

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

Complaint No. RERA/ GC No.0066 of 2023

Date of filing: 14.03.2023

Dated of Decision: **07.01.2026**

1. Munish Sehgal

2. Sarika Sehgal

Both residents of # 930 1st floor, Sector 65, SAS Nagar (Mohali), Punjab.

... Complainants

Versus

1. ACME HEIGHTS INFRASTRUCTURE PVT. LTD, Sector 92, Chapper Chiri, SAS Nagar (Mohali), Punjab.

2. INDIAN OVERSEAS BANK LTD, SCO 23, LOAN DEPTT, IST FLOOR, PHASE-1, SAS Nagar (Mohali), Punjab.

... Respondents

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

Present: complainants in person

Sh. Hoshier Chand, Advocate, representative for respondent no.1

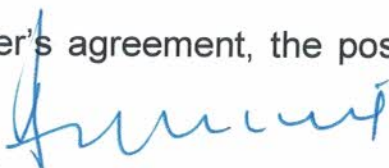
Respondent no.2 exparte

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.

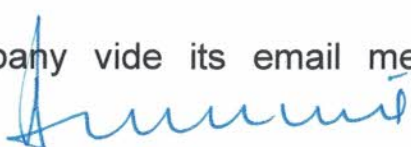
2. As per averments in the complaint, complainants got 2BHK flat booked with the respondent company in December 2019. A Flat Buyer's agreement dated 28.12.2019 was also executed *inter-parties*.

As per the buyer's agreement, the possession of the flat was to be



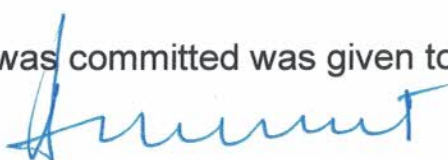
delivered within a period of 16 months from the date of agreement. In October, 2021 a pre-possession letter was sent to them by the respondent. But when the site was visited there was neither a lift was installed nor any store was constructed as was promised in accordance with the agreement. Rather repeated requests made by the complainants were ignored by the respondent company, who on the other hand kept on asking them to clear the remaining dues. Till then they had not been delivered possession of the flat nor any interest for the delayed possession as was committed was given to them. Just because of the delay in possession they were forced to live in an enhanced rented accommodation. Besides, they had been paying monthly instalments of the loan which they took from bank in order to make payment of its instalments. 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 complainants who were provisionally allotted the flat in question vide an agreement to sell dated 28.12.2019 had actually made default in adhering the payment plan by making timely payments despite sending them repeated reminders for that. Rather in response to their repeated reminders for making the payment asking complainants to make the payments as agreed, they vide an email message dated 06.02.2023 told them to refund their amount with interest for the last three years. And acting upon their said request, the respondent company vide its email message dated 21.02.2023



conveyed the cancellation done by them of the unit booked by the complainants. Vide the said message complainants were also asked to visit their office so that cancellation formalities be got completed and they could be refunded their deposited amount upon deducting 10% of the total consideration money as per clause 7.5 of the agreement of sale. But the complainants failed to collect the refund amount and the respondent was thus constrained to again send an email dated 13.03.2023. This way the complainants instead of collecting the refund amount had filed the present complaint on false and frivolous grounds. It was further submitted that once the complainants themselves requested for cancellation of the allotment they could not have asked for possession of the flat in question and their present complaint was liable to be dismissed. Denying the rest of the averments of the complaint a prayer was made for dismissal of the complaint.

4. While putting forth the case of complainants it was argued on their part that they got 2BHK flat booked with respondent company in December 2019 vide an agreement to sell executed between them on 28.12.2019. As per the agreement respondent company was supposed to deliver the flat within a period of 16 months. Then it was in October 2021 a pre-possession letter was sent to them by the respondent. But when the site was visited there was neither a lift ~~was~~ installed nor any store was constructed as was promised in accordance with the agreement. Rather repeated requests made by the complainants were ignored by the respondent who on the other hand kept on asking them to clear the remaining dues. Till then they had not been delivered the flat nor any interest for the delayed possession as was committed was given to them. Just because of the



delay in possession they were forced to continue ~~live~~^{living} in an enhanced rented accommodation. Besides, they had been paying monthly instalments of the loan which they took from bank in order to make the payment of its instalments.

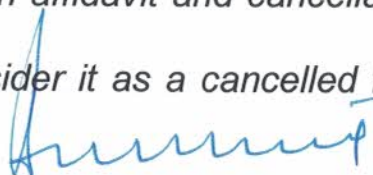
5. While on the other hand it was contended by the learned counsel for the respondent that the complainants who were provisionally allotted the flat in question vide an agreement to sell dated 28.12.2019 had actually made default in adhering the payment plan by making timely payments despite sending them repeated reminders for that. Rather in response to their repeated reminders for making the payment asking complainants to make the payments as agreed, they vide an email message dated 06.02.2023 told them to refund their amount ASAP with interest for the last three years. And acting upon their said request, the respondent company vide its email message dated 21.02.2023 conveyed the cancellation done by them of the unit booked by the complainants. Vide the said message complainants were also asked to visit their office so that cancellation formalities be got completed and they could be refunded their deposited amount upon deducting 10% of the total consideration money as per clause 7.5 of the agreement to sell. But the complainants failed to collect the refund amount and the respondent was thus constrained to again send an email dated 13.03.2023. This way the complainants instead of collecting the refund amount had filed the present complaint on false and frivolous grounds. Accordingly, once the complainants themselves requested for cancellation of the allotment they could not have asked for possession of the flat in question and their present complaint was liable to be dismissed.



6. Submissions and contentions of both complainants and respondent have been considered and examined in the light of facts and circumstances of the case emerging on record. Admittedly, a major amount of the total sale consideration of the flat was paid up by the complainants. Now the question that remains to be determined is whether the said cancellation done in the case is valid or not? The case of respondent company is that the cancellation of the flat in question was done at the request of complainants themselves which was conveyed to respondent vide an email message dated 06.02.2023. Admittedly, there was an agreement dated 28.12.2019 executed between the parties that governed and contained the terms and conditions of the sale of flat. As such the cancellation if any could have been done by either of the parties to the agreement only according to that and that too in writing. As such there could be no cancellation of the unit through a verbal chat and messaging on the email. It is for this reason the respondent vide its email message dated 21.02.2023 while conveying it to complainants that their request to cancel the flat was acceptable to them, further asked the complainants to send an affidavit and cancellation letter so that it could be considered that the sale of their flat was actually cancelled. Their said message forwarded to complainants in response to the cancellation request made by them to the respondent company dated 21.02.2023 reads as under: -

"Dear Sir

As per your request for cancellation of flat, we have accepted your request to cancel the flat. For this process we require an affidavit and cancellation letter from you so that we consider it as a cancelled flat and we can sale it



further. Kindly visit the office to complete the cancellation formalities.

Regards

*Anjana Rathore
Acme Heights Infrastructure Pvt. Lt.
Sector 92 Mohali."*

As is clear from the wordings of above message conveyed to the complainants, they themselves asked for the affidavit and cancellation letter of the complainants in order to consider the fact that cancellation was done by them. But the said requisite affidavit as was asked for was never sent nor any letter of cancellation by the complainants. It means the cancellation was never confirmed by the complainants. Rather the later messages sent by the complainants go on to show that something was being conveyed by the parties to each other on email chats out of their emotional outburst that carry no legal meaning or effect so far as the alleged cancellation was concerned. In this way also the cancellation even if any as has been done and conveyed by respondent through its email message dated 13.03.2023 could not be considered a valid action on its part and was thus an unilateral cancellation at the most. As per Section 11 Clause 5 the promoter might cancel the allotment only in the terms of agreement for sale provided that the allottee in that case could approach the authority for relief, if he was aggrieved by such cancellation and such cancellation was not in accordance with the terms of agreement for sale, unilateral and without any sufficient cause. Hence the said cancellation when examined in the light of facts and circumstances of the case was not only an unilateral one but was also not in accordance with the terms of the agreement for sale what to talk of it being without




any sufficient cause. Therefore, cancellation allegedly done was no cancellation in the eyes of law which can be allowed to be withheld or sustained.

7. Accordingly, as an outcome of my above discussion, this complaint is accepted in the following terms: -

i. The respondent shall be liable to pay interest 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% U/s 18(1) of the Act for the delay in handing over possession from 28.10.2021 till offer of possession to be made by the respondent of the flat. This amount shall be paid within 90 days as per Rule 17 of the Rules.

ii. The complainants shall take possession of the apartment so offered as directed within a period of two months from the date of fresh offer in case occupancy certificate has already been issued for the said apartment, after making all the pending payments, as provided in the buyer's agreement. The complainants shall also be liable to pay interest to the respondent/ promoter for the period of delay, if any, in making timely payments of the instalments as per the payment plan, at the above-said rate.


(Arunvir Vashista),
Member, RERA, Punjab