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

Complaint No. AdCNo02462021URBFTR-AUTH02342022
Date of Institution: 28.10.2021
Date of Decision: 16.03.2026

1. Sapandeep Singh Bakshi, c/o Mr. Sumesh Kumar,
2. Amandeep Singh Bakshi, c/o Mr. Sumesh Kumar,

Both at 210 HIG, Sector-71, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160071.

....Complainants

Versus

1. M/s Ansal Properties & infrastructure Ltd through its Managing Director/Director, 115 Ansal Bhawan 16 K G Marg, Delhi, Central Delhi -110001
2. Concord Hospitality Private Ltd, 1, VPO Bal Sachander, Airport Road Ajnala Road, Amritsar, Punjab – 143101
3. Harpinder Singh Gill, 1, VPO Bal Sachander, Airport Road Ajnala Road, Amritsar, Punjab – 143101

....Respondents

Present: Shri Sanjeev Gupta, Advocate for the complainant

Sh Ishant Negi, Advocate for respondent no. 1

Shri Ritika Garg, Advocate for respondent no.2 & 3

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 28.10.2021 by complainant as individual against respondents seeking following relief:

1.1 To direct the respondents to refund the entire amount of Rs. 24,66,000/- along with interest as the respondent have failed to deliver the possession till date.

1.2 To direct the respondent to pay compensation to the tune of Rs. 20,00,000/- to the complainants.

1.3 To direct the respondent to pay litigation expenses to the tune of Rs. 1,00,000/-

2. The brief facts of the complaint as submitted by complainant is summarized below: -

2.1 In 2007, the complainant booked a Unit No. 102 (commercial) measuring 685 sq. ft. super area in the Retail & Commercial cum Office Complex i.e. AERODROME BUSINESS & SHOPPING CENTER at Amritsar. Apart from the said unit, the complainants had also booked another Unit No.208 in the same project.

2.2 The said project was being developed jointly by Respondent No.1 to 3, on the land owned by Respondent No.3. Before booking of said unit, the respondents had assured that they had already received all the necessary approvals for developing the said project.

2.3 A brochure (C-1) was also given to the complainant. Total sale consideration was fixed as Rs.41,10,000/-. An allotment letter (C-2) was issued on 20.09.2007. Complainants had opted for construction linked plan. As per clause 11, the possession of the said unit was to be handed within 3 years from the date of allotment. Thus, the possession was to be handed over by 20.09.2010. Till 06.08.2009, complainants made the payments amounting to Rs.24,66,000/- (C-3) in response to the demand raised by Respondent no.1, which were due till the completion of 6th floor roof slab.

2.4 Construction at the project site was very slow & there was no likelihood of possession within stipulated time. Complainant vide email dated 29.06.2009 (C-4), requested Respondent No.1 to cancel the other unit no.208 in respect of which they had already paid Rs.20,55,000/- & adjust the said amount in Unit No.102. Despite that, Respondent No.1 raised the demand of Rs.4,11,000/- (C-5) which was due on completion of all floor roof slab. Respondent paid Rs.4,11,000/- as per account statement dated 20.07.2011 (Annexure C-3) Respondents had halted the construction of the project. Respondents kept on delaying the request of cancellation of unit No. 208 & did not adjust the amount.

2.5 In Oct, 2011, even when the project was severely delayed by 1.5 years from the stipulated date of possession, the complainant still offered to pay the full amount if builder agrees to handover the possession within 3 months (Emails C-6). But the respondents failed to respond or act upon the said proposal.

2.6 Since, there was considerable delay in handing over the possession, the complainants approached the PSCDRC for claiming refund of Rs.24,66,000/- along with interest & compensation, but the said complaint was dismissed on 28.11.16 (C-7) on the ground that complainant is not consumer. Thereafter, the complainant through their GPA many times requested the respondents to refund the amount but to no avail. Respondents neither delivered the unit nor refunded the amount. Complainant filed a complaint with Punjab State NRI Commission in 2018 seeking registration of FIR against the respondents. Upon which, the Commission conducted a detailed enquiry through C.P., Amritsar. During enquiry, it was found that no such project exists at the project site. Complainants were shocked on

coming to know about the said fact in Mar-Apr,2019. Thereafter, GPA holder of the complainants, enquired about the said fact & it was found that a hotel exists on the project land. The NRI Commission vide its order dated 02.05.2019 (C-8) concluded that this as a clear case of cheating & fraud henceforth recommended an F.I.R. to be lodged against the respondents. But even the Police authorities have failed to take any action against the respondents (C-9).

2.7 Complainants, through their GPA Holder & through the NRI Affairs Police tried to organize a meeting with Respondents to demand refund but it never materialized. After lifting of restrictions, imposed due to COVID-19, the complainant No.1 personally came to India & visited the project site & was really shocked to discover that respondents have built a Hotel Park Inn, instead & completely abandoned the projected & clearly duped complainant's hard-earned money. Till date, respondents have neither delivered the possession nor refunded the amount to the complainants rather they have changed the scope of the project.

3. Upon notice Ms Ritika Garg, Advocate appeared for respondents no.2 & 3 and filed reply dated 12.10.2022 which is summarized below:-

3.1 The complaint is not maintainable on account of the fact that the consideration was not paid by the complainants to the answering respondents and also on account of the fact that there was no contract between the answering respondents and the complainants.

3.2 The complainants themselves were defaulters of the terms and conditions of the allotment letter, in as much as, they have failed to abide by the construction linked payment plan despite repeated reminders. The complainants have not paid almost more than 40% of the price of the commercial unit till date.

3.3 The complaint is also not maintainable as the project in question is not an ongoing project in terms of the Act. It has been submitted that the said project was completed before coming into existence of this Act and no completion certificate is required to show the same. The said facts are fortified by letter dated 09.01.2019 issued by District Town Planner Amritsar to Respondent no.2 (Annexure R-2/1).

3.4 The respondents no. 2 & 3 have received all the sanctions and approvals from the competent authorities and have since completed the commercial project, possession of which was offered to the complainants, who failed to take the possession and make the balance payment.

3.5 With regard to clause 11 of the agreement to sell, it was stated that possession was promised within three years' time from the date of booking/allotment after all necessary approvals and sanctions have been obtained from the sanctioning authority, whichever is later. It was submitted that possession has been offered as per relevant clause 11 of the allotment agreement.

3.6 The complainants wanted that the Ansal (Respondent no.1) to cancel another Unit No. 208 in the same project and adjust the amount paid for Unit no.208 in unit no.102. Respondent no. 1 (Ansal) did not agree to the said request, however respondent no. 2 can give the opportunity to the complainants to adjust the payment made for two unit towards one unit i.e. unit no. 102 and cancel unit no. 208.

3.7 It has been falsely portrayed by the complainants that the commercial project has been changed to a hotel and the commercial project and the unit of the complainants were situated has been abandoned. The complainants have further alleged that the respondents have committed

cheating and fraud upon them by making a hotel on the project land. This is completely incorrect, misleading and false statement made by the complainants. In fact, the entire project has been bifurcated into three consolidated multiuse commercial units comprising of commercial unit (Mall), Apartment/Co-working offices and hotel complex. Lower Ground Floor, Ground Ploor, 1st floor and 2nd floor, 3rd Floor & 4th floors are dedicated to the commercial complex i.e. Mall, in which the units of the complainants are situated; 5th to 9th floors is dedicated to hotel complex, wherein; the hotel Park Inn by Radisson Hotel is situated. The entire complex has a common STP, Power Backup, Plumbing Solution, Water solution and parking facilities. The complex had two basements, which is common for all.

4. Upon notice, Sh Prateek Garg, Advocate appeared for respondent no.1 and filed reply dated 09.03.2023 which is summarized below: -

4.1 it is a matter of fact and record the applicants booked Unit No. 102 & Unit No. 208 with a super area of 685 Sq.Ft, for total consideration of Rs.41,10,000/- (Forty-One Lakh Ten Thousand) each by execution of an agreement of allotment dated 10.09.2007. The respondent no.1 responsibility under the Collaboration Agreement (and subsequent addendums, variation and memorandum) was to build the retail- cum-complex, in consideration of share of developed area/revenue for the company in ascertained ratio.

4.2 As per record, against Unit No. 102 the amount of Rs. 4,11,000/- was due till 10.11.2009 and against Unit No. 208 the amount of Rs. 8,22 000/- was due till 10.11.2009. The respondent no.1 admitted that the amount of Rs. 20,55,000/- is paid against Unit No. 208 and against sale price of Rs. 41,10,000/- and similarly against Unit No.102 the amount of Rs. 24,66,000/- is paid against sale price of Rs. 41,10,000/-.

4.3 it is further matter of fact that in order to safeguard the interest of all the Allottees (including Complainants) all the present and future

responsibilities including the financial arising/pertaining to the Project were expressly transferred by the answering Respondent to Respondent No. 3, who had expressly and unequivocally undertaken to bear all the obligations arising out of the allotment letters/agreement entered between answering respondent and the Allottees including the complainant herein. Furthermore, it is relevant to point herein that the liability (if any) on account of delay in allotment of Unit or on any other account is in the exclusive domain of Respondent no. 3 and answering Respondent even by any stretch of imagination cannot be made liable for the same.

5. Vide application dated 17.04.2025, complainants had made prayer that the name of the respondent no.1 may kindly be removed/deleted from the array of parties since the complainant is confirming its claim only against the respondent no.2 & 3.

5.1 The complainants stated that the project in question had been taken over by the respondent no. 2 & 3. A MOU (R-2/8) dated 11.06.2013 & addendum to MOU (R-2/9) was executed between the respondents no.1, 2 & 3. As per the said MOU & Addendum. The respondent no.2 & 3 subsequently took over the project completely along with all obligations of the respondent no.1 with regard to allotments made by it and further respondent no.2 & 3 had agreed to fulfil all obligations as contained in the term of allotment made to the allottees including any claim through legal proceedings. The complainants are confining its claim only against respondents no. 2 & 3 and presence of respondent no. 1 is not essential for adjudication of the dispute. Therefore, it is prayed that the name of the respondent no.1 may kindly be removed from the array of the parties.

6. I have examined the oral as well written submissions of the parties. As regards the submission of respondent No.1, M/s Ansal Properties

Infrastructure Pvt Ltd, there is no dispute on the fact that vide MOU dated 11.06.2013 & addendum to MOU, placed on record at Annexure R2/8 & R2/9, of the reply of respondent No.1, the liabilities of the allottees have been taken over by respondent No.2, M/s Concord Hospitality Pvt Ltd and therefore, respondent No.1 has shifted its liability towards respondent no.2 but without the consent/affirmation of the complainants who had the agreement for sale with respondent no.1.

7. The respondent no.2 pointed out that he is not liable towards the complainants as the agreement to sell has not been entered into between the complainants and respondent No.2, and respondent no.2 has not received any payments from the complainants, This objection of the respondent cannot be accepted, keeping in view the MOU entered into between respondents No.1 and 2 on 11.06.2013, which clearly mentions in article (G) of the said agreement that respondent No.2 will fulfill all obligations and responsibilities pertaining to the allotments made in the project and it shall also indemnify respondent No.1 from all third party claims. Keeping in view the specific provisions of the MOU between respondents No.1 and 2, all claims with regard to said project would be the responsibility of respondent No.2. Hence, this objection is rejected.

8. The respondent also pointed out that the complainants have defaulted in making payments as per the construction linked plan agreed to vide the agreement to sell dated 20.09.2007. Hence, it has been stated that the complainants were not eligible for any refund or compensation vis-a-vis the said agreement. This argument of respondent no.2 would not hold good as the issue in question has been set at rest by the Hon'ble Supreme Court in its decision in case of M/s

Newtech Promoters and Developers Pvt Ltd Vs. State of UP & Ors –*Civil Appeal No.(s) 6745- 6749 of 2021*. In para 80 of the said judgment, the Hon'ble Supreme Court has held as under: -

> *"The further submission made by learned counsel for the appellants that if the allottee has defaulted the terms of the agreement and still refund is claimed which can be possible, to be determined by the adjudicating officer. The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making instalments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and proviso to subsection 5 of Section 11 enables the allottee to approach the regulatory authority to question the termination or cancellation of the agreement by the promoter and thus, the interest of the promoter is equally safeguarded."*

From the above ratio of the judgment, it is clear that upon the default of the allottee to make payments as per terms of the agreement to sell, remedy with the promoter would lie in Section 11(5) of the Act, wherein, he has been bestowed with the powers to terminated the said agreement. In the instant case, the promoter has failed to terminate the agreement, even though, it has been alleged by him that the complainants had failed to make any payment, as per the construction linked plan, beyond the year 2009. On the other hand, Section 18(1) of the Act has conferred unqualified rights on the allottee to get a refund if the promoter fails to give possession by the date specified by the home buyer's agreement. This view has been endorsed by the Hon'ble Supreme Court in Imperia Structures Ltd Vs. Anil Patni and another-*2020(10) SCC 783*. Hence, this objection is also declined.

9. Another objection of the respondent No.2 is on the ground that the project "Aerodrome" is not an ongoing project as the same was completed before the coming into effect of the Act. In this regard, he

has relied upon letter of the District Town Planner, Amritsar dated 09.01.2019, placed at Annexure R2/1 and also upon the decision of the Hon'ble Supreme Court in case of Concord Hospitality Pvt Ltd and another Vs. G.J. Singh and others, *SLP (C) No.2937 of 2019*. The counsel for the respondent, as mentioned supra, had also sought to argue that in the light of the above two documents, it is quite clear that a completion/occupancy certificate was not required in the instant case.

10. I have perused the facts of the matter. This Authority has consistently taken the view that in view of the provisions of the Punjab Apartment and Property Regulation Act, 1995 (for short the PAPR Act 1995), a valid possession could only be given by a promoter to the allottee upon receipt of a completion/occupancy certificate from the competent authority. This obligation is made clear in Section 14 of the PAPR Act 1995, which reads as under: -

> *"14. Occupation and completion certificate-(1) It is the responsibility of the promoter, -*
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> *(i) in the case of apartments, to obtain from the authority required to do so under any law completion and occupation certificates for the building and if a promoter, within a reasonable time, after the construction of the building, a reasonable time, after the construction of the building, does not apply for an occupation certificate from the aforesaid authority, the allottee of an apartment may apply for an occupation certificate from the said authority; and*
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> *(ii) in the case of a colony, to obtain completion certificate from the competent authority to the effect that the development works have been completed in all aspects as per terms and conditions of the licence granted to him under section 5.*
>
> *(2) The authority referred to in sub-section (1) shall, after satisfying itself about the agreement of sale between the*

promoter and the allottee, and the compliance of the building regulations and all other formalities, issue an occupation certificate."

The respondent No.2 has sought to circumvent this provision on the basis of one letter dated 09.01.2019, issued by the District Town Planner, Amritsar, the relevant portion of which reads as follows: -

"ਉਪਰੋਕਤ ਵਿਸ਼ੇ ਦੇ ਸੰਬੰਧ ਵਿਚ ਆਪ ਨੂੰ ਦੱਸਿਆ ਜਾਂਦਾ ਹੈ ਕਿ ਆਪ ਨੂੰ ਜਾਰੀ ਕਿੱਤੇ ਗਏ ਪੱਤਰ ਨੰਬਰ 2119 ਡਿਟੀਪੀ (ਅ)/ਈਐੱਲ-21 ਮਿੱਤੀ 26.09.2006 ਦੇ ਨੁਕਤੇ ਨੰਬਰ 5 ਅਨੁਸਾਰ ਜੇਕਰ ਆਪ ਵੱਲੋਂ ਪ੍ਰਵਾਨਿਤ ਬਿਲਡਿੰਗ ਪਲੈਂਸ ਅੰਨੁਸਾਰ ਉਸਾਰੀ ਨਹੀਂ ਕਿੱਤੀ ਗਈ ਤਾਂ ਉਸ ਸਬੰਧੀ ਰਿਵਾਈਜ਼ੇਡ ਪ੍ਰਵਾਨਗੀ ਲੈਣ ਉਪਰੰਤ ਕੰਪਲੇਸ਼ਨ ਸਰਟੀਫਿਕੇਟ ਅਥਾਰਿਟੀ ਤੋਂ ਪ੍ਰਾਪਤ ਕਰਨੀ ਬੰਣਦੀ ਹੈ।."

From the above letter in Gurmukhi, it is seen that the District Town Planner has asked the respondent No.2 to obtain a completion certificate from the competent authority only after obtaining necessary approvals from the competent authority in case the building plans have been revised as per clause 5 of the letter dated 26.09.2006 (Annexure R2/2) of the reply. Now, clause 5 of the said letter reads as follows: -

"In case any construction besides the approved building plan is raised, then revised approval from the competent authority will be obtained by you regarding the same."

The respondents no.2 has sought to argue that a completion certificate was only required only if the building plans had been revised. However, this interpretation of the respondent is not incorrect. At the very outset, it needs to be pointed out that the District Town Planner is not competent authority for issuing a completion certificate for the project of the respondent. Instead, the competent authority in this case would be the Chief Administrator, Amritsar Development Authority, Amritsar. Notwithstanding the same, all that the letter of the District Town Planner states that a completion certificate should be applied for only after obtaining approval for revised construction plan and not otherwise. By no stretch of imagination, can it be held that the

provisions of Section 14 of the PAPR Act 1995 have been exempted in the case of this project and that too by means of a simple letter issued by the District Town Planner. It is not a matter of dispute that the respondents have not received a completion certificate for the said project till date. Hence, keeping in view the provisions of Section 3 of the Act, read with Rule 2(h) of the Rules, the said project was an ongoing project for the purpose of registration under the provisions of the Act and was thus under an obligation to register. In the circumstances, the argument of the respondents No.2 and 3 that, the project was not an ongoing project and was, therefore, not liable for refund and compensation under this Act, is not been found to have any force.

11. Another issue, which has been taken by the respondents no.2 in their reply, is that under clause 11 of the agreement to sell, the period of three years is to be taken from the date of booking/allotment or after all necessary approvals and sanctions have been obtained from the competent authority, whichever is later. It is, therefore, sought to be argued that in the instant case the period of three years is to be taken from the date of receipt of all necessary approvals and sanctions. In the case of GC no.0484 of 2022UR- Ravinder Aggarwal and another Vs. M/s Ansal Properties and Infrastructure Ltd and others, the Authority in his decision, held that the necessary approvals and sanctions were received only in the year 2009, the due date for possession in terms of clause 11 of the agreement to sell would lie in the year 2012. In its order, Authority held that the layout and building plans were passed in the year 2006 by the Chief Town Planner, Punjab and the respondents have also placed on record copies of the environment clearance dated 10.07.2009 and NOC from the Airport Authority dated 10.07.2008. Therefore, the date for commencement of

period of three years can be taken from 10.07.2009, being the date on which environment clearance was received and, therefore, the due date for possession would 10.07.2012.

12. In his reply, the respondents have relied upon the decision of the Hon'ble Supreme Court in its case i.e. Concord Hospitality Pvt Ltd and another Vs. G.J. Singh and others, cited supra. In the judgment of the Hon'ble Supreme Court, the respondent M/s Concord Hospitality Pvt Ltd has been asked to hand over possession of one unit in the said project to the allottee alongwith compensation of Rs.10,00,000/- for delayed delivery. In this case, the Hon'ble Supreme Court has itself observed that the possession was delayed and ordered for compensation, would go against the submissions of the respondents that possession was offered within time. Other than that, the decision of the Supreme Court does not in any way endorse the argument of the respondents that the project stands completed within time.

13. Now, coming down to the provisions of Section 18(1) of the Act, which read as under: -

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

14. Due date for possession as per the agreement to sell/allotment letter between the allottee and the respondent No.1 was 20.09.2010 and as per above said para-9, deemed was 10.07.2012. No evidence is placed on record that the complainant was ever offered for possession of unit no. 102. Even any offer of possession has been made after the due date, and that too be without having a completion certificate. Therefore, the complainants would be eligible for refund under Section 18(1) of the Act. The Hon'ble Supreme Court in its judgment in the matter of Newtech, cited supra, has clearly held that the claim for refund under Section 18(1) of the Act would be unconditional. Hence, no jugglery of facts can rebut the claim of the complainants for refund and interest under Section 18(1) of the Act.

14.1 As a result of the above discussion, this complaint is accordingly accepted. The undersigned is of the considered view that complainants are entitled for refund the amount paid by the complainants along with interest as provided in section 18(1) of the Act. Accordingly, this complaint is allowed.

14.2 Hence, the respondent No.2 is directed to refund the amount of Rs.24,66,000/- to the complainants, along with interest @ 10.80% as per State Bank of India's highest marginal cost of lending rate (8.80% as of today) plus 2% in view of the provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017, with effect from the respective date of payments till realization and this amount, shall be paid within 90 days from the date of this order.

15. It may be noteworthy that in case compliance report is not submitted by the respondent no.2 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.

16. As per the provisions of sub-section (1) of Section 36 of the RERD Act, 2016; the Respondent no.2 is hereby directed not to allot, book, sell or give possession to any third party of the unit/property which was allocated to the complainant(s) till all the payments payable to the complainant are fully paid to the complainant. The complainants will have its continuous lien over the said unit till the refund alongwith interest is fully paid by the promoter to the complainant as determined in this order. The promoter is free to sell the unit in question after duly obtaining the receipt of the due payment from complainants as per this order.

17. The other reliefs were not pressed, and hence not allowed.

18. File be consigned after due compliance.

16/03/26

(Binod Kumar Singh)
Member, RERA, Punjab