

**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.1422 of 2019  
Date of Order: 01.07.2021**

Pankaj Gupta son of late Shri Prem Kumar Gupta, resident of House No.502-F, Near Telephone Exchange, Shaheed Bhagat Singh Nagar, Basant Avenue, Ludhiana.

Complainant

Versus

M/s Spirit Infratech Pvt. Ltd., Corporate office 2626/11, Beadonpura, Gurudwara Road, Karol Bagh, New Delhi-110005.

Respondent

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

Present: Mr.Vipul Monga, Advocate, representative for the complainant.  
Respondent ex-parte.

**O R D E R**

1. The present complaint has been filed against M/S Spirit Infratech Pvt. Ltd. under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") seeking refund, interest and compensation etc.
2. The brief facts of the instant complaint are that respondent widely advertised its project namely "Blessings City/Amritsar" situated at Airport Road, Amritsar and published brochure (copy Annexure C2); that father of the complainant Pankaj Gupta booked Hotel Room No.1 & 2 in the project namely "Blessings

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City/Amritsar" of respondent situated at Airport Road, Amritsar and paid an amount of Rs.16,20,000/- through six different cheques ranging from 14.8.2010 to 20.02.2012 (Annexure C4); that respondent; that the complainant received an unsigned and blank allotment letter (copy Annexure C-3) for the said unit and as per Clause 17 of the said allotment letter the possession was to be handed over within three years from the date of booking/allotment or after all necessary approvals and sanctions had been obtained from the sanctioning authority/ies whichever is later; that respondent while accepting the money assured that the possession would be delivered in time; that the project was also far from being complete and still at the threshold stage; that respondent failed to handover the possession of the unit in question till date even after lapse of more than 10 years; that father of the complainant sent number of letters and e-mails for the refund of the total amount paid by him but to no avail. Father of the complainant expired and being son and legal heir the present complaint was filed.

3. Notice of the complaint was issued to respondent builder. However, despite duly served respondent chose not to appear and was proceeded ex parte vide order dated 03.01.2020.
4. I have heard the learned representative for the complainant and have gone through the ex-parte evidence brought on record by the complainant.



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 up the ongoing projects. Besides the project of the case in hand was unregistered. However, the complaint before this Bench is maintainable against unregistered project 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.**
6. Even though father of the complainant who invested the amount in the project in the case in hand cannot be said to be allottee but he certainly was aggrieved person. 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

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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 locus standi to file the instant complaint.

7. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. death certificate of Mr. Prem Kumar Gupta (Annexure C-1), brochure of the project namely "Blessings" situated at Airport Road, Amritsar (Annexure C-2), blank allotment letter (Annexure C-3), copies of six cheques whereby an amount of Rs.16,20,000/- had been paid from 14.8.2010 to 20.02.2012 (Annexure C-4), copies of number of letters and e-mails for the refund of the total amount paid by the father of the complainant (Annexure C-5 colly), photograph of the site in question (Annexure C-6) and copies of statement of account (Annexures C-7 and C-8) showing the amount of cheques issued by the father of the complainant had been credited in the account of respondent which remained unrebutted and inspires confidence, it can be safely concluded that father of the present complainant Mr. Prem Kumar Gupta invested the amount of Rs.16,20,000/- in the project namely "Blessings City/Amritsar" situated at Airport Road, Amritsar of the respondent on the

*Prem Kumar Gupta*

allurement made to him through brochure and the blank allotment letter containing obligations on the part of the builder with respect to the project. The fact, however, remains that the respondent builder of the case in hand is not only guilty of unfair trade practice but also had defrauded the father of the complainant. As per documents placed on record, a total sum of Rs.16,20,000/- had been obtained from the father of the complainant through six different cheques which were credited in the account of the respondent as per statement of accounts placed on record by the complainant. However, in spite of obtaining this amount even allotment letter was not issued in the name of father of the complainant what to talk of executing buyer's agreement. The respondent despite obtaining the said amount from the complainant's father failed to complete the project and as per photograph (Annexure C-6), the construction at the site is still at threshold stage despite lapse of more than 10 years. It is also brought on record that father of the complainant had sent e-mails dated 1.12.2015, 26.2.2016 and letters dated 23.10.2017, 4.8.2018, 20.8.2018 and 8.2.2019 calling upon the respondent to refund the entire amount paid him but no consequence. Moreover, the respondent probably even did not seek approval from the competent authorities for the project as is apparent from the letter dated 27.12.2013 written to the Chief Administrator, Amritsar Development Authority, Amritsar by the Town

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and Country Planning Department, Punjab indicating the project namely "Blessings City" was being considered for regularization. The respondent, therefore, is solely responsible for not complying with the provisions of Punjab Apartment and Property Regulation Act, 1995 and also of the RERA Act and the project of the case in hand which was to commence in the year 2010 has not been completed and is still at threshold stage. The respondent has thus violated the provisions of Section 12 of the Act which runs as under:-

**"12. Obligation of promoter regarding veracity of the advertisement or prospectus:-** Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

8. Resultantly the complainant being son and legal heir of the deceased Mr. Prem Kumar Gupta is certainly entitled to refund of Rs.16,20,000/- from the respondent.



9. The next question which arises for consideration, is as to whether the complainant is entitled to any interest on the amount paid to the respondent/promoter 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 respondent/promoter 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 Rs.16,20,000/- 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.
10. 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

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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 could not get possession of the 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.100000/-.

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

1.	Refund of Principal amount	Rs. 16,20,000/-
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.1,00000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. The amount if any 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

*Per...*



be sent to the parties under rules and file be consigned  
to record room.

Dated:01.07.2021



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