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

Complaint No. 0080 of 2022
Date of Institution :26.03.2023
Date of Decision: 17.03.2026

Kulbir Singh Rehal, SF-1534, Sector 74-A, Sahibzada Ajit Singh Nagar (Mohali)- Punjab-140307.

....Complainant

Versus

M/s TDI Infratech Limited, through its managing director, SCO 678-679, Airport Road, Sector 119, TDI Smart City, SAS Nagar (Mohali), Punjab - 140307

....Respondent

Present: Shri Vipul Sachdeva, Advocate for the complainant
Shri Puneet Tuli, Advocate for respondent no.1

ORDER

This complaint in Form 'M' 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) was instituted on 26.03.2023 by the complainants in their individual capacity against respondents with reference to Section 18 of the Act of 2016 seeking following reliefs:

1.1 To direct the respondent to pay interest at 18% per annum to the complainant on the total amount i.e. Rs.47,18,082 paid by the complainant, on account of delay in handing over the possession from the due date i.e. 23.03.2019 till the date of handing over of possession i.e. 16.07.2021;

1.2 To direct the respondent to refund the amount of excessive GST charged by the respondent or in the alternative, give the benefit of Input Tax Credit to the complainant;

1.3 To direct the respondent promoter to complete the repairs and remove the defects in the complainant' residential unit;

1.4 To direct the respondent to pay a sum of Rs.1,10,000/- towards the cost of litigation

2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rule of 2017 are reproduced as under:

> ***"31. Filing of complaints with the Authority or the Adjudicating Officer.***-- *(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.*
>
> *Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*
>
> *(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations".*
>
> *"Rule 36.* ***Filing of complaint with the Authority and inquiry by the Authority.[Section 31,71 (1) and 84(2)(zc)]--*** *(1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated".*

3. The complainants submitted the following facts in the complaint that: -

3.1 The complainant had purchased a residency unit No. SF-1534 having carpet area of 1180 sq ft in the project 'Connaught Residency' developed by the respondent at Sector 74-A, Mohali.

3.2 Thereafter provisional letter of allotment was issued on 21.03.2018 and Floor Buyer Agreement was entered into between the complainants and respondent on 21.03.2018 (Annexure C-2 and Annexure C-3 respectively). The promoter has to deliver the possession by 23.03.2019.

3.3 The rate of the floor was fixed at Rs.47,18,082/-. The complainant had made the entire payment to the promoter total amounting to Rs. 47,18,082. It is pertinent to mention that all the payments were made on time. Receipts and statement of account issued by the respondent are **Annexure C-7 (Colly).**

3.4 The complainant made the entire payment on time still the project was delayed. After a delay of more than two years, the possession of the flat was handed over to the complainant on 16.07.2021 and the sale deed was executed between the parties. The possession letter is annexed as Annexure C-4 and the Sale deed is executed on 26.08.2021 enclosed as Annexure C-5.

3.5 The flat is having many defects and certain works are still pending, in this regard, the complainant had written various emails/ communications *inter-alia* asking respondent to rectify the defects, but till date, nothing has been done in this regard.

3.6 As per the applicable GST rates, the GST on residential construction is at 5% without an input tax credit and 12% with an input tax credit, the said ITC benefit is to be given to the complainant. However, in the present case, no input tax credit benefit has been given to the complainant and it is clear that the respondent has illegally charged GST at 12% without giving the due benefit of input tax credit to the complainant. Statement of account dated 02.01.2021 is Annexure C-7.

3.7 In this complaint, the complainant is seeking interest from 23.03.2019 till 16.07.2021.

4. Upon notice, Shri Puneet Tuli, Advocate appeared for respondent and submitted reply to the effect that the complainants were allotted residency No.SF-1534 in the project 'Connaught Residency'; a buyer agreement was executed on 21.03.2018; the complainants could not deposit the amount in time; possession was made to the complainants on 16.07.2021, and the sale deed was executed between the parties on 25.08.2021. Possession of the unit was delayed due to corona which was declared 'force majeure', by the Ministry of Housing, Government of India.

5. Respondent submitted that in view of the payment clause that price of the floor was never deposited within the periods as agreed upon agreement dated 21.03.2018 and possession of the floor was linked with the price payment the floor hence the delay compensation for the period claimed by the complainant is not entitled at all.

6. Counsel for the complainants filed rejoinder reiterating the contents of their complaint and stated that all payments were made on time and there is no evidence to show that the complainant delayed any payment.

7. Both the Counsel for the complainant as well as respondent addressed their respective arguments on stipulated date. The undersigned considered the rival contentions of both the parties and also perused the pleadings along with documents annexed by both the parties:

8. Counsel for the complainants stated that the contents of complaint be considered as their arguments and also submitted that he had got possession on 16.07.2021. The prayer of the complainants is for

payment of prescribed interest with effect from 23.03.2019 till 16.07.2021. To strengthen the case of the complainants the Counsel submitted orders dated 01.06.2023 passed by this Authority in GC0500 of 2021 for the same project of respondent.

9. Counsel for respondent stated that due to corona the construction work was moved slowly. Possession was offered vide letter dated 16.07.2021 and conveyance deed was executed on 26.08.2021.

10. I have considered the arguments of both the parties and also gone through the file.

11. The respondent also argued that pandemic of Covid-19 occurred with effect from March 2020 onwards and possession as claimed by complainants was to be handed over on 16.07.2021 and this Authority had itself granted 6 months reprieve to the promoters. It is further the case of respondent that during the intervening period of March 2020 to July 2021 due to Covid-19, the construction was at snail's pace and respondent could not meet the dead line and prayed for six months exemption from payment of interest for the period of delay. He has also relied upon various orders of the competent Authorities in this regard.

12 It is a matter of record that Hon'ble Real Estate Appellate Tribunal, Punjab vide its order dated 22.08.2022 in Appeal No.100 of 2021 titled as "Hero Realty vs Arun Premdhar Dubey" held that due to force majeure on account of Covid-19, "a benefit of at least 4 to 5 months on account of force majeure should be afforded to the developer to absolve him of the liability of completing the projects within the timeline prescribed". In view of above position the period of 4 months of force majeure has to be excluded from the period of delay in handing over possession to the complainant, order accordingly.

13. From the above discussion it is established on record that possession was to be delivered by 23.03.2019 but possession was offered on 16.07.2021. This case is accordingly squarely covered within the definition of Section 18 of the Act which reads as under:-

> ***"18. (1)*** *If the promoter fails to complete or is unable to give possession of an apartment, apartment 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.*
>
> *(2) ...*
>
> *(3)..."*

14. As a result of the above discussion, this complaint is accordingly allowed and respondent is directed To pay interest under Section 18(1) of the Act of 2016 at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate i.e. 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by complainant before due date of possession i.e. 23.03.2019 to 15.07.2021 (minus four months being force majeure event as discussed in para 12 above) and in respect of payment received after due date of possession i.e. 23.03.2019, from the date of receipt of payment till 15.07.2021. The arrear of interest would be paid within the statutory time i.e. ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order and submit the compliance report.

15. It may be noteworthy that in case compliance report is not submitted by 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.

16. The complainant is also directed to submit report to this Authority that they have received the amount of interest as directed in this order.

17. The prayer of the complainant for refund of the alleged excess amount of GST is, however, denied as this Authority is not the correct forum to adjudicate upon the correct amount of GST leviable on the said transaction.

18. Regarding any defects in the residential unit, the complainant is at the liberty to approach the adjudicating officer through application in form "N".

19. As far as the claim of litigation cost of Rs.1,10,000/- is concerned, the complainants have not raised this issue during the course of arguments, hence being not adjudicated upon.

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

17/3/26

(Binod Kumar Singh)
Member, RERA, Punjab