

**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.1403 of 2019UR
Date of Order: 01.04.2021

Nishi Bansal, #1045, Sector 18-C, Chandigarh Pin Code 160018.

Complainant

Versus

1. M/s Royale Empire
2. M/s Singla Reality Infra Pvt Ltd, Peer Muchhalla Adjoining Sector 20 Panchkula, Zirakpur, District SAS Nagar, Mohali.

Respondents

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

Present: Shri Vineet Sehgal, Advocate, representative for the complainant.
Respondents ex-parte.

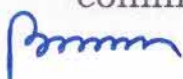
ORDER

1. Complainant Nishi Bansal filed this complaint against respondents M/s Royale Empire and M/s Singla Reality Infra Pvt Ltd for directing the respondentNo.1 to pay damages to the tune of Rs.35,00,000/- for causing wrongful loss as complainant had invested this much amount nine years back for a flat which was still incomplete and lacking basic facilities.
2. It is the case of the complainant that she purchased a flat bearing No.604 in Block-J of Project **Royale Empire**, situated in Peermuchhalla Zirakpur from respondent No.1 vide agreement to sell dated 26.08.2010. The respondent No.1 had assured the complainant that the project had all necessary permissions and would be



developed as per rules. However, the complainant requested many times to the respondent No.1 to complete the project and hand over the possession of the flat as promised, but, the respondent No.1 failed to do so and rather abandoned the project. The complainant got served a legal notice upon the respondent No.1 for completing the project, but, to no effect. Hence, this complaint.

3. None appeared on behalf of the respondents despite of service on 30.10.2020 and as such, were proceeded against ex-parte.
4. 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. 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. 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 are maintainable before this Bench.
7. As the project was not complete on the date of commencement of the Act, which covers the ongoing



projects, the provisions of the Act would be applicable in the facts of the case in hand in view of the law laid down by Bombay High Court in case ***Neel Kamal Realtors Suburban Pvt. Ltd and another Vs. Union of Indi 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 projects.

8. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. affidavit of complainant Nishi Bansal Ex.C1, payment receipt Ex.C2, copy of allotment letter Ex.C3, copy of agreement to sell Ex.C4, copy of bank statement Ex.C5, copy of legal notice Ex.C6, which remained unrebutted and inspires confidence and therefore, it can be safely concluded that complainant booked flat No.604 in Blok J of the project namely Royale Empire situated at Peermuchhalla, Zirakpur, District Mohali and allotment letter in this respect is Ex.C3 and agreement to sell is Ex.C4. It is also proved that the complainant paid an amount of Rs.35 Lakhs vide receipt Ex.C2 which is also corroborated by copy of the statement of account Ex.C5. The possession of the flat in question was to be delivered within 18 to 21 months from the date of booking i.e. 23.08.2010 as per clause 7 of the agreement to sell



Ex.C4, but, the respondents failed to deliver the possession and even as per the averment of the complainant, the respondent No.1 even abandoned the project; and this fact is also evident from the factum of issuance of legal notice Ex.C6 on 15.10.2013 (after lapse of stipulated period) which was never replied by the respondent. In these circumstances, a legal right has accrued to the complainant to withdraw from the project and to seek return of her amount. In these circumstances, the instant 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

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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.

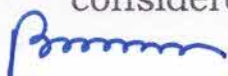
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under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

9. In view of the above provisions of the Act, the respondent No.1 was duty bound to refund the amount of Rs.35,00,000/- paid by the complainant.
10. 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 respondent or not. The fact of the matter remains that the respondent had been using the amount so paid by the complainant to them since the payments, as such, the respondents is 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

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similar benefit to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs. 35,00,000/- 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 respective payments were made to the respondent till realization.

11. Since the complainant had to seek the remedy under the existing law and for that obviously she has to suffer mental agony and had to incur expenses to pursue the 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 and as such, I am of the considered view that the complainant is held entitled for



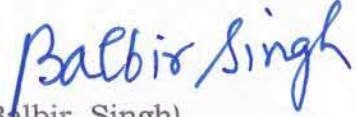
compensation under all the heads i.e. mental agony, litigation expenses etc to the extent of Rs.1,25,000/-.

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

1.	Refund of Principal amount	Rs. 35,00,000/-
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.1,25,000/-

The respondent No.1 is directed to pay the above said amount to the complainant within sixty days from the date of this order. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:01.04.2021


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