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.1524/2020
Date of Order: 18.05.2021

1. Ashok Kumar
2. Neelam Bansal, residents of Flat No.3072, Blood Donors Coop Housing Building Society, Sector 50D, Chandigarh.

.....Complainants

Versus

M/s Bhanu Infrabuild Pvt Ltd, India Trade Towers Ist Floor, Baddi-Kurali Road, New Chandigarh, Mullanpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.

.....Respondent

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

Present: Mr. R.S. Bhatia, Advocate, representative for complainants.
Mr. Arjun Sharma, Advocate, representative for the respondent.

ORDER

1. Ashok Kumar Bansal and Neelam Bansal, complainants filed this complaint against M/s Bhanu 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) for grant of refund, interest, compensation and litigation expenses on the ground that they

approached the respondent for purchase of office space in the project named **India Trade Towers** situated at Baddi-Kurali Road, New Chandigarh Mullanpur, being developed by the respondent. On 20.12.2010 allotment letter was issued whereby the office space bearing No.1701A on 17th floor measuring 662.73 sq. ft. The total sale consideration of the said office space was Rs.36,06,786.50 and the complainants opted for the plan to pay 50% immediately and 50% in instalments and to receive assured return @11% per annum till possession. The respondent was to complete the construction within 30 months from the date of start of construction i.e. from May, 2011. The complainants made the payments immediately when demanded and till December 2016 paid a sum of Rs.31,78,020.24. As per allotment letter, possession was to be delivered to the complainants by May, 2014, but, they did not receive the offer of possession till January, 2018. On 22.01.2018, they received a letter from the respondent raising a demand of Rs.31,93,437.18 and the respondent had arbitrarily increased the size of the office space to 1007.35 sq. ft from 662.73 sq. ft. The respondent also stopped paying monthly interest since January, 2018. The

complainants visited the site and found that the construction was still not complete and whole plans were changed. The complainants immediately responded to the said letter on 31.01.2018 intimating the respondent that they were not ready to purchase the additional space and they had already paid the entire dues and only an amount of Rs.6,09,823.31 was to be paid at the time of possession. Thereafter the complainants also sent reminders on 03.03.2018 and 28.03.2018, which were not responded by the respondent. Hence, this complaint.

2. In reply to the complaint, the respondent raised the preliminary objections to the effect that the relief sought by the complainants appeared to be on misconceived and erroneous basis; that as per the allotment letter dated 20.12.2010 the respondent was to complete the construction of the unit within 30 months from the date of start of construction, but, said clause was superseded vide addendum dated 31.10.2011 and it was agreed that the respondent would pay to the complainants a monthly compensation of Rs.16,937/- till the date of intimation of offer of possession and in return of said compensation, the complainants would neither claim any amount

from the respondent qua delay in construction nor qua delay in offering the possession; that on that account the complainants had received Rs.14,68,112/- for the period from November, 01, 2010 till January 21, 2018 and as such it did not lie in the mouth of the complainants that there was any delay; that the time was never the essence of the allotment letter; that the increase in the area of the office space in question was as per clause 4 of the allotment letter and were made as per sanction plans; that no agreement as per the provisions of Act had been executed in this case and the agreement sought to be referred by the complainants was only the allotment letter executed much prior to the coming into force of the Act; that the complainants were bound to take possession of the unit in question, but, they failed to do so despite the fact that the possession had already been offered to them; that there was arbitration clause in the allotment letter and as such the matter was required to be referred to the Arbitrator for adjudication and this Bench was not having any jurisdiction to entertain and try this complaint. Rest of the averments of the complaint were denied and prayer for dismissal of complaint was made.

3. The complainants filed rejoinder to the reply wherein the averments as contained in the written reply were denied and those of the complaint were reiterated.

4. 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.

5. I have heard the representatives for parties and have gone through the record on the file.

6. The admitted facts in this case are that the complainants booked office space and were allotted unit bearing No.1701A on 17th floor measuring 662.73 sq. ft in the project named **India Trade Towers** situated at Baddi-Kurali Road, New Chandigarh, Mullanpur, which was being developed by the respondent. Allotment letter was issued on 20.12.2010 and the total sale consideration of the said office space was Rs.36,06,786.50 and the complainants opted for the plan to pay 50% immediately and to pay remaining 50% in instalments. The complainants were also to receive assured return @11% per annum till possession. It is also admitted that as per clause 26(a) the respondent was to complete

the construction within 30 months from the date of start of construction. The payments by the complainants is also not a disputed fact. It is also admitted that possession could not be delivered to the complainants far.

7. The first objection taken on behalf of the respondent was that the present case pertained to the period prior to coming in to operation of the Act and as such, the instant case was not covered under the said 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. The argument of 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 complaint under the Act was 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. It was then argued on behalf of the respondent 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. The objection then raised on behalf of the respondent was that there was only an allotment dated 20.12.2020 and no agreement as per the provisions of the Act was executed in this case and as such the complainants were not entitled to any relief under the Act. On the other hand, the submission on behalf of the complainants was that the respondent obtained almost whole of the sale consideration, without prior entering into agreement with the complainants and by doing so the respondent indulged in unfair trade and malpractice and thus violated the provisions of the PAPR Act 1995 and the Act and as such the complainants were entitled to the refund of the amount deposited by them.

12. Admittedly, the respondent did not execute the agreement with the complainants, though obtained more than Rs.31,78,020.24 as against total sale price of Rs.36,96,786.50. By doing so, the respondent certainly violated the provisions of Section 6 of the Punjab Apartment and Property Regulation Act, 1995, as the respondent could not receive ***more than 25% of the sale***

consideration without prior entering into written agreement to sell. Section 6(1) 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)."*

13. 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, 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."*

14. 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 and by doing so the respondent indulged in unfair trade practice.

15. The representative for complainants submitted that the project was to be completed and possession was to be delivered within thirty months, but, the respondent failed to do so, rather, on 22.01.2018, the respondent sent a letter to the complainants raising a demand of Rs.32,93,437.18 and the respondent had arbitrarily increased the size of the office space to 1007.35 sq. ft from 662.73 sq. ft. i.e. by 52% of the actual size of the unit in question, which the complainants were not in a position to purchase and on 31.01.2018 the complainants responded the above letter of the respondent and also sent reminders on 03.03.2018 and 28.03.2018, but, no response was received from the respondent and the demand of the respondent being arbitrary, illegal and unfair, the complainants were not bound comply with the letter dated 22.01.2018 and were entitled to refund of the amount paid by them.

16. On the other hand, submission on behalf of the respondent was that no doubt the construction was to be completed within 30 months from the date of start of construction as per clause 26(a) of the allotment letter, but, vide addendum dated 31.10.2011 Annexure R3, the above clause was superseded and it was agreed between the parties that the respondent pay to the complainants Rs.16,937/- per month till date of intimation of offer of possession and in return of said compensation the complainants would neither claim any amount from the respondent qua delay in construction nor qua delay in offering the possession. The possession was offered on 22.01.2018 vide Annexure A3 which was admittedly received by the complainants, but, they failed to take possession. The submission then was that the respondent paid an amount of Rs.14,68,112/- on account of compensation and were not entitled to relief now being claimed in the instant complaint. It was further argued that increase in the area of office space was made as per the terms and conditions of the allotment letter and in accordance with the sanctioned plan and the complainants were bound to take possession of

the unit in question, which they failed and not entitled to any relief claimed by them.

17. As far as the addendum to allotment letter Annexure R3 is concerned, clause 1 thereof reads as under:-

> *"That the said return shall be paid to you till the date of intimation towards offer of possession of the said unit for limited purpose for carrying out temporary fit-out in the said unit or upto 30 months, whichever is later."*

18. The perusal of this clause shows that above return was to be paid to the complainants till the date of intimation towards offer of possession of the said unit or upto 30 months period, which shows that the respondent fixed the time frame for completion of the project late by 30 months from its start and the submission on behalf of the respondent that the time was not the essence of the contract is devoid of force because it is mentioned in the allotment letter too ***that the completion of the construction was to be made within thirty months from the date of its start*** and the allotment letter is dated 20.12.2010. So, the plea of the complainants in this regard, that the possession was to be delivered within 30 months, cannot be brushed aside simply in view of the addendum in question. Further, if the addendum in supersession of the allotment is taken into

consideration, even then, the alleged possession of the unit in question was offered on 22.01.2018 after long period of seven years meaning thereby that construction was completed in seven years instead of 30 months, which in no manner could be termed to be reasonable. Further the perusal of the letter of alleged offer of possession dated 22.01.2018 Annexure A3 shows that the size of the office space was increased to 1007.35 sq. feet from 662.37 sq. feet making increase of 344.98 sq.ft i.e. about 52% of the allotted space. The promoter was required to adhere to the sanctioned plans and project specifications as per the provisions of Section 14 of the Act, relevant portion whereof has been mentioned herein below:-

> ***"14.*** *(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.*
>
> *(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—*
>
> *(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the*

case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

19. The perusal of Section 14 of the Act shows that the promoter has to develop and complete the project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent Authorities and he cannot make any additions or alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be which are agreed to be taken,

without previous consent of the allottee. However, the promoter may make such minor additions or alterations ***as may be required by the allottee***, or ***such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee***. Explanation attached to this proviso shows that for the purpose of this clause, "minor additions or alterations" excludes structural change including **an addition to the area** or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc. The promoter cannot and shall not make any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project **without the previous written consent of at least two-thirds of the allottees, other than the promoter**, who

have agreed to take apartments in such building. So, it emanates from the provisions of Section 14 of the Act that the promoter cannot make any changes (except minor changes), without the previous written consent of at least two-thirds of the allottees and the change in the area does not include in the minor change. Further Rule 8 of the Punjab Real Estate (Regulation and Development) Rules 2017 (hereinafter referred to as the Rules) deals with the agreement for sale etc and sub Section 3 thereof reads as under:-

> *"Rule8(3):- The promoter shall not make any additions and alterations beyond the extent of 5(five) percent in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot, or building as the case may be, without the previous written consent of the allottee."*

20. The perusal of the above provisions leaves no doubt in the matter that the promoter cannot make any additions and alterations beyond the extent of 5% in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment etc, without the previous written consent of the 2/3rd of allottees. As such, the conjoint reading of Section 14 of the Act and Rule 8 of Rules make it abundantly clear that no change more than 5% in the sanctioned plans etc

in size/area (which is not included in the minor additions or alterations) could be made by the promoter without prior written consent of at least two-thirds of the allottees. In the instant case, nothing of the sort is placed on record to show that the complainants were ever intimated about the change in size of the office space or their consent was ever sought. In these circumstances, the respondent promoter was not justified in increasing the area of the unit in question to the extent of more than 50%. The changes could be possible to some extent only and not to more than 50% of the actual size of the property in question. Rather, it shows that the respondent did not adhere to the sanctioned plans and specifications of the project and has arbitrarily and wrongly increased the area of the property unit in question, which the law does not permit. As such, the complainants could not be forced to take the possession of the office space with more than 50% increase in the area at a more price and that too after an unnecessary delay of more than 7 years from the date of allotment letter. In these circumstances, the fault lay with the respondent in not delivering the possession of the unit in question within the reasonable period and this act

on the part of the respondent squarely falls within purview of the provisions of Section 18 of the Act which runs as under:-

> *"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*
>
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
>
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*
>
> *(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which*

the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

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

21. In view of the above discussion, the respondent is liable to refund of the amount of Rs.31,78,020/- paid by the complainants to the respondent.

22. The next question which arises for consideration is as to whether the complainants 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 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

complainants/buyers. As such, to conclude with, I am of the view that the complainants are entitled the return of principal amount of Rs.31,78,020/- 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 complainants till realization. Accordingly, the respondent is directed to return the amount of Rs.31,78,020/- 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.

23. 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 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 complainants are held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.1,25,000/-.

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

1.	**Principal amount**	**Rs.31,78,020/-**
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/-**

25. The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. The amount of compensation paid on account of delay in delivery of possession to the complainants by the respondent in this case shall stand disposed off against the above amount. 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:18.05.2021

Balbir Singh

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