

**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.1462/2019

Dated of Institution: 28.11.2019

Date of Order:09.07.2020

Neelam Sehgal, resident of House No.468, Krishna Nagar,
Gurdaspur, Punjab.

Complainant

Versus

1. M/s Emerging India Housing Corporation (P) Ltd. SCO 46-47, First Floor, Sector-9 D, Near Matka Chowk Madhya Marg, Chandigarh.
2. Indiabulls Home Loans, SCOP 337-338, Sector 35B, Chandigarh.

Respondents

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

Present: Shri Luv Malhotra, Advocate, representative for
complainant.

Respondent No.1 ex-parte vide order dated
03.01.2020.

Shri Vijayata Sharma, Advocate, representative for
respondent No.2.

ORDER

1. Neelam Sehgal complainant filed this complaint against M/s Emerging India Housing Corporation Pvt Ltd and Indiabulls Home Loans 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.



2. It was the case of the complainant that on the assurance and representations that they were having all approvals, clear ownership etc she made all the payments and got the sale deed of the flat No.D-604 executed in her name. It was also the case of the complainant that earlier her son Rahul Mahendru invested Rs.31,46,600/- to purchase a villa of 150 sq yards on 17.08.2013 in the project **EMERGING VALLEY**, but, said project was abandoned by the respondent and they offered the complainant to purchase flat in their other project namely Emerging Heights-3 and also offered to adjust the amount invested by her son. In order to safeguard her and her son's interest, the complainant invested another amount of Rs.16,47,089/- by obtaining loan from the Indiabulls Home Loans, Chandigarh and she had also paid an amount of Rs.3,76,938/- on account of interest. The respondent however also neglected the project in question also and there is no facility of electricity, water, roads etc and the possession was offered without obtaining occupancy certificate and completion certificate. By doing so the respondent has indulged in unfair trade practice and as such the respondent was entitled to refund of amount of Rs.47,93,689/- alongwith interest at the rate of 18@

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per annum, compensation and litigation expenses as claimed in the relief clause of the complaint.

3. None appeared on behalf of the respondent No.1 despite due service and as such was proceeded against ex-parte vide order dated 03.01.2020.
4. Respondent No.2 filed written reply taking the preliminary objection that the answering respondent was only the financier and had no role to play in the dealings between the complainant and the respondent No.1 and had been unnecessarily made party and no relief was made out against the answering respondent. On merits, it was admitted that the complainant had taken a loan of Rs.16,47,089/- from the answering respondent and remaining averments of the complaint were denied. Answering respondent prayed for dismissal of complaint.
5. I have heard the learned representative for the complainant and the contesting respondent and with their able assistance have gone through the record.
6. The representative for complainant and the representative for respondent No.2 addressed arguments on the basis of the submissions made in their pleadings.
7. I have anxiously considered the contentions of the learned representatives for the parties.



8. It is worthwhile to mention here that respondent No.1 is ex-parte and respondent No.2 is only the financier, who advanced loan to the complainant and against said respondent and no relief had been claimed by the complainant.
9. The first point raised by the representative for complainant was that as the respondent offered possession to the complainant without obtaining any occupancy and completion certificate and then executed sale deed in favour of the complainant but then abandoned the project and had not provided any facilities such as water, electricity roads and other development work and as such the complainant was entitled to refund of the amount, but, this contention is not of much help to the case of the complainant as admittedly the complainant had taken the possession of the unit in question and also got the sale deed executed in her favour and therefore, she was precluded from claiming any refund of the amount. But, her right for claiming compensation subsisted despite entering into possession of the flat and she could certainly rake up her claim under Section 14(3) of the Act, which reads as under:-

“S.14(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale



relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”

10. There is no challenge to the pleadings of the complainant that the respondent No.1 has abandoned the project without providing facilities such like water, electricity, roads etc. as respondent No.1 has not come forward to contest the complaint despite of service. In such a situation, there are no basic amenities available in the project as pointed out by the complainant, which was the sole responsibility of the respondent, the respondent is certainly liable to pay compensation for the difficulties and problems being faced by the complainant because of non-providing of above mentioned basic amenities.

11. Now, we have to consider that what will be the amount of compensation, to which the complainant is entitled because of the deficiencies in providing the basic amenities such as water, electricity roads etc by the respondent. In view of above discussions and the documents available on record, it can be safely concluded that the complainant was not provided by

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the respondent proper basic facilities and had to live in the unfinished project. The complainant had to seek the remedy under the existing law and for that obviously she had to suffer mental agony and had to incur expenses to pursue her claim by pursuing the proceedings. 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 fact that basic amenities such water, electricity, roads etc has not been provided and the complainant has to live without the basic amenities of the project and as such, I am of the considered view that the complainant is entitled for compensation under all the heads i.e. physical discomfort, mental agony and litigation expenses etc to the tune of Rs.1,00,000/-.



12. In view of above discussions and observations, the complaint stands partly accepted and the respondent No.1 is directed to pay the amount of Rs.1,00,000/- as compensation to the complainant within sixty days from the date of this order. If any amount has been received by the complainant from the respondent No.1 by way of compensation on the amount paid to the respondent No.1 by way of sale consideration of the property unit in question, the same shall be adjusted from the total amount awarded to the complainant in this order. Before parting with this order, it is observed that the complainant may approach the competent Authority under the appropriate provisions of the Act for issuance of directions to the respondent No.1/ builder to complete/provide the basic facilities/ amenities, which he was duty bound to do. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:09.07.2020


(Balbir Singh)
Adjudicating Officer,
Real Estate Regulatory Authority, Punjab.