

**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.1660 of 2020  
Date of Order: 01.04.2021**

Gurdeep Singh, resident of Kothi No.32, Shakti Nagar, Ludhiana, Punjab.

Complainant

Versus

Tristar Infrastructures, through its partners Sanjay Khurana and Viney Khurana, Tunis Premium Homes, Anand Enclave, Pakhowal Road, Ludhiana, Punjab.

***Address for service of notices***

Viney Khurana, partner Tristar Infrastructures, H.No.B-36/138, Vikas Nagar, Ludhiana, Punjab.

Respondents

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

Present: Shri Jatinderjit Singh Advocate, representative for  
the complainant.  
Respondents ex-parte.

**O R D E R**

1. Complainant Gurdeep Singh filed this complaint against respondents Tristar Infrastructures, through its partners Sanjay Khurana and Viney Khurana for refund alongwith interest, compensation and litigation charges. It is the case of the complainant that he booked 2BHK floor and vide flat buyer agreement dated 09.02.2013 Unit NO.33GF was allotted to the complainant in the project Tunis Premium Homes and its possession was to be delivered by September, 2014 as per clause 18-A of the said agreement. The complainant paid in all a sum of Rs.22,00,000/- against an amount of Rs.21,99,000/-



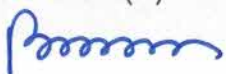
being sale price of the said property unit, but, the respondent failed to deliver possession to the complainant. Hence, this complaint.

2. None appeared on behalf of any of the respondents despite service on 13.10.2020 and as such, was proceeded against ex-parte.
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.
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. 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

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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 Gurdeep Singh Ex.C1, copy of brochure Ex.C2, copy of cheque for a sum of Rs.2,00,000/- as Ex.C3, copy of another cheque for a sum of Rs.1,50,000/- as Ex.C4, copy of the flat buyer agreement Ex.C5, receipt of Rs.4,00,000/- dated 04.06.2013 Ex.C6, copies of cheques for Rs.1,50,000/- and Rs.4.50,000/- for Rs.1,50,000/- and Rs.5,00,000/- as Ex.C7 (colly) and letter dated 17.09.2014 regarding admission of Rs.2,00,000/- Ex.C8 and letter Ex.C9 whereby the respondent promised to deliver the possession of the property unit to the complainant by 30<sup>th</sup> April, 2019, which remained unrebutted and inspires confidence and therefore; it can be safely concluded that complainant booked 2BHK unit and was allotted Unit No.33-GF in Tunis Premium Homes, Anand Enclave Ludhiana flat buyer's agreement was executed on 09.02.2013. The payment of an amount of Rs.22,00,000/- by the complainant to the respondents is evident from the above mentioned receipts. As per clause 18(a) of the flat buyer's agreement, the possession of the



property unit was to be delivered by September, 2014, but, respondent failed to do so and as is apparent from letter Ex.C9, the respondents were not in a position to deliver the possession prior to 30.04.2019 i.e. even much after the stipulated date i.e. September, 2014 and as such the complainant was left with no other alternative, but, to withdraw from the project. Under these circumstances, the respondents are certainly at fault in not delivering the possession of plot after lapse of long period till date and the 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*

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*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."*

9. In view of the above provisions of the Act, the respondents were duty bound to refund the amount of Rs.22,00,000/- 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 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

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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. 22,00,000/- 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 respondents till realization.

11. Since, 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 way of engaging a representative 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. 22,00,000/-
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 respondents are 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*

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