

**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.1767/2020
Date of Order: 12.05.2021

Ashim Kumar Sen, House No.11, PDA Omaxe City, Sirhind Road, Patiala, District Patiala, Punjab.

Complainant

Versus

1. Estate Officer, Patiala Urban Planning and development Authority, PUDA Complex, Urban Estate, Phase-II, Patiala, District Patiala.
2. M/s Omaxe Ltd, Office of Patiala Urban Planning and Development Authority, PUDA Complex Urban Estate, Phase-II, Patiala, District Patiala, Punjab.

Respondents

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

Present: Shri J.P. Singla, Advocate, representative for the complainant.
Shri Bhupinder Singh, Advocate, representative for respondent No.1
Shri Munish Gupta, Advocate, representative for the respondent No.2.
(Through Video-Conferencing)

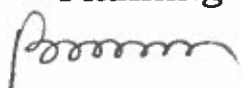
ORDER

1. The Complainant named above filed the above mentioned complaint against respondent Estate Officer, Patiala Urban Planning and Development Authority and M/s Omaxe Ltd alongwith documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund of the wrongly deducted amount

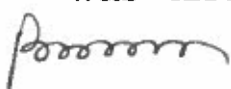
Pam

alongwith interest on the entire amount deposited by the complainant with the respondent and compensation as well as litigation expenses. As per case of the complainant originally EWS flat No.SF4 in block jasmine Cluster-D was allotted to one Amit Kumar son of Atma Ram vide allotment letter C1, which was lateron got transferred in the name of complainantr vide memo dated 09.05.2011 on the same terms and conditions of the original allotment letter. As per clause 6(a) of the allotment letter the possession of the flat was to be delivered within three years from the date of allotment. The total value of the flat was Rs.3,10,016/- and the complainant paid an amount of Rs.3,65,117/-. The respondents failed to complete the project and abandoned the same despite the complainant repeatedly requesting the respondents to refund his money and also filed an application dated 01.10.2018 for surrender of the flat, but, the respondents only refunded an amount of Rs.3,37,017/- vide memo dated 22.11.2018, but, did not pay the remaining amount. The complainant got served a legal notice upon the respondents, but, to no effect. Hence, this complaint.,

2. Upon notice, respondents contested the complaint by way of filing separate written replies. Patiala Urban Planning and Development Authority through its Estate



Officer filed written reply raising the objection that in view of judgment dated 16.10.2020 passed by the Hon'ble High Court in CWP No.38144 of 2018 and connected matters and CWP No.8548 of 2020, the instant complaint was to be adjudicated upon by the Authority and as such, the complaint before this Bench was liable to be dismissed; that the allotment had been made under the provisions of the Punjab Regional and Town Planning and Development Act 1995 and as such the remedy of appeal was available under Section 45 of the said Act, which the complainant failed to avail; that in view of the provisions of Section 174 of Punjab Regional and Town Planning and Development Act 1995 this Bench lacked jurisdiction; that there was also an arbitration clause in the allotment letter and the matter was required to be referred to the arbitrator; that the residents welfare association of the project filed a CWP No.14348 of 2016 raising issue regarding possession and development before the Hon'ble Punjab and Haryana High Court which was still pending and as such the matter was being monitored by the Hon'ble High Court, the instant complaint was not maintainable; that there was no letter of intent, letter of allotment or agreement for sale and as such there was no violation of section 18 of the Act; that the complaint was also liable to be dismissed for non-joinder of



necessary parties and mis-joinder of parties. On merits, it was averred that the Act had been made applicable prospectively and not retrospectively; that the answering respondent had applied for registration of the project, but, the said application was rejected on the ground that no time frame for completion of the project was mentioned in the application and that ground still subsisted as dispute with Omaxe Ltd was pending with the Government and Hon'ble Punjab and Haryana High Court; that the complaints in respect of projects which were not registered with the RERA Authority were not maintainable as per decision of the Authority in **Bikramjit Singh's case (supra)** and decision of Hon'ble Bombay High Court in **Neel Kamal Realtors' case (supra)**; that the State of Punjab enacted the Punjab Regional and Town Planning and Development Act 1995 with intent to develop the land in a planned manner in the State of Punjab and Section 43 of the Act empowered the authority to frame schemes for development of land owned by it or transferred to it by the State Government. Under the provisions of the above Act, the Patiala Urban Planning and Development Authority in collaboration with Omaxe Ltd under a joint development agreement in PPP Mode launched a scheme for development of 336.5 acres at Sirhind Road Patiala and invited applications



for allotment of EWS houses in the said scheme w.e.f. 27.04.2010 to 26.05.2010 and terms and conditions for allotment were detailed in the prospectus and application form; that Amit Kumar, (the original allottee) after going through the terms and conditions of the allotment filed an application for allotment of an EWS flat measuring 350.30 sq. ft and on being successful in the draw held on 28.07.2020, allotment letter dated 17.02.2011 was issued in his favour for allotment of flat in block Jasmine, Cluster-D, SF-4 measuring 350.30 sq. ft containing certain terms and conditions as detailed in para 16(a) to (i); that complainant Ashim Kumar Sen got the said flat transferred in his name vide letter dated 09.05.2011 and furnished an affidavit dated 19.04.2011 to abide by the provisions of the Punjab Regional and Town Planning and Development Act 1995 and also to pay additional price, extension fee and other dues; that some of the land owners filed CWP No.8100 of 2011- Harbhajan Singh and ors Vs. State of Punjab and ors, wherein, status quo in regard to development of the project was granted which remained operative w.e.f. 28.07.2011 to 28.09.2013; that in view of said status quo order the payment of instalments was rescheduled and due intimation was sent to the complainant vide letter dated 12.05.2014 and amount of Rs.36,931/-,



which was found to be received in excess was refunded to the complainant; that the complainant was required to pay the price of the flat as per agreed terms and conditions of the allotment, but, he failed to deposited the amount of Rs.16,384/- till 04.10.2018; that the complainant vide letter dated 01.10.2018 requested for surrender of the allotment of flat and refund of the amount deposited by him, which request was considered and vide order dated 04.10.2018 the refund was paid through cheque No.742145 dated 22.11.2018; that after one year of receipt of refund, the complainant got served legal notice upon the answering respondent which was duly replied vide Annexure C6 dated 26.09.2019; that the project in question was a joint venture of respondents No.1 and 2 under a joint development agreement dated 16.11.2006 and in public private participation mode; that M/s Omaxe failed to play its part for execution of the project as per terms and conditions entered into between it and the PDA despite repeated requests made to it and ultimately the answering respondent issued a notice of termination upon the Omaxe for breach of terms and conditions of the joint development agreement on 20.06.2011; that the land references filed by the land owners remained pending before various Courts and were decided finally by the Hon'ble Supreme Court on 24.10.2018; that with



a view to sort out the inter-se dispute between the respondents negotiations were held in the meeting on 09.01.2019 and it was decided that the matter be taken up by the committee headed by the Chief Secretary, Punjab for appropriate decision; that the complainant was not entitled to any relief being claimed by her in view of condition No.6 of the allotment letter and on account of the fact that she herself was a defaulter in making payments. Rest of the averments of the complaint were denied and prayer for dismissal thereof was made.

3. M/s Omaxe Limited in its written reply took the preliminary objections that the complaint before this Bench was not maintainable in view of the latest pronouncement of Hon'ble Punjab and Haryana High Court, Chandigarh in case titled as Janta Land Promoters Pvt Ltd Vs. Union of India and others, bearing CWP No.8548 of 2020; that the complaint had been filed by concealing relevant facts; that the project in which the property in question existed was primarily of Patiala Urban Development Authority and the answering respondent was only granted development rights being the highest bidder in the tenders floated by the above said authority who was promoter that since, the answering respondent had been served cancellation notice by the PDA Patiala and further the development



rights of answering respondent were under the scrutiny of Punjab and Haryana High Court in CWP No.13448 of 2016, the instant complaint against the answering respondent was not maintainable that the development work of the project came to a standstill, as some of the land owners approached the Punjab and Haryana High Court, Chandigarh, challenging the joint development agreement and acquisition process by way of filing CWP No.8100 of 2011, in which status quo order was passed on 29.07.2011 regarding construction, which remained in force till 26.09.2013, when the order Annexure R2/1 was passed regarding withdrawal of the CWP; that in the meantime, the PDA issued the notice of termination upon the answering respondent vide Annexure R2/2, which had not been withdrawn despite of the fact that the same was duly replied; that after disposal of CWP No.8100 of 2011, the answering respondent had been consistently pursuing the PDA Patiala to commence the development work, but, to no effect and even the Residents Welfare Association also preferred a CWP bearing No.14348 of 2016, wherein issue for development had been raised and said CWP was still pending; that in the said CWP the answering respondent filed a detailed reply to the effect that they were willing to commence the development work in case the approval was granted by



the PDA; that in said CWP, the hon'ble High Court passed an order dated 01.08.2017 Annexure R2/3 directing the PDA to seek instructions as to whether to carry out the development themselves or through respondent Omaxe Ltd or through third party; that on 25.09.2017, counsel for PDA made a statement that inter-se dispute of PDA and Omaxe was pending before Special Committee constituted for looking into the matter headed by Chief Secretary, Government of Punjab and matter was adjourned thereafter, but, till date no decision had been taken by the Special Committee and orders dated 01.08.2017, 25.09.2017, 16.01.2018, 26.11.2018 and 03.07.2019 were Annexures R2/4 to R2/8; that in these circumstances, it was evident that the non-development of the project was on account of the facts and circumstances beyond the control of the answering respondent and also for non-grant of permission by PDA; as such the instant complaint against the answering respondent was bad for mis-joinder of party; that as per the agreement, amount was also to be deposited with the PDA and not with the answering respondent, it being only a developer, as such, the instant complaint against the answering respondent was not maintainable; that the project under reference was not registered with the RERA Authority and registration was rejected vide



Annexure R2/9; that the complainant purchased the property in question in the year 2011, when the litigation was already pending and delay had already occurred and there being arbitration clause in the allotment letter, the instant complaint was not maintainable and that this Bench did not have jurisdiction to entertain this complaint. On merits, while reiterating the preliminary objections and denying the averments as contained in the complaint, prayer for its dismissal had been made.

4. The violations and contraventions as contained in the complaint were put to the representatives for the respondents to which they denied and did not plead guilty and then the complaint was proceeded for further inquiry.
5. The respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings as summarized above and the elaboration there of shall be made in the discussion.
6. The admitted facts between the parties in the instant case are that the original allottee Amit Kumar participated in the bid for allotment of EWS flats in the scheme launched by the Patiala Urban Planning and Development Authority, Patiala/Omaxe and he was allotted flat No.SF-4 in block Jasmine Cluster-D



measuring 350.30 sq. ft. in residential Township Project at Sirhind Road, Baran Patiala vide allotment letter dated 17.02.2011 Annexure C1. It is also an admitted fact that the said flat was purchased by the complainant from the original allottee and it was transferred in his name vide letter of respondent dated 09.05.2011 Annexure C2. It is also an admitted fact that the total tentative price of the flat was Rs.3,10,016/- and the respondents have not denied the fact that the complainant paid an amount of Rs.3,65,117/-. It is also an admitted fact that the possession of the flat was to be handed over to allottee within three years from the date of allotment as per clause 6(a) of the agreement. It is also an admitted fact that possession has not been delivered in the instant case to the complainant so far. It is also a fact that the matter was taken before the Hon'ble High Court in two CWPs No.8100 of 2011 and 14348 of 2016; and in CWP No.8100 of 2011 status quo order in regard to construction was passed on 29.07.2011, which remained in force till 26.09.2013, when the said CWP No.8100 of 2011 was disposed of. It is also an admitted fact that the complainant made request for refund of the amount paid by him vide letter dated 01.10.2018 Annexure C4 due to delay in delivery of possession. It is also an admitted fact that the respondent refunded the



paid amount after deduction of 10% vide order dated 04.10.2018 Annexure R6 through cheque No.742145 dated 22.11.2018 on the basis of receipt Annexure R7.

7. The first objection taken on behalf of the respondents was that the present case 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 can 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 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 project.
8. Another submission on behalf of the respondents was that the project was not registered with the RERA Authority and as such the complaint against the



unregistered project was not maintainable in view of the order of the RERA Authority in **Bikramjit Singh's case (Supra)**. In this respect, reference can be made to a 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***, wherein, it was held that the complaints against unregistered projects were maintainable before this Bench. Hence, this argument is hereby repelled.

9. It was then argued on behalf of the respondents that in view of the decision of Hon'ble High Court of Punjab and Haryana delivered in *CWP No.8548 of 2020* titled as **Janta Land Promoters Pvt Ltd Vs. Union of India and others** and connected Civil Write Petitions, this Bench had jurisdiction to deal with compensation part only, while the question of refund and interest could only be taken up before the Authority under the Act. This argument does not carry much weight because the decision in **Janta Land Promoters Pvt Ltd's case (supra)** is based on the decision of Hon'ble High Court of Punjab and Haryana in *CWP No.38144 of 2018-Experion Developers Pvt Ltd Vs. State of Haryana and others* and connected appeals, under Haryana RERA and in the appeal against the said decision, the Hon'ble Supreme Court stayed the operation of decision



of Hon'ble Punjab and Haryana High Court in relation to Haryana RERA. On the basis of the stay order of Hon'ble Apex Court, Ld. Authority of RERA Punjab, issued circular No. RERA/PB./LEGAL/24 dated 05.03.2021 relevant part of which runs as under:-

- “(i) Complaints falling under Section 18(1) of the Act, where the claim is only for return of the amount paid by the allottee and interest provided for in this Section, shall be dealt with by the Authority;*
- (ii) All cases, where the claim is for the return of the amount deposited by the allottee, interest thereon as mentioned at Sr. No.1 above and in addition, compensation (including payment of interest as compensation will be dealt with by the Adjudicating Officer;*
- (iii) All complaints falling under the proviso of Section 18(1) of the Act i.e. where the allottee does not intend to withdraw from the project, but, seeks interest for the period of delay in delivery of possession will continue to be heard by the Authority.*

The above will apply with immediate effect to all pending complaints and to those to be received in future. In case of pending complaints, the matter will be transferred to the appropriate forum as indicated above, whenever the complaint is taken up for hearing. The matter will be reviewed once the decision of the Supreme Court of India in SLP No.13005 of 2020 is received.”

10. In this view of the matter, the cases of refund, interest and compensation under the Act are maintainable before this Bench.



11. It was also agitated on behalf of the respondents that there being an arbitration clause in the agreement the matter was required to be referred to the Arbitrator and this Bench was not having any jurisdiction to entertain this complaint. It was further pointed out that in view of provisions of Section 174 of the Punjab Regional and Town Planning and Development Act 1995, this Bench was not having jurisdiction to entertain and decide this complaint. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act, which run as under:-

“S.79. *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

S.88. *The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.*

S.89. *The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”*

12. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause or otherwise, the remedy available to the complainants under the Act still subsists as it is in addition to the remedy available in any other forums. The argument is accordingly repelled.

13. The further point raised on behalf of respondent No.2 M/s Omaxe Limited was that the said company was only a developer as per joint development agreement



dated 16.11.2006 executed with PDA Patiala and all the ownership rights vested with PDA Patiala in regard to ownership of the project land and no agreement or any other document was ever executed between M/s Omaxe Limited and the complainants and as such no liability could be fastened against M/s Omaxe Limited being not privy to the contract between the complainant and the PDA Patiala.

14. On the other hand, the submission made on behalf of the complainant was that M/s Omaxe Limited was also liable being co-developer with the PDA Patiala as the project was to be developed as a joint venture by both the respondents and as such both the respondents were equally liable to refund the amount alongwith interest, compensation and litigation expenses.

15. It is the admitted case of respondent No.2 itself that there was a joint development agreement between Omaxe Limited and PDA Patiala dated 16.11.2006. This fact has also been mentioned in the notice of termination of the said joint development agreement. Under the said joint development agreement, respondent No.2, M/s Omaxe Limited was legally bound to develop the project. Not only this, in the allotment letter dated 29.12.2010 Annexure C2, it is specifically mentioned in the opening para that *"the PDA-Omaxe City Patiala (hereinafter referred to as said*



"Project") is proposed to be developed on the land situated at Village Baran (Patiala), The Patiala Urban Planning and Development Authority (hereinafter referred as "**PDA/authority**") has entered into a Joint Development Agreement dated 16.11.2006 for development of the said township project on Public-Private-Partnership basis with M/s Omaxe Ltd. company registered under the Companies Act 1956, having its registered office at 7 LSC Kalkaji, New Delhi,-110019 (hereinafter referred to as "**Developer/Omaxe**").

Further, in para 4 it is also mentioned that "all payments are to be made through bank draft drawn in favour of **Escrow Account PDA-Omaxe City Patiala payable at Patiala**. In these circumstances, when the project was a joint venture business of both the respondents, and respondent No.2 M/s Omaxe Limited was also privy to the documents, and the developmental work was to be carried out by the said respondent under the Joint Development Agreement dated 16.11.2006 and the amount of sale was to be deposited in the escrow account of project **PDA-Omaxe City Patiala**, both the respondents were fully liable for any liability arising out of the project in question. Hence, the contention on behalf of respondent No.2 M/s Omaxe Ltd in this behalf is repelled.



16. The further point raised on behalf of respondent was that there was no fault on the part of the PDA Patiala, as the possession of the plot could not be delivered to the complainant because the matter reached before the Hon'ble High Court in CWP Non.8100 of 2011 and CWP No.14348 of 2016 and in the first Civil Writ Petition status quo order was passed regarding construction on 29.07.2011, which remained in force till 26.09.2013. It was also pointed out that the matter was pending before the Special Committee headed by Chief Secretary, constituted by the State Government to look into the dispute inter-se the respondents. Further, on request of complainant made on 01.10.2018 for surrender of the flat in question, the respondent refunded the amount vide order dated 04.10.2018 Annexure R6 through cheque No.742145 of 22.11.2018 and receipt in that respect was Annexure R7 and as such, the complainant was not entitled to the refund of any further amount.

17. On the other hand, the submission on behalf of the complainants was that there was delay in completion of the project for which the respondents were liable. It was further submitted that when the respondents failed to carry out the development at the project site, the complainant because of prolonged delay requested for refund of the amount from the respondents but, the



amount was refunded after deducting the 10% of the total sale price of the flat instead of refunding of full amount alongwith interest.

18.No doubt, as is admitted by both sides, the matter went before the Hon'ble High Court in two CWPs as mentioned above and in CWP No.8100 of 2011 status quo order regarding construction was also passed which remained in operation till 26.09.2013 when the said CWP was disposed of. In the other CWP bearing No.14348 of 2016, orders dated 01.08.2017, dated 25.09.2017 and dated 16.01.2018 etc. were passed and the matter was also pending before the Special Committee, headed by Chief Secretary, appointed by the State Government to settle the dispute between respondents. In these circumstances, the delay occurred in the completion of the project, which could not be solely attributed to the respondents. As a matter of fact, the complainant after waiting for a period of about seven years feeling frustrated himself sought refund vide request dated 01.10.2018 Annexure C4, but, the respondent/PDA Patiala vide order dated 04.10.2018 Annexure R6 refunded the amount vide receipt Annexure R7 after deducting 10% of the sale consideration.

19.The point raised on behalf of the respondent was that as the complainant defaulted in making the payment of



Rs.16,384/- till 04.10.2018, the respondent/PDA Patiala was empowered to deduct/forfeit 10% of the total amount of consideration money, interest and other fees payable in respect of the flat. In the instant case, how the complainant could be said to have breached the condition of the allotment letter in not making further payments or withdrawing from the project as he waited for a long period but the project remained standstill and under compelling circumstances he decided to withdraw from the project. In these, circumstances, deduction of 10% by the respondent of the total sale price of the property unit in question cannot be said to be justifiable and in order to do substantial justice between the parties in the peculiar circumstances being faced by both the parties and there being hardly any hope of completion of project in near future, deduction so made by the respondent cannot be justified as the complainant was not at fault. As such, the complainant is entitled to refund of the amount of Rs.76,601/- ordered to be deducted by the respondent vide order dated 04.10.2018 Annexure R6.

20. So far as the question of interest is concerned, as the amount has been retained by the respondents in the circumstances as mentioned above, which remained available with the respondents for using the same and



earning profits and interest on the same, the complainant certainly is entitled to interest on the said amount. I, therefore, direct that the respondents shall pay the interest at the rate of 7% per annum on the amount of Rs.76,601/- with effect from the date of its payment till realization and on the refunded amount of Rs.3,03,713/- from date of payment by the complainant till refund made by the respondent i.e. on 22.11.2018 (as per Annexure R7).

21. Since the complainant had to seek the remedy under the existing law and for that obviously they had to suffer mental agony and had to incur expenses to pursue their claim by way of engaging representative. 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 facts and circumstances



of the case and as such, I am of the considered view that the complainants are held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.25,000/-.

22. In view of above discussions and observations, the complaint is accepted against respondents to the following extent and heads:-

1.	Principal amount	Rs.76,601/-
2.	Simple interest	At the rate of 7% per annum on the above said amount from the date of payment(s) till realization and also interest at the same rate on the amount of Rs.3,03,713/- from the date of its payment by the complainant till 22.11.2018 the date on which it was refunded by the respondents.
3.	On account of mental agony and litigation expenses	Rs.25,000/-

The respondents are directed to pay the above said amount to the complainant within sixty days from the date of this order. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:12.05.2021

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