

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

Review application No.10 of 2020
In complaint No.TR/AO/78/19-GC No.1206/2019
Date of Order: 24.12.2020

M/s Uniroyal Industries Ltd.

Complainant/DH

Versus

M/s Acme Builders.

Applicant

Review Application filed by M/s Acme Builders.
applicant (respondent in the main complaint).

Present: Ms. Nidhi Ayer Advocate, Representative for the
applicant
Mr. Ved Parkash and Ms. Manju Goyal Advocate,
representatives for respondent

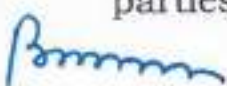
ORDER

1. The applicant has filed the instant review application seeking review of the order dated 29.06.2020 passed by this Bench in complaint bearing No.TR/AO/78/2029 (Old GC No.1206 of 2019 titled as Uniroyal Industries Ltd Vs. Acme Builders on the grounds that during the pendency of the complaint offer of possession was given to the complainant after issuance of occupancy certificate, but, this fact was not disclosed by the complainant and applicant-builder suffered loss on that score. It is further alleged that the builder also paid an



amount of Rs.27,63,857/- on account of pre-EMIs to the complainant, but, that amount had not been taken into consideration while passing of the main order mentioned above. On these grounds, it was prayed that the order dated 29.06.2020 may be set aside and the matter be decided afresh.

2. The complainant (respondent in this review petition) contested the review application by filing written reply raising the plea that the review application was not maintainable under the provisions of Regulation 22 of the Punjab Real Estate Regulatory Authority (Procedure for handling complaints and related matters); that the instant review petition had been filed simply to delay the execution proceedings instead of filing appeal against the main order; that the averment in respect of payment of pre-EMIs by the builder had been duly mentioned in the main order and wrong plea of non-mentioning thereof had been incorporated in the review application. It was also pointed out that it was wrongly mentioned in the review application that the occupancy certificate was placed on record on 16.01.2019 though it was dated 04.11.2019. Prayer for dismissal of the review petition was made.
3. The file of main complaint was also put up alongwith the review application. Both the representatives for parties addressed their respective arguments.



4. I have anxiously considered rival contentions of the learned representatives for the parties and have gone through entire record with their assistance.
5. The review of the direction, decision or order etc. can be made as per the Regulation 22 of the Punjab Real Estate Regulatory Authority (Procedure for handling complaints and related matters) Regulation 2017, relevant part of which runs as under:-

“Regulation 22. Review

(1) Any person aggrieved by a direction, decision or order of a Member, the Authority, or an Adjudicating Officer, from which (i) no appeal has been preferred, or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed; or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the direction, decision or order, as the case may be, to the Authority.

6. The perusal of above provision shows that review of any direction, decision or order of a Member, the Authority, or an Adjudicating Officer, could be sought by an aggrieved person upon the discovery of new and important matter or evidence which, after the exercise

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of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed; or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the direction etc, to the Authority subject to the fact that no appeal has been preferred against said direction or order etc, or from which no appeal is allowed.

7. The main ground for review of the order dated 29.06.2020 raised by the builder, to the effect that an amount of Rs.27,63,857/- paid by the applicant/builder on account of pre-EMIs through cheques/RTGS to the complainant (respondent in this review petition), but, the said fact had not been discussed in the main order, seems to have been taken under some mistaken impression because in the main order dated 29.06.2020, the plea of the builder/applicant in this behalf has already been recorded under para No. 02 as under:-

“On merits, it is pleaded that the respondent had paid pre/EMIs amounting to Rs.27,63,857/- as per terms and conditions of the agreement till December, 2018”



Subsequently, after discussion, in para No.14 of the said order pertaining to relief clause, it was specifically mentioned as under:-

"If any amount has been received by the complainant from the respondent by way of compensation on the amount paid to the respondent 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."

8. There is however, no dispute between the parties even at this stage that under subvention scheme, the *lump-sum* amount was paid by the bank directly to the applicant/builder on behalf of the allottee /complainant and in consideration thereof, the builder had been regularly remitting the specific amount in the account of the complainant for transmitting the same to the banker by way of Pre-EMIs. Therefore, the said amount, which was being paid by the builder in the shape of interest (compensation) to the complainant in view of the finding recorded in para 14 of the main order as noticed above has to be adjusted from the total amount, which became due to the complainant as per final order.



9. So far as the other ground taken on behalf of the builder for review that the occupancy certificate was issued and placed on record, but, mention of the same had not been made in the final order is concerned, we find that in the pleadings on behalf of the builder, there was no mention of any offer for possession having been made by the builder nor there was any mention of issuance of completion certificate. It transpires that subsequent to filing of the complaint one document purportedly dated 04.11.2019 was placed on record at the fag end of the case. However, unless specific offer for possession had been made by the builder to the allottee/complainant, the simple issuance of any such certificate, does not put the case of the builder at better footing. Therefore, this plea for seeking review of the final order dated 29.06.2020 is without substance.
10. The review application is accordingly disposed of. The review application file be tagged with the main complaint file and file be consigned to record room after due compilation.

Dated:24.12.2020



(Balbir Singh)

Adjudicating Officer,

Real Estate Regulatory Authority, Punjab.

**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.TR/AO/78/2019
(Old GC No.1206 of 2019)
Dated of Institution: 06.02.2019
Date of Order: 29.06.2020

Uniroyal Industries Limited through Akhil Mahajan, Plot
No.365, Industrial Area, Phase-II, Panchkula, Haryana.

Complainant

Versus

Acme Builders, Pvt Ltd. GH-10, JLPL, Sector-91, Mohali,
District Sahibzada Ajit Singh Nagar (Mohali) Punjab.

Respondent

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

Present: Shri Ved Parkash, representative for the
complainant.
Ms. Nidhi Ayer, Advocate, representative for the
respondent.

ORDER

1. Complainant Uniroyal Industries Limited through Akhil Mahajan filed this complaint against respondent Acme Builders, Pvt Ltd. 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. It was averred in the complaint that the complainant booked flat No.T1/1002, Sector



91, Acme Eden Court Mohali on 11.05.2011 with the respondent for a total sale consideration of Rs.90,87,212/-. The complainant opted for subvention scheme, which was later on converted into CLP. Complainant obtained home loan to the tune of Rs.61,30,443 out of which Rs.55,63,515/- was paid to the respondent in addition to the booking amount of Rs.24,50,000/- and another payment of Rs.1,17,775/-. Complainant also made additional payments of Rs.3,19,773/- and Rs.1,58,689/- and in total the complainant made payment of Rs.86,09,752/- towards the sale consideration. Buyers agreement was executed on 13.12.2012 and allotment letter was issued on 15.12.2012. As per terms and conditions of the agreement the possession of the flat in question was to be delivered within 42 months i.e. upto 13.06.2016, which the respondent failed to deliver. Hence, this complaint.

2. The respondent contested the complaint by taking up preliminary objections regarding maintainability; concealment of material facts; cause of action and there being arbitration clause, the instant complaint before this Bench was not maintainable. On merits, it is pleaded that the respondent had paid pre-EMIs amounting to Rs.27,63,857/- as per terms and conditions of the agreement till December 2018 and the

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respondent was ready to return the remaining amount to the complainant if he was prepared to take possession of the unit in question. The unit in question was ready to move in condition and offer of possession would be given on the asking of the complainants. Prayer was made for dismissal of the complaint.

3. It will not be out of place to mention here that originally this complaint was filed in form-M, which was later on converted to Form-N as per the ratio of the order dated 27.02.2019 of the Hon'ble Real Estate Appellate Tribunal, Punjab passed in Appeal No.53 of 2018 and other connected appeals, as in the instant complaint, refund had been sought by the complainant.
4. I have heard the representatives for the parties and have gone through the record on the file.
5. The argument on behalf of the respondent was that the present case pertained to the matter relating to the period prior to the coming into force of the Act and as such the provisions of the Act were not attracted to the facts of the case in hand. The argument however lacks merit as the project of the case in hand was not complete prior to coming into force of the Act and it was an ongoing project and the unit in question was not capable of delivery to the complainant. In these circumstances, the present project was ongoing and had not been completed till date; 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 **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.

6. It was also contention on behalf of the respondent that there was an arbitration clause in the builder-buyer agreement, according to which the dispute between the parties was to be referred to the arbitrator and therefore this Bench had no jurisdiction to adjudicate the controversy between the parties. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, the remedy available to the complainant under the Act still subsists. The argument is accordingly repelled.
7. The argument on behalf of the respondent was that the unit in question was ready to move in condition and offer of possession could be issued if desired by the

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complainant, but, this argument does not hold water because if the unit in question is in ready to move in condition, then what is preventing the respondent from issuing offer of possession letter to complainant. Further, it was nowhere the case of the respondent that occupation certificate or completion certificate had been issued to the respondent by the competent authority, which are the pre-requisites of completion of the project. As per the provision of the Act, including clause 7(3) of the model agreement, the allottee is liable to pay maintenance charges from the date of taking over of the possession and is also duty bound to take possession within two months of the occupancy certificate. In this case, neither occupancy certificate or completion certificate had been obtained nor the offer of possession had been given to the complainant as such no fault lies with the complainant. The clause 5 of specimen proforma for agreement for sale prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017 says that time is essence for the promoter as well as the allottee and the promoter shall abide by the time schedule for completing the project and handing over the apartment/flat to the allottee and the common areas to the association of the allottees. Clause 7 of the said agreement deals with the



possession of the apartment or flat and clause 7.5 runs as under:-

"Cancellation by allottee:- The allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act:

Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation.

8. In the instant case, the complainants are not at all at fault and in these circumstances; the promoter was under obligation to provide possession of the flats within the stipulated period. Clause 9.2 of the said proforma of agreement prescribes the rights of the allottee in case of default by the promoter, which runs as under:-

9.2 In case of default by promoter under the conditions listed above, the allottee is entitled to the following:-

(i) stop making further payments to the promoter as demanded by the promoter. If the allottee stops making payments, the promoter shall correct the situation by completing the construction milestone and only thereafter the

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allottee will be required to make the next payment without any penal interest; or

- (ii) *the allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/flat along with interest at the rate specified in the Rules within ninety days of receiving the termination notice;*

Provided that where an allottee does not intend to withdraw from the project or terminate the agreement, he shall be paid by the promoter, interest at the rate specified in the Rules for every month of delay till the handing over of the possession of the apartment/flat."

9. Under this clause, the promoter is liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/flat along with interest at the rate specified in the Rules within ninety days.
10. The payment of a sum of Rs.86,09,752/- has been admitted by the respondent. It is also a fact that the complainant was allotted unit/Flat No.T1/1002 Sector 91, Acme Eden Court, Mohali. Admittedly possession of the said unit has also not been delivered to the complainant as stipulated despite payment of huge amount; and as such the fault in not delivering the possession of unit in question despite lapse of long

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period lies with the respondent which is squarely covered within the mischief 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.

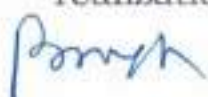
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under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

11. In view of the above provisions of the Act, the respondent was duty bound to offer the possession of the flat in question and on account of non-delivery of possession despite having received the due instalments,

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the complainant is entitled to the refund of the amount of Rs.86,09,752/- paid by the complainant to the respondent.

12. The next question which arises for consideration is as to whether the complainant is entitled to any interest on the amount paid to the respondent or not. The fact remains that the 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 alongwith interest to the complainant because once the amount is deposited with the promoter and promoter is getting benefit of interest accrued upon said amount, the similar benefit cannot be denied to the complainant/buyer. As such, to conclude with, I am of the view that the complainant is entitled the return of principal amount of Rs.86,09,752/- 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 payments by the complainant till realization. Accordingly, the respondent is directed to return the amount of Rs.86,09,752/- along with simple interest at the State Bank of India highest marginal cost of lending rate plus 2% from the respective dates of payments by the complainant till realization.



13. Since the complainant through Akhil Mahajan had to seek the remedy under the existing law by engaging a representative and for that obviously had to suffer mental agony and had to incur expenses to pursue their case. 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 in view of the prolonged delay 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 etc to the tune of Rs.1,25,000/-.

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

1.	Principal amount	Rs.86,09,752/-
2.	Simple	At the SBI highest marginal

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	interest	cost of lending rate plus 2% on the principal amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. If any amount has been received by the complainant from the respondent by way of compensation on the amount paid to the respondent 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. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:29.06.2020


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