

**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 AdCNo.1546 of 2020

Date of Order: 20.05.2021

Ekroop Singh through His father Harjeet Singh, House No.1033,
Phase 8, Sahibzada Ajit Singh Nagar, (Mohali) Punjab.

Complainant

Versus

1. Emerging Valley Pvt Ltd through its MD, SCO 46-47, First Floor, Sector 9D Madhya Marg, Chandigarh.
2. Gurpreet Singh Sidhu, SCO 46-47, First Floor, Sector 9D Madhya Marg, Chandigarh.
3. **Ordered to be deleted vide order dated 08.07.2020).**
4. Harvinder Singh Behl Director Emerging Valley Pvt Ltd, SCO 46-47, First Floor, Sector 9D Madhya Marg, Chandigarh.
5. Kapil Kukkar, Agent Emerging Valley Pvt Ltd, SCO 46-47, First Floor, Sector 9D Madhya Marg, Chandigarh.
6. Bhupinder Singh alias Lovely, Agent Emerging Valley Pvt Ltd, SCO 46-47, First Floor, Sector 9D Madhya Marg, Chandigarh.
7. Emerging India Housing Corporation Pvt Ltd, through its MD, SCO 46-47, First Floor, Sector 9D Madhya Marg, Chandigarh.
8. PUDA or GMADA through CA, Phase 8, SAS Nagar, District Sahibzada Ajit Singh Nagar (Mohali), Punjab.

Respondents

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

Present: Shri Satnam Singh, Advocate, representative for the complainant.

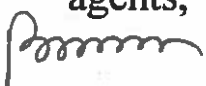
Name of respondent No.3 deleted vide order dated 07.08.2020

Remaining respondents ex-parte.

O R D E R

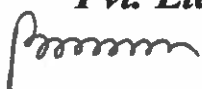


1. The brief facts of the instant complaint are that the complainant applied for a commercial booth measuring 250 square feet in the project namely **Emerging World**. The complainant paid Rs.9,07,500/- towards total sale price of Rs.13,50,000/- upto 02.06.2015. At the time of booking it was promised that all the approvals would be obtained and construction and development work would be completed within three years and booth would be single storey with its roof belonging to the owner of the booth and the company would also provide the buyback facilities. However, the respondents have not fulfilled any of the promises and cheated the complainant by means of unfair trade practices. Hence, this complaint.
2. Name of respondent No.3 was ordered to be deleted on the basis of application filed by the complainant vide order dated 07.08.2020, but, none appeared on behalf of the remaining respondents despite of their service to contest this complaint.
3. I have heard the learned representative for the complainant and have gone through the ex-parte evidence brought on record by the complainant.
4. The complainant has impleaded eight respondents consisting of the promoter company Emerging Valley, its directors, agents, emerging India Housing Corporation Pvt Ltd and



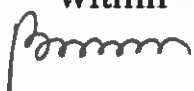
PUDA or GMADA. Name of respondent No.3 was deleted as mentioned in head-note of the complaint. The complainant has nowhere mentioned in the complaint as to which of the transactions were made by respondents No.2 and 4 to 8 with the complainant in regard to the commercial property in question. All the transactions were made by the complainant with respondent No.1 company and provisional allotment letter Annexure C1/2 was issued by said company. As such, the complaint against them is hereby dismissed. I proceed to determine and decide the complaint as regards respondent No.1 company being relevant party.

5. In this case, the project under reference is not registered with the RERA Authority, however, in view of the 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*, complaints against unregistered projects are maintainable before this Bench.
6. As the project was not complete on the date of commencement of the Act, which covers the ongoing projects, the provisions of the Act would be applicable in the facts of the case in hand in view of the law laid down by Bombay High Court in case *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 projects.

7. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. affidavit of Harjeet Singh father of complainant Ekroop Singh as Ex.PW1/A, copy of provisional allotment letter Ex.PW1/1, payment receipts Ex.PW1/2(colly), copy of order dated 18.07.2018 passed by the District Consumer Disputes Redressal, Forum, Chandigarh Ex.PW1/3 and copy of brochure Ex.PW1/4/5 and copy of order dated 20.08.2018 passed by the State Consumer Disputes Redressal Commission, Chandigarh Ex.PW1/5/5, which remained un rebutted and inspires confidence, it can be safely concluded that complainant was allotted commercial booth measuring 250 square feet in the project named **Emerging World** vide allotment letter dated 16.06.2014 Ex.PW1/1 and complainant paid an amount of Rs.9,07,500/- vide receipts Ex.PW1/2 (colly). It is also averred in the complaint that as assured at the time of booking, the possession after completion of developmental work was to be delivered within three years. This version of the complainant has



remained unchallenged on record as none on behalf of the respondent company chose to contest the complaint. In such a situation, the respondent is certainly at fault in not completing the project and not delivering the possession of property unit in question and the case is squarely covered within the mischief 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

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shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

8. In view of the above provisions of the Act, the respondent company was duty bound to offer the possession of the property in question within reasonable period. As such, on account of non-delivery of possession, the respondent company was liable to refund the amount of Rs.9,07,500/-.
9. The next question which arises for consideration, is as to whether the complainant is entitled to any interest on the amount paid to the respondent or not. The fact of the matter remains that the respondent company has been using the amount so paid by the complainant since the payments, as such, the respondent company is liable to refund the above said amount alongwith interest to the complainant because once the amount is deposited with the respondent and they were getting benefit of interest accrued upon said amount, they could not deny the similar benefit to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs. 9,07,500/- 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 dates on which the respective payments were made to the respondent company till realization.



10. 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 the claim by way of engaging a representative and further in attending the proceedings in this 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 from the fact that the complainant could not get possession of the property unit in question despite lapse of long period and have to pursue matter with the respondent since 2014 as such, I am of the considered view that the complainant are held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the extent of Rs.75,000/-.




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

1.	Refund of Principal amount	Rs. 9,07,500/-
2.	With Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above amount w.e.f. the dates on which the respective payments were made to the respondent No.1 till realization.
3.	On account of mental agony and litigation expenses	Rs.75,000/-

The respondent No.1 is directed to pay the above said amount to the complainant through his father within sixty days from the date of this order. In case, any amount has already been received by the complainant, from the respondent in this matter, on account of delay in delivery of possession, shall stand adjusted against the above said due amount. On recovery of the amount, Harjeet Singh, father of complainant, shall deposit the same in some nationalized bank under FDR in the name of complainant Ekroop Singh till the date of his majority. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:20.05.2021


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