

**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 1442 of 2019
Date of Order: 28.01.2020**

Ekam Highrise through its partner Sushil Dahra Regd. Office, SCO-7, Sector 30 D,
Chandigarh - 160030

Versus

Baba Banda Singh Bahadur Enterprise through its Managing Director/Directors
Registered Office at SCO No. 522, 2nd Floor, Sector-70, Mohali, SAS Nagar Mohali,
Pb- 160071

Present Mr. Himanshu Raj Advocate representative for the complainant.

Order

This complaint was filed by Ekam Highrise through its partner under Section 31 read with Section 71 of Real Estate Regulation & Development Act, 2016 (**hereinafter referred as The Act**) against Baba Banda Singh Bahadur Enterprise through its MD alleging violations of provisions of the Act by the respondent promoter of the project named 'POSH CITY' located in Mohali and the relief sought was for issuing direction to the respondent to hand over actual possession of plot no. 71 allotted to the complainant, within time bound manner; directing the respondent to pay the complainant interest on the delayed possession of the plot in accordance with the provisions of Section 18 of the Act; directing the respondent to execute the conveyance deed of the plot in-question in a time bound manner; directing the respondent to compensate the complainant by making payment @ Rs. 20,000/- per month for the unfair trade practices by the respondent as per provision of Section



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7(1) (c) of the Act; for directing the respondent to pay Rs. 10,000/- per month as compensation for the mental agony caused to the complainant; for directing the respondent to pay Rs. 20,000 per month as compensation for the physical harassment caused to the complainant; directing the respondent to pay litigation charges, opportunity cost and for directing the respondent to comply the obligations casted upon him by the Act and Rules.

2 Legal Branch of RERA however, raised the objection regarding the maintainability of the present complaint in Form-N before the Adjudicating Authority and the complainant thereupon filed protest petition against the objections of legal branch of the RERA. The matter was accordingly put up before me for decision

3 I have heard the learned representative for the complainant at length regarding maintainability of complaint.

4 Though there had been considerable confusion in the scope of the jurisdiction vested in the Authority and of the Adjudicating Officer and the matter ultimately has been set at rest by the RERA Appellate Tribunal, Punjab in the authority 'Sandeep Mann V/s Real Estate Regulatory Authority, Punjab' decided on 27.12.2019. According to the ratio of this authority the present complaint falls within the scope of the proviso of Section 18 and the sections runs as under:

18. Return of amount and compensation – (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building.-

- (a) In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or



for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

which was further clarified as under;


“The proviso however, does not talk of award of compensation but of interest. Thus the matter arising under the proviso cannot be placed before the Adjudicating Officer but shall be placed entirely before the authority.



The aforesaid finding may appear to contradict, our earlier opinion but as the Act is loosely drafted we have no other option but to hold as above”.

5 Apart from this the complainant of the case in hand does not want to opt out of the project, but he intends to seek issuance of the directions to the respondent which squarely fall under the jurisdiction of the Authority and the consequent relief of interest etc. because of the delay in non-performance of the provisions of the Act and of the terms and conditions of the written agreement between the parties would also bring the present complaint within the domain of the Authority and the entire matter has to be put before the Authority in the shape of complaint in Form-M. Resultantly the present complaint cannot be enquired into by this bench. Thus the present complaint filed by the complainant in Form- N is not maintainable before this bench and is ordered to be returned to the complainant along with its annexures, after obtaining receipt in this behalf and retaining photocopy of the entire record; for enabling the complainant to file fresh complaint before the Authority in Form ‘M’ for the same cause of action. Papers be consigned to record room after making due compliance of notifying the party this order well in time.

Dated 28.01.2020


(Balbir Singh)
Adjudicating Officer
RERA, Punjab