

**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.ADC1653/2020 UR
Dated of Decision: 23.06.2021

Parul Batra son of Sh. Pran Nath Batra, resident of House No.880, First Floor, Sector 40-A, Chandigarh through his General Power of Attorney Ms. Pushpa Batra, resident of House No.880/1, Sector 40-A, Chandigarh

.....Complainant

Versus

1. Preet Land Promoters & Development Pvt. Ltd. through Director its Director Sh. Charan Singh Saini, Preet City, Sector 86, SAS Nagar, Mohali.
2. A.B. Apartments Pvt. Ltd., SCO No.672, Sector 70, SAS Nagar, Mohali

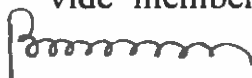
.....Respondents

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

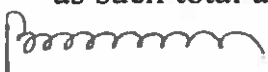
Present: Shri Vipin Kumar, Advocate, representative for the complainant
Shri Arun Singla, Advocate, representative for respondent no.1.

ORDER

1. Complaint was filed by Mr. Parul Batra through his general power of attorney Ms. Pushpa Batra under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") alongwith documents against Preet Land Promoters & Development Pvt. Ltd. and another for seeking refund with interest and compensation for violation of Section 18 of the Act. Gist of the allegations contained in the complaint is that the complainant initially paid booking charges and costs of the land and the development charges vide membership reference No.683 to A.B. Apartments Pvt. Ltd. for



obtaining plot which previously was booked by one Charan Singh and then was transferred to him; that it transpires that subsequently A.B. Apartments Pvt. Ltd. (respondent no.2) entered into an agreement with Preet Land Promoters & Development Pvt. Ltd. (respondent no.1) in which it was decided that all plots booked by A.B. Apartments Pvt. Ltd. shall be allotted by Preet Land Promoters & Development Pvt. Ltd. (respondent no.1); that the complainant had already paid part of charges to A.B. Apartments Pvt. Ltd. (respondent no.2) bearing membership reference No.683 with effect from 3.9.2008; that all the said payments made prior to 2.4.2012 were transferred in the account of Preet Land Promoters & Development Pvt. Ltd. (respondent no.1) and the original receipts for the amount of Rs.5,00,000/-, Rs.8,12,500/- dated 30.9.2008 and Rs.4,75,000/- dated 26.11.2009 earlier issued by A.B. Apartments Pvt. Ltd. (respondent no.2) and one receipt dated 22.1.2011 for Rs.4,37,500/- issued by Preet Land Promoters & Development Pvt. Ltd. (respondent no.1) were to be surrendered by the complainant and in lieu thereof fresh receipts were to be issued by Preet Land Promoters & Development Pvt. Ltd. (respondent no.1) and accordingly two fresh receipts bearing No.1775 and 1776 dated 25.4.2012 (Rs. 17,50,000/- on account of land cost and Rs.4,75,000/- on account of development charges) of the said amount vide reference No.1206 PLP acknowledging the receipt of the said amount received from respondent no.2 were issued by Preet Land Promoters & Development Pvt. Ltd. (respondent no.1). Copies of which are annexed as Annexure A5; that thereafter complainant paid Rs.6,12,500/- vide receipt dated 20.7.2012 on account of land cost and Rs.96,400/- vide receipt dated 21.5.2015 to the respondent no.1 and as such total amount of Rs.29,33,400/- were paid by the complaint for the



plot in question; that respondent no.1 issued allotment letter dated 31.10.2009 to the complainant in respect of plot measuring 250 sq. yard, Preet City, Phase-1, Sector 86, SAS Nagar Mohali, however, no number of plot or dimension were indicated; that respondent no.1 subsequently issued another allotment letter dated 19.7.2010 containing terms and conditions with changed number of plot 754, measuring 10 Marla in Sector 86, SAS Nagar, Mohali on the basis of draw of lots held on 12.5.2010; that another allotment letter was issued in the name of complainant on 21.6.2012 and the plot number was then changed to 610 (N) with the terms and conditions of allotment; that subsequently vide letter dated 27.8.2014 plot number of the complainant was again changed to 429 (N.M) with the terms and conditions of the allotment; that it was claimed that plot number was being changed by respondent no.1 from time to time unilaterally without consent of the complainant but the complainant had been diligent in making regular payments as per stipulation of payments; that the project of respondent no.1 was not complete but document regarding handing over of the possession of plot was executed by respondent no.1 on 25.5.2015 and the signatures of attorney Ms. Pushpa Batra of the complainant were obtained on dotted lines though it was a merely paper possession because the project was never complete and had been unnecessarily prolonged; that it was averred that on inspection of the spot it transpired that plot No.429 (N.M.) of which paper possession was shown to be made, had no connectivity or the basic amenity which respondent no.1 assured to provide shortly but to no effect; that ultimately complainant got served legal notice dated 23.10.2019 upon respondent calling upon respondent for providing external development to the plot and to obtain necessary sanctions and



permissions of the competent authority or in the alternative requested for refund of entire amount along with interest etc.; that nothing was done by respondent. Hence the present complaint.

2. That respondent no.1 on being served contested the present complaint by filing written reply taking preliminary objections that complainant had no locus standi or cause of action and the present complaint was filed for extraneous reasons; that complainant concealed the material facts and had not come with clean hands; that all the changes done in the allotment letters were with the consent and concurrence of the complainant and the possession of the plot in question was delivered to the complainant on 25.5.2015; that complainant verified the plot and its location after obtaining possession through agreement dated 25.5.2015; that it was claimed that the respondent had already been contacting the complainant telephonically for getting the sale deed executed but the complainant was not coming forward for doing the needful and the present complaint had been filed with ulterior motive; that denying of the rest of the contents of the complaint on the grounds taken in the preliminary objections respondent no.1 prayed for dismissal of the complaint.

3. It will not be out of place to mention here that respondent no.2 A.B. Apartments Pvt. Ltd. was served with the notice of the present complaint but he apparently chose not to contest the present complaint, as his liability had been taken over by respondent no.1-Preet Land Promoters & Development Pvt. Ltd. being promoter and developer and even the change of land user of the project in question was issued by the competent authority only in the name of Preet Land Promoters & Development Pvt. Ltd.-respondent no.1.



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 objection taken on behalf of the respondent was that the project in the case in hand remained unregistered and therefore, the present complaint was not maintainable. Reliance in this behalf was placed upon the order passed by Real Estate Regulatory Authority, Punjab in case titled **Sh. Gurmandeep Singh Vs. PDA Omaxe, Patiala, Complaint No.92 of 2018.** The argument, however, is without merit inasmuch as 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.

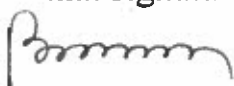
The argument is accordingly repelled.

7. Another argument on behalf of the respondent was that the allotment letter of the case in hand was executed much before the coming into existence of the Act and therefore the provisions of the Act were not applicable and that the rights and liability of the respective parties under the allotment letter would govern the controversy if any in relation to the completion of the project. On the other hand, the argument on behalf of the complainant was that the project was on an ongoing project but was not got registered with the RERA authority and as such the provisions of the Act were applicable.
8. The above submission on behalf of the respondent is devoid of force because it may be that the allotment letter pertained to the period prior to coming into existence of the Act, but the present project was ongoing and had not been completed and it is also settled law that the Act would certainly regulate the existing contracts, even though it is prospective in nature, but, is retroactive also to some extent. 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 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 project which were not complete when the RERA Act came into existence.

9. Further argument of the respondent was that the possession of the plot was delivered to the attorney of the complainant vide document dated 25.5.2015 (Annexure C6) before filing of the present complaint. Therefore, the present complaint was not maintainable.
10. On the other hand argument on behalf of the complainant was that project of the case in hand was incomplete and no document in the shape of completion certificate from the competent authority had been placed on record and therefore creation of document dated 25.5.2015 (Annexure C6) was merely paper possession, which was of no consequence, when the project was incomplete.
11. Though on behalf of the respondent document dated 25.5.2015 (Annexure C6) has been relied upon which bears the signatures of the attorney Ms. Pushpa Batra of the complainant in support of the plea that possession of the plot no.429 was delivered but we find that on behalf of the respondent no document had been placed on record i.e. completion certificate from the competent authority to fortify the said assertion that project is complete. In the absence of the certificate of the competent authority regarding the completion of project, assertion of the respondent regarding completion of project does not carry any weight. Even if the signatures of attorney of the complainant had been obtained on the document of paper possession dated 25.5.2015 (Annexure C6) it does not preclude the complainant from claiming that signatures had been obtained because the builder is in a position to



obtain signatures of the complainant, even in the absence of completion of project. The present complaint is therefore maintainable. No valid offer of possession has been made nor in that matter the possession had actually been delivered rather there is specific assertion of the complainant that that there was no connectivity in the shape of the road for connectivity to the plot No.429 (N.B.) allotted to the complainant nor for that matter the basic amenities i.e. external development are complete which are pre-requisite before delivery of possession to the complainant.

12. Learned authorized representative for the complainant contended that the respondent-builder was guilty of unfair trade practice because total sale consideration amounting to Rs.29,33,900/- of the plot in question had already been received by the builder, without even executing buyer's agreement in compliance of provisions of Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as "the PAPRA Act") and also Section 13 of the Act. However, argument was that despite issuance of allotment letter dated 27.8.2014 (Annexure C5) by respondent no.1 no dimension of the plot had been given and moreover the plot number was being changed by the builder from time to time unilaterally without consent of the complainant. Then authorized representative of the complainant contended that in the allotment letters no time period was specified upto which the project was to be completed and despite of issuance of first allotment letter dated 31.10.2009 (Annexure C2) the project had been delayed till date for considerable period and therefore, the complainant was entitled to seek refund.



13. On the other hand, argument on behalf of the respondent was that after delivery of possession of the plot in question to the complainant he was not coming forward to get the sale deed executed despite offers in this behalf on behalf of the respondent and therefore, the complainant was not entitled to refund.
14. Admittedly the complainant deposited the amount of Rs.12,87,500/- vide receipts dated 30.9.2008 and 26.11.2009 with the A.B. Apartments Pvt. Ltd. which was later on transferred to respondent no.1 Preet Land Promoters & Developers Private Ltd. who issued allotment letter dated 31.10.2009 to the complainant. After that complainant deposited the amount of Rs.4,37,500/- vide receipt dated 22.1.2011, Rs.4,75,000/- vide receipt dated 25.4.2012, Rs.6,12,500/- vide receipt dated 20.7.2012 and Rs.96,400/- vide receipt dated 21.5.2015 and as such complainant paid total sale consideration of Rs.29,33,900/- of plot in question. Respondent issued allotment letters dated 31.10.2009, 19.7.2010, 21.6.2012 and 27.8.2014 to the complainant and executed possession agreement dated 25.5.2015. The facts of the case are peculiar of its own kind because the respondent-builder is guilty of unfair trade practice in not executing the buyer's agreement with the complainant despite receiving the amount in excess of 20% of total sale consideration. Besides this only allotment letters by the respondent-builder was being issued in respect of the plot and the plot number had been unilaterally changed by the respondent for three times without obtaining any written consent from the complainant and especially no time period had been specified upto which the project was to be completed in any of the allotment letters. The aforesaid terms and conditions in the buyer and seller agreement/allotment



letters are required to be incorporated which the respondent failed to comply with and thereby violated the provisions of PAPRA Act and the RERA Act and therefore, respondent is guilty of unfair trade practice. So far as the question of delivery of possession of the plot to the complainant is concerned, as already noticed the document dated 25.5.2015 (Annexure C6) prepared in this behalf is of no consequence being merely paper possession without the project being complete. Though on behalf of the respondent it is claimed that offer was being made for getting the sale deed executed but there is no document in support of the said assertion otherwise also once the project of the case in hand was incomplete there possibly is no question of giving any such offer by the respondent. As the allotment letter was issued by the respondent on 31.10.2009 (Annexure C2) the project was required to be completed by the respondent within a reasonable time even in the absence of specifying any time period; but we find that project has not been completed so far and there has been prolonged delay in completion of the project for which the respondent-builder is responsible. However, no fault can be attributed to the complainant because he had been diligent in making the payments as demanded by the respondent and admittedly total sale consideration to the tune of Rs.29,33,900/- had already been paid and as noticed earlier the plot No.429 (N.M.) was not having any connectivity of road nor the basic amenities had been provided by the respondent. The respondent has thus violated the provisions of Section 18 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.”

15. In view of the above discussion, the respondent no.1 is liable to refund the amount of Rs.29,33,900/- to the complainant.

16. 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 principal amount of Rs.29,33,900/- 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.

17. In the instant complaint, the complainant had to seek the remedy under the existing law. He has to undergo this litigative process by pursuing the matter and to spend money and for that obviously he had to suffer mental agony and harassment. 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 above mentioned facts and especially prolonged delay in delivery of possession, 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/-.

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

1.	Principal amount	Rs.29,33,900/-
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 respective payments till realization

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3.	On account of mental agony and litigation expenses	Rs.1,25,000/-
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The respondent no.1 is directed to pay the above said amount to the complainant within sixty days from the date of this order. 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 both the parties free of costs under Rules and file be consigned to record room after due compilation.

Dated:23.06.2021

(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority