

**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.1314 of 2020  
Date of Order: 22.06.2021**

1. Babreek Sharma son of Sh. Brij Mohan Sharma
  2. Brij Mohan Sharma son of late Shri Ram Gopal Sharma, both residents of House No.28, Ground Floor, Near Khera Chowk, Dessu Majra, Tehsil Kharar, District SAS Nagar, Mohali.
- Complainants

Versus

1. M/S Ever Rich Buildcon Pvt. Ltd., Avenue 125, Near Vidya Valley School, Sector 125, SAS Nagar, Mohali.
- Respondent

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

Present: Mr. Deepak Garg, Advocate, representative for the complainants.  
Respondent ex-parte.

**O R D E R**

1. The present complaint as filed against M/s Ever Rich Buildcon Pvt. Ltd, Sector 125, 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.
2. The brief facts of the instant complaint are that the complainants Babreek Sharma and Brij Mohan Sharma jointly had booked a residential flat(Apartment NO.B-602 in Tower B measuring 12300.90 Sq. ft.); that allotment letter was issued on 17.1.2018 (Annexure -1); that buyer's agreement was duly executed between the parties on 17.1.2018 (Annexure-2); that as per condition no.2 of the buyer's agreement basic sale price of the flat was Rs.26,50,000/- based on construction

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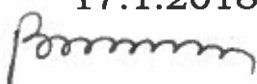
linked plan and payable on demand; that the complainants had paid total Rs.25,00000/- till date;(copies of receipts issued by the respondent for the said amount are appended as Annexure 4); that as per Clause 15 of the buyer's agreement possession of the flat was to be handed over by 31.5.2018 (with three months of grace period); that flat was still under construction and there was no chance to be completed in near future; that the complainants took a house loan of Rs.13,50,000/-from State Bank of India, Sector 20-D Branch, Chandigarh and had been paying monthly installment of Rs.14,684/-; (copy of loan statement was annexed as Annexure 5) that the complainants sent a demand notice to the respondent intimating to withdrawal from the project and praed for refund of Rs.25,00,000/- alongwith interest from the date of payment till its realization besides claiming compensation and strict action against the respondent.

3. Notice of the complaint was served upon the and the respondent put in appearance and filed written reply taking up preliminary objections that the complainants concealed the material facts and rather at the asking of the complainant extra electrical works in the living rooms, change of door location of the bedroom and extra door in bathroom was provided. It was averred that the respondent was still ready to deliver the possession but the complainants refused to take the possession and on the basis of the said plea prayer was made for dismissal

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of the complaint. However, on behalf of the respondent no document in support of the said pleas to alteration in the existing facilities nor for that matter to show that any offer of possession had been made or that the project was complete in the shape of completion certificate or occupation certificate has been placed on record. However, respondent absented from proceedings and on 9.3.2021 the respondent was proceeded exparte.

4. I have heard the learned representative for the complainants and have gone through the ex-parte evidence brought on record by the complainants.
5. 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.
6. On the basis of the pleadings of the complainants duly supported with documents placed on record i.e. affidavit of the complainants dated 24.4.2021 (Ex.C1), Allotment letter dated 17.1.2018 (Ex.C2), Buyers' agreement dated 17.1.2018 (Ex.C3), Demand notice dated (Ex. C4),



Receipts (Ex.C5), bank statement (Annexure C6), authority letter (Exc. C7) which remained unrebutted and inspires confidence, it can be safely concluded that complainants Babreek Sharma and Brij Mohan Sharma jointly had booked a residential flat (Apartment N,.B-602 in Tower B measuring 12300.90 Sq. ft. and allotment letter was issued on 17.1.2018. Buyer's agreement was duly executed between the parties on 17.1.2018 that as per condition no.2 of the buyer's agreement basic and sale price of the flat was Rs.26,50,000/- based on construction linked plan and payable on demand. The complainants had paid total Rs.25,00,000/- (Rs.5,00,000/- vide receipt dated 23.12.2017, Rs.6,50,000/- vide receipt dated 17.1.2018 and Rs.13,50,000/- vide receipt dated 29.3.2018). The respondent issued aforesaid receipts in token of receipt of Rs.25,00,000/-. As per Clause 15 of the buyer's agreement possession of the flat was to be handed over by 31.5.2018 (with three months of grace period) but respondent failed to hand over the possession of the flat in question. The complainants took a house loan of Rs.13,50,000/- from State Bank of India, Sector 20-D Branch, Chandigarh and had been paying monthly installment of Rs.14,684/-. The complainants sent a demand notice to the respondent intimating to withdrawal from the project and prays for refund of Rs.25,00,000/- alongwith interest from the date of payment till its realization with interest;



7. In the instant case, the complainants are not at all at fault and in these circumstances, the respondent was under obligation to provide possession of the flat within the stipulated period as per Clause 15 of the buyer's agreement. Clause 15 of the buyer's agreement runs as under:-

“15. Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be delivered by the Company to the Allottee by 31<sup>st</sup> May, 2018 (with three months of grace period), subject to timely payment by the Allottee(s) towards the basic sale price and other charges, as demanded in terms of the Agreement. The time frame for delivery of possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all installments and the completion of formalities required. The company shall be entitled to avail execution of time for completion of project if delay in completion of the same occurs due to departmental delay or any other circumstance beyond the power and control of the developer. The Company shall be entitled to six (6) months additional period in event there is delay in handing over possession. However, in case of delay beyond a period of six (6) months and such delay is attributable to the Company, the Company shall be liable to pay compensation @ 10% p.a. for the period of further delay.”

8. The specimen proforma for agreement for sale has been prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017. The clause 5

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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/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.*

9. 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 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*

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*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."*

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.25,00,000/- paid by the complainants.

11. 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*

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*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."*

12. 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 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

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Rs. 25,00,000/- 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.

13. Since the complainants 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 complainants Babreek Sharma and Brij Mohan Sharma could not get possession of the property unit in question 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.50,000/-.

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

1.	Refund of Principal amount	Rs. 25,00,000/-
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.50,000/-

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 State Bank of India, 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:22.06.2021

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