

**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.1532 of 2020  
Date of Order: 21.05.2021**

1. Amit Gupta, #1191, Sector 15, Panchkula, Haryana.
2. Pooja Jain, House NO.465, Sector 8, Panchkula, Haryana.

Complainants

Versus

1. M/S Geetu Constructions Private Limited, SCO 219, Second Floor, Sector 37C, Chandigarh.
2. Amarjit Singh, H.No.86, T-4, Power Colony, Ward No.17, Roop Nagar, District Rupnagar, Punjab
3. Pardeep Kumar, House No.263, Rani Di Kothi, Opposite PWD Rest House, Sangrur, Punjab.

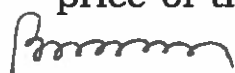
Respondents

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

Present: Ms. Manju Goyal, Advocate, representative for the complainants.  
Respondents ex-parte.

**O R D E R**

1. Complainants Amit Gupta and Pooja Jain filed this complaint against respondents M/s Geetu Constructions and others, for refund of a sum of Rs.27,25,000/- alongwith interest, compensation and litigation charges.
2. The brief facts of the case are that the complainants booked two plots, each measuring 125 square yards in the Project Geetu Constructions Pvt Ltd, Sector 113, Landran Chowk, Mohali and agreement to sell was executed on 03.03.2012. The complainant paid an amount of Rs.27,25,000/- out of Rs.37,50,000/- total price of the plots, but, till date possession had not been



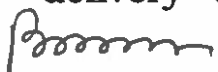
delivered to the complainants and there is no occupancy/completion certificate of the project. Hence, this complaint.

3. None appeared on behalf of the respondents despite service on 09.03.2020 and as such, were proceeded ex-parte.
4. I have heard the learned representative for the complainants and have gone through the ex-parte evidence brought on record by the complainants.
5. As far as respondents No.2 and 3 are concerned, though they have been impleaded in this complaint, but, the complainant has not mentioned in the complaint or proved during proceedings in the complaint as to in what capacity they have been impleaded in this complaint. In these circumstances, it would not be appropriate to pass any order against them in this complaint.
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 the ongoing projects.

7. On the basis of the pleadings of the complainants duly supported with documents placed on record i.e. affidavit of Amit Gupta, copy of brochure Annexure C/1, copy of the agreement to sell Annexure C/II, and copy of receipt Annexure C/III, which remains unrebutted and inspires confidence, it can be safely concluded that complainants booked two plots each measuring 125 square yards in the Project Geetu Constructions Pvt Ltd, Sector 113, Landran Chowk, Mohali and agreement to sell was executed on 03.03.2012. The complainant also paid an amount of Rs.27,25,000/- out of Rs.37,50,000/- total price of the plots. No date for delivery of possession had been mentioned in the agreement to sell, which shows that the respondent No.1 was not having intention to complete the project and to hand over the possession of the plots to the complainants. In these circumstances, some reasonable period should have been given for delivery of possession in the agreement to sell. The plots were booked in the year 2012 and the complaint was filed in the year 2020 i.e. after eight long years. As such, the complainants cannot be expected to wait for an indefinite period for delivery of possession. The respondent No.1 obtained a huge amount from the complainants, but, did not give any time frame for delivery of possession and even did not deliver the



possession within a period of eight years and this act on the part of the respondent No.1 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*

*Poojara*

*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."*

8. In view of the above provisions of the Act, the respondents were duty bound to refund the amount of Rs.27,25,000/- paid by the complainants.
9. The next question which arises for consideration is as to whether the complainants are entitled to any interest on the amount paid by them to the respondents or not. The fact of the matter remains that the respondents had been using the amount so paid by the complainants to them since the payments, as such, the respondents are liable to refund the above said amount alongwith interest to the complainants because once the amount is deposited with the respondents and they were getting benefit of interest accrued upon said amount, they could not deny the similar benefit to the complainants. As such, I am of the view that the complainants is entitled the return of principal amount of Rs. 27,25,000/- 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 respondents till realization.

10. Since the complainants 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 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 prolonged delay for delivery of possession and as such, I am of the considered view that the complainants is held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the extent of Rs.50,000/-.

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



1.	Refund of Principal amount	Rs. 27,25,000/-
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 respondents till realization.
3.	On account of mental agony and litigation expenses	Rs.50,000/-

The respondent No.1 is directed to pay the above said amount to the complainants within sixty days from the date of this order. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:21.05.2021

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