

Before Sh. J. S. Khushdil, Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot No.3, Block-B,
First Floor, Madhya Marg, Sector 18A, Chandigarh-160018

Complaint ADC No.1071/ 2019
Date of Institution: 08.03.2019
Date of Order: 19.06.2019

Navdeep Singh Anand, Navleen Kaur and Surjit Singh Anand,
residents of 19D,Raj Guru Nagar Ludhiana, Punjab, Pin Code-
141012.

...Complainants

Versus

IREO Waterfront Pvt. Ltd., Sidhwan Canal Road, Ferozepur
Road, Ludhiana -141001.

...Respondent

Complaint under Section 31 of the Real Estate
(Regulation and Development) Act 2016.

Present: Shri Sanjeev Gupta representative for the
complainant
Respondent Ex-parte vide order dated 30.04.2019.

ORDER

1. Navdeep Singh Anand, Navleen Kaur and Surjit Singh
Anand (hereinafter called as the complainants) have filed
this complaint against IREO Waterfront Pvt. Ltd. (here-
in-after called as the respondent) alongwith documents
alleging violation of Section 18 of the Real Estate

(Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund and interest etc. as per the provisions of the Act on account of delay in handing over possession of built up villa bearing Unit No.104 of Type B-2 in the project namely IREO Waterfront Pvt. Ltd. Sidhwan Canal Road, Ludhiana. It is the case of the complainants that they have paid an amount of Rs.60,01,038/- towards total sale price of Rs.1,70,00,222/- including taxes, but, the respondent has not raised the construction of the Villa in question which is still at the stage of plinth level, though, the possession was to be delivered to the complainants as per the terms and conditions of the agreement dated 26.11.2015 within 18 months from date of agreement i.e. upto 25.05.2017. As such due to delay in construction of the unit in question, the complainants do not want to stay in the project and seek refund of the principal amount alongwith interest, compensation and litigation expenses as mentioned in the complaint itself. A prayer for acceptance of complaint has been made.

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2. Respondent did not turn up despite of service of notice and was proceeded against ex-parte vide order dated 30.04.2019.
3. Finding prima facie grounds to proceed further in the complaint, the complainants were asked to produce additional documents, but, no additional documents were produced by them. However, the complainants have relied upon certain documents attached with the complaint i.e. brochure Annexure-C1, application dated 22.09.2019 Annexure-C2, Allotment letter Annexure-C3, agreement to sell Annexure-C4, receipts and letters Annexure-C5 and letters Annexure-C6.

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4. I have heard the learned representative for the complainants and have gone through the record on the file with his able assistance.

5. The learned representative for the complainants has submitted that the complainants made the payments of instalments as per schedule and on demand, but, still the construction is on plinth level and no construction has been raised thereafter. The last payment was made by the

complainants on 05.11.2017 and no demand has been made thereafter as there is no progress in the construction at the spot. The learned representative for complainant has submitted that in the near future there is no possibility of completion of the project, what to talk of handing over of the possession to the complainants which was otherwise to be delivered by 25.11.2017 and in these circumstances, the complainants intend to withdraw from the project as per clause 11.5 of the agreement dated 26.11.2015 and seek refund of principal amount alongwith interest, compensation and litigation expenses. The learned representative further submitted that some of the terms and conditions of the agreement are unilateral and arbitrary in nature. The learned representative for the complainants has further reiterated the version of the complainant as contained in the complaint in his arguments and has submitted that there being violation of the provisions of the Act on the part of the respondent the complainants may be granted the relief as claimed in the

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complaint and accordingly the complaint may be accepted.

6. I have taken into consideration the submissions of learned representative for the complainants. Before proceeding further in the matter, it is necessary to sum up certain evident facts relevant for the disposal of this complaint. The project to which this complaint relates is registered with this Authority against registration No.PBRERA-LDH45-PR0041. Therefore, the complaint is maintainable in view of the order of Full Authority passed in case titled as *Bikramjit Singh and others Vs. M/s H.P. Singh and others bearing complaint No.3 of 2017 decided on 13.12.2017*. The basic sale price of the built up Villa bearing Unit No. 104 of Type B-2 was Rs.1,58,88,013/- and total sale price was Rs.1,70,00,222/- including taxes, out of which, the complainants have paid sum of Rs.60,01,038/-. The perusal of the agreement dated 26.11.2015, placed on record with the complaint shows that the respondent was to deliver the possession of Unit in question to the complainants by 25.11.2017 and time

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was the essence of the execution of this document between the parties.

7. As the project is registered before the Authority, therefore, the complainants have submitted to the jurisdiction of Real Estate Regulatory Authority, Punjab. The Hon'ble Bombay High Court in *Neelkamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors. WRIT PETITION NO. 2737 OF 2017 decided on 06.12.2017* has given findings on various relevant issues, a few of which are operation and effect of the Act, maintaining of separate account, ongoing projects, completion certificate and partial certificate, pre/post RERA Act agreements, role of Authority and Adjudicating Officer etc. etc. I have also given elaborate references on above points in cases titled as *Suman Mann and another Vs. JLPL, complaint No.AO/09 of 2017, Nikhil Kwatra and another Vs. JLPL, complaint No.AO/20 of 2017* and subsequent cases, the judgments/ orders of which are available on the website of this Authority.

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8. I have already given extensive findings in an identical case titled as *Keshav Rai Dhandra Vs. IREO Waterfront* recently *decided on 30.05.2019* in regard to unilateral agreements, provisions of the PAPRA Act 1995 and present Act and its effect etc., and as such, I do not want to reproduce the same in this order again for sake of brevity. The contractual rights are not affected by RERA since its provisions operate prospectively so as to regulate the existing contracts. The effect of the Act though is prospective in nature, but to some extent it retroactive. The Hon'ble Bombay High Court is of the view that liability to pay interest is from the date of payment till the amount is refunded. Under the provisions of the RERA, the vested or accrued rights are not affected by this Act.

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9. Now, the specimen proforma for agreement for sale has been prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017. The clause 5 of said agreement says that time is essence for the promoter as well as the allottee and the promoter shall abide the time schedule for completing the project and

handing over the apartment/plot to the allottee and the common areas to the association of the allottees. Clause 11 of the said agreement deals with the possession.

10. The promoter is under obligation to provide possession of the apartment/plot/Unit within the stipulated period. Clause 9.2 of the said proforma of agreement depicted in Punjab Rules prescribes the rights of the allottee in case of default by the promoter, which runs as under:-

9.2 In case of default by promoter under the conditions listed above, the allottee is entitled to the following:-

(i) *stop making further payments to the promoter as demanded by the promoter. If the allottee stops making payments, the promoter shall correct the situation by completing the construction milestone and only thereafter the allottee will be required to make the next payment without any penal interest; or*

(ii) the allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/plot along with interest at the rate specified in the Rules within ninety days of receiving the termination notice;

Provided that where an allottee does not intend to withdraw from the project or

terminate the agreement, he shall be paid by the promoter, interest at the rate specified in the Rules for every month of delay till the handing over of the possession of the apartment/plot."

11. Under this clause, the promoter is liable for the refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/plot along with interest at the rate specified in the Rules within ninety days.

12. The documents/evidence placed on record by the complainants is unrebutted and the careful scrutiny of the record on the file leads to the conclusion that as per version of the complainants the construction of the project is still at plinth level and they have already made payments of the amount till that level. In these circumstances, the respondent has not been able to deliver the lawful physical possession of the Unit to the complainants within the stipulated time frame i.e. within eighteen months from the date of execution of agreement on 26.11.2015 and thereafter during the 180 days' extended period i.e. till 25.11.2017 and the version of the

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complainants has remained un rebutted and unchallenged on record. The complainants as such want to withdraw from the project and seek refund of the amount of Rs.60,01,038/- deposited by them with the respondent as the clause 11.5 of the agreement within 12 months from the date of expiry of extended period i.e. 25.11.2017 till 25.11.2018. The respondent is otherwise utilizing the amount deposited by the complainants since long.

13. It is option of the complainants either to claim their money back or to claim possession or remain in the project or may withdraw from the project. In the instant case, the complainants have opted for refund of the principal amount and have claimed interest and compensation. Otherwise also, the above version of the complainants has remained un-rebutted on the record as none has come forward to contest the claim of the complainants from the side of the respondent despite of service and ex-parte proceedings were initiated against the respondent. There is no evidence on the file that the allottees were at fault at any stage of time in performing

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their part of the agreement. Thus, in view of the facts and circumstances of this case, this Bench is of the considered opinion that the complainants are entitled to the return of the amount paid by them to the respondent.

14. The next question which arises for consideration is as to whether the complainants are entitled to any interest on the amount paid by them to the respondent or not. The fact of the matter remains that respondent has been using the amount so paid by the complainants to it since respective payments, as such, the respondent is liable to refund the above said amount alongwith interest to the complainants because, once, the amount is deposited with the promoter and he is getting benefit of interest accrued upon said amount, then he cannot deny the similar benefit to the buyer. As such, to conclude with, I am of the view that the complainants are entitled return of principal amount of Rs.60,01,038/- alongwith interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% from the respective dates of deposits by complainants

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from the dates of payments of respective instalments till realization. The respondent, as such, is directed to return the amount of Rs.60,01,038/- alongwith simple interest at the State Bank of India highest marginal cost of lending rate plus 2% from the date of respective payments till realization of the amount.

15. Since, the complainants could not purchase the Unit in question and could not reside peacefully and happily therein and have to seek the remedy under the existing law and for that obviously, they have to suffer mental agony and have to incur expenses to pursue their claim by way of attending the proceedings in this case. The compensation has not been defined under this Act, however, the compensation has been defined under some other statute, such like Workman Compensation Act, Land Acquisition Act etc. etc. To settle the claim under the Motor Vehicle Act, this term compensation is being used invariably and compensation is awarded accordingly.

In my opinion, compensation can be granted under the heads pecuniary and non-pecuniary. Under this Act,

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Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. In case *Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd, AIR 1995 Supreme Court page 755*, the Hon'ble Supreme Court has held as under:-

"Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

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16. So while awarding compensation under this Act, all factors are to be taken into consideration by the Adjudicating Officer. It is necessary to add here that the procedure to be adopted for disposal of the complaint is summary in nature. Under the Motor Accident Claims Tribunal cases, the procedure is also summary. I have considered all the factors as enunciated in Section 72 of the Act and have also taken into account the observations made in the above case law. Though, no exact amount can be assessed on this count, but, in the light of the above factors and the documents brought on record by the complainants qua payment of fee to her representative and from the material placed on record by the complainant, the extent of mental agony and harassment can also be gauged, I am of the considered view that the complainants are held entitled for compensation under all the heads i.e. mental agony and litigation expenses to the extent of


Rs.1,25,000/-.

17. The complaint is, therefore, accepted to the following extent and heads:

01.	Principal amount	Rs.60,01,038/-
02.	Simple Interest	At the State Bank of India highest marginal cost of lending rate plus 2% on the principal amount from the respective dates of deposit of each instalment till realization.
03.	On account of Mental agony and litigation expenses	Rs.1,25,000/-

The respondent is directed to pay the above-said amount to the complainants within sixty days from the date of this order. In case any amount has already been received by the complainants from the respondent in this matter on account of delay in delivery of possession, that would stand adjusted against above said due amount. A copy of this order be supplied to the complainants and be also sent to the respondent under rules. File of complaint be consigned to record room after due compilation.

Dated:19.06.2019


(J.S. Khushdil)
Adjudicating Officer, 19/6/2019
Real Estate Regulatory Authority, Punjab.