

**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.ADC1714/2020
Dated of Decision: 21.06.2021

Anand Parkash Jain son of Shri Faqir Chand Jain, resident of House No.G-9,
Hauz Khas, New Delhi.

.....Complainant

Versus

Greater Mohali Area Development Authority, Sector 62, Sahibzada Ajit
Singh Nagar (Mohali), Punjab.

.....Respondent

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

Present: Shri Vishal Aggarwal, Advocate, representative for the complainant
Shri Bhupinder Singh, Advocate, representative for respondent.

ORDER

1. Mr. Anand Parkash Jain filed this complaint against Greater Mohali Area Development Authority, SAS Nagar under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the RERA Act") seeking refund, interest and compensation etc. As per the case of the complainant, the Greater Mohali Area Development Authority invited applications for allotment of 753 residential plots of different sizes at IT City Mohali and issued brochure (Annexure C1); that in the brochure it was stipulated that husband and wife could apply separately, however, only one plot would be allotted of their choice in case both were successful and they have to surrender other one before issuance of letter of allotment and in that case complete earnest money deposited by either of them would be refunded without any deduction; that complainant and his wife Mrs. Sudha Jain

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applied separately for plot measuring 500 Sq. yards in the said scheme and deposited Rs.12,51,000/- alongwith each application as earnest money on 6.5.2018 (Annexure C2); that the complainant and his wife Mrs. Sudha Jain both were declared successful in the draw of lot held on 14.06.2018; that complainant having come to know about the same surrendered the plot as per terms and conditions of the brochure vide letter dated 3.7.2018 which was received in the respondent office vide no.25150 on 5.7.2018 before issuance of letter of intent which was issued on 7.8.2018 by the respondent; that complaint clearly stated in the letter dated 3.7.2018 that the he and his wife both had been held successful in draw of lots and since only one plot could be allotted, the complainant surrendered his plot and requested for refund of entire earnest money; that the complainant sent reminder time and again for refunding the earnest money vide letters dated 1.9.2018, 5.10.2018 and 23.10.2018 (Annexures C5-colly); that the complainant received letter dated 16.8.2018 whereby at the rate of 1% out of total price of the plot i.e. Rs. 1,25,00,000/- on account of having surrendered the plot, Rs.1,25,000/- was forfeited from the earnest money of Rs.12,50,000/- and remaining Rs.11,25,000/- was refunded to the complainant, which was against the terms and conditions of the brochure; that the complainant wrote letter dated 16.11.2018 (Annexure C6) to the respondent for refund of Rs.,1,25,000/- which was wrongly deducted but to no avail. Hence the present complaint.

2. Upon notice respondent appeared and filed written reply raising the preliminary objections to the effect that the present complaint was not maintainable as the Bench of Adjudicating Officer could only grant compensation in view of judgment passed by the Hon'ble Punjab and Haryana High Court in CWP No.38144 of 2018 titled Experion Developers Pvt. Ltd. Vs. State of Haryana and other and CWP No.8548

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of 2020-Janta Land Promoters Private Limited Vs. Union of India and

did not have jurisdiction to entertain and try this complaint as in this case complaint refund and interest had also been sought; that there was no violation of Section 18 of the Act as there was no agreement for sale, no letter of intent or letter of allotment in existence at the time of filing of the complaint; that the project was not registered with the RERA and it was specifically clarified and mentioned at page 3 of brochure that partial completion of the area in which the plots were being offered had already been granted vide letter dated 28.4.2017; that the complainant did not fall within the definition of allottee; that there was remedy of appeal under the provisions of Punjab Regional and Town Planning and Development Act, 1995; that there was an arbitration clause to settle the dispute in the letter of intent and the matter was required to be referred to the Arbitrator for adjudication, under the provisions of Arbitration and Conciliation Act, 1996 and thus the present complaint was not maintainable. On merits it was stated that the provisions of the RERA Act had been made applicable prospectively i.e. w.e.f. 1.5.2016 and 1.5.2017 and no provision of the RERA Act had been made applicable retrospectively; that a part of project in question had been completed prior to coming into force of the provisions of the Act and the partial completion certificate had already been issued on 28.4.2017 (Annexure R1) that the complaint was not maintainable in relation to the unregistered projects with the RERA; that the order dated 24.7.2019 passed by the Hon'ble RERA, Punjab Appellate Tribunal in appeal No.49 of 2018 titled Silver City (Main) Resident Welfare Association Vs. State of Punjab and others was pending adjudication before the Hon'ble Punjab and Haryana High Court and as such proceedings in the present complaint were liable to be dropped; that the State of Punjab enacted the Punjab Regional and Town

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Planning and Development Act, 1995 with intent to develop the land in a planned manner in the State of Punjab and Section 43 of the Act empowered the authority to frame schemes for development of land owned by it or transferred to it by the State Government. Under the provisions of the above Act the GMADA had framed scheme namely IT City for allotment of 753 residential plots of different sizes; that the terms and conditions of the allotment were detailed in the brochure; that the complainant after going through the terms and conditions in the brochure applied for plot measuring 500 Sq. yard; that the draw of lots for allotment of the plots to the applicants was held on 14.6.2018 and the complainant was successful; that the complainant submitted a request on 3.7.2018 after draw of lots to surrender the plot and refund of earnest money, which was considered by the respondent and Rs.11,25,000/- was ordered to be refunded vide letter dated 16.8.2018 (Annexure C3); that thereafter complainant vide his letter made a request for refund of balance amount of Rs.1,25,000/- which was considered by the respondent and the complainant was held entitled to refund of Rs.1,25,000/- as his case was covered under the Husband and wife category, however, the file of the complainant remained got misplaced and tagged with other file; that on receiving notice of the present complaint, the file of the complainant was traced and an amount of Rs.1,25,000/- was refunded to the complainant and as such the cause of action for present complaint did not survive and was liable to be dismissed.

3. Complainant also filed rejoinder controverting the allegations of the written reply filed by the respondent and reiterating the averments of the complaint.
4. The violations and contraventions 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 enquiry.



5. That respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings as summarized above and the elaboration there of shall be made in the discussion.
6. The first argument raised on behalf of the respondent that in view of the decision of the Hon'ble Punjab and Haryana High Court in **CWP No.38144 of 2018 titled Experion Developers Pvt. Ltd. Vs. State of Haryana and other** and **Janta Land Promoters Private Limited Vs. Union of India,** **CWP No.8548 of 2020** this Bench had jurisdiction to deal with compensation part only, while the question of refund and interest could only be taken up before the Authority under the Act.
7. The argument does not carry much weight because the decision in **Janta Land Promoters Private Limited Vs. Union of India, (supra)** is based upon the decision of Hon'ble High Court of Punjab and Haryana in **CWP No.38144 of 2018 titled Experion Developers Pvt. Ltd. Vs. State of Haryana and other** and connected appeals under Haryana RERA and in the appeal against the said decision, the Hon'ble Supreme Court stayed the operation of decision of Hon'ble Punjab and Haryana High Court in relation of Haryana RERA. On the basis of the stay order of Hon'ble Apex Court, ld. Authority of RERA Punjab issued circular No.RERA/PB/LEGAL/24 dated 05.03.2021 relevant part of which runs as under:-

“(i) Complaints falling under Section 18(1) of the Act, where the claim is only for return of the amount paid by the allottee and interest provided for in this Section shall be dealt with by the Authority;

(ii) All cases where the claim is for the return of the amount deposited by the allottee, interest thereon as mentioned at Sr. No.1 above and in addition, compensation (including payment of interest as compensation will be dealt with by the Adjudicating Officer;

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(iii) All complaints falling under the proviso of Section 18(1) of the Act i.e. where the allottee does not intend to withdraw from the project, but, seeks interest for the period of delay in delivery of possession will continue to be heard by the Authority.

The above will apply with immediate effect to all pending complaints and to those to be received in future. In case of pending complaints, the matter will be transferred to the appropriate forum as indicated above, whenever the complaint is taken up for hearing. The matter will be reviewed once the decision of the Supreme Court of India in SLP No.13005 of 2020 is received.”

8. In this view of the matter, the cases of refund, interest and compensation under the Act are maintainable before this Bench.
9. The next point raised on behalf of the respondent was that the project had already complete and was not an on going project at the time of coming into force of the Act and therefore, the present complaint was not maintainable.
10. The argument, however, lacks merit inasmuch as according to own showing of the respondent only partial completion certificate had been issued and the project of the case in hand therefore cannot be said to be complete and is to be treated as on going project and therefore, complaint of the case in hand would certainly be maintainable. On this point, reliance may 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 India and others** bearing Writ Petition No.2737 of 2017 decided on 6.12.2017.
11. The other objection taken on behalf of the respondent was that the project in the case in hand was not registered, therefore, the present complaint was not maintainable. The argument, however, is without merit inasmuch as

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despite the project in question being unregistered, the present complaint before this Bench is maintainable in view of the decision dated 24.07.2019 of Hon'ble Real Estate Appellate Tribunal, Punjab in complaint titled M/s Silver City Construction Ltd. Vs. State of Punjab and others, Appeal No.49 of 2018 in which it was held as under:-

“We frame the following question of law that falls for our consideration:-

Whether Real Estate Regulatory Authority, Punjab under sub section 1 of Section 20 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act of 2016 for brevity) has jurisdiction to hear and decide the complaints in relation to the projects which have not been registered by the promoters thereof, as required by Section 3 of Act of 2016?

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The upshot of the above discussion is that the question of law framed by us above will have to be answered in the affirmative. We accordingly hold that Real Estate Regulatory Authority, Punjab has jurisdiction to hear and decide the complaints in relation to the projects which have not been registered by the promoters thereof as required by Section 3 of the Real Estate (Regulation and Development) Act, 2016.

The argument is accordingly repelled.

12. The representative of the respondent raised the objection that there was an arbitration contained in letter of intent according to which, the dispute between the parties was to be referred to the sole arbitrator and this Bench had no jurisdiction to adjudicate the controversy between the parties. The further argument on behalf of the respondent was that the complainant could approach the concerned authorities under the Punjab Regional and Town



Planning and Development Act, 1995 for her grievance if any and this Bench had no jurisdiction to adjudicate the controversy between the parties. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act, which reads as under:-

“79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

88. The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.

“89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

13. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, the remedy available to the complainant under the Act still subsists as it is in addition to remedy available before in any other forums. The argument is accordingly repelled.
14. The next point raised by the representative for the respondent was that the complainant did not fall within the definition of allottee as per provisions of Section 2(d) of the Act and as such she was not having any locus standi to institute the instance complaint. However, this argument does not hold much water as the instant complaint had been filed under Section 31(1) any aggrieved person may file a complaint with the Authority or the

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adjudicating officer as the case may be for any violation or contravention of the provisions of this Act or the Rules and regulations made there under against any promoter, allottee or real estate agent as the case may be. Further, as per Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, any aggrieved person may file a complaint with the adjudicating officer and the word "any" has been deliberately employed therein. It is nowhere mandated by under the Act or the above Rules that only an allottee can approach the Authority or the Adjudicating Officer. As such the complainant has got locus standi to file the instant complaint.

15. The argument on behalf of the complainant was that both complainant as well as his wife applied for allotment of plot measuring 500 Sq.yard in IT City Mohali along with earnest money of Rs.12,50,000/- and both were declared successful in the draw of lots held on 14.6.2018. Further argument was that as per terms and conditions of brochure husband and wife can apply separately, however, only one plot would be allotted of their choice in case both were successful and they would have to surrender other one before issuance of letter of allotment and in that case complete earnest money deposited by either of them would be refunded without any deduction but the respondent wrongly deducted the amount @ 1% i.e. Rs.1,25,000/- of the total costs of the plot and refunded balance earnest money to the tune of Rs.11,25,000/-. Further argument was that the deduction of the amount of Rs.1,25,000/- by the respondent was in violation of the terms and conditions stipulated in the brochure and therefore would tantamount to illegal and the complainant was entitled to refund of Rs.1,25,000/- alongwith interest from the date of said deduction till its realization.



16. On the other hand argument on behalf of the respondent was that though on the application of the complainant Anand Parkash Jain for surrender and refund from the earnest money Rs.1,25,000/- @ 1% of the total costs of plot was deducted but balance amount of Rs.11,25,000/- was refunded. However, later on it was realized that it was the case of husband and wife and one is seeking refund as both had been declared successful and as per terms and conditions of the brochure deduction of 1% of the total costs of plot was not to be made and therefore amount Rs.1,25,000/- was allowed to refunded vide order dated 18.11.2020 which had been received by the complainant. Further argument was that delay on the part of the respondent in refunding the deducted amount was due to the fact that the file of the complainant was got misplaced and after tracing it the needful was done and the refund was allowed, therefore, the complainant was not entitled to any further amount by way of interest.
17. It will not out of place to mention here that the complainant has conceded in the course of arguments that after filing of the present complaint, as per refund order dated 18.11.2020 the complainant already received the amount of Rs.1,25,000/- and therefore claim of the complainant was now only for seeking interest on the delayed payment of amount of Rs.1,25,000/- which had been wrongly deducted.
18. Therefore the controversy is now left only to the extent of claim of interest on illegal deduction of amount of Rs.1,25,000/- from the earnest money. The complainant as well as his wife applied for allotment of plot measuring 500 Sq.yard in IT City Mohali along with earnest money of Rs.12,50,000/- and both were declared successful in the draw of lots held on 14.6.2018 and the complainant applied for refund the entire earnest while surrendering the plot vide application dated 3.7.2018. As per terms

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and conditions of brochure, the complainant was entitled to entire refund of earnest money. Respondent vide order dated 16.8.2018 ordered to refund Rs.11,25,000/- after deducting 1% total costs of the plot i.e. Rs.1,25,000/-. The complainant wrote letter dated 16.11.2018 for refund of Rs.1,25,000/- alleging that illegally amount of Rs.1,25,000/- was deducted in violation of terms and conditions stipulated in the brochure. However, respondent allowed refund of Rs.1,25,000/- as per order dated 18.11.2020 passed by the respondent and after filing of the present complaint. Action of the respondent in deducting the amount of Rs.1,25,000/- from the earnest money to which complainant was entitled by way of refund in accordance with terms and conditions of the brochure as both husband and wife were declared successful in the draw of lot and retaining the said amount from 16.8.2018 to 20.11.2020 would tantamount illegality without any justification. As has already been noticed Rs.1,25,000/- wrongly deducted by the respondent has been refunded to the complainant but nonetheless Rs.1,25,000/- had been illegally retained by the respondent from 16.8.2018 to 20.11.2020.

19. The next question which arises for consideration is as to whether the complainant is entitled to any interest on the amount which was illegally retained by the respondent or not. The fact remains that the respondent had been using the amount so paid by the complainant since its payment for pecuniary gains, as such, the complainant is certainly entitled to interest by way of compensation for wrongful retention of the amount by respondent. As such, I am of the view that the complainant is entitled to interest at the 9% on the amount of Rs.1,25,000/- with effect from 16.8.2018 to 20.11.2020.



21. So far as the question of compensation sought by the complainant is concerned, I am of the considered opinion that complaint is not entitled to separate compensation as the interest awarded to the complainant in the case in hand is in the shape of compensation only.

23. In view of above discussions and observations, the complaint is accepted against respondent to the following extent and heads:-

1.	Simple interest	At the rate of 9% per annum on the amount of Rs.1,25,000/- with effect from 16.8.2018 to 20.11.2020.
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The respondents are directed to pay the above said amount to the complainant within sixty days from the date of this order. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:21.06.2021

Balbir Singh

(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority