

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

Complaint No.0141 of 2023 UR
Date of Institution : 03.05.2023
Date of Decision: 12.01.2026

Karishma Singhal, resident of House No.41, Industrial Area, Phase-1,
Chandigarh, Pin Code 160002.

....Complainant

Versus

1. ACME Builders Private Limited, SCO No.2449-50, Ist Floor,
Sector 22-C, Chandigarh, Pin Code 160022
2. Dewan Housing Finance Corporation Limited (Piramal Capital &
Housing Finance Limited), Wardon House, 2nd Floor, Sir P.M.
Road, Fort, Mumbai, Maharashtra, Pin Code 400001

(Name of respondent no.2 was deleted vide interim order dated
19.01.2024)

....Respondents

Complaint in Form 'M' u/S 31 of the Real Estate
(Regulation and Development) Act, 2016, read with
Rule 36 (1) of the Punjab State Real Estate
(Regulation and Development) Rules, 2017.

Present: Ms. Manisha Maggu, Advocate for the complainant
Shri Manoj Vashishtha, Advocate for the respondent no.1
Ms. Isha Janjua, Advocate for respondent no.2

The relief sought by the complainant is for issuance of
direction to respondent no.1 to refund the amount along with interest
thereon.

2. The brief facts mentioned in the complaint by the
complainant are as under:-

2.1 It is submitted that complainant, booked a residential floor unit no 1998-GF having super area 1050 sq. ft, in the project "Acme Floors" promoted by respondent no.1 and paid booking amount of Rs.2,50,000/- through cheque on 02.07.2012 followed by another payment of Rs.3,10,000/- vide cheque no. 901959 dated 01.09.2012. A copy of provisional Allotment Letter issued by respondent no.1 along with receipts are Annexure C/I (Colly).

2.2 Thereafter a Builder Buyer Agreement (Annexure C/II) was executed on 04.06.2014 mentioning terms and conditions; total consideration amount of Rs.28,75,625/-; payment plan and due date of offer of possession i.e. 24 months plus 6 months of grace period from the date of signing of agreement as per Clause 16 of the agreement i.e. by 03.12.2016.

2.3 It is stated that complainant opted for 'Subvention Plan'. A loan agreement was signed between the complainant and respondent no.2/M/s Dewan Housing Finance Corporation Limited (DHFL) on 28.04.2015. Complainant availed a loan of Rs.22,40,000/-. Thereafter a tripartite agreement was also executed among complainant, respondent no.1 and respondent no.2 on 27.04.2015. It is submitted that as per Clause 3 of the tripartite agreement (Annexure C/III (Colly)), respondent no.1 shall pay pre-EMI Interest for a period of 24 months from the date of disbursement of the loan or till offer of possession whichever is earlier. In view of terms of loan and tripartite agreement respondent no.2 paid an amount of Rs.19,04,000/- on 30.04.2015 and Rs.2,24,000/- on 30.06.2015 to respondent no.1 on behalf of complainant. As such, complainant made full and final

payment of the allotted unit (after accounting for rebate of 5 % on BSP as mentioned in schedule 1 of the agreement for sale). A copy of bank statement is Annexure C/IV.

2.4 It is alleged that complainant visited the project site from 2015 to 2017 to ascertain the date of offer of possession. Respondent no.1 offered possession (Annexure C/V) of allotted unit on 30.06.2017 but unit was not ready. However, respondent no.1 verbally assured complainant that allotted unit would be ready soon and insisted on taking paper possession but complainant refused. It is alleged that respondent no.1 had not received any Completion/Occupancy Certificate from the competent authorities.

2.5 It is further alleged that complainant also raised issue of non-registration of its project with this Authority. However, respondent no.1 threatened to cancel allotment of the unit, knowing well that 100% payment had already been paid by complainant in 2015.

2.6 It is further alleged that respondent no.1 has also not honoured its commitment to pay pre-EMI interest for a period of 2 years as agreed.

2.7 It is submitted that on account of delay in handing over possession of allotted unit, complainant was burdened with interest on home loan and she repaid the loan amount from her own funds in the year 2019 and loan account was closed by respondent no.2 on 20.08.2019 (Annexure C/VI) and charge created over the property was removed. Hence, this complaint for issuance of a direction to respondent no.1:

- a) To refund the deposited amount to the complainant along with interest at the earliest;
- b) To pay interest for the delayed period in offering possession of the unit;
- c) To pay Pre EMI interest for a period of 2 years in terms of the Clause 3 of the Tripartite agreement; and
- d) To issue notice under Section 59 of the Act of 2016 for non-registration of the project with this authority, and impose appropriate penalty for non-compliance of the provisions of the Act of 2016.

3. Upon notice, Ms. Isha Janjua, Advocate appeared for respondent no.2 and submitted her Power of Attorney and sought time to file reply. When the matter was taken up on 19.01.2024, Counsel for the respondent no.2 stated that complainant has paid the entire due amount to it and now nothing is due against the complainant and prayed that name of respondent no.2 be deleted from the array of respondents. Accordingly, name of respondent no.2 was deleted on 19.01.2024 itself.

4. It is noted that on 19.01.2024, Ms. Jennifer, Advocate appeared for Shri Manoj Vashishtha, Advocate for respondent no.1 and sought three weeks' time to file reply, which was granted and the matter was adjourned to 01.03.2024. It is noteworthy that reply was filed by respondent no.1 vide this Authority's Diary No.1552 on 01.03.2024 which is summarized below: -

4.1 It is alleged that complainant approached respondent for making investment by purchasing 2 residential units to earn profit.

4.2 Complainant opted to take 2 residential units, and property being 1998-GF, admeasuring about 125 sq. yds, Acme Floors, TDI City, Sector 110-111, SAS Nagar, Mohali, the total sale consideration of which is Rs.28,75,625/- is involved in this instant complaint. Complainant paid Rs.2,50,000/- through cheque bearing No. 012777 which was dishonored and in lieu thereof complainant issued another cheque bearing No. 012778 dated 02.07.2012 against receipt.

4.3 Complainant opted for subvention plan vide which respondent had to pay Pre-EMI of the loan amount till unit was completed. It is alleged that complainant had to get the loan processed and respondent had no role to play in this behalf.

4.4 It is submitted that complainant paid another sum of Rs.3,10,000/- on 01.09.2012. Complainant showed her inability to enter into the agreement for sale till she arrange money. However, when respondent contacted complainant after more than a year complainant again showed her inability to arrange the funds. Respondent issued a letter to complainant 21.03.2014 (Annexure R-1) intimating about project being approved by DHFL/respondent no.2 and requested complainant to approach the said Financing Institute for arranging finance. Thereafter, Agreement to Sell was executed on 04.06.2014 (Annexure R-2). It is further submitted that on completion of the formalities loan was sanctioned by respondent No.2 on 21.04.2015 and thereafter a tripartite agreement was also executed between complainant, respondent no.1 and respondent No.2 on 27.04.2015. A copy of letter of offer-cum-acceptance issued by respondent No. 2 and tripartite agreement are Annexure R-3 and Annexure R-4 respectively. Respondent no.2 disbursed

Rs.19,04,000/- to complainant towards loan. In compliance of tripartite agreement (Clause-3), respondent no.1 undertook to make the payment of the Pre-EMI for the first 24 months and started making from month of June, 2015.

4.5 It is further averred that when the development work reached at the relevant stage, vide demand letters issued through registered post on 05.05.2015, 10.06.2015, 25.06.2015, 15.07.2015 (Annexure R-5 to R-8 respectively) complainant was requested to pay outstanding amount, but to no avail.

4.6 It is also submitted that by that time development of the project was completed and the Competent Authority was in the process to issue the Completion and Occupancy Certificate of the units. Respondent followed up with complainant to make the payment of remaining sale consideration.

4.7 It is submitted that Competent Authority issued permission for Occupancy or use of building vide its letter dated 15.07.2016 (Annexure R-9). Since the project of respondent was complete and Occupancy/ Completion Certificates were issued by Competent Authority, respondent shifted its office to new site location and allottees including complainant were informed vide letter dated 03.08.2016 (Annexure R-10).

4.8 It is submitted that possession of the residential floor allotted to complainant was offered to her on 30.06.2017 (Annexure R-11). Complainant was also informed and requested that respondent had been paying the Pre-EMIs till offer of possession and from the next month complainant shall be liable to make the payment of the EMIs. But complainant did not come forward either to take possession or to

make payment at the time of the offer of possession. Respondent also issued reminder letters on 13.11.2017 and 11.01.2018 (Annexure R-12 and Annexure R-13 respectively).

4.9 It is also submitted that due to illness of partner of respondent no.1 who was looking after the banking work, Pre-EMIs were paid till April, 2019 (statement of account is Annexures R-14) which however were only to be paid upto June 2017. But complainant concealed this fact from respondent and also from this Authority.

4.10 It is further submitted that all claims of complainant are groundless as offer of possession was made in the year 2017 upon receipt of the Completion and Occupancy Certificate, but she did not come forward to take possession. Thus, her claim is not maintainable and cannot be allowed. It is also even barred by limitation.

4.11 It is also stated that respondent no.1 is entitled to refund of Pre-EMIs (statement showing recoverable amount-Annexure R-15) paid beyond its liability and reserves its rights to initiate proceedings for recovery of said amount from the complainant.

4.12 It is prayed that complaint be dismissed with exemplary costs.

5. A rejoinder was filed by complainant reiterating the contents of complaint and controverting the contents of the reply of respondent no.1. However, it is added that complainant opted for subvention scheme at the instance of respondent no.1 as such respondent no.1 was having role to play in getting the loan sanctioned. While denying Annexure R-5 to R-8 regarding demands raised by respondent no.1, complainant admitted that the amount, if any, was to be paid at the time offer of possession. It is further stated that the Occupancy Certificate (Annexure R-9) cannot be said to be a valid document as

project in question was not complete. Regarding the offer of possession, it is stated that the offer of possession dated 30.06.2017 was not accompanied by occupancy/completion certificate. Complainant raised objection that if Occupancy Certificate was issued to respondent no.1 earlier i.e on 15.07.2016, then why they offered possession after one year of its issuance i.e. on 30.06.2017, as such this is not a valid document. Thus, the default committed by respondent no.1 is squarely covered under Section 18(1) of the Act of 2016, and respondent no.1 is liable to return the amount deposited by complainant. Further, complainant is not bound to take delayed possession and in support thereof relied upon the judgement passed by the Hon'ble Supreme Court in the matter of "*M/s Newtech Promotes and Developers Vs. The State of Uttar Pradesh and ors.*" decided on 11.11.2021. It is the prayer of the complainant that in view of above explanation, this complaint be allowed.

6. From the above pleadings it is clear that there is no dispute about allotment of Unit no 1998-GF having super area 1050 sq. ft, in the project "Acme Floors"; receipt of Rs.2,50,000/- and Rs.3,10,000/- issuance of provisional Allotment Letter by respondent no.1; execution of Builder Buyer Agreement on 04.06.2014; total consideration amount of unit being Rs.28,75,625/-; due date of offer of possession i.e. 24 months plus 6 months; availing of loan of Rs.22,40,000/-, disbursement of Rs.19,04,000/- on 30.04.2015 and Rs.2,24,000/- on 30.06.2015 to respondent no.1 on behalf of complainant; and offer of possession by Respondent no.1 on 30.06.2017.

6.1. The Builder Buyer Agreement was executed on 04.06.2014 and as per agreement date of possession was 24 months plus 6 months from date of agreement which become 04.12.2016. Further the Builder has obtained completion certificate vide memo no. GMADA-S.D.O.(B)/2016/32468 dated 15.07.2016 but 'Offer of Possession Letter' was issued on 30.06.2017 i.e. after the due date of possession. Provisions of the Section 19(4) of the Act is stated as under:

"The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder."

In view of provisions of the Section 19(4) of the Act, the complainant is entitled to refund the amount paid by him along with the interest prescribed in Rule 16 of the Rules of 2017.

6.2. As a net result of the above discussion, this complaint is accordingly allowed and respondents no.1 is directed to refund the amount of Rs.26,88,000/- along with interest at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the dates of respective payments till the date of offer of possession as provided in section 18(1) of the Act. Provisions of the Section 18(1) of the Act is reproduced 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."

6.3. Respondents are entitled to set off pre-EMI already paid to Dewan Housing Finance Corporation Limited on behalf of complainant, against the interest payment as directed above.

6.4. It is also further directed that the amount of refund along with interest thereon should be paid by respondents no.1 to complainant 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 a compliance report to this Authority about releasing the amount along with interest as directed.


6.5. It may be noteworthy that in case compliance report is not submitted by respondents no.1 after the expiry of above stated period of ninety days and further any failure to comply with or contravention

of any order, or direction of this Authority may attract penalty under Section 63 of this Act of 2016.

6.6. The complainant is also directed to submit report to this Authority that they have received the amount along with interest as per directions issued in this order.

6.7. Till then the complainants shall have the charge on the allotted residential floor No. 1998-GF, TDI CITY-II, Sector-110 &111, Mohali in the project "ACME FLOORS". The complainant is further directed to execute a Cancellation Deed on receipt of payment of refund and interest thereon from respondents no.1 thereafter.

7. File be consigned to record room after due compliance.


12/01/26
(Binod Kumar Singh)
Member, RERA, Punjab