

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

Complaint No. AdCNo.1292/2019

Dated of Institution: 09.08.2019

Date of Order: 18.06.2020

Sandeep Bhattacharjee, resident of D-2, 303, Karnavati Apartments, Third Floor, Opposite Hira Bhai Tower, Uttam Nagar Road, Mani Nagar, District Ahmedabad, Gujarat.

Complainant

Versus

1. M/s Sanskriti Group of companies, SCO 78-79, First Floor, Madhya Marg, Sector 8-C, Chandigarh.
2. Golden Oak Real Estate Pvt. Ltd, SCO No.78-79, First Floor, Madhya Marg, Sector 8-C, Chandigarh.

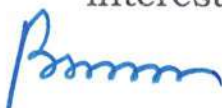
Respondents

Complaint under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri Sanjeev Gupta, Advocate, representative for complainant  
Respondents ex-parte vide order dated 18.11.2019

**ORDER**

1. Sandeep Bhattacharjee (hereinafter called as the complainant) filed this complaint against Ravi Garg Director of M/s Sanskriti Group of Companies and another (here-in-after called as the respondents) 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 the fact that no development work had taken place at the site; neither possession of apartment SJC/SF/203 in the project namely Sanskriti J Classic Residency nor that of re-allotted apartment No.SF/R3/106/III in the project namely DLF Hyde Park, New Chandigarh had been delivered, though, the complainant had paid an amount of Rs.25,30,000/- in instalments. Police complaint was made and the site and number of the apartment was changed as mentioned above, however, no construction work, what to talk of development work, had been undertaken at any of the site and thereupon complainant stopped further payments and wanted to withdraw from the project. Hence, this complaint for refund, interest and compensation.

2. None appeared on behalf of the respondents despite due service and as such they were proceeded against ex-parte vide order dated 18.11.2019.
3. I have heard the learned representative for the complainant and with his able assistance have gone through the record.
4. The representative for complainant addressed arguments on the basis of the submissions made in the pleadings.
5. I have anxiously considered the contentions of the learned representative for the complainant.



6. On the basis of pleadings of the complainant duly supported with documents placed on record i.e. payment receipts Annexure-A1 to A4, allotment letter dated 09.09.2016 Annexure A5, another allotment letter Annexure-A6 and police complaint made by the complainant as Annexure-A7, which remained unrebutted; it can be safely concluded that complainant booked apartment SJC/SF/203 in the project namely Sanskriti J Classic Residency vide allotment Annexure-A5 and then apartment No.SF/R3/106/III in the project DLF Hyde Park, New Chandigarh, was reallocated in place of above apartment vide allotment Annexure-A6. As per clause 30(a) of said allotment letter Annexure-A5, the possession of the apartment was to be delivered within 24 months with an extended period of six months from the date of start of construction. As averred in the complaint and also evident from the receipts Annexure-A1 to A4, the complainant paid an amount of Rs.25,30,000/- to the respondents in instalments; however, no development work was started at the spot and therefore, the complainant did not make further payments and was constrained to seek refund of the amount. The conduct of the respondents in not undertaking the developmental work at the site would amount to unfair trade practice. In such a situation,



the respondents are certainly at fault in not starting the development work, though the possession of the property in question was to be delivered within thirty months including extended period of six months from the start of the construction work, despite lapse of stipulated period and as such, this case is squarely covered within the mischief of the provisions of Section 18 of the Act, which runs as under:-

*"18. (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 of 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 there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such*

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*compensation to the allottees, in the manner as provided under this Act."*

7. In view of the above provisions of the Act, the respondents was duty bound to undertake development work at the site and offer the possession of the apartment in question, to complainant within the stipulated period, but, the respondents defaulted. As such, the respondents are liable to refund the amount of Rs.25,30,000/- paid by the complainant.
8. 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 respondents. The fact of the matter remains that the respondents had been using the amount so paid by the complainant to them since the payments, as such, the respondents were liable to refund the above said amount alongwith interest to the complainant because, once the amount is deposited with the respondents and they are getting benefit of interest accrued upon said amount, they cannot deny the similar benefit to the buyers. As such, to conclude, I am of the considered view that the complainant is entitled the return of principal amount of Rs.25,30,000/- 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% w.e.f. the dates on which the payments were made to the respondents till realization.



9. Since the complainant had to seek the remedy under the existing law and for that obviously he had to suffer mental agony and had to incur expenses to pursue his claim by way of engaging a representative. The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land Acquisition Act etc etc. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can also be gauged from the delay in delivery of possession and as such, I am of the considered view that the complainant is held entitled for compensation under all the heads i.e. mental agony, litigation expenses to the extent of Rs.50,000/-.

10. In view of above discussions and observations, the complaint stands accepted to the following extent and heads:-

1.	<b>Refund of Principal amount</b>	<b>Rs.25,30,000/-</b>
2.	<b>With Simple</b>	<b>At the SBI highest marginal cost of</b>

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	<b>interest</b>	<b>lending rate plus 2% on the principal amount w.e.f. respective the dates on which the payments were made to the respondents till realization.</b>
<b>3.</b>	<b>On account of mental agony and litigation expenses</b>	<b>Rs.50,000/-</b>

The respondents are 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 respondents in this matter, on account of delay in delivery of possession, shall stand adjusted against the above said due amount. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:18.06.2020

*Balbir Singh*

(Balbir Singh)

Adjudicating Officer,

Real Estate Regulatory Authority, Punjab.


Sandeep Bhattacharjee Vs. M/s Sanskriti Group Companies

Dated :18.06.2020

Present: Shri Sanjeev Gupta, Advocate, representative for complainant  
Respondents ex-parte vide order dated 18.11.2019

No case law cited. For the reasons recorded in my separate detailed order of even date, the complaint is accepted. File be consigned to record room after making due compliance of notifying the parties this order well in time.

Dated: 18.06.2020

  
(Balbir Singh)  
Adjudicating Officer,  
RERA, Punjab