

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

I)

Complaint No.ADC 1683 of 2019
Dated of Decision: 27.04.2021

Vijay Kumar Gupta, Street No.2, Aggarwal Sweets, Sangrur,
District Sangrur.

.....Complainant

Versus

M/s Bajwa Developers Ltd, SCO 17-18, Sunny Enclave, Desu
Majra, Tehsil Kharar, District Sahibzada, Ajit Singh Nagar
(Mohali) Punjab.

.....Respondent

II)

Complaint No.ADC 1684 of 2019
Dated of Decision: 27.04.2021

Vijay Kumar Gupta, Street No.2, Aggarwal Sweets, Sangrur,
District Sangrur.

.....Complainant

Versus

M/s Bajwa Developers Ltd, SCO 17-18, Sunny Enclave, Desu
Majra, Tehsil Kharar, District Sahibzada, Ajit Singh Nagar
(Mohali) Punjab.

.....Respondent

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III)

Complaint No.ADC 1685 of 2019
Dated of Decision: 27.04.2021

Vijay Kumar Gupta, Street No.2, Aggarwal Sweets, Sangrur,
District Sangrur.

.....Complainant

Versus



M/s Bajwa Developers Ltd, SCO 17-18, Sunny Enclave, Desu Majra, Tehsil Kharar, District Sahibzada, Ajit Singh Nagar (Mohali) Punjab.

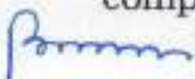
.....Respondent

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

Present: Ms. Manju Goyal, Advocate for Shri Ved Parkash representative for the complainant
Shri Vipul Monga, Advocate, representative for respondent.

ORDER

1. Through this common order, I intend to dispose of the above mentioned complaints as these are based on substantially similar facts, cause of action and against same promoter in the same project.
2. The Complainant Vijay Kumar Gupta filed the above mentioned complaints against M/s Bajwa Developers Ltd seeking refund of the amount paid by him alongwith interest, compensation and litigation expenses. It is the case of the complainant that originally one Mohan Kataria entered into agreements with the respondent to purchase plots in the Project namely **Global City Residential Township** and paid the initial amounts for to the tune of Rs.6,25,000/- for each plot. The said plots were purchased by the complainant from the previous vendee, but, the number of the plots were changed vide re-issue letters dated 04.05.1015, and new plots in lieu of the earlier plots were allotted in the name of the complainant. The particulars of agreement, reissue



letters, amount paid, plots etc in each case are given below:-

Complaint case no.	Agreement date	Particulars of previous plots	Amount paid	Details of re-issue letters for transfer of plots with Nos.
1683/2019	11.05.12	938 of 200 sq. yards.	Rs.6,25,000/-	Dt.04.05.15 1023 of 250 sq yards
1684/2019	11.05.12	940 of 200 sq. yards	Rs.6,25,000/-	Dt.04.05.15 937 of 150 sq yards
1685/2019	11.05.12	941 of 200 sq. yards	Rs.6,25,000/-	Dt. 04.05.15 938 of 150 sq. yards and 1090 of 100 sq. yards

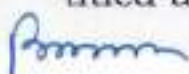
3. Though, in the agreement no specific date for offer of possession for delivery of plot was mentioned, but verbally the respondent confirmed that the possession would be offered within two years from the date of booking amount. The balance amount was payable in instalments as per the development plan of the project and final payment was to be made ten days prior to the offer of possession. The respondent did not develop the project nor further raised any demand for instalments nor informed about the status of the project. After waiting for a long period, the complainant requested the respondent to refund his amount, but, to no effect. Hence, these complaints.

4. In reply, it is submitted on behalf of the respondent that due to misconduct on the part of the investors the project could never see the light of the day and the earnest money paid in this case stood forfeited on account of fault on the part of complainant in making

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the remaining payments. The project was now complete the complainant was asked to take possession of the plots by paying remaining amount, but, the complainant willfully defaulted to doing so. The instant complaints had been filed with mala-fide intention by the complainant and the same were liable to be dismissed.

5. The violations and contraventions as contained in the complaints were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was to proceed for further inquiry.
6. I have heard both the representatives for parties and have gone through the record of the case.
7. The first objection taken on behalf of the respondent/promoters was that the present case was not maintainable as it pertained to the period prior to coming in to operation of the Real Estate (Regulation and Development) Act 2016 (hereinafter referred to as the Act). The argument, however, lacks merit because 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 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. Reliance in this behalf 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 the ongoing projects.

8. Another argument advanced on behalf of the respondent was that no agreement was executed by the complainant nor for that matter any amount was advanced by the complainant and therefore, the complainant had no locus standi to file the present complaint. The argument on behalf of the respondent is, however, fallacious. It may be that initial buyer's agreement was executed by the respondent with one Mohan Kataria in all the three cases and the earnest money of Rs.6,25,000/- in each case was advanced by said Mohan Kataria. However, the respondent issued letters dated 04.05.2015, in favour of complainant Vijay Kumar Gupta for re-issuance of the transfer letter of new plots in lieu of earlier plots as mentioned in para No.2 above in tabular form. Issuance of the subsequent letters dated 04.05.2015 in the name of the complainant would act as estoppels against the respondent from agitating that there was no buyer's agreement with the complainant. Rather the sequence of buyers agreement dated 11.05.2012 and issuance of re-issue letter dated 04.05.2015 by the respondent leaves



no manner of doubt that initial agreement of the respondent was with Mohan Kataria, but, the rights of the said buyer's agreement were substituted by the present complainant with the tacit approval and consent of the present respondent. Therefore, the respondent cannot agitate that the initial amount of earnest money had not been received from the complainant and the present complaints by the present complainant Vijay Kumar Gupta who stepped into the shoes of the earlier buyer are certainly maintainable.

9. It was also agitated on behalf of the respondent that default was made by the complainant in making the payments of remaining instalments and otherwise the project was complete and the possession of the same could be delivered to the complainant, but, because of the fault of the complainant in payment of instalments, he was not entitled to possession of the plots in question.

10. On the other hand, the argument on behalf of the complainant was that no further demand letter was issued by the respondent nor for that matter, any offer for possession accompanied by completion certificate had been issued by the respondent and, therefore, the fault was of the respondent in not completing the project and delivery of possession thereof within reasonable period, though the respondent had orally stated that the



possession would be transferred within two years of the execution of the buyer's agreement.

11. The admitted facts are that earlier one Mohan Kataria booked and allotted the plots in these cases with different numbers and also paid earnest money of Rs.6,25,000/- in each case and entered into agreements on 11.05.2012. It is also the admitted case that the respondents issued re-issue letters on 04.05.2015 for transfer of plots in lieu of plots allotted to Mohan Kataria in favour of present complainant and detail of previous and subsequent plots has already been given in para 2 of this order. It is also admitted that till date possession of either of plots has not been delivered to the complainant. It is also a fact that the completion certificate has not been brought on record in order to show that the project is complete.

12. The respondent failed to place on record any document to show that any demand letter was issued or calling upon the complainant to pay any further instalment, indicating the status of the ongoing development, at the site. Surprisingly, in the buyer's agreement no time period was specified as to when the possession of the plot was to be delivered and, therefore, this buyer's agreement executed by the respondent was also a vague document. On behalf of the complainant, it was claimed that two years' period was assured for delivery of possession from the date of execution of the buyer's



agreement, but, in the case in hand, reasonable period has to be taken for completion of project and the complainant cannot be expected to wait indefinitely, in the absence of any stipulation for date of delivery of possession in the buyer's agreement. Though on behalf of the respondent it has been claimed that the project was complete and possession could be delivered, but, the assertion in this behalf does not inspire confidence nor any letter for offering the possession was issued to the complainant and even no document in the shape of completion certificate etc has been placed on record to indicate that the project of the case in hand was complete and that possession could be delivered. Therefore, the respondent miserably failed to show that he was able to complete the project within reasonable time because period of eight years has already elapsed and offer for delivery of possession has not so far been made. In these circumstances, the fault solely lay with the respondent and the act on the part of the respondent is squarely covered under 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

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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."

13. In view of the above discussion, the respondent is liable to refund of the amount of Rs.6,25,000/- in each case to the complainant.



14. 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, since the day of payment, 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.18,75,000/- (Rs.6,25,000/- in each case) 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 respective dates of payments by the complainant till realization. Accordingly, the contesting respondent are directed to return the amount of Rs.18,75,000/- (Rs.6,25,000/- in each case) along with simple interest at the State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the respective dates of payments by the complainant till realization.
15. Since the complainant 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 the case. The compensation has not

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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 of eight years 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.75,000/-.

16. In view of above discussions and observations, all the three stand accepted to the following extent and heads:-

1.	Principal amount	Rs.18,75,000/- (Rs.6,25,000/- in each case)
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above amount(s) from the date(s) of payment(s) till realization
3.	On account of mental agony and litigation expenses	Rs.75,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. An attested copy of this order be placed on the file of



connected complaints and file be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:27.04.2021



(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority