

**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.0013 of 2021  
Date of Order: 25.05.2021**

Bharat Malhotra, E-1381, Sainik Colony, Faridabad, Haryana.

Complainant

Versus

M/S Citi Centre Developers VIP Road, Zirakpur, Sahibzada Ajit  
Singh Nagar (Mohali). Punjab.

Respondent

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

Present: Shri Luv Malhotra, Advocate, representative for the  
complainant.  
Respondent ex-parte.

**O R D E R**

1. Complainant Bharat Malhotra booked unit No.554 in block D and E, Fifth floor, in the project namely **Chandigarh Citi Centre**, VIP Road, Zirakpur to be developed by the respondent for a total sale consideration of Rs.18,22,500/- and paid an amount of Rs.18,66,530/-. Office space purchase agreement was executed between the parties on 05.05.2016 and per clause 4(a)(i) thereof, possession of the said space was to be delivered on or before 24 months from the date of the agreement.



However, the project was not even near completion.  
Hence, this complaint.

2. None appeared on behalf of the respondent despite due service on 02.03.2021 and as such, was proceeded ex-parte.
3. I have heard the learned representative for the complainant and have gone through the ex-parte evidence brought on record by the complainants.
4. 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.
5. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. affidavit of complainant Bharat Malhotra, copy of space purchase agreement Annexure C1, copy of receipts Annexure C2,



---

copy of the offer of paper possession Annexure C3 and copy of the legal notice Annexure C4, which remains un rebutted and inspires confidence, it can be safely concluded that complainant booked one office space No.554, in block D and E, Fifth Floor, in the project named **Chandigarh Citi Centre**, VIP: Road, Zirakpur and paid a sum of Rs.18,66,530/- towards the sale consideration of Rs.18,22,500/-. As per clause 4(a)(i) of the office space purchase agreement dated 05.05.2016 Annexure C1, the possession of the said unit was to be delivered to the complainant within 24 months from the date of execution of said document i.e. by 04.05.2018, but, possession has not yet been delivered. Even from the copy of the offer letter Annexure C3 dated 15.07.2019, it is clear that the unit in question had been kept in pre final stage and was not complete in the year 2019, possession of which was to be delivered by 04.05.2018. As such the complainant cannot be expected to wait for an indefinite period for delivery of possession. The respondent obtained a huge amount from the complainant, but, did not deliver the possession within the stipulated period and this act on the part of the respondent 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.*

*Prasanna*

*(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."*

6. In view of the above provisions of the Act, the respondents were duty bound to refund the amount of Rs.18,66,530/- paid by the complainants.
7. 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 had been using the amount so paid by the complainant to them since the payments, 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 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 complainants is entitled the return of principal amount of Rs. 18,66,530/- 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

*B...*

the dates on which the respective payments were made to the respondents till realization.

8. Since the complainant 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 delay for delivery of possession 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 extent of Rs.50,000/-.

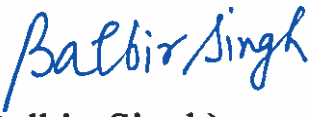


9. In view of above discussions and observations, the complaint stands accepted to the following extent and heads:-

1.	Refund of Principal amount	Rs. 18,66,530/-
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 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 the parties under rules and file be consigned to record room.

Dated:25.05.2021

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