

**Before Shri Binod Kumar Singh, Member,
Real Estate Regulatory Authority, Punjab**

Execution No. 57 of 2024
GC No.1452/2019TR
Date of Order: 11.11.2024

Archana Sharma, # 103, D1 Tower, World 1 Society, Sante Majra Sector
115, Mohali, Punjab - 140307

....Complainant/Decree Holder

Versus

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshiar Singh, Village
Chapparchiri Kalan, H.B.No.195, Sector 92, SAS Nagar, Mohali.

....Respondent

Present : Complainant/Decree Holder in person
None for the respondent

ORDER

This is an application for execution of order dated 28.05.2021
passed by the Full Bench of the learned Authority consisting of the then
two Members and Chairperson in GC No.1452 of 2019TR.

2. However, one of the then Members and Chairperson (i.e Bench of
Member Sanjiv Gupta) and (Chairperson Navreet Singh Kang) had
arrived at the following conclusion vide their order dated 21.05.2021:-

*"..In view of the position explained above, as the contract
between both the parties has been frustrated, **we are unable to
accede to the pleading of the complainant(s) seeking relief
of allotment of alternate plot in the residential project titled
Posh City** being developed by the respondent.*

9. It is accordingly ordered that the respondent shall refund the
entire amount, to the complainant(s), along with interest @

9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) from the dates on which the same were received. The entire principal amount along with interest shall be paid within a period of 2 months from the date of this order".

Sd/-
(Sanjiv Gupta)
Member

Sd/-
(Navreet Singh Kang)
Chairperson

3. One of the Bench of the then Member (APS) however, while dissenting, passed the following order on 28.05.2021:-

"22. As a result of the above discussion, **I am inclined to agree with the complainants' plea that the respondent be ordered to give possession of same sized plots in the new project i.e "Posh City", at the original agreed to sale consideration.**

Accordingly, the following is directed:

- i. **The respondent is directed to allot a fresh plot, of the same size as specified in the buyers agreements and at the consideration agreed to in the said agreements, within seven days from the date of receipt of this order. The plot can be commercial or residential.**
- ii. The respondent is further ordered to pay interest as provided in Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules, 2017, as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2% w.e.f. the date of promised possession, as mentioned in table given on page

03 of this order, till delivery of possession, on the amount of sale consideration received prior to this order.

- iii. It is also ordered that the complainants shall make payment of the balance amount of sale consideration, as per the buyer's agreement, within 30 days of receipt of fresh allotment letter in "Posh City".

Sd/-
(Ajay Pal Singh)
Member

Order of the Authority (Member Ajay Pal Singh dissenting)

It is accordingly ordered that the respondent shall refund the entire amount, to the complainant(s), along with interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) from the dates on which the same were received. The entire principal amount along with interest shall be paid within a period of 2 months from the date of this order".

Announced
28.05.2021

Sd/-
(Sanjiv Gupta)
Member

Sd/-
(Navreet Singh Kang)
Chairperson

Sd/-
(Ajay Pal Singh)
Member

4. Brief facts of the original complaint bearing GC No.1452 of 2019 are that the complainant booked one Plot of 500 sq. yards on 24.03.2014 in the project namely "Integrated Knowledge Park" Sector 92, Mohali, developed by the respondent. It was further the case of the complainant that after making 33.4% payment through Chaques, the respondent entered into an Agreement and handed over Provisional Allotment letter along with site map etc. and along with details of

payment made by the complainant. The respondent failed to hand over possession of the plot, instead on the same land the respondent was developing another project in the name of "**POSH CITY A RESIDENTIAL TOWNSHIP**" and has sold some part of the land to "M/s ACME Builders" and they developed "**ACME HEIGHT 92 Project**" without any information to the complainant. It was the prayer of the complainant in the said original complaint that the respondent be directed to allot the same size of the plot on the same rates as agreed between the parties. Thereafter seven (07) complaints including that of the complainant was allowed vide common order dated 21.05.2021/28.05.2021.

5. It is noted that the Registry of this Authority vide Memo No.RERA/Pb/Legal/4772-4773 dated 29.06.2021 despatched a copy of the order dated 21.05.2021/28.05.2021 to the complainant as well as to the respondent for information and record.

6. The complainant thereafter filed Execution Application No.57 on 26.06.2024 attaching calculation sheet claiming a sum of Rs.21,85,200/- (Rs.11,25,000/- as principal amount + Rs.10,60,200/- as interest for the period from March 2014 till 30.06.2024). It is the prayer of the complainant that the above said amount be recovered from the respondent by issue of recovery letter.

7. Notice was issued to the respondent on 02.07.2024 for appearance on 13.08.2024. However, the same was received back with the report "no such person in the address" and the complainant was directed to supply alternate address of the respondent and the matter was adjourned to 10.10.2024. It is noted that the complainant

submitted addresses of the respondent/promoter, Hoshiar Singh and Sukhchain Singh, (both partners) vide this Authority's Diary No.6250 on 23.08.2024 and accordingly the Registry of this Authority issued notice to all of them on 12.09.2024 with a direction to file reply/objections on 10.10.2024. As per report on the notice dated 12.09.2024 itself, it is reported by the Registry of this Authority that notice issued to BBSB Enterprises, SAS Nagar (Mohali) (serial no.1) received back undelivered with the report 'wrong address' by the postal authorities. Notice issued to another alternate address of BBSB Enterprises, Chandigarh (serial no.2) was delivered on 14.09.2024. Notice issued to Hoshiar Singh (serial no.3) was delivered on 18.09.2024. Notice issued to Sukhchain Singh (serial no.4) received back undelivered with the report 'no such in the address' by the postal authorities. Thus, from the above reports of the Registry of this Authority, it is clear that the respondent/promoter as well as one partner namely Shri Hoshiar Singh were served, but nobody was present on their behalf on 10.10.2024 and the matter was reserved for orders.

8. During the course of hearing of this application, the complainant stated that the respondent has not complied with the order dated 21.05.2021/28.05.2021 as the amount has not been paid till date. It is the prayer of the complainant that the recovery certificate be issued for the amount of Rs.21,85,200.00.

9. The undersigned has gone through the available record of this execution application and considered the arguments raised by the complainant.

10. It is a matter of record that despite service of notice no one was present on behalf of the respondent on 10.10.2024 to contest this execution application or to rebut the claim of the complainant raised therein. Even there is not an iota of evidence on behalf of the respondent that they have complied with the order dated 21.05.2021/28.05.2021. It is noted that there was no written explanation put forth by the respondent as to why this execution application should not be allowed, in the absence of which an adverse inference can be drawn against the respondent.

11. From the above discussion, it is clear that the order dated 21.05.2021/28.05.2021 has not been complied with by the respondent till date. It has already been held that the complainant is entitled for the principal amount along with interest from the respective dates of payment till the refund is made at the rate of SBI MCLR + 2% vide above stated order in the GC No.1452 of 2019. Accordingly, computation has been made from the office of this Authority whereby a total sum of Rs.20,96,310/- (Rs.11,25,000/- principal amount + Rs.9,71,310/- as interest for the period from March 2014 till 30.06.2024) is payable by the respondent to the complainant. It is held accordingly.

12. This Execution Application is accordingly accepted and a decree for a sum of Rs.20,96,310/- (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.

13. 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.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab