BEFORE SH. ARUNVIR VASHISTA, MEMBER-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT CHANDIGARH

Complaint No. RERA/ GC No.0273 of 2023
Date of filing: 07.08.2023
Dated of Decision: **15.09.2025**

1. Manmohan Singh Bedi
2. Mrs. Amrit Kaur Bedi
   Both residents of M 703, Sector 117 TDI City, Wellington Heights Extension, Block (M & N), SAS Nagar (Mohali), Punjab.

...Complainants

Versus

M/s TDI Infratech Ltd., SCO 144-145, International Airport Road, TDI City, Sector 117, SAS Nagar (Mohali), Punjab.

... Respondent

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Sh. Mohd. Sartaj Khan, Advocate representative for the complainants
Sh. Puneet Tuli, Advocate, representative for the respondent

ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act"), read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules) against the respondent.

2. As per averments in the complaint, on 16.11.2018 the complainants were allotted Unit No.M-0703 at 7th floor, having carpet area of 1849 Sq. ft, alongwith one covered car parking in the project "Wellington Heights Extension (Block M & N) at TDI City, Mohali, Sector 117-119, SAS Nagar Mohali by paying booking amount of Rs.

ten lacs. It was a RERA registered project. The total price of the unit was Rs.67,37,309/-. A Flat Buyer's agreement dated 20.11.2018 was also executed *inter-parties*. As per Clause 7.1 of the buyer's agreement, the possession of the unit was to be delivered on 01.03.2019. But the same was delayed by the promoter and finally possession was offered on 01.12.2020. However, the actual legal possession of the unit had not been delivered till date as the same was to be delivered after obtaining Occupation Certificate which had not yet been obtained by the respondent/ promoter although conveyance deed was executed on 04.02.2021 by the respondent in favour of the complainant. Moreover, the area of the unit was also not as per the buyer's agreement and the allotment letter. As per the buyer's agreement, the carpet area promised was 1849 sq. ft. whereas actual delivered area was only 1153 sq. ft. The promoter had also wrongly charged for covered car parking by taking Rs.one lac extra from the complainant. It was alleged that the respondent had violated various provisions of the RERA Act. As such the complainants seek interest on the paid amount for each month on account of delay in handing over possession. Hence, the present complaint.

3. Upon notice, respondent promoter filed written reply contesting the complaint. Respondent emphatically denied the complainant's allegations regarding delay in possession further submitting that the complaint was barred by limitation and was thus not maintainable. The complainant had already been asked to take the possession of the floor in question long back on 01.12.2020 and the present complaint had been filed by the complainant on 09.08.2023 i.e. after three years from the date of offer of possession, which was clearly

time barred. It was further submitted that once the sale deed had been executed in favour of the complainant no relief could be granted u/S 18 of the RERA Act. Denying the rest of the averments of the complaint a prayer was made for dismissal of the complaint.

4. The main contention that has been put forth on behalf of the complainants is that they are entitled to seek refund of the amount that has been charged in excess by the respondent-promoter towards total sale consideration of the apartment as per the agreement to sell between the parties. It was clearly agreed between the parties that the apartment being sold was going to have the carpet area of 1849 sq. ft. while at the time of executing sale deed very cleverly the 'carpet area' was mentioned as super area of 1849 sq. ft. with carpet area being 1153 sq. ft. as against what was agreed to. As such since the possession has been given to the complainants of lesser carpet area than the agreed one, the excessive amount cleverly charged against the terms of agreement dated 20.11.2018 were liable to be refunded alongwith the interest on that as well as on delayed possession as is more or less admitted and is clear from the record. It is settled law as well that no sale could be made of the 'super area' by the promoter and as such on this account also, he was bound to refund the excessive amount that has been charged by deducting the charges of actual carpet area of which possession has been delivered from the total sale consideration. Even the parking charges have been wrongly made by the respondent.

5. While opposing the above contentions it was argued on behalf of the respondent that in claiming the refund of the alleged amount charged in excess towards the sale consideration the

complainants are not coming to the Authority with clean hands and by revealing the true and actual facts. Infact, in the agreement to sell dated 20.11.2018 executed between them, a mistake occurred there in mentioning the total 'super area' to be sold as 'carpet area' against the total sale consideration. And, the complainants are now trying to take undue benefit of that typographical error that occurred in the agreement to sell executed. Besides, the claim made by the complainants with regard to refund of excess amount charged is not only a highly time barred one but is also not at all legally justified even in view of the fact that at the time of delivery of possession and execution of conveyance deed no such objection was raised. Moreover, the fact that it was just a typographical mistake was clear from this fact as well that in the entire building on the 7th floor there was no apartment built having the carpet area of 1849 sq. ft. as would be clear from the record. It was thus finally contended that once the sale deed had been executed in favour of the complainants no relief could be granted u/S 18 of the RERA Act.

6. Submissions and contentions of both complainants and respondent have been considered and examined in the light of documents placed on record. Upon doing so this bench happens to be in partial agreement with the case put forth by the complainants. So far as the claim of interest on the delayed possession is concerned, their case is found to be fully justified since delivery of possession took place on 01.12.2020 as against the agreed date 01.03.2019.

7. With regard to the claim of refund of the excess payment that has been charged from complainants, this bench of the authority

fails to agree with the case put forth by the complainants on that. It is found that such a claim of refund of the alleged excess payment made is first of all not maintainable before the authority. In that context, it is important to take note of the provisions of Section 18 of the RERD Act that allows return of the amount alongwith interest received by the promoter in respect of sale of apartment only when promoter is unable to give possession of the same in accordance with the terms of the agreement for sale and when the allottee wishes to withdraw from the project. Except the above under no other condition such an order of refund can either be allowed or made, but for the interest for the period delivery of possession is delayed. And, in the case in hand, complainants seek refund/ return of the said excess amount alongwith interest having been paid by them towards the total sale consideration without withdrawing from the project that is not permissible. Whatever refund of the amount paid thus could be ordered only in the case allottee choses or intended to withdraw from the project on the failure of promoter to deliver the possession as per agreement. What can be possibly claimed by the complainants under the given circumstances is at the most refund by way of compensation that too only if the sold apartment and its area is not as per the sale price agreed to between them if complainant choses not to withdraw from the project.

8. As has been contended on behalf of the complainants that they have been charged in excess against the agreed price at agreed rate since the carpet area of which possession was delivered was lesser than the one agreed to in the agreement to sell between them. As such their claim for the refund is on account of lesser carpet area of the apartment as was mentioned and disclosed in the agreement to

sell taking place between the parties. But here also since the conveyance deed has been executed between the parties their claim has lost justification since conveyance deed that follows the agreement to sell supersedes it. Both the deeds are basically two different agreements, one being 'agreement to sell' while the other being 'sale agreement' and the later and subsequent one supersedes the previous agreement. Thus, the 'agreement to sell' that was executed earlier to sale agreement gets replaced by the subsequent 'sale agreement'.

9. Otherwise also the only challenge the complainants could make to the conveyance deed was on the ground of fraud and deception played upon them by the promoter as has been allegedly done so in the present case as well since it was contended that promoter cleverly mentioned the carpet area of 1849 sq. ft. as super area deceptively reducing it to 1153 sq. ft. against the disclosures made in the agreement to sell. Such a challenge on the said ground is not maintainable before the authority as it could be made only before the Civil Court that has the jurisdiction in that case. But at the same time, the complainants could maintain their claim as additional remedy if it is for the compensation that too before the Adjudicating Officer of the Authority if they so desired in the alternative ofcourse subject to proving their case for that as they have already taken the possession of the apartment sold and conveyance deed has been executed.

10. Accordingly as an outcome of my above discussion, this complaint is partly accepted and the respondent is directed to pay interest on the amount paid by the complainants to the respondent at the prescribed rate as per Rule 16 of the RERD Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% from

01.03.2019 i.e. due date for handing over possession of the unit in question till 01.12.2020 i.e. date of offer of possession made by the respondent within a month from today. Needless to mention here that this order of the authority shall not act as a bar in availing any other remedy available to complainant under the law. File be consigned to record room after due compliance.

Announced:
15.09.2025

(Arunvir Vashista),
Member, RERA, Punjab