

**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 AdC No.1639/2020  
Date of Order: 10.05.2021

Kulwinder Kaur, village Bakarpur, Tehsil Mohali, District  
Sahibzada Ajit Singh Nagar (Mohali), Punjab.  
.....Complainant

Versus

M.B. Infrabuild Pvt Ltd, 354 Tarun Enclave, Pitampura,  
North Delhi, Delhi Pin Code 110034.

Respondent

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

Present: Ms Manju Goyal, Advocate, for Shri Ved Parkash  
representative for complainant.  
Mr. Yash Yadav, Advocate, representative for the  
respondent.

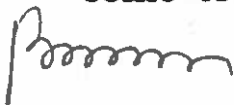
**ORDER**

1. Kulwinder Kaur, complainant filed this complaint against M.B. Infrabuild Pvt Ltd, respondent alongwith documents seeking refund and interest etc. as per the provisions of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) on the ground that she booked flat No.101, Building No.1, Floor No.01, 2BHK plus servant room measuring 1738.37 sq feet in the project namely **Beverly Golf Avenue**, Sector 65, SAS Nagar, Mohali for a total sale consideration of Rs.1,05,14,886/- and paid an amount of Rs.50,00,000/-. As per clause 17 of the terms and

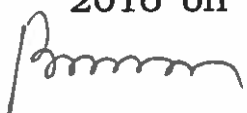
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conditions of the booking form, the due date for offer of possession was 36 months from the start of construction i.e. upto 16.12.2018. The allotted unit was changed from 101 in tower 01 to Unit No.01, which was earlier allotted to Smt. Lovely Manocha and agreement was got signed from the complainant with Smt. Lovely Manocha on 19.04.2017. The complainant approached the respondent to know about the status of the project and also likely date of offer of possession, but, to no effect. There was little progress in construction at the site and there was no possibility of delivery of possession in the near future and even the respondent did not issue any demand after October, 2017. The respondent got inserted a clause in the agreement that the physical possession of the property was delivered to the purchaser alongwith relevant papers/documents and on verification it was intimated that it was a standard clause and possession of the allotted unit would be handed over soon. When the respondent failed to hand over the possession, the complainant was constrained to file the instant complaint.

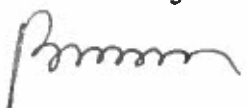
2. In response to notice, complaint has been contested on behalf of the respondent and written reply raising preliminary objection that the complainant had not come to this Bench with clean hands; that being the



highest bidder in the auction held on 18.08.2015 by GMADA authorities, regarding the site under Beverly Golf Avenue, Sector 65, SAS Nagar, Mohali, allotment letter was issued to the respondent bearing memo No.44090 on 20.10.2015; that one Sumit Singla had booked four flats bearing No.101 to 104 in tower No.1, which included the flat in question by paying an amount of Rs.6,25,000/- through cheque No.210192 to 210195 dated 17.12.2015 for each flat even before approval of the building plan for the purpose of investment and earning profit as he happened to be a property dealer; that the actual price of one flat was Rs.1,05,14,886/- and discount of Rs.5,53,415/- was given to him; that the respondent applied for group housing project, near golf range Sector 65, Mohali for approval of proposed building plan by deleting the green belt to GMADA, which was approved on 30.04.2016 by the Punjab Regional and Town Planning Board and set of sanctioned building plans was issued to the respondent on 15.03.2017, Annexure R2; that said Sumit Singla requested the respondent that he was not in a position to make payment for all four flats and the booking amount paid by him might be adjusted against one flat only i.e. Flat No.1, Tower No.1 and surrendered the remaining three flats; that in the year 2016 on request of Sumit Singla, the flat in question

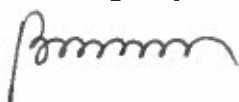


was transferred in the name of Prabhat Manocha, but, agreement to sell dated 19.04.2017 was never sent to the respondent and respondent came to know about the agreement of the flat with the complainant, when the complainant furnished an undertaking dated 22.11.2017 Annexure R3 alongwith an affidavit of Prabhat Manocha dated 13.06.2017, Annexure R4 with a request for transfer of the booking in her name on the basis of purchase of the flat from Prabhat Manocha and accordingly the booking form was transferred in the name of the complainant; that the flat in question was purchased by the complainant on 22.11.2017 and as per clause 17 of the terms and conditions of booking form, the possession of the flat was to be handed over within 36 months from the date of commencement of construction or the date of execution of builder buyer agreement, whichever was latter; that in the instant case DPC certificate was issued by GMADA Authorities on 19.09.2019 Annexure R5 and construction commenced on that date; that the complainant never contacted the respondent for entering into builder buyer agreement nor it was the case of the complainant that respondent refused to do so; that the perusal of agreement to sell Annexure-III showed that flat in question had been sold to the complainant by Smt. Lovely Manocha being owner of the flat and as per



clause 5 of agreement to sell possession had been handed over to the complainant that too even before the commencement of the construction of the flat, which commenced on 19.09.2019; that the respondent got the project registered with the RERA Authority on 22.09.2017, vide copy of registration Annexure R6, wherein the time granted for completion of the project was till 31.07.2021 and as such the instant complaint was pre-mature and filed without cause of action and as such was liable to be dismissed; that after filing the complaint, the complainant approached the respondent through her husband Bhupinder Singh for settlement and it was agreed that the possession would be delivered as per time given for completion of the project by the RERA Authority and copy of settlement arrived at between the parties was Annexure R7, which was signed by Bhupinder Singh, Sumit Singh and authorized representative for the respondent. On merits, the pleas as contained in the complaint were denied and prayer for its dismissal was made.

3. The violations and contraventions as contained in the complaint were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was proceeded for further inquiry.



4. I have heard the representatives for parties and have gone through the record on the file.
5. At the very outset, the representative for the respondent submitted that as per clause 17 of the terms and conditions of booking form, the possession of the flat was to be handed over within 36 months from the date of commencement of construction or the date of execution of builder buyer agreement, whichever was latter. In the instant case, DPC certificate was issued by GMADA Authorities on 19.09.2019 vide Annexure R5 and construction commenced on that date and the respondent had to complete the project and deliver the possession within 36 months i.e. upto September, 2022. It was further argued that as per registration certificate issued by the RERA Punjab, the project was to be completed till 31.07.2021 and as such the complaint was pre-mature. The perusal of booking form shows that clause 17 thereof states that the possession of the flat was to be handed over within 36 months from the date of commencement of construction or the date of execution of builder buyer agreement, whichever was latter. However, this clause itself is a unilateral and vague clause as the respondent did not enter into a buyer's agreement in this case with the complainant for the reasons best known to them as the booking of the flat was made on 17.12.2015 when the



first instalment was made by the complainant as per schedule of payments Annexure-II and the respondent received Rs.38,00,000/- till 16.03.2017 and Rs.50,00,000/- till 31.10.2017 i.e. about 50% of the total sale consideration of the flat i.e. Rs.1,05,14,886/-. As per the provisions of Section 6 of the Punjab Apartment and Property Regulation Act, 1995, the respondent could not accept any more than twenty five percent of the sale price before entering into a written agreement for sale with the complainant. Section 6(1) of the Act reads as under:

***“6(1) Notwithstanding anything contained in any other law for the time being in force, a promoter who intends to construct or constructs a building of apartments, all or some of which are to be taken or are taken on ownership basis, or who intends to offer for sale plots in a colony, shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than twenty five per cent of the sale price, enter into a written agreement for sale with each of such persons who are to take or have taken such apartments, or plots, as the case may be, and the agreement shall be in the prescribed form together with prescribed documents and shall be registered under the Registration Act, 1908 (Central Act no. 16 of 1908).”***

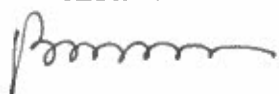
6. Further as per the provisions of Section 13 of the Act, the respondent could not have received more than ten percent of the sale price before entering into an agreement to sell and the relevant part of Section 13 of the Act read as under:-

***“13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment,***

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***plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”***

7. The perusal of both the above provisions show that before entering into written agreement, the respondent was not entitled to receive more than 25% or 10% of the sale price under both the conditions and as the respondent has done so, he has certainly violated the provisions of the Punjab Apartment and Property Regulation Act, 1995 as well as of the present Act.
8. As far as the plea raised on behalf of respondent regarding issuance of DPC certificate issued by GMADA Authorities on 19.09.2019 vide Annexure R5 and the fact that construction commenced on that date and the respondent had to complete the project and deliver the possession within 36 months i.e. upto September, 2022 as per booking form is concerned, as noticed above, the said clause has already been held to be a unilateral and vague clause. By taking advantage of said clause, neither the respondent executed agreement nor started construction though the booking was made in the year 2015 and the alleged DPC was obtained by the respondent in the year 2019 after four years of booking, which shows that the intentions of the respondent was not clear from the very beginning and that is why they neither executed the agreement





nor started the construction at the site and thus acted in violation of the provisions prevalent at the time of booking and also thereafter of the present Act, though they got the project registered with the RERA Authority and bound themselves to abide by the provisions of the Act. As such, by doing so, the respondent indulged in unfair trade and malpractices. In these circumstances, the respondent cannot take any benefit out of the issuance of DPC in the year 2019 and alleged starting of construction in that year.

9. As far as the objection raised on behalf of the respondent that the project was registered with the Authority and time for completion of the project in which the unit of the complainant falls, was till 31.07.2021 is concerned, again the respondent cannot take any benefit out of this because the agreement was executed between the present complainant and Lovely Manocha wife of Prabhat Manocha and Prabhat Manocha on 19.04.2017, which was later on, adopted by the respondent by changing the flat from the earlier allotted to the complainant and they also obtained further amount of Rs.12,00,000/-, thus taking these facts into consideration, the period for delivery of possession being 36 months as mentioned in the booking form, even then the possession was to be delivered by 18.04.2020. The complainant has filed the



instant complaint in June 2020, which cannot in any manner be said to be pre-mature. As far as the time for completion of project granted by the RERA Authority is concerned, it would be appropriate to add here that as per settled proposition of law in **Neelkamal Realtor's case citation** this declaration and extension for completion of the project would not be applicable to the allottees, who have entered into any transaction prior to the coming into force of this Act.

10. The complainant referring to agreement to sell dated 19.04.2017 raised an objection that though possession was not delivered till date to her, but, a clause was clandestinely inserted in the agreement dated 19.04.2017 that the possession of the said property had been delivered to her and in this manner also a fraud was committed upon her. However, the respondent in the written reply nowhere stated that the possession had been delivered to the complainant, rather, it is stated in para No.9 of the written reply that *"it is indeed very strange that complainant entered into an agreement to sell and also took possession of a flat which did not even exist the day when the flat was purchased and construction of which commenced on 19.09.2019."* So, in view of above recital in the reply of the respondent, clause No.5 of the agreement dated 19.04.2017 cannot be taken into consideration for any



purpose and it is thus clear that the possession of the flat has admittedly not been delivered to the complainant so far.

11. As per own case of the respondent, one Sumit Singla had booked four flats bearing No.101 to 104 in tower No.1, which included the flat in question by paying an amount of Rs.6,25,000/- through cheque No.210192 to 210195 dated 17.12.2015 for each flat even before approval of the building plan for the purpose of investment and earning profit as he happened to be a property dealer. The actual price of one flat was Rs.1,05,14,886/- and discount of Rs.5,53,415/- was given to him. It is further the case of respondent that said Sumit Singla requested the respondent that he was not in a position to make payment for all four flats and the booking amount paid by him might be adjusted against one flat only i.e. Flat No.1, Tower No.1 and surrendered the remaining three flats and then in the year 2016 on request of Sumit Singla, the flat in question was transferred in the name of Prabhat Manocha. It is also a fact that the complainant Kulwinder Kaur booked Flat No.101, Tower No.1 on 17.12.2015 and since that date till 16.03.2017, she paid an amount of Rs.38,00,000/- to the respondent. It is the case of the complainant that in the month of April 2017 she was called by the respondent to execute

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11. As per own case of the respondent, one Sumit Singla had booked four flats bearing No.101 to 104 in tower No.1, which included the flat in question by paying an amount of Rs.6,25,000/- through cheque No.210192 to 210195 dated 17.12.2015 for each flat even before approval of the building plan for the purpose of investment and earning profit as he happened to be a property dealer. The actual price of one flat was Rs.1,05,14,886/- and discount of Rs.5,53,415/- was given to him. It is further the case of respondent that said Sumit Singla requested the respondent that he was not in a position to make payment for all four flats and the booking amount paid by him might be adjusted against one flat only i.e. Flat No.1, Tower No.1 and surrendered the remaining three flats and then in the year 2016 on request of Sumit Singla, the flat in question was transferred in the name of Prabhat Manocha. It is also a fact that the complainant Kulwinder Kaur booked Flat No.101, Tower No.1 on 17.12.2015 and since that date till 16.03.2017, she paid an amount of Rs.38,00,000/- to the respondent. It is the case of the complainant that in the month of April 2017 she was called by the respondent to execute



the agreement, but, was made to sign an agreement on 19.04.2017 with Smt. Lovley Manocha and the apartment number was changed from Flat No.101 to unit No.01. It may be that the complainant signed the agreement to protect her rights and to settle the matter as she had already paid an amount of Rs.38,00,000/- to the respondent prior to 19.04.2017. The above Lovely Manocha and her husband Prabhat Manocha relinquished their rights in the above unit in favour of the complainant. The respondent further obtained an amount of Rs.12,00,000/- from the complainant after execution of the said agreement on 19.04.2017 till 31.10.2017, which is apparent from Annexure CII schedule of payment. All the circumstances i.e. first inserting vague clause No.17 in the booking form in regard to delivery of possession as mentioned above, then obtaining of huge amount from the complainant, but, not entering into agreement with her and then to persuade her to enter into an agreement with Smt. Lovely Manocha and her husband Prabhat Manocha by way of changing the unit number by the respondent shows that the respondent played a fraud with the complainant from the very beginning and succeeded in perpetuating the same by getting an agreement of complainant with the above said persons executed instead of respondent entering into an agreement with



the complainant. Hence, this act on the part of the respondent amounts to fraud, unfair trade practice and cheating with the complainant in obtaining huge amount from her and then not delivering possession to her.

12.As has been noticed above that the possession could not be delivered within the stipulated period and delay occurred in delivery of possession and therefore right accrued to the complainant to stop further payments and to withdraw from the project, on account of unreasonable delay. The respondent could not deny the refund after the expiry of the date for delivery of possession as 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/flat 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 flat 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:*

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*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 flats 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/flat 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/flat.”*

14. Under this clause, the promoter is liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the flat along with interest at the rate specified in the Rules within ninety days.

15. In view of above discussed facts and circumstances of the case, the fault on the part of the respondent in not delivering the possession of the unit in question within the stipulated period, thus, squarely falls within 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,—*

*[Handwritten signature]*



(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."

16. In view of the above discussion, the respondent was liable to refund the amount of Rs.50,00,000/- so paid by the complainant to them.

17. 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 respondent or not.

The fact remains that the respondent had been using

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the amount so paid by the complainant since its payment for pecuniary gains, as such, the amount is required to be refunded alongwith interest to the complainant as similar benefit cannot be denied to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs.50,00,000/- 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 respective dates of payments by the complainant till realization.

18. In the instant complaint, the complainant had to seek the remedy under the existing law. He has to undergo this litigative process by pursuing the matter and to spend money and for that obviously he had to suffer mental agony and harassment. 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 in view of the above mentioned facts and especially delay in delivery of possession, 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.1,25,000/-.

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

1.	Principal amount	Rs.50,00,000/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above said amount from the date of respective payments 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 complainant within sixty days from the date of this order. A copy of this order be sent to both the parties free of costs under Rules and file be consigned to record room after due compilation.

Dated:10.05.2021

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