

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

Execution No.89 of 2022 in
Complaint No.1437 of 2019
Date of Decision: 23.10.2024

Kapil Goyal s/o Lt.Col.Ramesh Chander Goyal (Retd.), r/o Flat F-1,
First Floor, Plot No.82, Parsvanath Colony, Nirman Nagar, Jaipur -
302019

....Complainant/Decree Holder

Ansal Properties and Infrastructure Ltd., 115 Ansal Bhawan, 16
Kasturba Gandhi Marg, Central Delhi, Delhi 110001

.... Respondent/Judgement Debtor

Present : 1. Complainant in person
2. Shri Prateek Garg, Advocate for the respondent

ORDER

This is second consecutive application for executing the original order dated 15.09.2020 passed by the then Bench of learned Chairperson in GC No.1437 of 2019 vide which the respondents were directed as under:

"5. As a result of the above discussion the complaint is partly accepted and the respondents are directed to pay interest at the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) from 24.01.2016 till possession is actually handed over. The date of 24.01.2016 has been fixed as the 42 months from the execution of agreement between the parties - the Agreement mentions the time in which possession is to be delivered as 42 months (36 months + 6 months' grace period), not 36 as claimed in the complaint. It is also directed that any delay in payment of instalments by the complainant would entail payment of interest only at the above rate i.e SBI's MCLR prevalent on the date of default plus 2%. Finally, the complainant would be liable to pay the basic sale price only

for the actual area of the plot that is finally made available to him, since the claim that the area has actually been reduced has not been rebutted".

2. To understand the crux of the complaint filed by the complainant against the respondents, it is worth to mention here the background of the complaint bearing GC No.1437 of 2019 to the effect that the complainant had booked a residential Plot No.B-40 measuring 250 sq. yards by paying Rs.10,62,500/- on 09.04.12 which plot was later on reduced to 245 sq. yards without the consent of the complainant. It was the case of the complainant that the respondent had collected Rs.51,21,483/- against the total due of Rs.46,06,279/-. Despite assurances the respondent has neither completed the development, nor delivered possession. The prayer of the complainant was to direct the respondent to complete the development and hand over the legal possession of the allotted plot to the complainant and also to refund the excess amount of Rs.5,15,204/- and also to pay interest thereon; to pay compensation for delayed possession; not to levy additional charges under any heading such as maintenance charges, holding charges etc. etc.

3. Since the respondents did not comply with the order dated 15.09.2020, operative part of which is mentioned in para no.1 above, the complainant/DH filed Execution Application bearing no.26 of 2021, claiming an amount of Rs.29,29,216.70 upto 17.02.2021, towards interest as possession was not handed over to the complainant which was decided by the then Bench of learned Chairperson on 14.10.2021 and following order was passed in the said Execution Application No.26 of 2021:-

"5. This application is accordingly accepted and a decree for a sum of Rs. 23,18,372/- (as per attached calculation sheet) is passed in favour of the applicant and against the respondent. The payment may be made within 2 months from the date of issue of this order; failing which a Recovery Certificate be issued to the concerned District Collector.

4. It is worth to mention here that since the respondent did not comply with the order dated 14.10.2021 passed in Execution Application No.26 of 2021, the Registry of this Authority in compliance of above order, issued Recovery Certificate to the Deputy Commissioner-cum-District Collector, SAS Nagar (Mohali) vide Memo No.RERA/2021/Legal/9468 on 30.12.2021.

5. Thereafter, a Miscellaneous application enclosing therewith Demand Draft No.436606 dated 19.01.2022 for Rs.23,18,372/- drawn at Punjab National Bank, New Delhi was filed by the respondent. The same was forwarded to the complainant Kapil Goyal vide Memo No.RERA/Pb/Secy/2022/866 on 10.02.2022 enclosing therewith the above said original Demand Draft which was acknowledged by him vide his email dated 14.02.2022 also received a copy thereof in this Authority vide Diary No.609 on 15.02.2022.

6. In view of above acknowledgment of the original demand draft of Rs.23,18,372/-, the Recovery Certificate issued on 30.12.2021 was called back from the office of the Deputy Commissioner-cum-District Collector, SAS Nagar (Mohali), vide Memo No.RERA/Pb/2022/ Legal/970 dated 17.02.2022, as unexecuted.

7. The instant application is the second consecutive execution bearing no.89 of 2022 claiming an amount of Rs.15,80,064.11 upto

06.03.2023 as interest as possession of the plot has yet not been delivered by the respondent to the complainant.

8. Notice of this execution application was issued to the respondent on 06.06.2023 for appearance and filing reply/objection on 24.08.2023. Shri Prateek Garg, Advocate appeared for the respondent on 24.08.2023, submitted his Power of Attorney, sought time to submit reply/objections and was granted three weeks' time to submit the same with an advance copy to the complainant. It is noted that no reply/objections to the execution application have been filed by the respondent till date. Instead, an application has been filed by the respondent seeking stay of the proceedings of this execution application. The complainant submitted his reply to this application.

9. During the hearing of this second consecutive execution application on 09.10.2024, the complainant reiterated the brief history of the original complaint case as well as of the first and second execution applications. The complainant stated that this is the second execution application for claiming interest upto 09.10.2024 to the tune of Rs.22,35,643.61 as per fresh calculation submitted along with his written arguments. The complainant stated that possession of the plot has not been handed over to him till date so the instant execution application has been preferred by him for claiming interest upto 09.10.2024.

10. On the other hand, learned Counsel for the respondent stated that the earlier order dated 14.10.2021 passed in execution

application no.26 of 2021 has been fully complied with and they are ready to comply this order also.

11. The undersigned has considered the arguments of both the parties and also gone through the available record of this case.

12. It is the case of the complainant that possession of the plot has not been handed over to him till date by the respondent. The learned Counsel for the respondent did not controvert this argument of the complainant. It is admitted fact that the respondent had paid a sum of Rs.23,18,372/- through demand draft No.436606 dated 19.01.2022 drawn at Punjab National Bank, New Delhi, duly acknowledged by the complainant vide his email dated 14.02.2022 in the first execution application no.26 of 2021 and this execution application bearing no.89 of 2022 is the second consecutive application claiming interest upto 09.10.2024 to the tune of Rs.22,35,643.61 and it is the consistent case of the complainant that possession of the plot has not been handed over to the complainant. It is also the case of the complainant that no payment has been released to him. Thus, it is established on record that no payment or part payment for this period has been released by the respondent to the complainant so far and he is entitled to the interest for this period also.

13. In view of the above discussion, this execution application bearing no.89 of 2022 is accordingly accepted and a decree for a sum of Rs.16,61,855/- (as per attached calculation sheet) is passed in favour of the complainant and against the respondent. The payment be made within 2 months from the date of issue of this

order, and thereafter submit a compliance report to this Authority.
In case of non-compliance of this order by the respondent the
Registry of this Authority is directed to issue a Recovery Certificate
to the concerned District Collector.

14. It may be noteworthy that any failure to comply with or
contravention of any order, or direction of Authority may attract
penalty under Section 63 of this Act.

15. Any application, if pending is also disposed of.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab