

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No. GC No.0156 of 2023

Date of Institution : 09.05.2023

Date of Decision: 16.01.2025

Gurpreet Singh, resident of Dharam Heri, Bibipur, Patiala, Punjab-147102

...Complainant

Versus

M/S WTC NOIDA Development Company Pvt. Ltd. through its Director Shri Sherif Muin Khan, F-37, Khasra No.774/338, Shaheen Bagh, Abul Fazal Enclave-2, Jamia Nagar, South Delhi, Delhi-110025

(Project -WTC Chandigarh (Offices and Retail Outlets)

(Regn No. – PBRERA-SAS81-PC0074)

....Respondent

Present: Shri Gurnoor Singh, Advocate for the complainant
Shri Dixit Garg, Advocate for respondent

ORDER

This complaint was instituted on 09.05.2023 in Form 'M' by the complainant Gurpreet Singh, in his individual capacity under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act of 2016) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017) against the respondent-M/S WTC Noida Development Company Pvt. Ltd. seeking possession of Unit No.303, Tower-C, in the project "WTC Chandigarh (Offices and Retail Outlets)" (PBRERA-SAS81-PC0074) being developed by the respondent at WTC Towers, Plot No.2, Block-D, Aerocity, SAS Nagar, Punjab along with interest @ 10% on the

amount of Basic Settled Price (BSP) paid to the respondent from 01.01.2022 till the date of possession.

2. The brief facts of the complaint submitted by the complainant are that:-

- 2.1 The complainant was allotted Unit No.303, Tower C, having built up area of 500 Sq ft.
2. An Agreement was entered into between the complainant and the respondent and notarized on 24.01.2020.
- 2.3 The respondent gave written commitment that the date of completion of project as per RERA registration was 30.12.2022.
- 2.4 It was stated that if the project was running out of completion schedule then the builder/developer agreed to pay interest on the amount of Basic Settled Price w.e.f. 01.01.2022 till the date of offer of possession as per Annexure C-1003.
- 2.5 The respondent did not pay any single penny towards interest till today which reflected its *mala fide* intention.
- 2.6 The complainant never opted for personal parking space evident from Schedule-A at Serial no.22(d), but the respondent forcing to pay Rs.4,00,000/- towards car parking space.
- 2.7 Respondent is not delivering possessing and also not paying the interest despite repeated requests.

2.8 The unit is still under construction and would take more time to complete.

3. It is the prayer of the complainant to direct the respondent to deliver possession of the Unit and further to pay interest at 10% on the amount of BSP paid to the respondent from 01.01.2022 till the date of offer of possession and also to pay cost of litigation. The learned Counsel for the complainants attached annexure in support of their case including agreement, payment details etc.

4. Upon notice, Shri R.S. Baweja, and Shri Rachil Kaushal, Advocates appeared for the respondent and submitted reply dated 02.11.2023 taking certain preliminary objections. It is submitted by the respondent that:-

- 4.1 The instant complaint is not maintainable.
- 4.2 The complaint is without any cause of action.
- 4.3 The date of offer of possession as per Agreement dated 24.01.2020 was agreed to be governed by Serial No. 20 of the Schedule-A attached with the Agreement (Schedule-A, Sr.No.20 - Date of Completion of Project as per RERA Registration as well as date of offer of possession of Unit by Promoter-31.12.2022), which was understood by both the parties.
- 4.4 This arrangement of both the parties was further understood from the wording of Clause 5 of the agreement dated 24.01.2020, which has been reproduced by the respondent:-

"5 TIME IS THE ESSENCE:-

The promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Real Estate Regulatory Authority and for handing over the unit to the allottee and the common areas to the association of allottees or the competent authority, as the case may be...."

- 4.5 Respondent further stated that at Serial No.27 of Schedule-A of the Agreement it is mentioned - "tentative" date of offering possession to the allottee was 31.12.2022.
- 4.6 Respondent had previously applied to this Authority for extension of completion of project to 30.06.2022, and again the Respondent has duly applied for further extension of the completion date to 30.06.2024, which application of extension is under consideration of this Authority.
- 4.7 Therefore, this complaint is pre-mature and is liable to be dismissed.
- 4.8 There is no commitment made in the Agreement dated 24.01.2020 for the payment of any interest.
- 4.9 It is submitted that it is the endeavour of the respondent to offer possession of the allotted unit as mentioned, however, due to lockdown owing to the outbreak of COVID-19 pandemic created a *force majeure* situation which was completely out of the control of the respondent. It is further submitted that now the construction work is in full swing and the respondent would be able to offer possession soon.
- 4.10 These preliminary objections go to the root of the maintainability of the instant complaint and may be decided

at the first instance before proceeding further to decide the Complaint.

4.11 On merits, it is stated that the contents of the preliminary submissions may be read as part and parcel of the paras.

4.12 It is further submitted by the respondent that the Unit of the complainant is lockable and for lockable Unit, allottee is required to pay Car Parking Charges, however, the complainant is not willing to pay, therefore he has no right of usage of car parking area.

5. Later on, Shri Dixit Garg, advocate appeared on behalf of the respondent, replacing the earlier Counsels and submitted his Power of Attorney.

6. It is brought to the notice of the undersigned by the office of this Authority that the registration number of the project in question i.e. *WTC Chandigarh (Offices and Retail Outlets) - PBRERA-SAS81-PC0074* granted by this Authority has been revoked by this Authority vide order dated 15.05.2024. A copy of order dated 15.05.2024 also available on the web portal of this Authority, the relevant paras 25 and 26 of the said order are reproduced below:

"25. This Authority has received letter dated 17.04.2023 about resumption of the project site. Thus, the conjoint reading of letter No. No.7206 dated 17.04.2023 and Section 7(1) of the Act of 2016 established that the respondent/promoter failed to adhere to the time scheduled mentioned in the allotment letter which resulted into resumption of project site allotted to the promoter.

26. As a sequel of above said facts and circumstances it is concluded that the respondent/promoter has miserably failed to adhere to the payment schedule mentioned in the Allotment

Letter/ undertaking given by it before the Chief Administrator, GMADA, the following registration numbers granted to all the projects of M/s WTC Noida Development Company Pvt. Ltd. i.e.

1. WTC Chandigarh (Offices)
- **PBRERA-SAS81-PC0073**
2. WTC Chandigarh (Offices and Retail Outlets)
- **PBRERA-SAS81-PC0074**
3. WTC Chandigarh (Suites)
- **PBRERA-SAS81-PC0075**

are revoked with immediate effect with the following directions to the Secretary of this Authority to send a copy of this order to the following:

- i. The Chief Administrator, GMADA, Mohali with reference to his letter No. No.7206 dated 17.04.2023.
- ii. The concerned Deputy Commissioner-cum-Collector to direct all the Registrars/Joint Sub Registrars/Sub Registrars under his jurisdiction not to execute and register any sale deed pertaining to the projects under reference.
- iii. The IT wing of this Authority will upload this order on the website of this Authority to make the general public aware about the revocation of the projects.
- iv. M/s WTC Noida Chandigarh Development Company Pvt. Ltd. with a direction not to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, in any real estate projects or part of it..."

7. Thus, it is clear from the above order dated 15.05.2024 that the project "WTC Chandigarh (Offices and Retail Outlets) bearing registration no. PBRERA-SAS81-PC0074" in which the Unit bearing Unit no.303, allotted to the complainants was situated has already been revoked as such there was no application filed by the respondent for extension of the completion date was pending before this Authority.

8. Arguments were heard by the undersigned on the stipulated date.

9. The learned Counsel for the complainant argued that he was allotted Unit No.303, Tower C, having built up area of 500 Sq ft. by the respondent and an Agreement was entered into between the complainant and the respondent duly notarized on 24.01.2020 and the date of completion of project was given by the respondent as 30.12.2022. It was further argued that in the written commitment (without date Annexure C-1003) issued by the respondent it was clearly mentioned that "your penalty as per RERA (i.e 9%) will be applicable from 1-Jan-2022 on the basis of the principle paid amount." It is further argued that the respondent did not pay any interest. As on date the respondent failed to deliver physical possession. Complainant prayed that the respondent be directed to deliver possession of the Unit allotted to him and further to pay interest from 01.01.2022 till the date of offer of possession.

10. The learned Counsel for the respondent reiterated the contents of his reply. The learned Counsel for the respondent did not dispute about the allotment of the unit and execution of agreement between the complainant and the respondent. The precise argument of the learned Counsel for the respondent was that they have filed representation before the Competent Authority of Greater Mohali Area Development Authority (GMADA) regarding difference of interest, i.e there is a difference of interest calculated by GMADA and calculated by the respondent, which is likely to be decided shortly and the respondent is sanguine of its success. It was further argued by him

that in view of the pendency of the representation before GMADA, respondent is unable to apprise this Authority about the actual date of handing over of possession.

11. The undersigned considered the arguments of both the parties and also examined the records available on the file.

12. From the pleadings of the parties it is clear that there is no dispute between the parties about allotment of Unit No.303 having built up area of 500 Sq. Ft. in Tower-C in the commercial project named 'WTC Chandigarh (Offices and Retails)' being developed at Plot No.2, Block-D, Aerocity, SAS Nagar, Punjab; entering into an Agreement on 24.01.2020; as per Clause 20 of the Schedule-A attached with the agreement the date of delivery of possession of the unit was 31.12.2022; total fixed price of the unit being Rs.38,52,800. Till date possession of the above said Unit has not been handed over to the complainant.

13. It is noteworthy that the date of offer of possession promised to the complainant as per agreement was 30.12.2022 and the argument/averment of the respondent that the instant complaint is premature and liable to be dismissed is without any substance, as the instant complaint was instituted by the complainants on 09.05.2023. The other contention of the Counsel for the respondent that due to lockdown owing to outbreak of Covid-19 pandemic followed by another lockdown in 2021 the construction activities on the site was adversely effected. However, as per the Schedule-A of the agreement, the date of possession declared to be 31.12.2022, which is much after

the Covid-19 period and the present complaint was also filed thereafter.

14. It is noteworthy that out of the total sum of Rs.43,00,8000.00, the total value of the unit, the complainants had paid a sum of Rs.16,12,800.00 for the allotment of the Unit No.303 and this amount has not been disputed by the respondent.

15. In the matter of "*Imperia Structures Ltd. v. Anil Patni and Anr*" - Civil Appeal 3581-3590 of 2020) the Hon'ble Supreme Court held that "**the relevant date for delivery of possession to an allottee is the date mentioned in the agreement for sale and not the date till which the registration of the project is valid** (emphasis supplied). The argument of the respondent that they have submitted application for extension which is under consideration has no legs to stand as vide order dated 15.05.2024 the registration of this project 'WTC Chandigarh (Offices and Retail Outlets)' bearing No.PBRERA-SAS81-PC0074 had already been revoked by this Authority. Even otherwise if the respondent itself is not able to complete the construction and did not abide by the terms of possession, i.e possession by 31.12.2022, the complainant is not at fault. Thus, this argument is rejected.

16. Perusal of Annexure C-1003 attached by the complainant with his complaint revealed that Unit No.303 floor in Tower-C, which is allotted to the complainant, is mentioned in the undated letter written by the respondent, wherein it is clearly mentioned that ""your penalty as per RERA (i.e 9%) will be applicable from 1-Jan-2022 on the basis of the principal paid amount." It is the case of the complainant that

till date no interest has been paid to him by the respondent. However, it is made clear that as per Section 18(1) of the Act of 2016, the interest payable by the promoter to the allottee shall be the State Bank of India Highest Marginal Cost of Lending Rate plus two percent. The complainant is asking for interest @ 10% on the amount of BSP from 01.01.2022 till the date of offer of possession. Today's highest MCLR of SBI is highest than the demand raised by the complainant. However, considering the offered date of offer of possession as 31.12.2022, it is held that the complainant is entitled to interest w.e.f. 01.01.2023.

17. As per provisions of the Act of 2016, failure to deliver possession of the unit as committed attracts the provision of Section 18(1) of the Act which reads as under:

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b)

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed (**emphasis supplied**).

(2)

(3)"

18. As a result of the above discussion, this complaint is accepted and the respondent/WTC Noida Development Company Private limited, is accordingly hereby directed to pay interest at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost

of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainant w.e.f 01.01.2023 till the date of this order and the arrear of interest would be paid within two months from the date of receipt of this order.

19. The respondent is further directed to pay interest under Section 18(1) of the Act at the rate of 11.10% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by the complainant from the date of this order till the date of delivery of valid possession of the Unit No.303, Tower-C, situated in the project 'WTC Chandigarh (Offices and Retails)' being developed at Plot No.2, Block-D, Aerocity, SAS Nagar, Punjab. The respondent is directed to submit the compliance report accordingly.

20. It may be noteworthy that in case compliance report is not submitted by the respondent after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act of 2016.

21. The complainant is also directed to submit report to this Authority that he has received the amount of interest as directed in this order.

22. Further, the complainant is bound to pay the outstanding amount, if any, before taking the possession of the Unit as per Section 19(10) of the Act of 2016 which reads as under:-

"(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy

certificate issued for the said apartment, plot or building, as the case may be".

23. As far as the claim of litigation cost is concerned, the complainant has not raised this issue during the course of arguments, hence being not adjudicated upon.

24. File be consigned to the record room after due compliance.

Announced


(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab