

**Before Sh. Balbir Singh. Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot-3 Block-B,
First Floor, Madhya Marg, Sector-18-C, Chandigarh- 160018**

**Complaint No. ADC 1662 of 2020 UR
Date of Order: 26.05.2021**

Harpreet Singh Bhatia, resident of main Road, Chandeni Bhata,
Dalli Rajhara, District Durg, Chhattisgarh.

Complainant

Versus

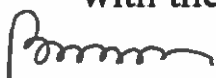
Director, Regent Land Holdings Pvt. Ltd., Adjacent Hotel
Radisson Blu, Airport Road, Amritsar, Punjab.

Respondent

Present Mr. Hemen Aggarwal, Advocate, representative for
the complainant
Mr. Gunjan Rishi, Advocate, representative for the
respondent.

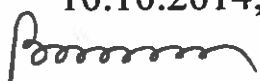
Order

1. This complaint was filed by Mr. Harpreet Singh Bhatia under Section 31 read with Section 70 of Real Estate Regulation & Development Act, 2016 (**hereinafter referred as The Act**) against Director, Regent Land Holdings Pvt. Ltd for seeking refund of amount of Rs.15,87,586/- along with interest and compensation.
2. In brief the case of the complainant was that, complainant had booked a 4 BHK Floor/Flat in Blessings City, Amritsar with the respondent; that complainant had paid total sum of



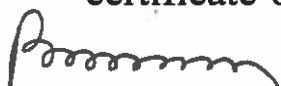
Rs.15,87,586/-; that the complainant on raising demand on 23.9.2011 by the respondent paid a sum of Rs.4,40,000/- on 24.12.2011; that the complainant had been allotted Unit No.C-7, 4 BHK, 300 Ebony, Blessings City, Airport Road, Amritsar having area of 1954 Sq. Ft. on 28.6.2012; The possession of the unit was to be given by the respondent within period of three years from the date of 28.6.2012 but despite lapse of more than seven years neither any construction was raised not any amount was returned which was paid by the complainant by the company.

3. The complaint was contested by the respondent by taking preliminary objections that complaint was baseless, vexatious and was not tenable; filed with malafide intention to make illegal enrichment; that the project was established in 2007 and the same was approved by the competent authority long back on 12.1.2015; that the complaint was liable to be dismissed on the ground of concealment and suppression of material facts; that the complaint failed to pay the installment as per schedule described in the agreement dated 28.6.2012 and even after repeated demand letters, complainant never came forward to deposit the due amount; that on account of non payment of due installments the allotment was cancelled on 10.10.2014; that project was not ongoing project in terms



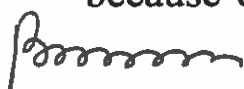
of Punjab Real Estate (Regulation and Development) Rules, 2017; that the complainant admittedly filed the complaint after a period of 8 years. On merits, respondent admitted receiving of payment of Rs.15,87,586/- being matter of record. Respondent prayed for dismissal of complaint with exemplary costs.

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 the parties and have gone through the record on the file.
6. The first objection taken on behalf of the respondent was that the present case related to the period prior to coming into force of the Act and the project in question had already been completed in the year 2015 as the same was regularised by the competent authority before coming into operation of the Act. Therefore, the present complaint is not maintainable. The argument raised on behalf of the respondent is, however, devoid of merit inasmuch as the possession was to be delivered within a period three years whereas no offer of possession was made by the respondent nor any document has been placed on record completion certificate of the competent authority. The result therefore



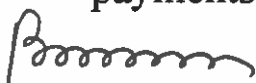
is that the present project has to be treated as ongoing project, when the Act came into operation and therefore provisions of the Act would be applicable in the case in hand. In support of this, reliance may be placed upon the law laid down by the Hon'ble Bombay High Court in case titled as *Neel Kamal 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 got registered with RERA.

So far as the issuance of regularisation certificate as per Annexure R2 by the competent authority is concerned, the said certificate cannot be construed as completion certificate of the project rather the said certificate indicates that the respondent-builder had not obtained the necessary approval of the competent authority for development of the project before entering into agreement with the prospective buyers including the complainant. Therefore, issuance of regularisation certificate in respect of the said project would not place the case of the respondent at better footing, because only the completion of the project before coming



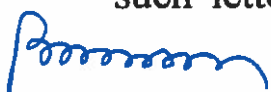
into operation of the Act brings the case out of applicability of the Act.

7. The other objection taken on behalf of the respondent was that the limitation for filing of the present complaint was three years from the date of transaction, which took place in the year 2011 and the instant complaint having been filed in the year 2020 was hopeless barred by time. 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 yet been completed. Therefore, the complaint of the complainant is not barred by limitation.
8. The main objection on behalf of the respondent was that the complainant defaulted in making the payments as per demands raised by the respondent from time to time vide letters dated 15.4.2013, 15.5.2013, 26.9.2013 (Annexure R-3-Colly) and 14.1.2014 (Annexure R-4). Further argument was that on failure of the complainant in making the payments of the installments as per demands in accordance



with the Clause 10 of the allotment letter dated 28.6.2012 (Annexure C-1), the respondent was left with no option but to cancel the allotment of the complainant vide letter dated 10.10.214 (Annexure R/5). The complainant never turned up to collect the refund of the amount deposited after usual deduction. Learned counsel for the respondent has argued that the fault in the case in hand was directly attributable to the complainant and therefore, the complainant is not entitled to refund as has been raised in the complaint.

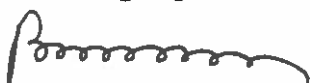
9. On the other hand, argument on behalf of the complainant was that the complainant had paid total amount of Rs.15,87,586/- to the respondent upto 16.11.2012 and the possession of the property was to be delivered within three years from the date of the allotment as per Clause 17 of the allotment letter dated 28.6.2012 which was essence of the contract but the respondent had never offered possession by the said date, as such respondent could not raise any further demand from the complainant. Argument further was that the respondent had created documents i.e. letters dated 15.4.2013, 15.5.2013, 26.9.2013 (Annexure R-3-Colly) and 14.1.2014 (Annexure R-4) and so also the letter dated 10.10.214 (Annexure R/5) alleging cancellation of allotment in order to escape from its liability because no such letter had been received by the complainant nor for



that matter, the respondent appended any receipt of the postal authorities for having sent those letters. The learned counsel summed up his arguments that the respondent builder was guilty of unfair trade practice by entering into agreement with the complainant and other buyers without even first obtaining the necessary approvals for the project from the competent authorities and then defaulted in completion of the project as no completion/occupancy certificate had been placed on record to show that the project was complete and in such a situation, the complainant was certainly entitled to refund because of the default of the respondent in fulfilling his obligation of completion of the project within the stipulated period.

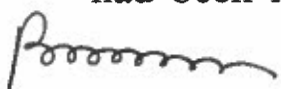
10. The admitted facts in this case are that complainant booked a 4BHK flat in the project named **Blessing City, Amritsar**, to be developed by the respondent and he was allotted Unit No.C-7 at the price of Rs.44,00,000/- and the complainant paid an amount of Rs.15,87,586/-. As per terms and conditions of the allotment, the possession of the unit in question was to be delivered within three years from the date of booking/allotment. It is also admitted that the possession could not be delivered to the complainant so far.

11. As already noticed the respondent itself has admitted that project was unapproved and regularisation of the same had



been made subsequently by the competent authority vide letter dated 12.01.2015 (Annexure R/2) but the respondent-builder had already entered into buyer agreement with the complainant and other buyers in the year 2011-12 and obtained advance amount from them. As project of the case in hand was certainly not completed before coming into operation of the Act. It was on-going project and thus respondent-builder was duty bound to get the project registered with the Real Estate Regulatory Authority, Punjab in compliance with the provisions of Section 3 of the Act but he failed to do so. It may be that besides placing on record regularization certificate dated 12.01.2015 (Annexure R/2) issued by the competent authority, respondent has also placed on record the photographs (Annexure R-6 Colly) in support of his claim that the project was complete and capable of delivering the possession, but, as already noticed, the project can only be taken to be completed when the completion/occupation certificate in respect of the same was issued by the competent authority and no such document has been placed on record.

12. Now, coming to the question regarding issuance of demand notices by the respondent-builder, we find that no effort had been made by the respondent to place on record the



postal receipts in respect of issuance of the said demand notices and as per Clause 15 of the allotment letter dated 28.6.2012 any correspondence was required to be sent through registered post/speed post/courier. The stand of the complainant, however, is that no such demand notice was issued and the further argument in rebuttal was that as the project itself was not progressing being unauthorized there was no question of issuance of any demand notice by the respondent. The argument advanced on behalf of the complainant is not wholly without merit. In such a situation the respondent as per stipulation in the allotment letter was duty bound to send the demand notices only through registered post/speed post/courier but no record in this behalf in the shape of receipts is forthcoming, therefore, taking into account the entire facts and circumstances of the case in hand the demand notices do not inspire much confidence.

13. Now coming to the question as to whether the respondent had issued cancellation letter dated 10.10.2014 (Annexure R/5) because of the fault of the complainant for not making payments as per demand notices. As has already been noticed the demand notices in the case in hand, are not worthy of credence and on the same analogy cancellation letter also does not inspire much confidence because the



same has also not been sent through authorised mode of communication i.e. registered post/speed post/courier. No receipt of the postal authority has been placed on record. Surprisingly, if such a cancellation letter was to be issued, the same was required to be accompanied by the cheque of the amount which was required to be refunded to the complainant as per Clause 12 of the allotment letter and even according to the own case of the respondent-builder, no such tender in the shape of cheque/demand draft has been sent, therefore, the letter of cancellation has also to be discarded.

14. Perusal of the allotment letter Annexure-C1 shows that as per clause 17 thereof, the possession of the property unit was to be delivered to the complainant within three years from the date of booking/allotment. The application for booking is dated 28.06.2012 as has been referred by the respondent in the allotment letter and taking the three years from that date, the possession was required to be delivered to the complainant in June 2015. 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 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.

15. 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 within the stipulated period. 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 next 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.”

16. 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.

17. 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 stipulated and 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 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."

18. In view of the above discussion, the respondent is liable to refund of the amount of Rs.15,87,586/- paid by the complainant to the respondent.

19. 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 complainant/buyers. As such, to conclude with, I am of the view that the complainant is entitled the return of principal amount of Rs.15,87,586/- 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.15,87,586/- 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.

20. 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/-.

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

1.	Principal amount	Rs.15,87,586/-
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: 26.05.2021

Balbir Singh
(Balbir Singh)
Adjudicating Officer
RERA, Punjab