

**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 1386/2019

Dated of Decision: 17.05.2021

Harish Jain, resident of #500/6, Street No.4, Shastri Nagar,
Jagraon, District Ludhiana. Jaswinder Singh, F-36, PDA
Omaxe City, Patiala, District Patiala, Punjab.

.....Complainant

Versus

PUDA through Estate Officer, PUDA Bhawan, Sector 62,
Sahibzada Ajit Singh Nagar, (Mohali), Punjab.

.....Respondent

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II)

Complaint No.AdC 1468/2019

Dated of Decision: 17.05.2021

Kanta Singhal, D-61, FF, Pushpanjali Enclave, Pitampura,
New Delhi, Delhi.

.....Complainant

Versus

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


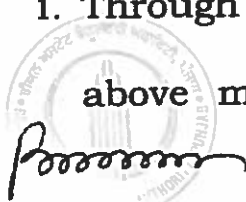
.....Respondent

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

Present: Shri Vinod Verma, Advocate, representative for the
complainants
Shri Bhupinder Singh, 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 of the same project.

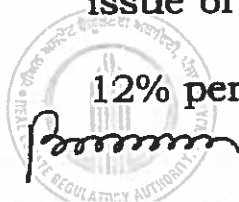
2. The Complainants named above filed the above mentioned complaints against respondents seeking refund of the amount deposited by them with the respondents alongwith interest, compensation etc. The brief facts as enumerated in the complaints are that the complainants booked residential plots in the project named PUDA Bhawan, Sector 62, Sahibzada Ajit Singh Nagar, (Mohali), Punjab **Gateway City**, Sector 118-119, SAS Nagar Mohali, to be developed by the respondent, the particulars whereof are given as below:-

Sr. No.	Name of complainant	Plot No./size	Tentative Price in Rs.	Amount paid in Rs.	Date of allotment letter
1.	Harish Jain	57 of 400 sq. feet	84 Lakhs	22,90,000/-	16.08.2016
2.	Kanta Singhal	113 of 400 sq. ft	84 Lakhs	67,80,000/-	01.08.2016

As per clause 4 of the allotment letter, the possession of the respective plots was to be delivered to the complainants after completion of construction work or within 18 months from the date of the allotment letter, whichever was earlier. The plots were not feasible and capable of delivery of possession and as such the respondent failed to deliver the possession to the complainants. The complainants made representations for refund of the amount paid by them, but, to no effect.

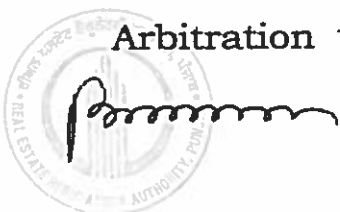
Hence, these complaints.

3. Upon notice, the respondent filed replies to the complaints 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 plots measuring 400 square yards and certificates to that effect were issued to them. It is also admitted that the complainants being successful in the draw of lots were allotted plot No.57 and 113 vide allotment letter dated 16.08.2016 and 01.08.2016 respectively. 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 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, complainant Harish Jain had



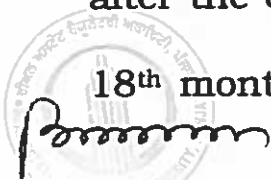
not deposited the amount after paying 25% of the sale consideration. As per condition No.4(i) of the allotment letter, the complainant was required to take possession of the plot, but, the complainant vide his letter dated 16.08.2019 requested for refund of the amount due to the plot being non-feasible, but, as per report of the field staff the plot in question was feasible and the complainant could take possession of same after payment of due instalments alongwith penal interest as stated in letter dated 05.12.2019 Annexure R5. In case of complainant Kanta Singhal it is submitted that she sought time for payment and also for mortgaging the plot in question which was permitted by the respondent vide letter dated 04.09.2015, but, vide letters dated 10.06.2019 and 07.06.2019 Kanta Singhal complainant sought refund of the amount on the ground that the plot was not feasible due high tension wire etc near the same. It is further the case of the respondent that the basic amenities were available at the site and the project was completion and partial completion certificate had been obtained and this part of the project had not been registered with the RERA Authority. It is also averred that there was an arbitration clause in the terms and conditions of the allotment and the grievance of the complainants was required to be referred to the

Arbitration under the Arbitration and Conciliation Act



1996. In the end, it was prayed that the complaints were liable to be dismissed.

4. Complainants filed rejoinders, wherein the averments of the written replies were denied and those of the complaints were reiterated.
5. 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 to be proceeded for further inquiry.
6. I have heard both the representatives for parties and have gone through the record of the case.
7. The admitted facts between the parties in these cases are that the complainants booked residential plots in the project namely **Gateway City**, being developed by the respondent and in the auction the complainants being highest bidders were allotted plots No.57 and 113 respectively of the size of 400 sq. feet. The tentative sale price of each plot was Rs.84,00,000/- and complainant Harish Jain paid a sum of Rs.22,90,000/- and complainant Kanta Singhal paid an amount of Rs.67,80,000/-. It is also admitted that letter of intent were issued and allotment letters were also issued and as per clause 4(1) of the allotment letter, possession of the plots was to be handed over to the allottees either after the completion of the development works at site or 18th months from the date of issuance of the allotment



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letter, whichever was earlier. It is also an admitted fact that the possession has not been delivered to the complainant so far.

8. The first submission made by the representative for the respondent was that as per terms and conditions of the allotment letter, the matter was required to be referred to the arbitrator under the Arbitration and Conciliation Act 1996 and the complaints under the Act were not maintainable and this Bench also did not have any jurisdiction to entertain and try this complaint. On the point of the arbitration clause contained in the allotment letter, reference is required to be made to Sections 79, 88 and 89 of the Act, which read 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.”*

A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, 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.

9. 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 **Harish Jain's case** is dated 28.05.2015, whereas the allotment letter has been issued on 16.08.2016 and letter of intent in **Kanta Singhal's case** is dated 01.07.2015 and the allotment letter has been issued on 01.08.2016 i.e. more than one year after issuance of letter of intent in both the cases. Possession of the plots was to be delivered within 18 months from the date of allotment letter i.e. upto 16.02.2018 and 01.02.2018 respectively. If the part of the project in which the plot of the complainants 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 for remaining amount, is not known as it is neither the case of the respondent that they have issued



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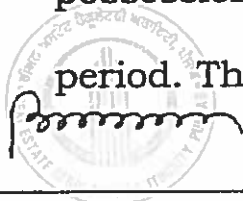
any such offer of possession letter nor they have ever cancelled the allotment. In these circumstances, how the complainants could come to know about the alleged completion of the project and as such they were justified in further stopping the payments. As such, the fault lies with the respondent in 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 plots in question were not capable of 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 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 the ongoing project.



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10. It is the stand of the complainants that the plots were not feasible being near the high tension electric wires, the level of plots being very low/deep, lack of basic amenities and farming still going on at the site and both the complainant made written requests for refund of the amount paid by them, but, the respondent has taken the plea that the plots were feasible as per the report of the field staff of their office and reference has been made to letters Annexure R5 and Annexure R7. However, the alleged report of the field staff has not seen the light of the day and brought on record or sent to the complainants alongwith the above said letters. So, simply by saying that the plots were feasible does not make any difference as the factum of high tension wires around the site in question had not been denied nor it was stated that the same had been got removed or would be removed therefrom within some stipulated period. The fact of non-feasibility of the plots get strength from the fact that there was inordinate delay in delivery of possession, which was to be delivered in February, 2018, but, till date possession has not been delivered. In these circumstances, how the complainants could be forced to take possession of plots which were not fit for construction.

11. Admittedly, the respondent has failed to deliver the possession of the plots 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:

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.

12. 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:-

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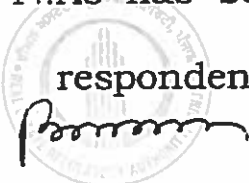
9.2 In case of default by promoter under the conditions listed above, the allottee is entitled to the following:-

- (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 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."

13. 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.

14. As has been discussed and observed above, that the respondent has failed to offer or deliver the possession of

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the plots to the complainants 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:-

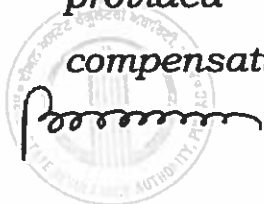
“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(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 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

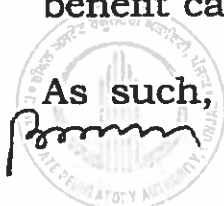


barred by limitation provided under any law for the time being in force.

(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.”

15. In view of the above provisions of the Act, the respondent was duty bound to offer the possession of the plots 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 complainants to the respondent i.e. Rs.22,90,000/- in **Harish Jain's case** and Rs.67,80,000/- in **Kanta Singhal's case**.

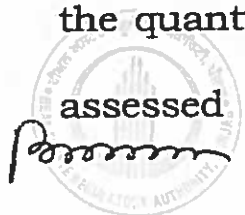
16. The next question which arises for consideration is as to whether the complainants are entitled to any interest on the amount paid to the respondent or not. The fact remains that the respondent has been using the amount so paid by the complainants to them since the day of payment, as such, the respondent is liable to refund the above said amount alongwith interest to the complainants because once the amount is deposited with the respondent/promoter and promoter is getting benefit of interest accrued upon said amount, the similar benefit cannot be denied to the complainant(s)/buyer(s).



As such, to conclude with, I am of the view that the

complainants are entitled the return of principal amount of Rs.22,90,000/- in **Harish Jain's case** and Rs.67,80,000/- in **Kanta Singhal's case** along with interest at the prescribed rate as per Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the respective dates of payments by the complainant till realization. Accordingly, the respondent is directed to return the amount of Rs.22,90,000/- in Harish Jain's case and Rs.67,80,000/- in **Kanta Singhal's case** along with simple interest at the State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the respective dates of payments by the complainants till realization.

17. Since the complainants had to seek the remedy under the existing law by engaging a representative and for that obviously had to suffer mental agony and had to incur expenses to pursue the case. The compensation has not 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



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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 in each case is held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.1,25,000/-.

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

Harish Jain's case

1.	Principal amount	Rs.22,90,000/-
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 payment(s) till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

Kanta Singhal's case

1.	Principal amount	Rs. 67,80,000/-
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 payment(s) till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

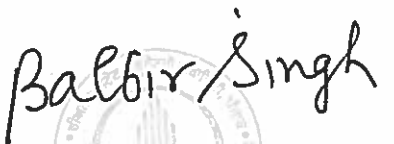
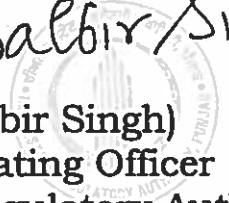
The respondent is directed to pay the above said amount to the respective complainants within sixty days from the date of this order. An attested copy of this order be placed on

the file of **Kanta Singhal's** case and a copy of this order be



sent to both the parties free of costs under rules.
Complaint file be consigned to record room after due
compilation.

Dated: 17.05.2021


(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority

JK
17/5/21