

**BEFORE SHRI J. S. KHUSHDIL, ADJUDICATING OFFICER,  
REAL ESTATE REGULATORY AUTHORITY,  
PUNJAB MANDI BHAWAN, SAS NAGAR (MOHALI).**

Complaint No.AO/RERA/05/2018

Date of Institution: 05.02.2018

Dated of Decision: 25.05.2018

Hans Raj son of Sh. Maam Chand resident of Suniar Basti Patran Tehsil Patran, District Patiala.

.....Complainant

Versus

Shri Jarnail Singh Bajwa son of Sh. Bishan Singh Managing Director of M/s Bajwa Developers Ltd. SCO No.17-18, Sunny Enclave, Dessu Majra, Tehsil Kharar, District Ropar.

.....Respondent

Complaint under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act 2016 and Rule 37 of Punjab State Real Estate (Regulation and Development) Rules.

Present: Shri Vijay Sharma Advocate, representative for the complainant  
Respondent ex-parte vide order dated 13.03.2018

*JSKms*  
**ORDER**  
25/5/2018

1. Hans Raj (hereinafter called as the complainant) has filed this complaint against Mukhtiar Singh Bajwa Managing Director of M/s Bajwa Developers Ltd. SCO No.17-18, Sunny Enclave, Dessu

Majra, Tehsil Kharar, District Ropar (hereinafter called as the respondent) alongwith documents alleging violation of Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein-after called as the Act) seeking refund of the amount of Rs.13,20,000/- paid by him to the respondent alongwith interest and compensation on account of delay in handing over the possession of 2BHK flat measuring 900 square feet bearing No.BR 283 in Sunny Apartment, Sector-74A, Mohali till date despite of the fact that he has deposited an amount of Rs.13,20,000/- with the respondent by way of making payment of Rs.2,00,000/- on 17.02.2011, Rs.3,50,000/- on 03.05.2011, Rs.50,000/- and another additional amount of Rs.50,000/- on 03.05.2011, Rs.3,60,000/- on 19.09.2011 and another amount of Rs.3,60,000/- on 08.06.2012. It is further pleaded that the promoter has committed a fraud with the complainant and he has not completed the project and as such the complainant is entitled to refund of the principal amount paid by him to the respondent alongwith interest at the rate of 18% per annum from the date of payments and compensation for mental and physical harassment

*J. K. Mehta*  
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caused to him. In the end, a prayer for acceptance of the complaint has been made.

2. Upon notice of this complaint, the respondent did not appear despite of service and as such, it was proceeded against ex parte vide order dated 13.03.2018.
3. I had heard the learned representative for the complainant at length and have perused the documents annexed by the complainant with her pleadings and after hearing the representative for the complainant it was found that there was a need for further hearing into the complaint.
4. The complainant was afforded an opportunity to file documents/ evidence in support of her stand, which he has taken in his pleadings and representative for the complainant made statement that the documents already annexed with the complaint may be read into evidence.
5. The complainant has relied upon the following documents:-

1.	Annexure-P1	Agreement dated 04.05.2011 and receipt of an amount of Rs.6,00,000/- has been mentioned on first page of this document.
2.	Annexure-P2	Receipt dated 19.09.2011 for payment of Rs.3,10,000/-
3.	Annexure-P3	Receipt dated 08.06.2012 for payment

*J. Srinivasulu*  
25/5/2018

	of Rs.3,60,000/-
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6. The learned representative for the complainant has submitted that, the complainant had applied for a flat of 2BHK BRNo.283 in Sunny Apartment Sector 74-A, Mohali and an agreement to sell dated 04.05.2011 was executed in that regard. It is further contended that the basic sale price of the flat in question was Rs.24,00,000/-, out of which the complainant has paid an amount of Rs.13,20,000/- as mentioned in the complaint to the respondent, but, the latter has failed to deliver the possession of the flat in question till date. It is further contended that the project to which this complaint relates is registered with this authority vide registration No.PBRERA-SAS80-PM0021 and as such the instant complaint in form 'N' is duly maintainable. The representative for the complainant has submitted that now the complainant does not want to remain in the project and wants refund of the amount paid by him alongwith interest and compensation under the Act.

7. I have considered the above submissions made by the learned representative for the complainant and have gone through the file.

*JSKmendal*  
25/5/2018

In this case the project to which this complaint relates is proved to have been registered with this authority vide registration No.PBRERA-SAS80-PM0021. As in view of the law laid down

by the Hon'ble Bombay High Court in case titled as Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors. Writ Petition No. 2737 of 2017 decided on 06.12.2017 it is settled that only those complaints could be entertained by the authority as well as by the Adjudicating Officer under Section 31 read with Rule 36 and 37 of the Punjab Rules in connection with those projects which are registered with the authority. This authority has also clearly settled this position in a case titled as Bikramjit Singh and another, bearing complaintNo.3 of 2017 decided on 13.12.2017 holding clearly that the project to which the complaint relates must be registered with the authority. In the instant case, the project to which this complaint pertains has been registered with this authority, as mentioned above, as such; the complaint is very much maintainable.

8. The Hon'ble Bombay High Court in Neel Kamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors' case (supra), has upheld the validity of this Act. The Hon'ble Bombay High Court has also touched several points vis-à-vis maintainability, operation and effect of the Act, ongoing projects, completion certificate and partial completion certificate, separate

*J. S. M. S. D. P.*  
25/12/2015

account of the promoter qua the project, pre/post RERA agreement and role of Authority and Adjudicating Officer. I have already given detailed findings in two cases titled as ***Suman Mann and another Vs. JLPL and Nikhil Kawatra and another Vs. JLPL*** decided on 14.05.2018 in regard to above points.

9. The perusal of record also shows that agreement for sale was executed on 04.05.2011, whereby a 2BHK flat BR No.283 in Sunny Apartment Sector 74-A Mohali was offered to the complainant for a total cost of Rs.24,00,000/-. Out of this amount the complainant has paid an amount of Rs.13,20,000/- as mentioned by him in the complaint to the respondent towards sale price as well as according to documents brought on record i.e. Annexure-P1 to Annexure-P3.

10. It is settled proposition of law that the promoter has to pay interest to the allottee, whose money has been utilized by him and the project is delayed beyond the contractual agreed period. The promoter enjoying the benefit is bound to pay compensation to the allottee. The RERA does not contemplate re-writing of contracts between flat purchaser and the promoter to deprive the allottee to receive the statutory benefits.

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11. The execution of agreement for sale is a mandatory requirement under Section 13 of the Act. There is a prescribed proforma under the Rules which is to be followed by the promoter. The agreement under reference Annexure P1 in this case relates to 04.05.2011 and the perusal of this agreement shows that this is a unilateral document and beneficial to the promoter only. In one of the clauses, it has been mentioned that in case the allottee seeks return, then 10% of the deposited amount would be deducted and the balance amount would be paid in three months. No date of handing over of the possession of the flat in question has been mentioned. To curb such like tendencies of the promoters, the agreement for sale and other documents have been prescribed. No such clause detrimental to the cause of the allottee could be there in the agreement and Rule 8(2) of the Punjab Rera Rules is very specific on this point. The agreement under reference is rather not near to the Rules.

12. There is also no dispute with regard to the factual position

regarding allotment of flat under reference as the same is mentioned in the contents of this very agreement. The complainant has also made payment of an amount of Rs.13,20,000/- i.e.

*J. S. M. S. S. S.*  
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Rs.2,00,000/- on 17.02.2011, Rs.3,50,000/- on 03.05.2011, Rs.50,000/- and another additional amount of Rs.50,000/- on 03.05.2011 vide Annexure-P1, Rs.3,10,000/- on 19.09.2011 vide Annexure P2 and another amount of Rs.3,60,000/- on 08.06.2012 vide Annexure P3. In this manner, it has been proved that the complainant has paid a total amount of Rs.13,20,000/- to the respondent. However, possession of flat in question has not been handed over to the complainant as the respondent has failed to complete the project and now he does not want to remain in the project and seeks refund alongwith interest and compensation.

13.The promoter has already received the payment towards sale consideration and utilized the same towards his benefits. Once, the amount is deposited with the promoter and he is getting benefit of interest accrued upon said amount, then he cannot deny the similar benefit to the buyer. Needless to repeat here that the Hon'ble Bombay High Court has settled almost all the proposition of law, while holding this Act as constitutional. To conclude with I am of

the view that the complainant is entitled for the interest from the

date of payments of respective instalments. In this case, the flat

has not been completed and possession thereof has not been

*J. S. M. S. S.*  
25/5/2018



delivered to the complainant, who has paid an amount of Rs.13,20,000/- till date. Keeping in view all the facts and circumstances, I am of the considered view that the complainant is entitled for prescribed rate of interest as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% from the respective dates of deposits by her. There is no evidence with regard to the rate of interest, therefore, it is not possible to calculate the exact amount of interest. However, here I would like to add that the complainant would be entitled for the simple interest at the State Bank of India highest marginal cost of lending rate of interest (simple) plus 2% on principal amount from the date of respective payments till realization. The respondent is directed to pay the principal amount of Rs.13,20,000/- alongwith simple interest at the State Bank of India highest marginal cost of lending rate plus 2% from the date of respective payments till realization of the amount.

14. Since, the complainant has not received the possession of the flat has to seek the remedy under the existing law and for that obviously, he has to suffer mental agony and had to incur expenses on litigation to pursue her claim. I have considered all the

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factors as enunciated in Section 72 of the Act and, though, no exact amount can be assessed on this count, but, by applying some guess-work in the light of the factors, I am of the considered view that the complainant is also held entitled for compensation under all the heads i.e. mental agony and litigation expenses to the extent of Rs.25,000/-.

15. The complaint is, therefore, partly accepted to the following extent and heads:

01.	Principal amount	Rs.13,20,000/-
02.	Simple Interest per annum	At the State Bank of India highest marginal cost of lending rate plus 2% on the principal amount
03.	Compensation on account of mental agony and litigation expenses	Rs.25,000/-

The respondent is directed to pay the above-said amount on account of principal amount, simple interest and compensation within sixty days from the date of this order. A copy of this order be supplied to the complainant and also sent to the respondent. File of complaint be consigned to record room after due compilation.

Dated: 25.05.2018

(J.S. Khushdil),  
 Adjudicating Officer, 25/5/2018  
 Real Estate Regulatory Authority.