

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ROPAR,
CAMP COURT AT S.A.S. NAGAR (MOHALI)**

RBT/Complaint No.	:	403 of 2021
Date of Institution	:	02.07.2021
Date of Decision	:	06.02.2026

1. Colonel Romesh Ghai son of Sh. Charan Dass Ghai
2. Shaheen Ghai daughter of Colonel Romesh Ghai (through Colonel Romesh Ghai having authority letter),
Residents of Flat No.104, Tower K-1, Maya Garden City, Nagla Road,
Chandigarh-Ambala Highway, Zirakpur, Punjab, 140603.

....Complainants

Versus

1. M/s Barnala Builder and Property Consultants Developers, through MD Shri Satish Jindal, Maya Garden City, Nagla Road Village Singhpura Sub Tehsil Zirakpur, District SAS Nagar, Mohali, Punjab.
2. Residents Welfare Association of Maya Garden City Zirakpur through the President Mr. NS Birdie, Registered office at Maya Garden City, Nagla Road, Chandigarh Ambala Highway Zirakpur, Punjab 140603

....Opposite Parties

Complaint Under Section 35 of the Consumer Protection Act.

QUORUM:-

Sh. Kuljit Pal Singh	President
Smt. Ranvir Kaur	Member

PRESENT:

For the complainant	: Sh.Luv Malohtra, Adv.
For the OP No.1	: Sh. Jatin Bansal, Adv.
For the OP No.2	: Sh. J.S. Toor, Adv.

ORDER:-

1. The present complaint has been received from the District Consumer Disputes Redressal Commission, SAS Nagar (Mohali) by the order of

the Hon'ble State Consumer Disputes Redressal Commission, Punjab, Chandigarh dated 21.07.2025 for its disposal.

2. The brief facts of the complaint are that the complainants are the allottees of the Flat No.104 and 204, Tower No.K1, Floor First and second category 6BHK, Maya Garden City, Village Singhpura, NAC, Zirakpur Tehsil Derra Bassi, Nagla Road. The OP no.1 failed to provide promised facilities and services of the flat purchased by the complainants as per binding terms and conditions of the contract i.e. allotment letter and the Buyer's agreement execute between the parties. OP no.1 further failed to provide the promised amenities and has given the possession of the flat without obtaining the completion certificate and occupation certificate from the authority concerned. The OP No.2 cannot be registered in the absence of the completion/occupancy certificate according to the provision of the Punjab Apartment Ownership Act, 1995. Therefore, the OP No.1 is duty bound to refund the maintenance charges illegally charged from the complainants without having the OC and CC. The complainants entered into an agreement with the OP No.1 to purchase a 3 BHK Penthouse for residential purpose. But the construction quality of the 3BHK Penthouse was very poor and OP No.1 recommended the complainants for an up gradation and purchase 6BHK duplex flat and as such, the complainants decided to upgrade the flat to 6BHK duplex in the year 2015. The OP No.1 promised the complainants that the possession of the said flat will be given by December 2015 and it will be the same as sample flat. The copy of the application form dated 12.6.2015 is Ex.C2. The complainants entered into agreement to sell dated 6.8.2015 for duplex flat No.104 and 204 Tower No.K1, Floor First and Second,

Category-6 BHK for a total sale consideration of Rs.1,40,00,000/-.

Copy of the agreement to sell dated 6.8.2015 is Ex.C3. The complainants paid the total sale consideration of flat amounting Rs.1,40,00,000/- and as per the clause 6 of the agreement, the possession of the apartment complete in all aspects was required to be handed over within a period of three years from the date of agreement to sell and it was promised to deliver the possession by December 2015 with all amenities and approvals. The complainants visited the office of OP No.1 in the month of March 2017 with regard to hand over the possession. He was informed that OP offered the possession of the flat vide letter dated 10.12.2016, but the said letter was never received by the complainants. The copy of the letter dated 10.12.2016 is Ex.C4. The partial completion certificate was obtained illegally from the competent authorities on 8.12.2016, whereas no NOC was ever obtained from the Pollution Board, which is a mandatory requirement to obtain partial completion certificate. Punjab Pollution Board, sent the letter to the Sub Registrar dated 3.10.2013 and 3.3.2017 to not to execute any sale deed pertaining to the project in question without clearance certificate/permission of the board and the same are Ex.C5 and the partial completion certificate is Ex.C6. The facilities were offered vide Ex.C7 with regard to the flats in question. The possession of the flats was hand over without all the amenities, which was promised and not deliver by the OP No.1. The complainants also request to the OP1 for supply of OC and CC. On 23.12.2016, paper possession was taken by the complainants under protest and the same is Ex.C8. The complainants sent notice dated 17.5.2017 to the OP1 to deliver the actual physical possession of the flats and the same is Ex.C10. After

getting the possession of the said flats, the complainants got the false ceiling wood work himself. The flats were lacking the amenities which were promised by the OP No.1 and the same has been brought to the notice of the OP No.1 vide letter dated 29.6.2018 Ex.C11. The OP No.1 illegally charged the maintenance charges and further floated a scheme that who so ever pay one time maintenance charges for three years will get extra three years free and accordingly the complainants also paid one time maintenance charges for three years for the benefit of extra three years, but the same was not mentioning in the agreement. The above mentioned scheme is Ex.C12. The OP No.1 collected maintenance charges for six years before handing the possession of the apartment and the statement of maintenance charges are as Ex.C13 (Colly). The complainants were forced by OP No.1 to get the conveyance deed registered on 6.3.2018 and the same is Ex.C14. Thereafter, numerous complaints were made to the OP No.1 regarding the non availability of various facilities/amenities promised by the OP No.1 and the same are Ex.C15 (Colly). There was a big difference in covered area and the super area calculation. The total area of the flat was 5110 sq.ft as per the agreement to sell but the actual delivered was 4760 sq.ft. Ceiling height of the one bedroom No.2 is just 8 feet violation of the Building law. Bathroom attached with the master bedroom on floor second has no opening to fresh air or ventilation and the same has been relocated without the consent of the complainants. Only one stilt parking allotted for 6 BHK. The servant quarter is inhabitable due to size and shape. Moreover, RWA (respondent No.2) not constituted as per provision in PAPRA 1995 and Punjab Apartment Ownership Act. The society has been taken over by RWA (respondent

No.2) w.e.f. 1.1.2021 without valid completion/occupation certificate. It points to the connivance of both OPs No.1 & 2. The RWA has entered into an agreement to take over the society from OP no.1 w.e.f. 1.1.2021 and floated almost all norms. The OP No.2 (RWA) has been registered without obtaining CC and OC and has no legal sanctity to collect maintenance charges. The complainants shared in the total land area has not been calculated proportionately. The architect report showing deficiency and violation is Ex.C16. The deficiency of sewerage treatment plant Ex.C17 and copy of the email legal notice Ex.C18. The OP No.1 is duty bound to provide to the complainants a registered Residential Welfare Association. Hence, prayed for the following reliefs by the complainant:-

- a) OP No.1 be directed to provide the 'Completion Certificate and 'Occupation Certificate' from the competent authority within time bound manner.
- b) Ops be directed the illegally constituted RWA (respondent No.2) not to charge any maintenance charges from the complainant and stop harassing a verteran of the Indian Army and a senior citizen.
- c) Ops be direct to refund the maintenance charges Rs.5,45,890/- illegally recovered from the complainants without obtaining the completion certificate.
- d) OP No.1 is directed to provide the promised facilities and amenities as per the architect report enclosed with the complaint.

- e) Ops be directed to provide monetary compensation of Rs.13,95,000/- to the complainants as the same is borne by the complainants for the facilities not provided:-
- i. Inhabitable Bedroom with ceiling height of just 8 feet
(180 Sq.ft (size of room) X (2990 (rate per sq. ft) =
Rs.5,38,200/- only.
 - ii. Unusable Bathroom – (36 (size of toilet) X (2990 (rate
per sq.ft) = Rs.1,07,640/-
 - iii. False ceiling, wood work, electrical fittings etc-
Rs.3,50,000/-.
 - iv. Toughened glass work railing and six bathrooms –
Rs.4,00,000/-
 - v. Total = i+ii+iii+iv = Rs.13,95,000/-.
- f) OP No.1 be directed to pay interest @ 12% per annum on the total sale consideration paid by the complainant i.e. Rs.1,40,00,000/- from the date on which possession was to be offered till the OP is able to obtain the Completion Certificate and Occupation Certificate of the flat in question.
- g) Ops be directed to refund the excess amount charged for the area delivered i.e. 4769 sq.ft but actual amount paid is for 5110 sq.ft (i.e. 342 sq.ft in excess) i.e. 342 X Rs.2990/- = Rs.10,22,580/-
- h) Ops be directed to pay a consolidated amount of Rs.25,00,000/- towards the mental and physical harassment to the complainants.
- i) Ops be directed to pay Rs.1,50,000/- towards the litigation cost of the complainant.

j) Cost of the complaint be awarded in favour of the complainants and against the Ops.

k) To grant any other relief to which the complainants are found entitled to in the facts and circumstances of the case.

Hence, this complaint.

3. Notice of this complaint has been issued to the OP No.1, but the OP no.1 has failed to file written version within stipulated period of time of 45 days as per the Consumer Protection Act. Therefore, the right of OP No.1 for filing the written version has been struck off vide order dated 11.3.2022 of this Commission.

4. OP No.2 has appeared and filed separate written statement submitting that the complainants are the defaulter to pay the amount of Rs.3,41,943/- as maintenance charges till 31.3.2023 to the RWA. The OP No.2 is claiming the common area maintenance charges from December 2020 to 31.3.2020 like other residents of the society and the legal notice is Ex.OP2/1. The OP No.2 has its elected President Mr. Jagbir Singh and elected Vice President Kulbir Singh Gill. It is wrong that RWA not constituted as per provision. It is also wrong that there is any connivance between OPs No.1 & 2. The OP No.2 has been registered by the competent authority cum Sub Divisional Magistrate, Dera Bassi on 24.9.2019. The said association was challenged by one Loveneesh Arya before the Hon'ble Punjab and Haryana High Court and the Hon'ble High Court ordered to the Competent Authority Cum Sub Divisional Magistrate, Dera Bassi to pass a speaking order on dated 4.2.2021. The society was taken over by the elected body of the RWA from Mr. Satish Jindal, MD, Barnala Builders and property consultant on 15.1.2021 w.e.f. 1.1.2021 through a registered agreement between both the parties. A

complaint was also filed dated 6.9.2021 by Kanchan Malohtra against NS Birdie and 19 other all residents of Maya Garden City, before the SDM Dera Bassi and Court decided the matter in favour of the RWA. The present complainants also filed a complaint before Ms. Swati Tiwana, PCS, Sub Divisional Magistrate, Dera Bassi and after hearing the complainants and RWA, SDM Dera bassi passed the directions on 24.3.2022. The RWA in compliance of the order of the SDM Dera bassi has requested the complainants to pay the common area maintenance charges, but the complainants have failed to do so. The copy of the same is Ex.OP2/5. But even the complainants have not paid common area maintenance charges till date and the copy of the same is Ex.OP2/6. Complaint has also been filed by the RWA before the Court of Addl. Deputy Commissioner cum Collector SAS Nagar and the total common area maintenance charges of Rs.3,41,943/- still due towards the complainant. The problem of the rain water has been sort out by the RWA. After taking over the society by RWA from Barnala Builders on 15.1.2021, the RWA is supervising and maintaining the society through the contract given to M/s Ultimate Utilities upto 28.2.2022 and to M/s Mapple Management Services Private Limited for two years till 1.3.2024. Two partial completion certificates has been issued to the Barnala Builders on dated 8.12.2026 and 12.3.2018 by the Municipal Council Zirakpur. Hence, prayed to dismiss the complaint.

5. The learned counsel for the complainant has tendered into evidence affidavit Ex.CW1/A along with documents Ex.C1 to Ex.C17 and closed the evidence.
6. In spite of availing many opportunities, the OP1 has failed to tender any documents in support of his evidence, therefore, the case was listed for

arguments on 21.2.2024. The learned counsel for the OP No.2 has tendered into evidence affidavit Ex.OP2/1 along with documents Ex.OP/1 to Ex.OP/8 and closed the evidence.

7. The learned counsel for the complainant and OP2 have filed written arguments.
8. We have heard the learned counsel for the parties and have gone through the record of the file, along with written arguments filed by the learned counsel for the complainant and OPs No.1 & 2, carefully.
9. As per the written arguments filed by the learned counsel for the complainants, it is submitted that complainants purchased the Duplex Flat No.104 and 204 from the OP No.1 vide agreement to sell dated 6.8.2012 for a total sale consideration of Rs.1,40,22,659/- having approximately area measuring 5110 sq. ft. However, the actual area was delivered to the complainants is 4769 Sq. ft as per the report of the architect Ex.C16. The possession was further delivered to the complainants without supply of completion and occupation certificate and paper possession was only delivered to the complainants. The OP No.1 has not provided the amenities as mentioned in the complaint as promised to it. The learned counsel for the complainants further relied upon the decided cases of CC No.502 of 2018 titled as Sheena Puri Vs Emaar MGF, decided on 13.6.2018 that in the absence of completion certificate issued by the competent authority, the possession of the flat/plot offered to the complainant is just a paper possession and is not legal. The relevant portion of the said judgment passed by the Hon'ble State Commission reads as under:-

“However, in the absence of Completion Certificate issued by the competent authority as per Section 14 of Punjab Apartment and Property Regulation Act, 1995 (in short, "PAPRA"), the Partial Completion Certificate and offer of possession cannot be considered. Section 14 of PAPRA deals with responsibility of the promoter to obtain Completion and Occupation Certificate from the competent Authority, which reads as under:

14. It is the responsibility of the promoter-

(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, 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

(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 OPs are duly bound to provide to the complainants a registered RWA according to the provision of the Punjab Apartment Ownership Act, 1995. OP No.1 has collected a corpus fund of Rs.27 Crores. The RWA

which has been registered without obtaining OC and CC has no legal right to collect maintenance charges. The covered area provided to the complainant is 4769 sq. ft against 5110 sq.ft. **Hence, prayed to allow the complaint.**

10. Whereas on the other hand, the learned counsel for the OP No.2 has filed written arguments, it is mainly argued on the point that the maintenance charges are due towards the complainants. Even the order passed by the SDM Derabassi in favour of the RWA. Hence, prayed to dismiss the complaint.

11. Admittedly the flats/penthouse in question was purchased by the complainants from the OP No.1 vide agreement to sell dated 6.8.2015 (Ex.C3). The total sale consideration of Rs.1,40,22,659/-. The possession was delivered to the complainants vide offer of possession dated 10.12.2016 Ex.C7 and the possession was taken under protest by the complainants on 23.12.2016 vide possession letter Ex.C8. The section 14 of the PAPRA Act, deal with responsibility of the promoter to obtain CC and OC from the competent authority. The Hon'ble National Consumer Disputes Redressal Commission, New Delhi, in its order dated 13.6.2018, passed in First Appeal No.855 of 2018 (Vision India Realtors Private Limited and Anr Vs Sanjeev Malohtra), categorically held that legal possession cannot be delivered in the absence of Completion Certificate by the Competent Authority. It was held in para No.5 as follows:-

5. During the course of hearing, it was submitted by the learned counsel for the appellant that the completion certificate in respect of the project was obtained by the appellant on 15.3.2016. A copy of the communication dated 15.3.2016 from Municipal Council Kharar has been

placed on record. It is therefore, evidence that the completion certificate having been received only on 15.3.2016, the appellant could not have offered legal possession of the apartment to the complainant any time before that date. As noted earlier, the amount of Rs.1,81,375/- was demanded on 20.4.2015 and the amount of Rs.2,12,489/- was demanded on 6.2.2016. The complainant was requested to pay the aforesaid amount so that the appellant could offer the possession of the flat. The said offer of possession was meaningless being unlawful as the requisite completion certificate had not been obtained by that date....”.

12. Although, it is the case of the OP No.1 that the partial completion certificate has been issued to the OPs. But partial completion certificate has no legal sanctity and in this regard, we relied upon the case of M/s Motia Developers Private limited Vs Priya Bose Chanda & Anr. 2024, the Hon’ble National Commission has held “that an offer of possession made without a valid completion/occupation certificate is not legal. A partial Completion Certificate does not satisfy statutory requirements for handing over possession, making the developer liable to continue paying assured returns to the buyer due to deficient service”. The developer’s offer of possession for an incomplete unit, supported only by a partial completion certificate was invalid. Under Section 14 of the PAPRA 2015, and the Punjab Municipal Corporation Act, 1976, valid legal completed construction with necessary certificates is required to terminate liability for assured returns. The failure to deliver the complete project constitutes deficiency in service and the developers cannot force home-buyer’s to accept possession without legal compliance. Therefore, the possession of

the unit delivered to the complainant without OC and CC was not a legal and valid possession.

13.It is also specific case of the complainants that OP No.2 was formed without obtaining Occupancy Certificate. In this regard, it needs to be noticed that according to the provisions of Chapter IV-Association and Regulation of its Affairs, Section 17(2) of the Punjab Apartment Ownership Act, 1995, the Resident Welfare Association could be formed and registered only after obtaining the Occupation Certificate for the building. Section 17(2) of the said Act reads as under:-

“17(2) After obtaining occupation certificate for the building and within three months of one third of the apartments being allotted, sold or otherwise transferred, the promoters shall make an application to the competent authority for the registration of association, with the persons who have taken apartments as members and if the promoter fails to make such application, the allottee shall make such application”.

Hence, it is held that the Resident Welfare Association was also formed by the Ops No.1 & 2 illegally without following the norms.

14. Further, as the OP No.2 was formed without norms and could not have charged maintenance charges until and unless they have obtained the OC and CC from the competent authority. However, OPs illegally realized a total sum of Rs.5,45,890/-vide receipt Ex.C13 from the complainants as maintenance charges.

15.As the complainants further alleged that he has spent amount of Rs.13,95,000/- from his own pocket for the facilities, which has not been provided by the OPs to the complainants as assured in the brochure. However, complainants have not produced any authentic and cogent record/receipts with regard to spent Rs.13,95,000/-.

16. As per the architect report Ex.C16 produced on the file by the complainants showing the deficiencies and violation with regard to the amenities/facilities not provided by the OPs to the complainants and from the said report, it is also proved that the actually area delivered to the complainants was 4769 sq. ft but actual amount paid for 5110 sq.ft. The complainants are entitled to recover the amount in excess paid by the complainants to the OPs for 342.sq.ft. (5110sq.ft – 4769sq.ft) as per the original price of the flats/penthouse.

17. In view of the above discussion, the complaint of the complainants against OP No.1 and the following directions passed against it:-

1. OP No.1 is directed to obtain the Completion and Occupation Certificates from the competent authorities concerned and provide the copies thereof to the complainant.
2. OP No.1 is directed to adjust the amount of Rs.5,45,890/- charged on account of maintenance charges from the complainant, after obtaining Completion and Occupancy Certificates in respect of flat/project in question from the competent authorities concerned not to charge maintenance charges till the issuance of such certificates.
3. OP No.1 is directed to provide all the agreed facilities as per Brochure Ex.C1 to the complainant.
4. OP No.1 is directed to refund the excess amount charged from the complainant with regard to the area of 342 sq.ft (actual amount paid for area 5110 sq.ft, but provided the area only 4769 sq.ft).
5. OP No.1 is directed to pay compensation for delay in delivery of possession @ 12% on the entire amount deposited by her towards sale consideration of the flat from the date of filing of the complaint (as

prayed for) till obtaining of Completion and Occupancy Certificates from the competent authorities.

6. OP NO.1 is directed to pay Rs.75,000/- as litigation expenses to the complainant.

7. OP No.1 is also directed to comply with the above said directions within 45 days from the date of receipt of certified copy of this order.

18. Copy of the order be supplied by the District Consumer Disputes Redressal Commission, Mohali, as per rules. File be sent back to the District Consumer Commission, Mohali, for consigning the same, to the Record Room, after due compliance.

Pronounced:06.02.2026

(Ranvir Kaur)
Member

(Kuljit Pal Singh)
President

CC No. 403 of 2021 Col.Romesh Ghai Vs Barnala Builder

PRESENT: Sh. Luv Malohtra, Adv. For complainant
Sh. Jatin Bansal, Adv. For OP No.1
Sh. JS Toor, Adv. For OP No.2.

1. This order shall disposed of an application moved by the OPs for dismissal the complaint on the ground that this commission does not have the pecuniary jurisdiction to hear the matter, vide which, it is submitted that the pecuniary jurisdiction of this Commission was of Rs.1,00,00,000/- and total paid up consideration of the captioned complaint as per the complainant's own averments is Rs.1,40,22,659/-. Moreover, as per the further notification, the Consumer Protection (jurisdiction of the District Commission), the State Commission and the National Commissioner (rules 2021) wherein the pecuniary jurisdiction of the District Consumer Redressal Commission has been further reduced to Rs.50,00,000/-. As such, this Commission does not have pecuniary jurisdiction to hear the complaint. Hence, prayed to allow the application.
2. Notice of this application has been given to the complainant, and complainant filed its reply submitting that firstly this case was filed before the Hon'ble state Commission, Punjab, Chandigahr, having the pecuniary jurisdiction of Rs.1 Crore at that time and the Hon'ble State Commission, gave directions to the complainant that the relief prayed in the complaint was much lesser than 1 Crore and directed the complainant to file this complaint before the District Commission. The present application filed by the OP is maintainable as the complainant is not seeking for the refund of the entire amount paid as Rs.1,40,22,659/-. Hence, prayed to dismiss the application.

3. We have heard the learned counsel for the parties and have gone through the entire record of the file, carefully.
4. As when the complainant has been filed before this Commission, the pecuniary jurisdiction of the District Commission was of Rs.1 Crore. As the complainant is only seeking the relief, which are lesser than the pecuniary jurisdiction of this Commission at the time of the filing of the present complaint. Even otherwise, the present complaint has been admitted by this Commission dated 7.7.2021 and the said order has not been challenged by the OP with regard to the pecuniary jurisdiction of this Commission before any appellate court. Hence, the present application is dismissed.
5. Vide our separate detailed order of even date, the main complaint is partly allowed. Copy of the order be supplied by the District Consumer Disputes Redressal Commission, Mohali, as per rules. File be sent back to the District Consumer Commission, Mohali, for consigning the same, to the Record Room, after due compliance.

(Ranvir Kaur)
Member

(Kuljit Pal Singh)
President/06.02.2026