

**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 AdCNo.1730 of 2020  
Date of Order: 15.03.2021**

Vishal Kansal, House No.B-X-541, Iqbal Ganj, Ludhiana, District Ludhiana, Punjab Pin Code 141001.

Complainant

Versus

1. JMS Investment Pvt Ltd, 34, Nehru Sidhant Kender Building, Firoze Gandhi Market, Ludhiana, District Ludhiana, Punjab, Pin Code 141001.
2. Jaswinder Kaur, 34, Nehru Sidhant Kender Building, Firoze Gandhi Market, Ludhiana, District Ludhiana, Punjab, Pin Code 141001.
3. Maniksha, 34, Nehru Sidhant Kender Building, Firoze Gandhi Market, Ludhiana, District Ludhiana, Punjab, Pin Code 141001.
4. Ankur Sood, 34, Nehru Sidhant Kender Building, Firoze Gandhi Market, Ludhiana, District Ludhiana, Punjab, Pin Code 141001.

Respondents

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

Present: Shri Vipul Monga, Advocate, representative for the complainant.  
Respondents ex-parte.

**ORDER**

1. The brief facts of the instant complaint are that the complainant booked flat No.440, G.F. in the project JMS Homes at village Jandiali, Ludhiana for a basic price of Rs.34,00,000/- and agreement in this respect was executed between the parties on 29.08.2012. A discount of Rs.7,00,000/- was given to the complainant and he paid an amount of Rs.25,00,000/-. As per clause 4.1 of the agreement the possession of the flat was to be delivered by 30.04.2014, but, the respondents failed to

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do so. Hence, the instant complaint for refund, interest etc.

2. None appeared on behalf of any of the respondents despite of their service for 13.11.2020 and as such, they were proceeded against ex-parte on that date.
3. I have heard the learned representative for the complainant and have gone through the documents and ex-parte evidence brought on record by the complainant.
4. The representative for complainant addressed arguments on the basis of the submissions made in his pleadings and as such, there is no need to repeat the same here again.
5. I have anxiously considered the contentions of the learned representative for the complainant.
6. In this case, the project under reference is not registered with the RERA Authority, however, in view of the decision delivered by the Hon'ble Real Estate Appellate Tribunal, Punjab, in appeal No.49 of 2018 titled as ***M/s Silver City Construction Vs. State of Punjab and others***, complaints against unregistered projects were maintainable before this Bench.
7. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. affidavit of complainant Vishal Kansal, plot buyer's agreement dated 29.08.2012, Ex.C1, confirmation letter dated 13.12.2012 Ex.C2, receipt in respect of amount of Rs.3,00,000/- Ex.C3, photographs of site Ex.C4 (colly)



and copy of article 4 (possession) dated 21.06.2016 Ex.C5, which remained unrebutted; it can be safely concluded that complainant was allotted flat No.440 and buyer's agreement was executed on 29.08.2012 and as per clause 4.1 of the said agreement the possession of the flat was to be delivered by 30.04.2014 though the complainant has paid an amount of Rs.25,00,000/- after availing discount of Rs.7,00,000/- (as is evident from confirmation letter Ex.C2) against basic sale price of Rs.34,00,000/-. From the own ex-parte evidence of the complainant it also stood proved that the complainant changed the flat No.440 ground floor to No.431 second floor with mutual consent of parties as is evident from receipt Ex.C3 and possession of said flat was to be delivered by 30<sup>th</sup> May, 2016. Prior to that also, the date of delivery of possession of the flat was changed i.e. instead of 01.04.2014 to 30.04.2014 between 01.04.2015 to 30.04.2015 as per document Ex.C5. However, the fact remains that the respondent failed to deliver the possession of any of the flats by any of the above dates i.e. by 30.04.2014, 30.04.2015 or by 30.05.2016 or till date. In these circumstances, the complainant was left with no other alternative but, to withdraw from the project. As such, under such a situation, the respondents are certainly at fault in not delivering the possession of flat after lapse of long period from 2014 till date and the case is squarely covered

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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*

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*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."*

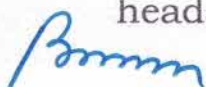
8. In view of the above provisions of the Act, the respondents were duty bound to offer the possession of the flat in question within reasonable period. As such, on account of non-delivery of possession, the respondents were liable to refund the amount of Rs.25,00,000/-.
9. The next question which arises for consideration, is as to whether the complainant is entitled to any interest on the amount paid by him to the respondents or not. The fact of the matter remains that the respondents have been using the amount so paid by the complainant to them since the payments, as such, the respondents are liable to refund the above said amount alongwith interest to the complainant because once the amount is deposited with the respondents and they were getting benefit of interest accrued upon said amount, they could not deny the similar benefit to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs. 25,00,000/- 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 (as on today) plus 2% from the dates on which the

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respective payments were made to the respondents till realization.

10. Since the complainant has to seek the remedy under the existing law and for that obviously he has to suffer mental agony and has to incur expenses to pursue his claim by way of engaging a representative and further in attending the proceedings in this 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 from the prolonged delay for delivery of possession which has not yet been delivered 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 extent of Rs.75,000/-.

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



1.	Refund of Principal amount	Rs. 25,00,000/-
2.	With Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above amount w.e.f. the dates on which the respective payments were made to the respondents till realization.
3.	On account of mental agony and litigation expenses	Rs.75,000/-

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. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:15.03.2021

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