

**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.ADC1715/2020
Dated of Decision: 21.06.2021

Shipra Jain wife of Abhishek 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 respondents

ORDER

- Ms. Shipra Jain filed this complaint against Greater Mohali Area Development Authority, SAS Nagar alleging violation of Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the 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 at IT City Mohali and issued brochure (Annexure C1); that applicant applied for a plot measuring 400 Sq. yards in the said scheme under the preferential category of women and deposited Rs.10,01,000/- as earnest money on 6.5.2018 (Annexure C2); that inadvertently applicant missed the relevant clause in the brochure that the applicants applying for allotment under the preferential category should belong to the State of Punjab, whereas the complainant was resident of Delhi

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and as such she was not eligible for the preferential category of women; that the applicant clearly stated in the application that she was the resident of Delhi; that the complainant was declared successful in the draw of lots held on 14.06.2018; that the complainant was surprised that despite being ineligible she was allowed to participate in the draw of lots and declared successful; that having come to know that the complainant was not eligible for allotment of plot under the preferential category of women, complainant vide letter dated 3.7.2018(Annexure C3) surrendered the plot in question and requested for refund of earnest money; that the complainant received letter dated 10.8.2018 (Annexure C4) whereby 1% total price of the plot i.e. Rs. 1,00,00,000/- on account of having surrendered the plot and thus Rs.1,00,000/- was forfeited from the earnest money of Rs.10,00,000/- and remaining Rs.9,00,000/- was ordered to be refunded to the complainant; that the complainant wrote successive letters dated 4.10.2018 and 23.10.2018(Annexure C5) to the respondent for refund of entire earnest money; that respondent issued cheque of Rs.9,00,000/- on 2.11.2018; that the complainant made request for refunding of remaining Rs. 1,00,000/- with interest vide letters 30.11.2018, 2.1.2019 and 12.2.2019 (Annexure C6); that respondent vide its letter dated 12.3.2019 intimated the complainant that "in case applicant seeks refund of his earnest money after draw of lots but issuance of letter of intent (LOI) the same is to be refunded with deduction of 1% amount of the total cost of plot." Hence the present complaint.

2. Upon notice respondent appeared through authorized representative 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 adjudicate/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 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 not violation of Section 18 of the Act, there being no agreement for sale, 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 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 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 a scheme namely IT City for allotment of 753 residential plots; 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 a plot measuring 400 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 immediately after draw of lots which was held on 14.6.2018 had surrendered the plot vide her letter dated 3.7.2018; that the request of the complainant for surrender of plot was considered and as per terms and conditions mentioned in the brochure Rs.9,00,000/- was ordered to be refunded on 10.8.2018 which was accepted by the complainant; that the complainant vide her letter dated 21.2.2019 requested for refund of Rs.1,00,000/- and the same was considered and replied vide letter dated 12.3.2019 ; that legal notice dated 8.7.2019 given by the complainant was considered and intimated the complainant vide letter dated 18.10.2019 that "in case applicant seeks refund of his earnest money after draw of lots but issuance of letter of intent (LOI) the same is to be refunded with deduction of 1% amount of the total cost of plot." Rest of the averments as contained in the complaint were denied and prayer for dismissal of complaint was made.

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 was 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;

(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 have completed 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 in which it was held that RERA covered the on going projects.

11. The representatives of the respondent raised the objection that there was an arbitration clause 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.”

12. 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.

13. 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 instant 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 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.
14. The argument on behalf of the complainant was that the complainant was under mistaken impression, on the basis of brochure of the respondent regarding the project of the case in hand i.e. IT City, Mohali applied for allotment of plot measuring 400 Sq. yard in the preferential category of women and an amount of Rs.10,01,000/- was deposited with the respondent. Further argument was that the complainant specifically mentioned her address of Delhi but in the said preferential category requirement was that one had to be resident of Punjab and therefore the complainant was not eligible for allotment of the plot. The draw of lots in respect of the said project was held on 14.6.2018 and the complainant was



declared successful. The complainant realizing her bonafide mistake and being ineligible vide letter dated 3.7.2018 (Annexure C3) surrendered the plot and requested for refund of Rs.10,00,000/- deposited by her as earnest money. However, respondent vide letter endst. No.36786 dated 10.8.2018 (Annexure C4) allowed the refund but deducted 1% amount of the total cost of plot i.e. Rs.10,00,000/-. Argument was that the complainant being ineligible for allotment no amount should have been deducted and she therefore was entitled to refund of Rs.1,00,000/- along with interest and action of the respondent would amount to unfair trade practice.

15. On the other hand argument on behalf of the respondent was that the complainant was supposed to know entire terms and conditions in respect of her ineligibility for allotment being not resident of Punjab but she applied and gave address of New Delhi without indicating that she was not resident of Punjab and she was declared successful in draw of lots and only thereafter she surrendered the plot and in accordance with the terms and conditions of brochure respondent was entitled to deduct 1% amount of the total cost of plot in case refund of earnest money was sought after draw of lot but before issuance of letter of intent. The argument accordingly was that the respondent was well within its right of deducting 1% amount of the total cost of plot and rest of the amount was returned and therefore complaint was liable to be dismissed.

16. The facts of the case are not disputed by the parties in view of their respective pleadings and documents placed on record. Admittedly the complainant vide application dated 6.5.2018 applied for allotment of plot measuring 400 Sq. yard in IT City Mohali in the preferential category of women and she indicated her address of Delhi only and deposited a sum of Rs.10,00,000/- as earnest money. The complainant was declared successful



in the draw of lots held on 14.6.2018. It is also not disputed that the complainant surrendered the plot on 3.7.2018. The respondent thereupon ordered the refund of earnest money to the tune of Rs.9,00,000/- after deducting 1% of the total cost of the plot which was to the tune of Rs.1,00,00,000/- vide letter dated 10.8.2018.

17. As has been noticed above according to the brochure of the respondent, though the complainant fulfilled all the other conditions for allotment of plot of 400 Sq. yard in IT City Mohali but for claiming preferential category of women, there was additional condition that the applicant had to be resident of Punjab, which the complainant admittedly was not because she was permanent resident of New Delhi. Apparently the complainant submitted application alongwith earnest money under the preferential category of women for which essential condition was that the applicant had to be resident of Punjab and the complainant was declared successful in the draw of lots held on 14.6.2018 for 400 Sq. yards plot in IT City Mohali. Thereafter complainant having come to know regarding her ineligibility surrendered the plot and requested for refund of entire earnest money. Therefore, bonafide mistake on the part of the complainant could easily be noticed by the respondent in the scrutiny of the application of the complainant prior to holding of draw of lot, which however was not done and the complainant was allowed to participate in the draw of lots. Though on behalf of the respondent it has been agitated that the complainant was fully aware of her ineligibility but she gave her correspondence address of New Delhi and intentionally withheld status of her permanent residence not being of Punjab and chose to surrender the plot, after draw of lot and therefore as per terms and conditions of the brochure the respondent was well within its right to deduct 1% of the total costs of plot from the earnest



money and rest of the amount has been refunded. The argument on behalf of the respondent is however without merit because none of the documents furnished by the complainant contain any averment on the part of the complainant of her being resident of Punjab and she exclusively gave her address of New Delhi. Further more she also clarified this fact, while submitting documents and apparently had scrutiny been done by the respondent it would have been revealed that she was ineligible for allotment of plot under the preferential category of women and then she ought not to have been allowed to participate in the draw of lots. It may be that in the brochure following conditions were mentioned:-

“2. In case, applicant seeks refund of his earnest money before draw of lots, the same shall be refunded with deduction of Rs.10,000/- from the earnest money. However, no interest on the deposited amount shall be paid.

3. In case, applicant seeks refund of his earnest money after draw of lots but before issuance of Letter of Intent (LOI), the same shall be refunded with deduction of 1% amount off the total cost of the plot. However, no interest on the deposited amount shall be paid.

4. In case, applicant seeks refund of his earnest money after issuance of Letter of Intent (LOI) but within 30 days from the date of issuance of Letter of Intent (LOI), the same shall be refunded with deduction of 5% amount off the total cost of the plot. However, no interest on the deposited amount shall be paid.”

18. However, the said condition of the brochure would be applicable only if the complainant had tried to commit mischief by mentioning her to be permanent resident of Punjab for claiming eligibility for plot under the preferential category of women but as already noticed submitting application by the complainant in the preferential category of women was under bonafide impression which becomes apparent from the subsequent

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conduct of the complainant in surrendering the plot immediately after draw of lots on having come to know regarding her ineligibility. Otherwise even the respondent admitted the factum of complainant being resident of New Delhi and therefore not eligible for applying the plot under the preferential category of women for which the applicant was required to be permanent resident of Punjab. Apparently respondent also did not properly carry out the exercise of scrutinizing the application and the documents for determining the eligibility prior to holding of draw of lots. If the respondent had been vigilant the said bonafide mistake would have come to the knowledge of the respondent at that stage. Otherwise also if a particular applicant is ineligible for allotment of a plot in a particular category and who voluntarily disclosed the entire factual position and no benefit to the complainant could be said to have been made nor any loss could be said to have been caused by her to the respondent. Thus it can be safely held that application of the complainant in preferential category of women for seeking allotment of 400 Sq. yard plot in IT City Mohali was under bonafide mistake and she surrendered the plot immediately after draw of lot. Therefore, action of the respondent being public authority in deducting an amount of Rs.1,00,000/- being 1% of the total costs of the plot would amount to unfair trade practice and would certainly cause prejudice to the rights of the complainant under Section 12 of the RERA Act. Therefore, complainant is entitled to refund of Rs.1,00,000/- which was wrongfully deducted by the respondent from the earnest money of the complainant vide letter Endst. No.36786 dated 10.8.2018 (Annexure C4).

19. The next question which arises for consideration is as to whether the complainant is entitled to any interest on the amount paid by him to 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 amount is required to be refunded alongwith interest to the complainant as similar benefit cannot be denied to the complainant. As such, I am of the view that the complainant is entitled the return of amount of Rs.1,00,000/- along with interest at the 9% with effect from 10.8.2018 till its realization.

20. 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.
21. In view of above discussions and observations, the complaint is accepted against respondent to the following extent and heads:-

1.	Principal amount	Rs.1,00,000/-
2.	Simple interest	At the rate of 9% per annum on the above said amount from 10.8.2018 till realization

The respondent is 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