

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

Complaint No. RERA/ABC No.1757 of 2020UR

Date of filing: 22.09.2020

Date of Decision: 18.11.2025

1. Santokh Singh Mander son of Chaudhary Sant Singh Mander, Non-Resident Indian, resident of Chaudhary Niwas, VPO Jarg, Tehsil Payal, District Ludhiana, Punjab-141416;
2. Sarabjit Kaur daughter of Dilbag Singh, Non-Resident Indian, resident of village Billa Nawab, P.O. Tut Kalan, Tehsil Nakodar, Jalandhar, Punjab-144040

Through General Power of Attorney

Dilbag Singh son of Kesar Singh, resident of village Billa Nawab, P.O. Tut Kalan, Tehsil Nakodar, Jalandhar, Punjab-144040

...Complainants

Versus

1. Premium Acres Infratech Pvt. Ltd. Regd. Office: 17/6 Industrial Area, Near Gali No.10 Anand Parbat, New Rohtak Road, New Delhi-110005
2. Premium Acres Infratech Pvt. Ltd. through Amit Jain son of M.R. Jain, Authorized Signatory cum Director, B-4/39, Sector 8, Rohini, New Delhi, 110085
3. Taneja Developers and Infrastructure, through Managing Director, #9, Kasturba Gandhi Marg, New Delhi-110005.

... Respondents

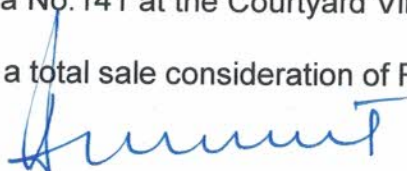
Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Sh. Himanshu, Advocate representative for the complainants
Sh. Parminder Singh, Advocate, representative for respondents no.1 and 2
Sh. Puneet Tuli, Advocate for respondent no.3

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 respondents.

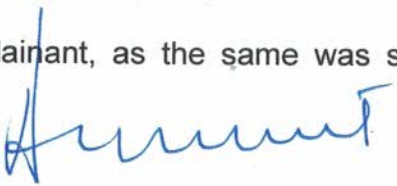
2. As per averments in the complaint, complainants jointly booked one corner, park facing villa No.141 at the Courtyard Villas, TDI City, Sector 110, 111, SAS Nagar Mohali for a total sale consideration of Rs.45.80 lacs out of which they



had already paid Rs.43.06 lacs. A buyer's agreement was also executed *inter-parties*, which stipulated that possession would be delivered on or before 15.05.2012 (18 months plus 6 months grace period). However, till 15.05.2012, i.e. the date before which the possession was promised, the respondents did not even begin the construction work at the site and offered another villa No.93 for a total sale consideration of Rs.45,30,400/- and promised to handover possession of the said villa on or before 16.01.2015. But till that date even the construction work of the villa No.93 did not see the light of the day. Instead, respondent Company raised a further demand of Rs.26,00,647/- which was absolutely unlawful. Hence, the present complaint seeks refund of the amount paid by them, alongwith interest for the entire period of inordinate delay.

3. Upon notice, respondents no.1 and 2 filed written reply contesting the complaint taking preliminary objections on the grounds of maintainability of the complaint, concealment of material facts and jurisdiction. On merits, it was submitted that respondent company was not a developer and was only a contractor who enters into a contract of the construction after helping the buyers to purchase the plot on which the villas were to be constructed. It was denied that there was any delay on the part of the answering respondents regarding construction of the Villa. And was then submitted that as per the settled terms and conditions duly agreed upon by the complainants at settled payment that too in a proper time period as the essence of the contract was timely payment which in this case was not there. No fault of any type was there on the part of the answering respondent company who was basically a contractor and had purchased the developed plots from TDI i.e. respondent no.3 who was the master developer/ owner of the land in question. The respondent company was only doing the work of construction as per the plan agreed upon in the buyer's agreement which was totally at the asking of the complainants only. Denying the rest of the averments of the complaint a prayer was made for dismissal of the complaint.

4. Respondent no.3 TDI filed its separate reply wherein it has been submitted that it was not in any way associated with the selling of the unit in question to the complainant, as the same was sold and all the consideration

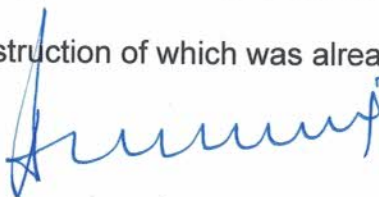


amount was collected by Premium Acres Infratech Private Ltd. which was a separate entity. And at no point of time any of the Directors/ Managing Director were same for both the above said companies. Consequently, a prayer for striking out the name of the TDI Infratech Limited from the memo of the parties has been made.

5. Complainants filed rejoinder and broadly reiterated the contents of the complaint.

6. While putting forth the case of complainants it was argued by their learned counsel that a buyer's agreement was executed between complainant and respondents no.1 and 2 regarding purchase of villa in question by the complainant in the project of the case in hand as per which possession of the villa was to be delivered on or before 16.01.2015 but the respondents failed to complete the construction work within the stipulated period despite receiving payment of Rs.43.06 lacs out of total sale consideration of Rs.45.80 lacs. It was further contended that respondents neither delivered the possession of the said villa nor they were in a position to do so as no completion certification has been obtained till date. In these circumstances, complainants have been left with no other option but to withdraw from the project praying for refund of their amount paid alongwith interest as per the provisions of RERD Act.

7. On the other hand, while opposing the case of complainants it was argued on behalf of respondents no.1 and 2 that the present complaint first of all not maintainable against them as they were only contractors/ builders while respondent no.3 TDI was the main respondent. Moreover, the agreement between complainants and respondents no.1 and 2 was construction related payment plan and all the payment was to be made within the time line agreed to therein. It was further contended that complainants failed to adhere the terms and conditions of the agreement by making payment as per the agreement in a time line manner. So much so notice annexure R-4 was issued that shows that from time-to-time complainants were being invited to make the payment so that possession could be delivered to them construction of which was already completed.



8. I have carefully considered the rival contentions. This authority finds absolutely no weight or substance in the contentions put forth on behalf of respondents no.1 and 2 because agreement was between complainants and respondents no.1 and 2. Possession of the villa was to be delivered on or before 16.01.2015 as per terms and conditions of the agreement dated 24.12.2009. The complainants had already paid Rs.43.06 lacs i.e. more than 90% out of total sale consideration of Rs.45.80 lacs. Although it had been contended on behalf of the respondents that there was a default on the part of complainants for making timeline payment, yet there is nothing pointed out on record that shows as to how complainants failed to make payments as per the agreement.

9. In view of above discussions, it is held that respondents failed to deliver possession of the property unit in question to the complainants within the stipulated period even till date after having received a huge amount from the complainants and this act on the part of the respondents is squarely covered under the provisions of Section 18 of the RERD Act which runs 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) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

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.

- (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*



(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."


10. A plain reading of above makes it abundantly clear that an indefeasible right has been conferred upon an allottee in case promoter failed to complete or was unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein provided allottee wishes to withdraw from the project and refund is to be made to allottee on demand alongwith interest at such rate as may be prescribed in this behalf. Such legal right of an allottee cannot be defeated on the ground of lack of any such provision in any document issued by a promoter as was also so observed by the Hon'ble Supreme Court in the case of **'Emaar MGF Land Ltd. Vs. Aftab Singh'** (Civil Appeals No.23512-23513 of 2017).

11. In view of the above discussion, respondents no.1 and 2 are liable to refund the amount of Rs.43.06 lacs paid by the complainants to them.

12. The next question which arises for consideration is as to whether the complainants are entitled to any interest on the amount paid to the respondents or not? The fact remains that the respondents had been using the amount so paid by the complainants to them since the day of payment. As such, the respondents are liable to refund the above said amount alongwith interest to the complainants because once the amount is deposited with the promoter and promoter is getting benefit of interest accruing upon said amount, the similar benefit cannot be denied to the complainants/buyers. As such, to conclude with, I am of the view that the complainants are entitled to the return of principal amount of Rs.43.06 lacs along with interest at the prescribed rate as per Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the respective dates of payments till realization. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.



13. As an outcome of above discussions and observations, the complaint stands accepted. A copy of this order be provided to both the parties free of costs. File be consigned to record room after necessary compliance as per rules.



**(Arunvir Vashista),
Member, RERA, Punjab**