

**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.1539 of 2020
Date of Order: 04.06.2021**

1. Ramesh Chand
2. Rajnish Handa
3. Shilpa Handa, all residents of House No.18, Green Enclave, Barewal, District Ludhiana, State Punjab, Pin Code 141012.

Complainant

Versus

1. M/S IREO Waterfront Pvt Ltd through its Directors, Dhanraj Chambers, Ist Floor Satbari, New Delhi, District North Delhi, Delhi Pin Code 110047.

Respondent

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

Present: Mr.Vaibhav Gupta, Advocate, representative for the complainants.
Respondent ex-parte.

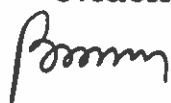
O R D E R

1. The brief facts of the instant complaint are that the complainants Ramesh Chand, Rajnish Handa and Shilpa Handa jointly bought a residential Villa Type D-1 bearing Villa No.65 measuring with 2nd floor constructed without basement having built up area of 5800 Sq.ft built on a non-standard plot of land measuring 1015 sq. yards in the project namely IREO Waterfront, Pocket 3, Sidhwan Canal Road, opp. Ferozepur Road, Village Devatwal, Ludhiana. The total sale consideration of the said residential villa was Rs.3,97,59,000/-. The complainants obtained a housing loan of Rs.3,18,00,000/- from the Housing Development

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Finance Corporation Limited vide tripartite Agreement dated 19.02.2016. An allotment letter was issued on 2.11.2015 and the buyers' agreement was executed on 16.2.2016. The total amount of Rs.2,81,47,171.65 has been paid by the complainants in installments upto 18.12.2017 to the respondent-developer. As per buyers' agreement dated 16.2.2016 the respondent developer was to submit notice of completion within a period of 18 months from the date of execution of agreement. The agreement further provides for additional grace period of 180 days on the expiry of the said period of 18 months. That despite complainant paying the price of the said residential villa, respondent failed to offer and deliver possession of the said villa to the complainants till date as they did not have completion certificate from the concerned authorities. In these circumstances, the complainants were not expected to wait for an indefinite period and as such was not interested to continue with the said project. Hence, this complaint.

2. None appeared on behalf of the respondent despite of service for 20.11.2020 and as such was proceeded against ex-parte on that date.
3. I have heard the learned representative for the complainants and have gone through the ex-parte evidence brought on record by the complainants.



4. The representative for complainants addressed arguments on the basis of the submissions made in his pleadings.
5. I have anxiously considered the contentions of the learned representatives for the complainants.
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 complainants duly supported with documents placed on record i.e. affidavits of the complainants (Annexure C1) of application dated 31.10.2015 (Annexure C2), Allotment letter dated 2.11.2015 (Annexure C3), Buyers' agreement dated 16.2.2016 (Annexure C4), Tripartite agreement dated 19.2.2016 (Annexure C5), E-mails (Annexure C6) and bank statement (Annexure C7) and evidence tendered on behalf of the complainants by way of affidavits dated 16.12.2020 along with latest photographs which remained unrebutted and inspires

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confidence, it can be safely concluded that complainants Ramesh Chand, Rajnish Handa and Shilpa Handa jointly bought a residential Villa Type D-1 bearing Villa No.65 measuring with 2nd floor constructed without basement having built up area of 5800 Sq.ft built on a non-standard plot of land measuring 1015 sq. yards in the project namely IREO Waterfront, Pocket 3, Sidhwan Canal Road, opp. Ferozepur Road, Village Devatwal, Ludhiana. For a total sale consideration of the said residential villa was Rs.3,97,59,000/- and amount of Rs.2,81,47,171.65 had been paid by them in installments upto 18.12.2017 to the respondent. The complainants obtained home loan of Rs.3,18,00,000/- from the Housing Development Finance Corporation Limited in this case as is evident from tripartite agreement dated 19.2.2016 (Annexure C5). An allotment letter was issued on 2.11.2015 and the buyers' agreement was executed on 16.2.2016. As per Clause 11.3 of the buyers' agreement dated 16.2.2016 the respondent developer was to submit notice of completion within a period of 18 months from the date of execution of agreement with the grace period of 180 days on the expiry of the said 18 months. But, the respondent promoter failed to deliver possession to the complainants. 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

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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/plot 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 plot 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.

8. 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 property unit 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*

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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/plot 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/plot."

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

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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."

10. In view of the above provisions of the Act, the respondent 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 was liable to refund the amount of Rs.2,81,47,171.65 paid by the complainant.
11. The next question which arises for consideration, is as to whether the complainant is entitled to any interest on the amount paid to the respondents/promoters or not. The fact of the matter remains that the respondents/promoters had been using the amount so paid by the complainant since the payments, as such, they are liable to refund the above said amount alongwith interest to the legal heir of complainant because once the amount is deposited with the respondents/promoters and they were getting benefit of interest accrued upon said

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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. 2,81,47,171.65 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.

12. 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 their 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 Kanwal Khurana during his life time and after his death his legal heir Mrs. Anu Khurana could not get possession of the property unit in question

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despite lapse of long period and have to pursue matter with the respondent 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.75,000/-.

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

1.	Refund of Principal amount	Rs. 2,81,47,171.65 /-
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 date(s) of payment (s) till realization.
3.	On account of mental agony and litigation expenses	Rs.75,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. In this case the complainants had obtained home loan from Housing Development Finance Corporation Limited, which shall be first charge on the above said amount. The amount if already paid by the respondent to the complainant on account of compensation for delay in delivery of possession shall be set off against above said amount. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:04.06.2021

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