

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No.ADC1559/2020
Dated of Decision: 20.05.2021

Ira Jain, House No.1010, Sector-8C, Chandigarh.

.....Complainant

Versus

M/S Bajwa Developers Ltd, through MD S. Jarnail Singh Bajwa, M/s Bajwa Developers Ltd, Sunny Business Centre, 5th Floor, New Sunny Enclave, Kharar, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.

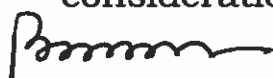
.....Respondent

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

Present: Shri Varun Luthra, Advocate, representative for the complainant
Shri Vipul Monga, Advocate, representative for the respondent

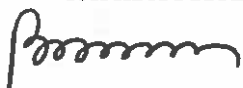
ORDER

1. Complainant Ira Jain filed this complaint against respondent M/S Bajwa Developers Ltd seeking refund of the amount paid by him alongwith interest, compensation and litigation expenses.
2. It was averred in the complaint that the complainant purchased plot No.1227, from one Ranjit Singh and a fresh agreement to sell was executed on 28.05.2011. Said plot was transferred in the name of the complainant vide receipt dated 27.05.2011. The total sale consideration of the plot in question was Rs.39,92,000/-

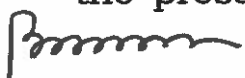


and the complainant paid an amount of Rs.30,01,100/-. However, the respondent did not mention any time limit to deliver possession of the plot to the complainant. The complainant visited the office of the complainant on 04.04.2012 when new plot No.978 was got mentioned on the above mentioned agreement, but, possession of neither of the plots was delivered and rather respondent sold the plot to someone else. After waiting for a long period of eight years, the complainant decided to withdraw from the project. Hence, this complaint.

3. In the reply, the respondent took the preliminary objections that the complaint was beyond limitation and, thus, not maintainable; that the complainant failed to pay the whole amount and due to misconduct of the investors like the complainant the project could never see the light of the day; that the project was complete and ready for possession, but, the complainant had not come forward to take possession and the complaint had been filed with mala-fide intention and therefore liable to be dismissed.
4. The violations/contraventions as alleged in the complaint were conveyed to the representative of the respondent, who denied the same and pleaded not guilty. The matter was then proceeded for further inquiry and opportunity was granted to both sides to produce additional documents



5. I have heard both the representatives for parties and have gone through the record on the file.
6. The argument advanced on behalf of the respondent was that buyer's agreement of the case in hand was executed between the parties prior to coming into operation of the Real Estate (Regulation and Development) Act 2016 (for short the Act) and the said Act being prospective in operation, would not apply for adjudicating the controversy between the parties of the case in hand. 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 on going 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.
7. Another argument on behalf of the respondent was that the present complaint was barred by limitation having



not been filed within three years from the date of execution of the agreement i.e. 28.05.2011 and as such was liable to be dismissed. However, this submission is also without merit because RERA is a special legislation with particular aim and object covering certain issues and violations relating to housing sector. By virtue of Section 29 of the Limitation Act, a period of limitation as assigned under the Limitation Act is not applicable on RERA which is special enactment; moreover the cause of action in this case is continuing because the project has not been completed. Therefore, the complaint of the complainant is not barred by limitation.

8. Another point agitated on behalf of the respondent was that the project was complete and ready for delivery of possession, but, despite possession having been offered, the complainant did not come forward to take the possession by making payment of the remaining amount for which he defaulted. However, this submission of the respondent is not based on any document such as, completion certificate or offer of possession letter ever issued to the complainant and this cannot sustain, because the mere assertion made in the pleadings without supported by any document cannot take the place of proof. Further, as far as the default in making payment of instalments by the complainant is concerned, as per version of the complainant, an amount of Rs.30,01,100/- had been paid and perusal of



agreement dated 28.05.2011 shows that the respondent acknowledged the receipt of Rs.30,01,100/-. As there was no development at the spot and even the plot was changed to 978 on 04.04.2012, the complainant was justified in stopping the rest of the payments.

9. Even perusal of the agreement to sell dated 28.05.2011 shows that no time limit for delivery of possession of the unit in question has been mentioned therein and in these circumstances, it was not expected that the complainant should wait for an indefinite period for delivery of possession. Now, the specimen proforma for agreement for sale has been prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017. The clause 5 of said agreement 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. 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

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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.

10. In the instant case, the complainants are not at all at fault and in these circumstances; the promoter was under obligation to provide possession of the flat at least within reasonable time as no period was mentioned in the agreement despite being obligatgory. 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 nest 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."

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11. Under this clause, the promoter is liable to refund the entire money paid by the allottees under any head whatsoever towards the purchase of the plot along with interest at the rate specified in the Rules within ninety days.

12. In view of above discussed facts and circumstances of the case, the fault on the part of the respondent in not delivering the possession of the plot in question within the reasonable period, thus, squarely falls within 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

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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."

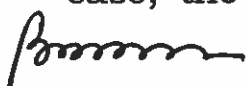
13. In view of the above discussion, the respondent is liable to refund of the amount of Rs.30,01,100/- paid by the complainant to the respondent.

14. 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 remains that the respondent has been using the amount so paid by the complainant 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

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complainant/buyers. As such, to conclude with, I am of the view that the complainant is entitled the return of principal amount of Rs.30,01,100/- 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.30,01,100/- 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 complainant till realization.

15. Since the complainant 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



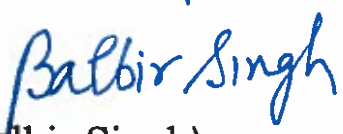
also be gauged in view of the prolonged delay and as such, I am of the considered view that the complainant is held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.1,25,000/-.

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

1.	Principal amount	Rs.30,01,100/-
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 complainant within sixty days from the date of this order. 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:20.05.2021


 (Balbir Singh)
 Adjudicating Officer
 Real Estate Regulatory Authority