

**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 1560 of 2020
Dated of Decision: 29.04.2021

1. Anil Sood
2. Manisha Sood, #3185, Paradise Enclave, Sector 50D,
Chandigarh.

.....Complainants

Versus

Citi Centre Developers, CCC, VIP Road, Zirakpur, District
Sahibzada Ajit Singh Nagar, (Mohali) Punjab.

.....Respondent

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II)

Complaint No.ADC 1562 of 2020
Dated of Decision: 29.04.2021

1. Manisha Sood
2. Anil Sood #3185, Paradise Enclave, Sector 50D,
Chandigarh.

.....Complainants

Versus

Citi Centre Developers, CCC, VIP Road, Zirakpur, District
Sahibzada Ajit Singh Nagar, (Mohali) Punjab.

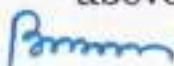
.....Respondent

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

Present: Shri Anil Sood, complainant for self and for
complainant Manisha Sood
Shri Manoj Vashishtha, 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 Complainants Anil Sood and Manish Sood filed the above mentioned complaints against respondent Citi Centre Developers seeking refund, interest, compensation and litigation expenses. The brief facts as enumerated in the complaints are that the complainants booked commercials showrooms in the project Chandigarh Citi Centre, with the following particulars:

Complaint no.	Showroom no.	Price in Rs.	Amount paid in Rs.	Agreement date	Possession to be delivered
1560/2020	B-37, 2 nd floor	47 Lakhs	48,17,450/-	08.10.2017	31.12.2018
1562/2020	B-44, 2 nd Floor	47 Lakhs	48,17,450/-	08.10.2017	31.12.2018

It was promised by the respondent to pay 1% assured return on the amount paid by the complainants till delivery of possession, but, it was stopped w.e.f. 01.06.2018 and on 05.06.2018 offer of possession was made for delivery of possession till 05.07.2018. However, on visiting the spot, the complainants found that the project was not complete and construction was going on and on 12.03.2019 the complainants sent an email to the respondent to provide completion certificate and occupation certificate issued by the competent Authority, but, no reply was received from the side of the respondent, rather, on 29.09.2019, the complainants were told to take possession and to pay holding charges. Thereafter the complainants again visited the site and found that the project was still

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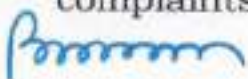
incomplete. As the respondent/promoter failed to provide possession as promised, the complainants filed the instant complaints.

3. Upon notice, respondent filed written replies in both the complaints raising the preliminary objections in regard to maintainability; complaint being bad for non-joinder of necessary parties; the complainants have concealed material facts from this Bench; that the project in question was a very big commercial complex developed by the respondent and the complainants agreed to book two commercial units bearing No.37 and 44 on second floor of Block/Tower B and two separate agreements to sell dated 08.10.2017 were executed between the parties; that the complainants made the payments as per the terms and conditions of the agreements and the respondent also offered possession of the units in question to the complainants on 05.06.2018 after obtaining partial complete certificate on 20.04.2018; that the respondent kept on paying the assured return to the complainants till June 2018; that the complainants after receipt of offer of possession visited the site and made payments of Rs.23,00,000/- in each complaint in the months of July and August, 2018 and sought some time to take possession as they were looking for some suitable purchaser; that after about nine months, the complainants raised the unnecessary query of

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completion certificate and occupancy certificate and even the RERA Authority had also issued clarification in respect of the completion certificates/ partial completion certificate and the same was Annexure R2; that the complainants did not raise any objection regarding delay in possession till the time they were receiving the assured return, but, when they came to know that they would be liable to pay maintenance charges and other allied expenses, they started disputing the offer of possession; that only final coat of paint etc was purposely left out with a view that once the complainants clear the outstanding payment, the respondents would complete the final coat otherwise the unit in question was ready since 2018 and occupation/completion certificate had been received in April 2018 and as such the complainants were bound to take possession of the units after completing the documentation formalities; that the complainants have intentionally violated the terms and conditions of the agreement and have rather filed the instant complaints in order to avoid payments of remaining sale consideration and maintenance charges etc. On merits, the averments as contained in the written replies were reiterated and prayer for dismissal of the complaints was made.

4. 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 complaints were to proceed for further inquiry.

5. I have heard both the representatives for parties and have gone through the record of the case.
6. The admitted facts between the parties in these cases are that the complainants booked show-rooms bearing No.B37 and B47 on the 2nd floor of project namely **Chandigarh Citi Centre**, for a fixed price of Rs.47 Lakhs and the complainants paid a sum of Rs.48,17,450/- against each of the unit. Two separate commercial unit buyers agreement dated 08.10.2017 were executed in respect of above mentioned two units and as per clause 7 of the agreements, possession of the said units was to be delivered to the complainants by 31.12.2018.
7. It was argued on behalf of the respondent that the tower in which the show-rooms of the complainants fall, was complete and partial completion certificate was obtained by the respondent from the concerned competent authorities on 20.04.2018, which was Annexure R1 and thereafter offer of possession was made to the complainants on 05.06.2018 vide letter Annexure-6 well within the stipulated period which was valid one as per clarification issued by the RERA Authority vide Annexure R2, but, the complainants themselves failed to take possession and as such they

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were not entitled to grant of refund etc claimed by them.

8. On the other hand, complainant Anil Sood representing both the complainants submitted that the project was not complete and the respondent failed to deliver possession of the units in question despite their having paid the whole sale consideration and rather stopped paying the assured return, under the garb of alleged offer of possession Annexure-6. It was further submitted that even after about ten months of issuance of alleged offer of possession letter, they sent an email to the respondent on 12.03.2019 to know, as to whether completion certificate and occupancy certificate had been issued and for supply of their copies, but, that email was never replied by the respondent, which shows that the project was not complete and offer of possession was not valid.
9. I have considered the above respective submissions made by both sides and have gone through the partial completion certificate Annexure R1, offer of possession dated 05.06.2018 Annexure-6, clarification dated 26.10.2018 Annexure R2, and email dated 12.03.2019 Annexure-7. The perusal of the offer of possession letter shows that no partial completion certificate, completion certificate or occupancy certificate was ever sent alongwith it to the complainant. It is nowhere mentioned therein that the any of the above documents

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had been obtained by the respondent. It is even mentioned in the offer of possession letter that unit(s) had been *"kept in pre-final stage and ready for possession effective from 05.07.2018"* which means the units in question were not complete. Further the perusal of the partial completion certificate Annexure-6, which had been issued by the Municipal Council, Zirakpur, shows that the same was issued subject to fulfillment of certain conditions and relevant conditions No.6 and 7 are reproduced as under:-

6. *"That it would be your sole responsibility to keep the maintenance and lifts, tube-well, STP, fire fighting system in working condition before handing over of commercial project;*
7. *That you shall be bound to obtain the completion certificate as per the instructions of the Government after completion of the commercial project;"*

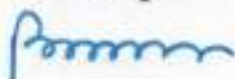
10. In clause 7 of the buyer's agreement dated 08.10.2017, the possession was to be delivered by 31.12.2018 based on the approved plans and specifications. Undoubtedly, only a completed project could be handed over to the allottees as per the provisions of Section 14(1) of the Act, which clearly lays down that the project shall be developed and completed by the promoter in accordance with sanctioned plans and specifications approved by the competent Authority. Further, condition 6 of the partial completion certificate also stipulates that "it would be promoter's sole responsibility to keep the maintenance and lifts, tube-



well, STP, fire fighting system in working condition before handing over of commercial project, but, the respondent did not bring on record to show that the said condition alongwith other conditions of partial completion certificate were complied with. Further, circular dated 26.10.2018 issued by the RERA Authority laid down the two following conditions regarding clarification of occupation certificate, partial completion certificate and completion certificate:-


- i. *In the case of Group Housing Projects a partial completion certificate for a particular part (say a tower) would be considered valid only if the promoter could prove that the supporting infrastructure relevant to that particular part was also complete;*
- ii. *An Occupation certificate would be valid only if the project in which it was located had been granted a completion certificate or in the case of partial completion certificate the condition prescribed in (i) above was complied with. This would be in line with the instructions issued by the Department of Housing and Urban Development vide its reference No.4966-CTP(Pb)/P-458 dated 02.09.2014;"*

11. From the above clarification, it crystal clear that the partial completion certificate was to be taken as a valid document, if it was shown that the supporting infrastructure relevant to that particular part was also complete. However, the respondent failed to show that the tower in regard to which the partial completion certificate had been obtained on 05.06.2018. was having the complete supporting structure relevant to that particular part and this fact is further clear from



the email dated 12.03.2019 sent to the respondent by the complainants, which was never replied by the respondent, wherein query regarding issuance of completion certificate and occupancy certificate and regarding non-completion of the project in question was raised. Even compliance of conditions laid down in the partial completion certificate was not shown to have been made. In these circumstances, it cannot be said that the project was complete in all respects and as such, how valid and legal possession could be handed over to the complainants. Hence, the offer for possession made vide letter dated 05.06.2018 cannot be said to be a valid. Rather the same appears to have been made merely to avoid further payments of assured return to the complainants.

12. In view of above discussions, the fact remains that the respondent failed to deliver possession of the units in question to the complainants within the stipulated period. Now, the specimen proforma for agreement for sale has been prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017. The clause 5 of said agreement 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/ plot 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 plot 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.

13. In the instant case, the complainant is not at all at fault and in these circumstances, the promoter was under obligation to provide possession of the property unit 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 allottee will be required to make the next payment without any penal interest; or*

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- (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/plot 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/plot."

14. Under this clause, the promoter was liable to refund the entire money paid by the allottee(s) under any head whatsoever towards the purchase of the apartment/plot/unit along with interest at the rate specified in the Rules within ninety days. Under such a situation, the respondent is certainly at fault in not delivering the possession of property unit within the stipulated period 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 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.

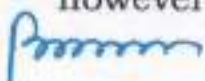
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under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

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15. In view of the above provisions of the Act, the respondent was duty bound to refund the amount of Rs.48,17,450/- in each case to the complainants.

16. The next question, which arises for consideration, is as to whether the complainants are entitled to any interest on the amount paid to the respondent or not. The fact of the matter remains that the respondent had been using the amount so paid by the complainants since the payment, as such, the respondent is liable to refund the above said amount alongwith interest to the complainants because once the respondent was getting benefit of interest accrued upon said amount, he could not deny the similar benefit to the complainants. As such, I am of the view that complainants are entitled the return of principal amount of Rs. 48,17,450/- 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 dates on which the respective payments were made to the respondent till realization.

17. Since the complainants had to seek the remedy under the existing law and for that obviously she had 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 above discussed facts and circumstances of the case in which delay in delivery of possession is there and therefore, I am of the considered view that the complainants are held entitled for compensation under all the heads i.e. mental agony, litigation expenses to the extent of Rs.1,25,000/- in both the cases.

18. In view of above discussions and observations, both the complaints stand accepted to the following extent and heads:-

Anil Sood and anr vs. M/s City Centre Developers
ADC Complaint No.1560/2020

1.	Refund of Principal amount	Rs. 48,17,450/-
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 date of payment(s) till realization.
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-



Manisha Sood and anr Vs. M/s City Centre Developers
ADC Complaint No.1562/2020

1.	Refund of Principal amount	Rs. 48,17,450/-
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 date of payment(s) 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 complainants within sixty days from the date of this order. The amount, if any, already paid by the respondent to the complainants on account of delay in delivery of possession, the same shall be set off against the above amount. A copy of this order be sent to the parties under rules and an attested copy be also placed on the file of connected complaint bearing No.ADC 1562 of 2020. File be consigned to record room.

Dated: 29.04.2021

Balbir Singh

(Balbir Singh)
 Adjudicating Officer
 Real Estate Regulatory Authority