

**SHRI ARUNVIR VASHISTA, MEMBER
THE REAL ESTATE REGULATORY AUTHORITY,
PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No. GC No.0380 of 2021
Date of Institution: 08.10.2021
Date of Decision: 17.03.2026

Sohinder Kaur through her son and GPA holder Narinder Pal Singh, H. No.1627, Phase 10, Sahibzada Ajit Singh Nagar, (Mohali) Punjab.

.....Complainant

Versus

M/s EMAAR MGF Land Limited, Office No.40, Central Plaza, Sector 105, Mohali, District Sahibzada Ajit Singh Nagar, (Mohali) Punjab.

Respondent

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

Present: Mr. Vipul Monga, Advocate, representative for complainant
Mr. Sanjiv Sharma, Advocate, representative for respondent no.1
Mr. Sagar Kumar, Advocate, representative for respondent No.2 (HDFC Bank)

ORDER

Sohinder Kaur complainant through her son and GPA holder filed this complaint against respondent M/S EMAAR MGF Land Limited seeking refund and interest etc. as per the provisions of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) on the ground that she alongwith her husband Salinder Singh

Malhi (since deceased) booked unit No. K1-F01-101 in the project namely '**The Views**' at Mohali Hills, Sector 105, Mohali. The basic sale price of the unit/ apartment was Rs.42,97,619/-. The complainant paid a sum of Rs.43,89,731/- from her own pocket as well as by obtaining loan from the bank. Allotment letter was issued on 31.07.2008. The husband of the complainant died and she being an old aged person could not maintain the loan account and the HDFC bank recovered Rs.18,69,584/- from the respondent to clear the account by making the account NPA on 04.01.2017. There was no development at the site and possession was not delivered to the complainant after a passage of long period of ten years, but the respondent sent cancellation letter dated 18.07.2017 with two cheques worth Rs.12,02,058/- which were not accepted by the complainant. The son of the complainant offered to give the respondent the above said amount which was paid by the respondent to the bank and to deliver possession of the flat, but to no effect. Even the respondent did not offer the possession to the complainant as there was no occupancy certificate with the respondent qua the project in question. Hence, the instant complaint.

2. In reply to the complaint, respondent raised the objections that the unit had been cancelled and money was forfeited. As such the instant complaint was not

maintainable. As per apartment buyer's agreement dated 24.03.2008 the time was essence of the contract and possession was to be delivered subject to timely payment of instalments, but the complainant defaulted in making the payments to the respondent and to the bank. As per clause 10 of Tripartite agreement dated 16.11.2007, the unit was cancelled and money was remitted to the bank on their demand as the bank had sought cancellation of the unit vide their letter dated 03.01.2017, when the complainant failed to make the account regular. The complainant also did not pay any heed to the letter sent to her by the respondent on 18.07.2017 and vide cancellation letter dated 13.10.2017 the unit was cancelled and money was forfeited. Two cheques each of Rs.6,01,029/- bearing No.415322 and 415323 were sent to the complainant, but she refused to accept the same. The project was complete and had the complainant not defaulted, possession would have been delivered to her. An amount of Rs.18,50,146/- was released to the bank on 25.09.2017 by the respondent and the relief of refund as claimed by the complainant could not be allowed in her favour. As per RERA registration, the respondent was to complete the project by June 2020, but the project was already complete. It was prayed that the complaint was liable to be dismissed.

3. While putting forth the case of complainant her learned counsel argued that the unit in question was got booked in the year 2007 upon payment of booking amount of Rs.7 lacs. Thereafter an agreement was executed between allottee and the respondent in March, 2008. As per terms and conditions of the agreement the completed possession of the unit was to be delivered within 36 months from the date of allotment. But there was a default on the part of promoter/ respondent as he failed to deliver the unit/ apartment in a duly completed form as per the agreement thereof. Rather on account of delay complainant had to suffer from hardships as in the year 2014 her husband had died and because of her weaker financial condition she could not pay back the loan amount that she took from HDFC Bank. The terms and conditions of tripartite agreement between allottee and promoter and the bank on the other side could not be fulfilled and honoured. Taking undue advantage of the financial condition of complainant, the promoter unilaterally ordered cancellation of the allotment in the year 2017 which was not only an arbitrary act on the part of promoter but was without any sufficient reason as well. The said unilateral cancellation ordered had no effect and bearing on the rights of complainant that has been given to her by the statute i.e. by Section 18 of the Act and she was therefore

entitled to claim refund of the entire deposited amount with the promoter alongwith the prescribed interest on account of delay in delivery of possession for a long period.

4. On the other hand, the submission on behalf of the respondent was that claim of complainant was a highly time barred one since suffered from delay and laches. Moreover, the cancellation was done at the asking of bank as per the terms and conditions of the tripartite agreement. As per clause 10 of Tripartite agreement dated 16.11.2007, the unit was cancelled and money was remitted to the bank on their demand as the bank had sought cancellation of the unit vide their letter dated 03.01.2017, when the complainant failed to maintain the account regular.

5. Submissions and contentions of both complainant and respondent have been considered and examined in the light of facts and circumstances of the case emerging on record. The admitted facts of the case are that the complainant and her husband Salinder Singh Malhi booked unit No. K1-F-1-101 in the Project namely '**The Views**' at Mohali Hills, the basic sale price of which was Rs.42,97,619/- and the complainant paid Rs.43,89,731/- towards the price of the said unit. It is also

an admitted fact that allotment letter dated 31.07.2008 was issued in this case. The apartment buyer agreement was executed between the parties on 24.03.2008. A tripartite agreement was also executed between the complainant, respondent and the HDFC bank on 16.11.2007 on the basis of which loan amount of Rs.27,25,980/- was disbursed by the bank directly to the respondent seller on behalf of the buyers. The crucial clause 10 of the said agreement runs as under: -

"Further, the builder, in the event of default of repayment as mentioned in clause 2 and 3 hereinabove, shall on intimation by HDFC cancel the allotment of the residential apartment in favour of the borrower and refund all monies to HDFC directly under intimation to the borrower for appropriation and adjustment by HDFC against all monies due to it from the borrower as mentioned above."

6. The perusal of above clause shows that in the event of default of repayment as mentioned in clauses 2 and 3, builder shall on intimation by HDFC of the borrower's default of loan, cancel the allotment of the residential apartment in favour of the borrower and refund the outstanding amount of loan to the HDFC directly under intimation to the borrower for appropriation and adjustment by HDFC against all monies due to it from the borrower. The perusal of file further shows that the HDFC wrote a letter dated 03.01.2017 to the respondent

intimating that the account of the complainant was classified as Non-Performing Asset and thus seeking cancellation of the allotment of the property in terms of the tripartite agreement and to remit to the HDFC, the outstanding balance in the loan account of the respondent. In response to the said letter, the respondent sent letter dated 18.07.2017 to the complainant and her husband Salinder Singh Malhi for clearing the dues with the HDFC within fifteen days from the date of receipt of said letter, failing which the allotment would be cancelled. On the failure of complainant to respond, the respondent sent cancellation letter dated 13.10.2017 to the complainant and her husband Salinder Singh Malhi, whereby intimating the payment of outstanding loan amount to the HDFC bank and that the earnest money was forfeited and the balance amount of Rs.12,02,058/- was offered to the complainant through two cheques. Original documents were sought back and it was intimated that in future the lien marked over the said property of complainant and her husband Salinder Singh Malhi would stand discharged. The perusal of letter dated 29.09.2017 written by the HDFC to the respondent shows that they received the amount of Rs.18,50,146/- through cheque No.415283 dated 25.09.2017. From above discussed correspondence, it comes out that the respondent cancelled the allotment of

unit in question on the basis of Tripartite agreement dated 16.11.2007.

7. Although, the cancellation of allotment was done by the respondent as per the terms and conditions of abovesaid tripartite agreement dated 16.11.2007 at the asking of HDFC Bank yet it cannot be stated that the said cancellation took away all the rights of complainant that accrued to her before the cancellation was done and conveyed to complainant vide letter dated 13.10.2017. Before the cancellation was done certain amounts were already deposited by the complainant with the respondent company/ builder which comes out to be rather more than the total sale consideration/ price of the apartment allotted by the time cancellation was done on 13.10.2017. The respondent company could not have escaped from the liability that arose towards complainant on account of buyer's agreement as it was because of their default the possession of the apartment could not be delivered in a duly completed form in accordance with the buyer's agreement. It was the respondent company that failed to deliver the timely possession as was stipulated in the agreement and they used the money/ amount deposited with them by the complainant till they returned the contributed amount by the bank to it after cancelling the allotment although in accordance with the terms and

conditions of tripartite agreement. The provisions of Section 18 of the Act grant an indefeasible right in favour of an allottee that cannot be taken away under any circumstance as there was a failure on the part of respondent/ builder itself in delivering the possession in a duly completed manner in accordance with the buyer's agreement. Besides, RERA Act is a beneficial legislation. And, the provisions made in Section 18 of the Act are most beneficial of all.

8. Another contention that has been raised on behalf of the respondent that the present complaint was not maintainable since it suffered from delay and laches and was thus highly time barred, is found to be having no merit or substance. This bench finds a very little application of the law of limitation being mindful of the '*retroactive*' and '*remedial nature*' of the Act. It is perhaps for this reason no specific limitation period has been provided in the Act. The complainant is thus found to be very much entitled to claim the refund of the amount deposited with the respondent company alongwith the prescribed interest thereon by virtue of statutory right given to her by Section 18 of the Act on the entire amount that remained deposited with respondent till 13.10.2017, when the cancellation of allotment letter was issued. Thereafter whatever the remainder amount after deducting

the amount paid back to the bank is to be refunded alongwith the interest till its payment as the cancellation done as per tripartite agreement had no bearing or effect on the buyer's agreement that gave indefeasible right to the complainant as per the Act.

9. As such as an outcome of above discussion, the present complaint is partly accepted and the respondent is directed to refund the entire deposited amount by the complainant along with interest thereon at the prescribed rate (today's highest MCLR rate plus 2%) w.e.f. 31.07.2010 i.e. date of possession till 13.10.2017 i.e. date of cancellation of the allotment. Thereafter whatever the remainder amount after deducting the amount paid back to the bank is to be refunded to the complainant alongwith the interest till its payment.



10. The respondent is directed to make the above payment within 90 days from the date of receipt of this order as per Section 18 of Act, 2016 read with Rules 17 of the Rules, 2017. The said amount is to be collected as arrears of Land Revenue by the Competent Authorities as provided/authorized in the Punjab Land Revenue Act, 1887 read with section 40(1) of the Act, 2016. In case payment is not made within abovesaid period of 90 days, then Secretary of this Authority shall be issuing "Recovery Certificate" as per rules. The complainant and the

respondent are directed to inform the Secretary of this Authority regarding any payment received or paid respectively so as to take the same in to account before sending "Recovery Certificate" to the Competent Authority for recovery.



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