

**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 AdCNo10102018  
Dated of Institution: 11.09.2018  
Date of Order: 02.12.2020

VINOD KHULLAR 215, Eldeco Greens, Opposite Khambra Gate, Jalandhar, District Jalandhar PIN Code No.140026

Complainant

Versus

Mr. Vijay Luthar Marketing Office, Eldeco Greens Opposite Khambra Gate, Jalandhar PIN Code No.140026

Respondent

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

Present: Shri Ranjeet Kumar Adhikari, Advocate, representative for the complainant.  
Shri Vijay Jaggi, Advocate, representative for the respondent.  
(Through Video Conferencing)

**ORDER**

1. Vinod Khullar filed this complaint, against Mr. Vijay Luthar, alongwith documents, under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking compensation to the tune of Rs.2,00,000/-. In brief, the case of the complainant was that he booked and purchased flat No.215, in the project namely Eldeco Greens Properties Pvt Ltd, at Jalandhar, which was registered with the Authority against registration



No.PBRERA-JAL34-PR0023. Allotment letter dated 04.02.2014 was issued to him. The complainant paid total sale consideration of the said flat. However, the wooden floors of three bed rooms provided at the time of allotment had been broken and uneven at many places and the surface area of the floor was not usable and was rather unsafe. The floor tiles of the kitchen were also uneven and all the walls of the house were having dampness and the paint also eroded at many places. On these grounds, compensation was claimed on account of repairs to be made by the complainant to the tune of Rs.2,00,000/-.

2. Upon notice, complaint was contested by the respondent on the ground that the same was not maintainable having been filed against Vijay Luthar, who was only a manager of M/s Eldeco Jalandhar Properties Pvt Ltd and no cause of action had arisen to the complainant against him. M/s Eldeco Jalandhar Properties Pvt Ltd was in the business of real estate development business and had successfully developed and delivered several projects in various states across India. Vijay Luthar was not necessary party in this complaint. The instant complaint was an attempt to put pressure upon the respondent to extort money by illegal means and also to malign the reputation of the respondent. The complainant had not complied with





the mandatory provisions of Section 14(3) of the Act and as such the complaint was not maintainable. The complainant had obtained possession of the property in dispute more than four and half years back without any protest or reservation and thus the complainant was at fault and could not take advantage of his own wrong. The complainant carried out major structural alterations in the unit in question without consulting the respondents such as installing fresh water supply to all washrooms and kitchens by obstructing the existing water pipe line and also encroached upon the open area by re-constructing the bed-room in violation of approved building plan. The complainant also relocated the existing water tank of the unit of his own without getting revision of approved building plan of the unit and all the damage to the wooden flooring, surface, floor tiles of kitchen etc occurred due to additions and alterations carried out in the building by the complainant himself in violation of approved building plan of the unit. No report of expert regarding the damage had been placed on record by the complainant. Even the complainant did not allow the respondents to inspect the site to verify his claims and allegations regarding the damage. There was no deficiency in service or any other fault on the part of the respondent. The complainant had himself time and



again defaulted in making payments of maintenance charges as per the terms and conditions of the agreement for maintenance annexure-A despite repeated demands. The instant complaint was the counter blast to the demands raised by the respondent. The unit in question was constructed by the respondents in accordance with the sanctioned building plans, layout plans and specifications as approved by the Competent Authority and the instant complaint was without any merit. Prayer for dismissal of complaint was made.

3. Both the respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings and documents as already summarized above and the elaboration thereof shall be made in the discussion.
4. It is not disputed between the parties that complainant booked Villa No.215 in the project namely "**Eldeco Greens**", Jalandhar, registered with RERA Authority against registration NO.PBRERA-JAL34-PR0023, which was allotted to the complainant vide allotment letter dated 04.02.2014 and sale deed in regard to said unit was executed by the respondent in favour of the present complainant and Smt. Shashi Khullar on 19.03.2014 and possession was delivered to the complainant at that time.





5. The first objection raised on behalf of the respondent was that the instant complaint had been filed against Vijay Luthar, who was a Manager with the respondent and not against Eldeco Greens Jalandhar Pvt Ltd and as such, the complaint was not filed against proper person. However, this objection raised on behalf of the respondent is not sustainable, as the complaint has been filed against Eldeco Greens through Vijay Luthar, who was admittedly the manager of the respondent and it was not the case of the respondent that Marketing office of respondent Eldeco Greens is not situated opposite Khambra Gate Jalandhar as is mentioned in the office. Moreover, the written statement has been jointly filed by the builder Eldeco Greens alongwith its authorized representative Vijay Luthar. Therefore, this objection of non-impleading the builder is without substance. Further, the respondent side itself brought on record copy of the circular resolution passed by the Board of Directors of Eldeco Jalandhar Properties Private Limited dated 20<sup>th</sup> day of May, 2015, whereby, Vijay Luthar, Deputy Manager Marketing alongwith other officials of the respondent was jointly and/ or severally authorized to act on behalf of the company as its duly Authorized representative for instituting and/or pursuing case/s of any nature filed by/against the company (present or future) in any court/tribunal/



quasi judicial body in/outside India in respect of its housing project/s "Eldeco Greens" at Nakodar Road, Jalandhar, Punjab. In these circumstances, it cannot be said that the complaint had not been filed through a proper person or there is mis-description of the name of the respondent. Hence, the complaint is held to have been filed against a proper person.

6. The further objection raised on behalf of the respondent was that the complainant had taken possession of the unit in question without raising any objection having satisfied about all aspects of the unit and the instant complaint after four and half years of the taking over of possession was not maintainable and had been filed with mala-fide intention merely to extort money from the respondent. As admitted by the respondent's side, the complainant took possession of the unit in question about four and half years prior to filing of the instant complaint. The projection in question has been registered with the RERA Authority against registration No.PBRERA/Jal34-PR0023, which shows that it was an ongoing project at the time of coming into force of the Act and it is also settled law that the Act would certainly regulate the existing contracts, even though, it is prospective in nature, but, is retroactive also to some extent. On this point, reliance may be placed on the law laid down by the Hon'ble Bombay High Court in case





titled as **Neel Kamal Realtors Suburban Pvt. Ltd and another Vs. Union of India and others**, bearing Writ Petition No.2737 of 2017 decided on 06.12.2017, wherein, it has been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act are not enforceable to that extent and the provision of the Act would be applicable to cover up the ongoing project got registered with RERA. Further, the complainant could also approach the RERA Authorities as per the provisions of Section 14(3) of the Act, which lays down 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."*

7. A bare perusal of the above provisions show that in case any structural defect or any other defect in workmanship etc. on the part of the promoter as per the agreement is brought to the notice of the promoter



within a period of **five years** by the allottee from the date of handing over possession, the promoter shall be duty bound to rectify such defects without further charge, within thirty days, and in the event of failure on part of promoter in doing so, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act. It is the version of the complainant that he brought the defects to the notice of the promoter orally after three years of allotment of the unit and also by making complaint in the complaint register of the respondent on 31.05.2018 and then again on 27.06.2018 by way of making a written complaint and copies thereof have been brought on record as Annexure-I and II. Even prior to that the supervisor of the respondent also visited the unit in question on the basis of complaint No.1 on 07.01.2018 as is mentioned in complaint card for technician, in which it is mentioned that "problems were still there" and status of the complaint was "not-satisfied". It shows that prior to above complaints in May and June, 2018, the complainant had earlier also made complaints in respect of defects in the unit in question and that was why that the supervisor of the respondent visited the unit and observed that the problems were still there and the complainant was unsatisfied. The complainant has also brought on record certain





photographs which show that there is dampness in the lower walls above floor and the tiles were uneven. The complainant has also brought on record the photographs after repair of the unit.

8. The further objection raised on behalf of the respondent was that the dampness or the damage of the walls was the result of unauthorized construction of a room raised by the complainant on the first floor without getting the site plan approved and sanctioned and further shifting of water pipes in the walls. It was also claimed that the respondent was not permitted to inspect the villa in question by the complainant and as such it could not be ascertained as to what was the reason about the defects. As is apparent from the photographs the dampness is in the lower portion of the walls and not on the upper area and if it had been due to the raising of construction on the first floor, then the defects would have been from upper portion to the lower side and not on the lower portion of the walls or on the floor. Furthermore there is no documentary evidence available on the file to show that the water pipes were changed/refitted or the construction of the room on the first floor was not made properly.
9. As far as the objection of the respondent that the complainant did not allow inspection of the villa in question to find out cause for the damages is

*Bomun*

concerned, no notice was issued to the complainant for inspection by the respondent. In the absence of such intimation, it is not believable that the complainant denied access to the respondent for inspection of his villa, rather he had been complaining about the resolution of the problems being faced by him by way of making complaints. In these circumstances, how it could be said that the complainant was not allowing inspection of his villa by the employees of respondent. Moreover, the factum of damage to the walls in the shape of dampness and also to the floor is admitted case of the parties and the plea of the respondent is simply evasive that it was due to fault of the complainant himself. Hence, the complainant has rightly approached this Bench within the stipulated period for grant of compensation under the Act.

10. The next point raised by the respondent was that the complainant was not making payment of the maintenance charges and in order to avoid that payment, the instant complaint had been filed, but, such objection raised by the respondent in this complaint is not beneficial to the respondent being a separate issue not related to the matter involved in this complaint otherwise the respondent could initiate separate proceedings for recovery of the arrears of maintenance charges, if any.

*Borish*



11. The next objection raised on behalf of the respondent was that the complainant has not brought on record any evidence of mason or report of any expert regarding the repairs made by him and in absence of which, how it could be said that the complainant spent about Rs.02 Lacs and as such, the version of the complainant in this respect remained unsubstantiated.

12. No doubt, there is no evidence of mason or report of any building expert brought on record by the complainant, but, the complainant has placed on record bills regarding purchase of cement, floor tiles, waterproofing material, Dr. Fixit, Fast flex, sand etc, total of which as per the complainant comes to Rs.2,62,873/-. This shows that the repair work has been got done by the complainant in his villa No.215 and photographs after repair have also been brought on record indicating the removal of defects by repairs. In these circumstances, even in the absence of expert/mason evidence, it can be said that expenditure has been made by the complainant for removing the defects which occurred in the walls and the floor of the unit in question due to defective construction by builder and these defects gradually came to notice and were latent not apparent at the time of delivery of possession.

13. Now, we have to consider the quantum of compensation, to which the complainant is entitled

*Boman*

because of the default of the respondent/builder in removing the defects in the walls and floor of unit No.215 of the complainant. In view of above discussions, it can be safely concluded that the respondent being promoter failed to remove the defects in the walls and floor of the unit in question and 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 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. Only approximate 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 the defects in the walls and floors had not been removed by the respondent and he himself had to get the needful done at his own expenses. For determination of pecuniary amount, if the bills of material placed on

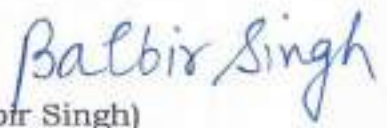
*Bansal*



record are taken into account, which remained un rebutted on record and labour involved to get repairs done of the case in hand, the amount could not be less than Rs.2,75,000/-. In these circumstances, I am of the considered view that the complainant is entitled for compensation under all the heads i.e. pecuniary, mental agony and litigation expenses etc to the tune of Rs.3,00,000/-.

14. In view of above discussions and observations, the complaint stands accepted and the respondent is directed to pay the amount of Rs.3,00,000/- as compensation to the complainant within sixty days from the date of this order. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:02.12.2020

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