

**Before Sh. Balbir Singh. Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot-3 Block-B,
First Floor, Madhya Marg, Sector-18-C, Chandigarh- 160018**

**Complaint No. ADC 1238 of 2019
Date of Order: 17.01.2020**

Nitin Prashar R/o Flat no. 809, Green Valley Towers, Old Ambala Highway, Opp.
DPS World School, Gazipur, Zirakpur, SAS Nagar, Mohali- 160104
Versus

M/s Barnala Builders Chandigarh-Ambala Highway, Zirakpur, SAS Nagar, Mohali-
140603

Present Mr. Sanjeev Gupta and Mr. Ripudaman Singh representatives of the
complainant.
Mr. Khushboo Arora Authorised Representative of the respondent.

Order

This complaint was filed by Mr. Nitin Prashar against M/s M/s
Barnala Builders under Section 31 of the Real Estate (Regulations &
Development) Act, 2016 (**hereinafter referred as The Act**) for seeking
refund of amount of Rs.66,24,34/- along with interest and compensation.

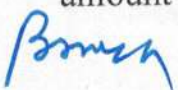
2 In brief the case of the complainant was the he booked a
commercial space measuring 250 sq. ft. in project **Maya Garden Magnesia**
for sale in consideration of Rs. 25,99,750/-; that MOU was executed between
the parties on 05.03.2018 but date of agreement was mentioned as 05.06.2017
as per annexure C-2; that booking amount of Rs.1,00,000/- was paid by the
complainant vide cheque no.265389 dated 09.01.2018, further was made
payment of Rs. 5,62,434/- vide cheque no. 017771 dated 12.03.2018; total
amount of Rs.6,62,434/- has been paid as per annexure C-1. However no
allotment letter was issued by the respondent nor any formal agreement as per



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regulations of the RERA had been executed by the defendant; that the respondent only paid the assured return of Rs.5624 on 10.05.2018, Rs. 3513/- on 10.05.2018, Rs. 5624/- on 02.06.2018 and Rs.5624 on 02.07.2018 amounting to Rs.20385/- and thereafter the assured amount of was not being paid despite assurance of the respondent to deliver the possession within one year; that the complainant applied for cancellation of the unit in June 2018 but to no effect. Hence this complaint for refund of amount with interest and compensation on account of mental agony, harassment and litigation cost.

3 The complaint was contested by the respondent by taking preliminary objections that complainant had booked the commercial unit with the sale purpose or investment and not as end user in order to earn handsome interest; that complainant had been willfully withdrawn from the deal, due to which respondent suffered huge and irreparable losses. Therefore the respondent was entitled to deduction of the amount as per regulations of the Act; that complainant had suppressed the material facts; on merits it was admitted that complainant booked the commercial space by making initial payment of Rs. 1,00,000/- vide receipt no.753 and subsequent amount of Rs. 5,62,434/- was paid by the complainant vide receipt no. 963; that MoU was signed between the parties on the date of booking itself i.e 05.06.2017; that draft agreement was transmitted to the complainant but the same was not executed by the complainant nor the requisite payments for registration for agreement for sell and stamp duty etc. had been made; that respondent paid Rs. 20,385/- as assured was returned to the complainant on the amount deposited by him, till the month of cancellation of the commercial site i.e 22.06.2018; that respondent were following up the procedure for return of the amount to the complainant after necessary deductions; and that as the



complainant has unilaterally withdrawn from the project the respondent was entitled to lawful deductions as per the regulation of the Act.

4 I have the learned representatives of both the parties.

5 Argument on behalf of the complainant was that despite payment of the initial booking amount and the subsequent installments, the requisite agreement to sell as per regulations of RERA was not got executed and registered by respondent nor for that matter the possession was offered within one year as orally assured by him; learned representative then contended that because of the said non-compliance the complainant certainly was entitled to refund of the amount with interest and compensation as per provisions of Section 18 of the Act; on the other hand the argument on behalf of the respondent was that no doubt the initial booking amount and the first instalment had been paid by the complainant but thereafter it was the fault of the complainant in getting the agreement to sell executed by making payment for purchase of stamp papers and registration charges etc. and the cancellation has been sought by the complainant unilaterally without any fault on the part of the respondent and therefore the respondent was entitled to deduct 10% of the amount and moreover the assured amount of Rs. 20,385/- was paid through different instalments to the complainant till the cancellation of the commercial site.

6 I have heard anxiously considered the rival contentions of the learned representatives of the parties and with their assistance have gone through the record.

7 It is not disputed that between the parties that commercial site measuring 250 sq. ft. was booked by the complainant with the respondent in the project **Maya Garden Magnesia** situated at Chandigarh-Ambala



Highway, Zirakpur after making payment of Rs. 1,00,000/- as booking amount, subsequently on 12.03.2018 further sum of Rs.5,62,434/- was paid by the complainant. It was admitted that complainant also received assured amount of as per MoU through different installments from the respondent totaling to Rs. 20,385/- and finally the complainant sought cancellation by writing.

8 Though on behalf of the complainant it was agitated that the respondent assured the delivery of commercial site within one year from the date of booking but there is no document in this behalf and the only writing executed between the parties i.e MoU on 05.06.2017 annexure as C-2. does not contain any such condition. On behalf of the complainant the cancellation of the booking has been sought and even the respondent does not deny that cancellation has been sought by the complainant but it is claimed that cancellation had been sought unilaterally without any fault on the part of the respondent. Apparently after the initial payments complainant was duty bound to pay the requisite charges for purchasing stamp papers etc. and of registration for getting the agreement to sell executed and registration which he failed to do and therefore fault cannot attributed on the part of respondent rather the respondent had been diligently making the payment of assured amount through instalments till the time of cancellation and the booking had been sought. In such a situation the complainant having unilaterally sought cancellation of the booking without any fault on the part of the respondent. The respondent is entitled to deduct 10% of the amount from the amount paid by the complainant to the respondent and the rest of the amount is to be refunded. Therefore the complainant is entitled to refund of Rs. 5,96,190/- (Rs.6,62,434 minus 10% i.e Rs. 66,243/-)




So far the question of interest is concerned, as the amount has been unauthorizedly retained by the respondent, the said amount remained available with the respondent for using the same and earning profits and interest on the same, the complainant certainly is entitled to interest on the said amount. I therefore direct that the respondent shall pay the interest on the return amount at the rate of 9% from the date of payment till realization.

9 As far as the question of compensation is concerned as the complainant himself withdrew from the project by seeking cancellation without any fault on the part of the respondent, he cannot claim any compensation from the respondent.

10 The respondent is directed to pay the above said amount to the complainants within sixty days from the date of this order after adjusting the amount of Rs.20,385/- already paid along with interest from the date of payment till realisation.

Dated 17.01.2020


(Balbir Singh)
Adjudicating Officer
RERA, Punjab