

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.1093/ 2019

Date of Institution: 16.04.2019

Date of Order: 24.06.2019

Paramjit Kaur, resident of House No.544, College Road, Civil
Lines Ludhiana, Punjab Pin Code 141001.

...Complainant

Versus

IREO Waterfront sale Gallery Sidhwan Canal Road, village
Dewatwal, Ludhiana, Pin Code 141102; 2nd address SCO-6 to
8, Sector-9D, Chandigarh Pin Code 160009.

...Respondent

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

Present: Ms. Paramjit Kaur complainant in person
Respondent Ex-parte vide order dated 23.05.2019.

ORDER

1. Paramjit Kaur (hereinafter called as the complainant) has
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.X002C (independent floor) in the project namely IREO Waterfront, Ludhiana. It is the case of the complainant that she has paid an amount of Rs.40,97,341/- towards total sale price of Rs.39,85,000/- including taxes. Agreement for sale was executed on 11.09.2013 and the possession of the unit was to be delivered within twenty four months from the date of execution of agreement with a grace period of 180 days. However, the possession has not yet been delivered to her and even there are no signs of completion of the project

As such due to delay in completion of the project and delivery of possession of the unit in question, complainant does not want to stay in the project and seeks 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.

J.S. Khurana
24/6/2013

2. Respondent did not turn up despite of service of notice and was proceeded against ex-parte vide order dated 23.05.2019.
3. Finding prima facie grounds to proceed further in the complaint, the complainant was asked to produce additional documents, and the complainant has relied upon receipts of payment i.e. dated 03.01.2013 for Rs.2,06,000/-, dated 11.03.2013 for Rs.9,00,000/-, dated 24.11.2014 for Rs.3,70,000/-, cheque No.831110 worth Rs.75,000/-, dated 04.05.2015 for Rs.6,35,264/-, dated 30.09.2015 for Rs.6,72,736/-, dated 21.10.2015 for Rs.4,12,448/-, dated 05.12.2015 for Rs.4,12,448/- and cheque No.000076 worth Rs.4,13,445/-, allotment letter dated 15.05.2013 and agreement to sell dated 10.09.2015.

S. S. Srinivasulu
24/6/2015

4. I have heard the complainant in person and have gone through the record on the file with her able assistance.

5. The complainant has submitted that she made the whole payment towards sale price of the unit in question to the respondent, but, despite of that she has not been given possession of the same, which was to be handed over upto

10.09.2015 and at the most by 09.03.2016 by way of adding further grace period of 180 days. As the project has not yet been completed and possession has not been delivered, she does not want to stay in the project and has become entitled to grant of relief of refund of the entire amount paid by her alongwith interest and compensation as well as litigation under rules. She has prayed for acceptance of this complaint.

6. I have taken into consideration the submissions of the complainant. 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-PR0060. 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 Unit No. X002C (independent floor) was Rs.39,85,000/- including taxes, out of which, the

Dismissible
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complainant have paid sum of Rs.40,97,341/- as is apparent from the receipts relied upon by the complainant an referred to above. The perusal of the agreement dated 11.09.2013, placed on record with the complaint shows that the respondent was to deliver the possession of Unit in question to the complainant by 10.09.2015 and at the most by 09.03.2016 by adding grace period of 180 days as per the clause 12.3 of agreement and time was the essence of the execution of this document between the parties.

7. As the project is registered before the Authority, therefore, the complainant has 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.*

W.RIT 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

CS Kamal
22/16/2019

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.

8. I have already given extensive findings in an identical case titled as *Keshav Rai Dhanda 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.

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:-

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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 complainant is un rebutted and the careful scrutiny of the record on the file leads to the conclusion that as per version of the complainant 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 complainant within the stipulated time frame i.e. within 24 months from the date of execution of agreement on 11.09.2013 and thereafter during the 180 days' extended period i.e. till 09.03.2016 and the version of the complainant has remained unrebutted and unchallenged on record. The complainant as such wants to withdraw from the project and seeks refund of the amount of Rs.40,97,341/- deposited by her with the respondent as is apparent from the documents brought on record by the complainant. The respondent is otherwise utilizing the amount deposited by the complainant since long.

13. It is option of the complainant either to claim her money back or to claim possession or remain in the project or may withdraw from the project. In the instant case, the complainant has opted for refund of the principal amount and has claimed interest and compensation. Otherwise also, the above version of the complainant has remained un-rebutted on the record as none has come forward to

contest the claim of the complainant 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 allottee was at fault at any stage of time in performing her part of the agreement. Thus, in view of the facts and circumstances of this case, this Bench is of the considered opinion that the complainant is entitled to the return of the amount paid by her to the respondent.

14. The next question which arises for consideration is as to whether the complainant is entitled to any interest on the amount paid by her to the respondent or not. The fact of the matter remains that respondent has been using the amount so paid by the complainant to it since respective payments, as such, the respondent is liable to refund the above said amount alongwith interest to the complainant 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

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the complainant is entitled return of principal amount of Rs.40,97,341/- 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 complainant from the dates of payments of respective instalments till realization. The respondent, as such, is directed to return the amount of Rs.40,97,341/- 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 complainant could not purchase the Unit in question and has to seek the remedy under the existing law and for that obviously, she has to suffer mental agony and has to incur expenses to pursue her 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

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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, 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

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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."

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 fact that the complainant has been pursuing this complaint and attending the hearings, the extent of mental agony and harassment can also be gauged, I am of the considered view that the complainant is held entitled for compensation under all the heads i.e. mental agony and litigation expenses to the extent of Rs.1,10,000/-.

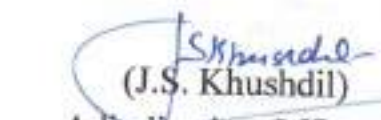
D. S. Khurana
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17. The complaint is, therefore, accepted to the following extent and heads:

01.	Principal amount	Rs.40,97,341/-
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.1,10,000/-

The respondent is directed to pay the above-said amount to the complainant within sixty days from the date of this order. In case any amount has already been received by the complainant 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 complainant and be also sent to the respondent under rules. File of complaint be consigned to record room after due compilation.

Dated:24.06.2019


(J.S. Khushdil)
Adjudicating Officer, 24/6/2019
Real Estate Regulatory Authority, Punjab.

Paramjit Kaur Vs. M/s IREO Waterfront

Dated : 24.06.2019

Present: Ms. Paramjit Kaur complainant in person
Respondent Ex-parte vide order dated 23.05.2019.

The representative for the complainant has produced certain additional documents, which have been taken on record. Arguments heard. To come up for orders afternoon.

Dated:24.06.2019

(J.S. Khushdil)
Adjudicating Officer,
Real Estate Regulatory Authority,

Present: Ms. Paramjit Kaur complainant in person
Respondent Ex-parte vide order dated 23.05.2019.

For the reasons recoded in my separate detailed order passed today, the complaint stands partly accepted. A copy of this order be supplied to the complainant and be also sent to the respondent under rules and the file be consigned to record room after due compilation.

Dated 24.06.2019

(J.S. Khushdil)
Adjudicating Officer,
Real Estate Regulatory Authority, 24/6/2019