

**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. TR/AO/51/19  
GC NO. 1200 OF 2019  
Date of Order: 31.01.2020**

Harjinder Singh Kohli, #253, Sector-4, Mansa Devi Complex, Panchkula, Haryana-134114

Versus

M/s Ireo Waterfront Pvt. Ltd. SCO 16-17, Fortune Chambers, Opposite Ludhiana Stock Exchange, Ludhiana - 141001

Present Mr. Sanjeev Gupta and Mr. Ripudaman Singh representatives of the complainant..  
Respondent Ex-parte vide order dated 18.07.2019

**Order**

This complaint was filed by Mr. Harjinder Singh Kohli against M/s Ireo Waterfront Pvt. Ltd under Section 31 of the Real Estate (Regulations & Development) Act, 2016 (**hereinafter referred as the Act**) for seeking refund of amount of Rs.13,36,820/- along with interest and compensation.

2 In brief the case of the complainant was that, complainant had booked a flat CC-T3-02-203 Type- H Ireo Waterfront situated at Sidhwan Canal, Ferozepur Road, Ludhiana, Punjab, with the respondent; that complainant had been allotted flat CC-T3-02-203 Type- H having area of 1306 sq. ft. Respondent acknowledged receipt of application dated 22.02.2013 and receipt of 3 Lacs. Respondent further demanded Rs. 2,34,728/- by 22.02.2013 and Rs. 8,20,092/- by 23.05.2013 and till date Rs. 13,36,820/- has been paid. Respondent assured to deliver possession within 2 years but neither buyer's agreement has been executed nor any development of group housing



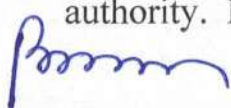
Contd.-P-2-

has been started.

3 But despite lapse of more than six years from the date of provisional allotment letter, respondent has not delivered the possession of the flat CC-T3-02-203 despite visits by the complainants. Registered Letter was also written by the complainant to the respondent on 21.07.2017 detailing the entire facts and circumstances and specifically indicating the fault of the respondent in not getting the buyers agreement executed and nor offer for delivery of the possession was made in the stipulated period, refund with interest was sought by the complainant but to no effect. Hence the complaint is for seeking refund of amount of Rs. 26,06,301/- along with interest and compensation on account of mental agony, harassment suffered by the complainant. Notice of the complaint was issued to the respondent. Respondent was duly served through e-mail on 28.05.2019 but respondent who has not contested the present complaint, was accordingly proceeded against ex-parte by my learned predecessor vide order dated 18.07.2019.

4 I have heard the learned representative for the complainant and his assistance have gone through the record.

5 The version of the complaint and documents executed between the parties and placed on record by the complainant remained un-rebutted and on that basis it can be safely calculated that unit was allotted to the complainant but any agreement between the parties has not been executed and complainant paid total sum of Rs.13,36,820/- and the possession was to be delivered within a period of 24 months. There is nothing on record to suggest any buyer's agreement or any offer was made by the respondent for delivering of the possession of the site by completion certificate from the competent authority. Needless to say that time was essence for the completion of the



project and the complainants deliberately had made the payments required to be paid prior to entitling him for possession of the site. Therefore the respondent defaulted in delivering of the possession of the site without any plausible cause or access and thereby violated the terms and conditions of the agreement of sale and also of the Act and therefore the complainants became entitled to refund of the amount of Rs. 13,36,820/- from the respondent under Section 18 of the Act which 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”.**

As per provisions of Section 18 of the Act, the respondent promoter was duty bound to offer possession of the site in-question consequent upon full and final payment of the same by the complainant or was required to offer possession conditionally to further payment of External Development



Charges on furnishing the complete calculations in this behalf but the defaulted in this behalf. On account of default of the respondent in not delivering the possession of the site, the complainants are certainly entitled to withdraw from the project and claim the refund of the amount of Rs. 13,36,820/- paid by them.

6 The next question 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 complainant to it since respective payments, as such, the respondent is liable to refund the above said amount along with interest to the complainants because, once, the amount is deposited with the promoter and he is getting benefit of interest accrued upon said amount, he cannot deny the similar benefit to the buyer. As such, to conclude, I am of the view that the complainants are entitled return of principal amount of Rs. 13,36,820/- along with interest at the prescribed rate as per Rule 16 of the Act, i.e State Bank of India highest marginal cost of lending rate plus 2% from the respective dates of deposits by complainants from the date of respective payments till realization. The respondent, as such, is directed to return the amount of Rs. Rs. 13,36,820/- along with 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.

7 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 Vehicles 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 **R.D Hattangadi V/s 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 to 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.”*



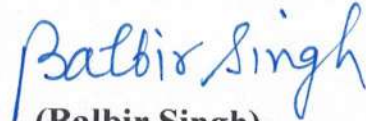
8 So while awarding compensation under this Act, all factors are to be taken into consideration by the Adjudicating Officer. It is necessary to add here that the procedure to be adopted for disposal of the complaint is summary in nature. Under the Motor Accident Claims Tribunal cases, the procedure is 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 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 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/-

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

01	Principal Amount	Rs. 13,36,820/- /-
02	Simple Interest	At the SBI highest marginal cost of lending rate plus 2% on the principal amount from the date of respective payments till realization
03	On account of Mental Agony and litigation expenses	Rs. 1,25,000/-

9 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 complainant from the respondents in this matter on account of delay in delivery of possession, that would stand adjusted against above said due amount..

**Dated 31.01.2020**

  
(Balbir Singh)  
Adjudicating Officer  
RERA, Punjab