

**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.1248/2019
Date of Order: 17.05.2021

Manoj Ahuja, resident of 1428, Phase-3-B-2, Sector 60,
Sahibzada Ajit Singh Nagar, (Mohali) Punjab.
.....Complainant

Versus

Punjab Urban Planning and Development Authority, PUDA
Bhawan, Sector-62, Sahibzada Ajit Singh Nagar (Mohali),
Punjab.

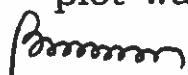
.....Respondent

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

Present: Shri Vinod Verma, Advocate, representative for
the complainant.
Shri Bhupinder Singh, Advocate, representative
for the respondent.

ORDER

1. Complainant Manoj Ahuja filed this complaint against respondent Punjab Urban Planning and Development Authority, alongwith documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund and interest etc. as per the provisions of the Act. It is the case of the complainant that he was allotted plot No.625, in project namely **Gateway City**, Sector 118-119, Mohali. The total sale price of the said plot was Rs.69,51,000/- and the complainant paid an



amount of Rs.18,08,512/-. Letter of intent was issued on 26.05.2015 and allotment letter was issued on 26.08.2016 and as per clause 4(I) of the said allotment letter, the possession of the plot in question was to be delivered to the complainant after the completion of the development work at site or 18 months from the date of issuance of the allotment letter whichever was earlier. As per the case of the complainant, earlier no exact location of the plots was provided and only in January, 2018 the plots were numbered temporarily and it was found that the plot allotted to the complainant was in the bed of seasonal rivulet known as Patiala Ki Rao and as per Sr. No.6 of the list attached with this complaint, plot No.625 was declared as non-feasible by the respondent and the complainant demanded refund of the amount paid by him, the plot being not fit for residence. The respondent allotted another plot bearing No.658 in the draw held on 29.10.2018 without the consent of the complainant, but, the complainant did not accept that plot the same being unfit for residence and from the plots already surrendered by other allottees due to inhabitable conditions and situated in slum area, near rivulet bed and high tension wires. The complainant deposited the original allotment letter to the respondent and on 02.04.2019 the respondent issued a letter stating that the amount would be

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refunded subject to 10% deduction plus interest etc.


Hence, this complaint.

2. The complaint has been contested on behalf of the respondent by filing written reply raising the plea that the Act is applicable prospectively and not retrospectively and the part of the project in question was complete prior to coming into force of the provisions of the Act and partial completion certificate had already been issued on 28.04.2017 qua that part and the remaining part of the project had been got registered with the Authority. As such, this authority did not have jurisdiction to entertain the instant complaint. The scheme of project in question was launched after due permission from the Government for allotment of 417 freehold residential plots and the terms and conditions were detailed in the brochure. It is admitted that the complainant applied for a plot measuring 300 square yards on 12.01.2015 and a certificate to that effect was issued to him. It is also admitted that the complainant being successful in the draw of lots was allotted plot No.625 vide allotment letter dated 26.05.2015. As per condition No.3 (iii) of the allotment letter the complainant was required to pay the balance amount of 75% of the tentative price of plot either in lump sum without any interest within sixty days from the date of issue of allotment letter or

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in six equated half yearly instalments, falling due after one year from the date of issue of allotment letter alongwith interest at the rate of 12% per annum. However, the complainant had not deposited the amount after paying 25% of the sale consideration. As per condition No.4(i) of the allotment letter, the complainant was required to take possession of the plot, but, the complainant vide his letter dated 12.03.2018 informed that the plot in question was not fit for constructed and requested for refund or to provide alternative plot at any suitable location. On said request of respondent, plot No.658 was allotted to him in a draw held on 29.10.2018. However, even though, the complainant sought refund of the amount and his request was considered and vide order dated 02.04.2019 amount was ordered to be refunded as per the provisions of the Punjab Regional and Town Planning and Development Act 1995 and terms and conditions of the allotment letter and sanction for payment was ordered on 08.08.2019 and Ms. Alka Gandhi collected the cheque on behalf of the complainant on 26.09.2019. In these circumstances, it was prayed that the complaint was devoid of merits and required to be dismissed.

3. The violations and contraventions as contained in the complaint were put to the representative for the

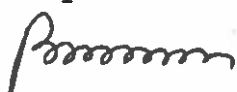


respondent to which he denied and did not plead guilty and then the complaint was proceeded for further inquiry.

4. I have heard the representatives for the parties and have gone through the record on the file.
5. The argument on behalf of the respondent was that the present case pertained to the period prior to the coming into force of the Act and the project was complete and partial completion certificate was also issued in favour of the respondent and rest of the project which was incomplete had been got registered with the RERA Authority and the contention then was that the provisions of the Act were not attracted to the facts of the case in hand. The argument however lacks merit as the Letter of Intent in this case is dated 26.05.2015, whereas the allotment letter has been issued on 26.08.2016 i.e. one year and three months after issuance of letter of intent. Possession of the plot was to be delivered within 18 months from the date of allotment letter i.e. upto 26.02.2018. If the part of the project in which the plot of the complainant falls was complete by 28.04.2017 as is being claimed by the respondent on the basis of partial completion certificate Annexure R1, then what was the hitch for the respondent to issue offer of possession letter with demand of remaining amount, is not known as it is

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neither the case of the respondent that they have issued any such offer of possession letter nor they have ever cancelled the allotment. In these circumstances, how the complainant could come to know about the alleged completion of the project and as such he was justified in further stopping the payments. As such, the fault lies with the respondent in not intimating the complainant regarding the status of the project and further in not making offer of possession, which they have not done till date. In such a situation, it could not be said that the project of the case in hand was complete prior to coming into force of the Act. It was an ongoing project and the plot in question was not fit for delivery to the complainant. In these circumstances, the present project was ongoing and had not been completed; 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. On this point, reliance 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 project.

6. Further, as per the own list issued by the respondent alongwith a public notice Annexure C4, leaves no doubt that the plot No.625 shown at Sr.No.6 of said list was non-feasible as declared by the respondent themselves and in these circumstances, how the project could be said to be partially complete. The complainant also made correspondence vide letters Annexures C5 and C6 with the respondent complaining that the plot in question was not feasible and requested for refund and said letters contained the noting of the office for taking necessary action in the matter and for considering the same. At this stage, the representative for the respondent submitted that the respondent vide letter dated 21.11.2018 plot No.658 was allotted to the complainant on the same terms and conditions of the plot No.625, but, the complainant did not come forward to take possession of said plot and considering the request of complainant, refund order was passed and after deducting 10%, the rest of the amount was refunded by way of cheque which was collected by Ms. Alka Gandhi sister of complainant and as such now the complainant was not entitled to any relief. This submission raised on behalf of the respondent does not hold much water as the complainant wrote a letter on

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21.01.2019 Annexure C7 in response to the letter dated 21.11.2018 stating therein that he had never given consent for reallocation of any alternative plot and he requested for refund of the amount paid by him. In the complaint and during arguments it was submitted that the re-allotted plot was also defective being near the rivulet bed and high tension wires and on that score having been surrendered by other allottee. This version of the complainant has not been specifically denied by the respondent and in these circumstances, how the complainant could be forced to take possession of a plot which was not fit for construction or residence.

7. Admittedly, the respondent has failed to deliver the possession of the plot in question within the stipulated period. The clause 5 of specimen proforma for agreement for sale prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017 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. and. 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.

8. 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 plot 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*
- (ii) the allottee shall have the option of terminating the agreement in which case the*

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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.”

9. 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 apartment/flat along with interest at the rate specified in the Rules within ninety days.

10. As has been discussed and observed above, that the respondent has failed to offer or deliver the possession of the plot to the complainant till date and as such fault lies with the respondent and in such a situation this case is covered within the mischief 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

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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."

11. In view of the above provisions of the Act, the respondent was duty bound to offer the possession of the plot in question and on account of non-delivery of possession despite having received the due instalments, the complainant is entitled to the refund of the amount paid by the complainant to the respondent. As far as the submission made on behalf of the respondent that the amount was refunded after making deduction of 10% of the total amount of consideration, however, the allotted plot being non-feasible, its possession was not possible and as such the complainant was not at fault in stopping further instalments and in these

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circumstances no deduction could be made from the amount paid by the complainant. Hence, the respondent is liable to refund the full amount of Rs.18,08,512/- to the complainant.

12. 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 has been using the amount so paid by the complainant to it since respective payments, 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.18,08,512/- 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 plus 2% from the respective dates of payments by the complainant till realization. Accordingly, the respondent is directed to return the amount of Rs.18,08,512/- along with simple interest at the State Bank of India highest marginal cost of lending rate plus 2% from the

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respective dates of payments by the complainant till realization.

13. Since the complainant could not purchase the plot in question and had to seek the remedy under the existing law and for that obviously he had to suffer mental agony and had to incur expenses to pursue his claim by way of engaging his 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 prolonged delay 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/-.



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

1.	Principal amount	Rs.18,08,512/-
2.	Simple interest	At the SBI highest marginal cost of lending rate plus 2% on the principal amount from the date of respective payments 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. If any amount has been received by the complainant from the respondent by way of refund or compensation on the amount paid to the respondent by way of sale consideration of the property unit in question, the same shall be adjusted from the total amount awarded to the complainant in this order. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:17.05.2021



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

Manoj Ahuja Vs. PUPDA

Dated :17.05.2021

Present: Shri Vinod Verma, Advocate, representative for the complainant.
Shri Bhupinder Singh, Advocate, representative for the respondent.


Arguments concluded. To come up after lunch for orders.


(Balbir Singh)
Adjudicating Officer,
RERA, Punjab

Present: Shri Vinod Verma, Advocate, representative for the complainant.
Shri Bhupinder Singh, Advocate, representative for the respondent.

For the reasons recorded in my separate detailed order of even date, the complaint is accepted. File be consigned to record room after making due compliance of notifying the parties this order well in time.

Dated: 17.05.2021


(Balbir Singh)
Adjudicating Officer,
RERA, Punjab