

Before Sh. J. S. Khushdil Adjudicating Officer,
Real Estate Regulatory Authority, Punjab Mandi Bhawan,
Sector 65A, SAS Nagar, Mohali, Punjab.

Complaint No. AO/RERA/20/2017
Date of Institution:06.12.2017
Date of Decision:14.05.2018

Nikhil Kawatra and Ranjani G, residents of B-1306, Platinum City,
Tumkur Road, Bangalore-560022.

Complainants

Versus

Mr. Kulwant Singh, Managing Director, M/s Janta Land Promoters
Private Limited resident of Kothi No.538, Phase-X, Mohali

Respondent

Complaints 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: Sh. Ved Parkash, representative for the complainants.
Sh. Vinay Panday, Advocate, representative for respondent

ORDER

1. Nikhil Kawatra and Ranjani G (hereinafter called as the
complainants) have filed this complaint against Kulwant Singh
Managing Director of M/s Janta Land Promoters Private Limited
(herein after 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 interest and compensation on account of delay in handing over the possession of the apartment bearing No.J-1104 in the project Falcon View, JLPL and action against the respondent for causing financial loss and mental agony to the complainants. The project is registered with this authority against registration No.PBRERA-SAS81-PM002. The complainants have claimed that they intended to buy an under construction apartment J-1104 in the project Falcon View, in Sector 66A, Mohali and they entered into an agreement to sell dated 05.08.2014 with the respondent to purchase the apartment in question and allotment letter dated 06.08.2014 was issued accordingly. As per the clause 2.24 of the allotment letter, the possession of the apartment was to be given to the complainants within 24 months from the date of issue of allotment letter meaning thereby that the possession was to be delivered upto 06.08.2016. It is pleaded by the complainants that they paid a total amount of Rs.71,66,711/- to the respondent, but, still the possession of the apartment has not been delivered to them. The complainants have claimed 15% per annum interest from the date of respective payments till August 2016 and at the rate of 12% per

annum interest thereafter till date. The acceptance of the complaint and grant of relief was prayed for.

2. Upon notice, the respondent appeared through its representative and filed reply alongwith relevant documents admitting the fact that the complainants got booked an apartment No.J-1104, Falcon View Sector 66-A, SAS, Nagar by way of depositing an amount of Rs.10,00,000/- as per receipt No.6861 dated 21.04.2014 under construction linked plan at a total price of Rs.95,10,800/- and the complainants deposited an amount of Rs.37,50,000/- on 12.05.2014. The execution of the agreement dated 05.08.2014 and allotment letter dated 06.08.2014 has also been admitted. The possession of the apartment was to be delivered within 24 months i.e. on or before 05.08.2016 from the date of allotment letter. However, in continuation to the allotment letter, the tentative dates for depositing the instalments were also conveyed to the complainant vide letter No.11409-91 dated 15.12.2014 and it has been specifically mentioned in the said letter that the possession of the apartment was to be handed over tentatively on 30.04.2017. It is further alleged that the possession could not be handed over to the complainants due to delay in construction and on that account the compensation has been paid to the complainants to the tune of

Rs.2,92,800 vide *Annexure-R2*. It is further the case of the respondent that as per report received from the engineering wing, the intimation with regard to the casting of 11th floor slab was duly intimated vide letter No.6492 dated 24.08.2016 copy of which is *Annexure-R3*. Now, the possession of the apartment is to be handed over on or before 31.03.2019 and till then compensation shall be paid to the complainants at the rate of Rs.10/- per square feet of the area of the residential apartment per month and to no other kind of compensation. All the necessary approvals were obtained from the concerned authorities and lay out plans etc also got passed for developing a colony. The respondent has also given the reason for delay in construction on account of the fact that earlier they invited tenders for construction in the Tribune on 26.02.2012f vide *Annexure-A4* and then allotted the work on 05.10.2012 vide allotment letter *Annexure-R5* and when the construction work was started problem of excess water in the soil was found an much time was sent in dewatering the soil and the copy of the bills submitted by the contractors for the said work of dewatering is *Annexure-R6* and the payment record is reflected in the bank statement *Annexure-R7*. The construction work also suffered on account of deficiency of construction material and ban

on mining in Punjab and the copy of the news item in this respect is *Annexure-R8*. There were heavy rains in the state of Punjab and Chandigarh in the year 2013-14 and copy of the news item in that regard is *Annexure-R9*. The nation-wide strike of transporters of six to 8 weeks also caused delay in the construction work and the news item in this respect dated 26.03.2013 is *Annexure-R10*. It is further pleaded that the complaint is not maintainable as the date of completion of construction of the apartment has been intimated to be 31.03.2019. It is admitted that the project to which this complaint relates, is registered with this authority against registration No.PBRERA-SAS81-PM0002 on 19.09.2017 and copy of the application and undertaking are *Annexure-R11*. The respondent has also made reference to certain provisions of the Act and has submitted that the complainants are not entitled to any compensation or interest and the complaint is liable to be dismissed. In the reply on merits, the respondent has also reiterated the entire version as mentioned in the preliminary objections and has stated that no cause of action accrues to the complainants for filing this complaint. In the end, a prayer for dismissal of the complaint has been made.

3. After hearing both the parties, notice under Section 18 of the Act was served upon the respondent, to which the respondent pleaded not guilty. The explanation furnished by the respondent was not found satisfactory and it was found that there was a need for further hearing into the complaint.

4. Both the parties were afforded an opportunity to file documents/evidence in support of their respective stand, which they have taken in their pleadings and representatives for both the parties made statements that the documents already annexed with their pleadings be read into evidence.

5. The complainant has relied upon the following documents:-

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| 1) | Annexure A | :Allotment letter dated 06.08.2014 |
| 2) | Annexure B | :Agreement to sell dated 05.08.2014 |
| 3) | Annexure C | : copies of receipts in regard to payment of instalments |

6. The respondent has relied upon the following documents:-

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| 1) | Annexure R1 | :Resolution dated 15.11.2017 |
| 2) | Annexure R2 | :Copy of ledger w.e.f. 1.4.16 to 31.3.18 |
| 3) | Annexure R3 | :Copy of letter dated 24.08.16 |
| 4) | Annexure R4 | :Advertisement inviting tenders dated 26.02.2012 |
| 5) | Annexure R5 | :Copy of allotment letter dated 05.10.2012 |
| 6) | Annexure R6 | :Copy of bills submitted by contractor for the period from 15.10.2012 to 03.12.2013 |
| 7) | Annexure R7 | :Bank statement in regard to payment |
| 8) | Annexure R8 | :Copy of news item dated 17.08.2012 |
| 9) | Annexure R9 | :News item in regard to heavy rainfall |
| 10) | Annexure R10 | :Copy of news item dated 26.03.2013 in regard to nationwide strike |

11) Annexure-R11

:Application and declaration

7. I have heard Shri Ved Parkash representative for complainant and also Shri Vinay Pandey, learned representative for the respondent and have gone through the record with their able assistance.
8. The learned representative for the complainants has submitted that the respondent has violated the provisions of Section 18(1) of the Act in not delivering the possession to the complainants and not awarding the interest and compensation to them. The representative for the complainant has referred to various documents and the contentions in the complaint itself. It is submitted that the complainants are entitled for the interest on the principal amount paid by them to the tune of Rs.79,45,611/- to the respondent for not handing over of the possession of the apartment in question to them at the rate prescribed under the Punjab Rules, 2017. The further submissions made on behalf of the complainants are by and large on the same lines of the averments made in the complaint and a prayer for grant of relief made by the complainants in the complaint has been made.
9. On the other hand, the learned representative for the respondent vehemently contested and controverted the submissions of the

complainants' side and by and large the submissions and the arguments of the learned representative for the respondent are on the lines of the stand taken by the respondent in the written reply. It is submitted that the obligation if any has to flow from the agreement for sale which operates in the event of default situation either committed on the part of the promoter or the allottee and the parties are bound by the agreement so executed between them. The learned representative for the respondent has drawn the attention of this authority towards the circumstances under which Section 18 of the Act would operate and under what circumstances the amount so deposited by the allottee with the respondent is to be returned or interest or compensation is to be paid. According to this section, the allottee may or may not withdraw from the project. According to the learned representative for the respondent, the words "as may be prescribed" are to be interpreted as prescribed in the agreement. The learned representative for the respondent has submitted that the main thrust is on Section 18(3) because the agreement for sale cannot be read into isolation or left as a waste paper. The learned representative for the respondent further pleaded that the effect to the present legislation has to be given prospectively and has placed reliance on a case titled as

Commission of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited, Civil appeal No.8750 of 2014 decided by the Hon'ble Apex Court on 15th September, 2014 to strengthen his point. It is submitted that the parties are bound by the terms and conditions of the agreement as well as of the allotment letter. For the delay in completion of construction, the learned representative has made reference to the averments made in the complaint in that respect. It is pleaded that the delay, if any, in handing over the possession of the apartment to the complainants is not attributable to the respondent, rather, it has been caused because of the circumstances beyond the control of the respondent and as such, is neither intentional nor deliberate. It is submitted that the claim raised by the complainants is false and groundless and while drawing the attention of this authority towards various documents, forming part of the record, the learned representative for respondent has submitted that the complaint is devoid of any merit and the same may be dismissed with costs.

10. I have considered the respective submissions made by both sides and have gone through the record on the file.

11. Before proceeding further into the matter in hand, it would be just, appropriate and relevant to discuss the statutory provisions and

case law. So far Hon'ble Bombay High Court has delivered a detailed judgment in bunch of writ petitions titled as Neelkamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors. WRIT PETITION NO. 2737 OF 2017 decided on 06.12.2017. The Government of India has issued a DO letter No.M12/3/2018-H/EFS-9035497 dated 28.02.2018, endorsed by the Department of Housing and Urban Development Government of Punjab vide memo No.23/5/18MO2/202876/1 dated 05.04.20-18, to this office, vide which, it was mentioned that the judgment of Hon'ble Bombay High Court be taken into consideration while defending the cases challenging the provisions of Real Estate (Regulation and Development) Act 2016. Before the Hon'ble Bombay High Court, through various writ petitions, the provisions of this Act were challenged on the ground that they are unconstitutional, invalid, illegal etc. However, Hon'ble Bombay High Court after hearing detailed submissions of the counsel for the writ petitioners and the counsels for the opposite parties, has concluded that the provisions of the Act are constitutionally valid and legal except a few. The Hon'ble Bombay High Court has struck down the provisions of Section 46(1) (b) of the Act. In the abovementioned writ petitions various points of law and provisions of this Act were

under challenge and were thereafter discussed and decided at length.

12.I would like to refer a few of relevant and important points dealt with by the Hon'ble High Court while deciding the writ petitions.

(I)
Operation and effect of the Act

13.The point with regard to the effect of the Act was seriously deliberated before the Hon'ble Bombay High Court. It was held in para 13 of the judgment as under:-

“The essential idea of legal system is that current law should govern current activities. An act or omission is not criminal unless forbidden by law. If it is done today, the law applying to it should be the law in force today. Article 20(1) of the Constitution provides as follows :

"20(1). No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

"38. (i) A prospective statute operates forwards from the date of its enactment conferring new rights on parties without reference to any anterior event, status or characteristic;

(ii) Retrospective statute, on the other hand, operates backwards, attaches new consequences, though for the future, but to an event that took place before the statute was enacted. It takes away vested rights. Substantive benefits which were already obtained by a party are sought to be taken away because of legislation being given effect to from a date prior to its enactment. The Rules of Interpretation of Statute raise a presumption against such retrospective effect to a legislation.

In other words, if the Legislature has not expressly or by necessary implication given effect to a statute from a date prior to its enactment, the Court will not allow retrospective effect being given to a legislation so as to take away the vested rights. Statutes enacted for regulating succession are ordinarily not applicable to successions which had already opened, as otherwise the effect will be to divest the estate from persons in whom it had vested prior to coming into

force of the new statutes. Muhammed Abdus Samad v. Qurban Hussain, ILR (26) All. 119 (129) P.C.

(iii) There is the intermediate category called "Retroactive Statute" which does not operate backwards and does not take away vested rights. Though it operates forwards, it is brought into operation by a characteristic or status that arose before it was enacted. For example, a provision of an Act brought into force on 1st January 2014, the Act applies to a person, who was employed on 1st January 2014 has two elements:

(a) That the person concerned took employment on 1st January 2014 - an event.

(b) That the person referred to was an Employee on that day - a characteristic or status which he had acquired before 1st January 2014.

Insofar as the Act applies to a person, who took employment on 1st January 2014, the Act is prospective. Insofar as the Act applies to a person, who had taken employment before 1st January 2014, the Act is retroactive."

14. Retrospective statute, on the other hand, operates backwards, attaches new consequences, though for the future, but to an event

that took place before the statute was enacted. It takes away vested rights. On the point of retrospective effect, the Hon'ble Bombay High Court is of the view that the consequences of the statute are for future, but, to an event that took place before the statute was enacted and it takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to the transaction or consideration already passed. The Hon'ble Bombay High Court has also considered the submissions of the learned Amicus curiae in para No.55 of the judgment as under:-

“It was submitted by the learned Senior Counsel that the retrospective or retro-active law is one which takes away or impairs vested or accrued rights [Virender Singh Hooda v. State of Haryana (Supra) - para 33]. The proviso to Section 3(1) of RERA provides that the projects which are ongoing on the date of commencement of RERA and for which completion certificates have not been issued required registration. Under the said provision, the projects which are already completed are not affected. No vested or accrued rights are being affected by the RERA. The obligations imposed by RERA applied prospectively i.e. after the commencement of RERA.

The counsel has referred to para 69 of the affidavit-in-reply filed by the Union of India in support of the submissions, wherein it was averred that promoter is entitled to provide new timelines for project completion. The obligations imposed and consequences for breach of such obligations under RERA are all prospective in their operation. It is not made applicable to past acts which have been completed. It merely relied on continuing acts, although their commencement was antecedent in point of time. Therefore, only a part of the requisites for action under RERA are antecedent to the coming into force of RERA.”

15. In that case it was submitted that in any event, no contractual rights are affected by RERA since its provisions operate so as to regulate the existing contracts and facilitate completion of construction in accordance with their terms. The date of contracts entered into by the petitioners with the purchasers is relevant and all that is to be seen, is whether a completion certificate has been issued.

16. The Hon'ble Bombay High Court in para 64 of the judgment has held as under:-

“None of the provisions of RERA imposes any penalty retrospectively even in the case of ongoing projects. The offences referred to in Chapter VIII (Sections 59 to 68) apply to offences committed after the commencement of RERA. The requirement to pay interest under Section 18 of the RERA is not a penalty since payment of interest is compensatory in nature in the light of the delay being suffered by the flat purchaser, who had paid for his flat but did not get the possession. Even assuming that the interest is penal in nature, the levy of interest is not retrospective but is only based on antecedent facts; it operates prospectively. The interest payable under Section 18 as per the definition of interest in Section 2(za) Explanation (ii), is the same interest that would have been payable by the flat purchaser for causing delay in payment.” It was further held that “the consequences for breach of such obligations under RERA are prospective in operation.”

17. Thus, in my view by and large, the effect of the provisions of this Act are prospective and to some extent retroactive.

(II)
Maintainability

18. The second important point which falls for consideration of Hon'ble Bombay High Court was regarding maintainability of the complaints and other related matter. The Hon'ble High Court in para 86 of the judgment has held as under:-

“After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature. What the provisions envisage is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed. Paragraph 141 of this judgment is very important and relevant on this point. Operation of which runs as under:-

“On behalf of the petitioners there is no specific challenge raised to legislative competence of Parliament to pass RERA. Therefore, we would not deal with the said issue. We had already discussed that the penalties to be imposed under Chapter VIII of RERA are not retrospective in its

operation. Merely because it relates to ongoing projects which get registered with the authority, the present statute cannot be said to be operating retrospective. Events taking place and instances occurring after registration of the project are taken note of under the penal provisions. The authority concerned would be dealing with cases coming before it in respect of projects registered under RERA. Therefore, the Parliament was competent enough to enact provisions under Chapter VIII of RERA. The challenge raised by the petitioners to the penal provisions under Chapter VIII is merit-less.”

(III)

Separate account

19. The third point was regarding maintenance of separate account and deposit of 70% of the amount realized for the Real Estate Project from the allottees from time to time. It will be worthwhile to reproduce Section 4(2)(d) of Real Estate (Regulation and Development) Act 2016. In paragraph 48 of this landmark judgment, it is held as under:-

“The State has made Rules in respect of deposit of 70% of the amount by the promoter while getting the project registered. He refers to the Rules framed by the State

Government and submitted that similar interpretation is put up by the Union while framing the Rules. The RERA aims at protecting larger interest of lacs of allottees who are waiting for getting their possession and are helpless in getting speedy remedy to their endless problems.

20. In paragraph 72 of the judgment it has been held as under:-

“A plain reading of Section 4(2)(l)(D) indicates that in the case of ongoing projects 70% of the amount already collected prior to registration, if any, and which has not been expended on costs of construction and land is required to be deposited in the designated account. It is only the requirement of deposit which has explicitly been made a requirement post registration. However, the deposit is required with reference to all amounts collected including those collected in the past, after adjusting amounts spent on construction and land. To read the section in the manner that the petitioners want, would run counter to and would defeat the intent of the statute and would prevent realization of its objects. The applicants have handed over a chart/table encapsulating comparative position between the respective Rules framed by various State Governments with respect to

section 4(2)(l)(D) of the RERA. Maharashtra and Gujarat States used the words "to be realized from the allottees". In contradistinction, fifteen States and Union territories have specific provisions with respect to deposit of amounts received prior to the coming into force of RERA. The remaining 9 States and Union territories do not have any specific provision on this regard relating to the deposit of monies and would thus be governed by the provisions of section 4(2)(l)(D)."

21. The Hon'ble Bombay High Court categorically held in para 94 of the judgment as under:-

"Section 4(2)(l)(D) mandates that 70% of the amount realized for the real estate project from the allottees from time to time shall be deposited in separate account in a scheduled bank to cover the cost of construction, land and shall be used only for that purpose. This is an important provision under the scheme of RERA. It was submitted during the course of argument that throughout the country and more so in Mega Cities like Delhi and Mumbai number of cases are coming to light, that huge projects are left incomplete by the builders without giving timely possession

to the allottees as proposed in the agreement. Allottees have approached the Apex Court/High Courts. Several stringent actions have been initiated by the courts. The purpose behind framing this provision is to see that amount collected from the allottees by the promoter is invested for the same project only. The promoter shall not be entitled to divert the said fund for the benefit of other project or for utilization as per desire of the promoter. Such practices have been curbed under the scheme of RERA and one of such move is to introduce such provision wherein one is bound to deposit 70% amount collected from the allottees to be invested on the project. This is again a legislation in the larger public interest of the consumer and allottee. We do not find any arbitrariness in this provision.”

22. In para No.96 of the judgment it has also been held as under:-

“However, the doubts expressed on behalf of the petitioners can be very well explained. The Union of India has clarified that in case 70% amount was invested or spent by a promoter on the project, then such a promoter need not deposit 70% amount realized from the allottees while getting the project registered. It is sufficient if necessary

certificate is furnished to the authority concerned to their satisfaction that amount realized from the allottees was spent on the said project. Even if 50% amount was collected from the allottees and spent accordingly, then the authority under RERA would look into the same and deal with the fact situation and pass necessary orders. In case the allottees default in payment, then it would be for the authority to issue necessary instructions and directions so that allottees are made to deposit the amount with the promoter. A promoter would remain always a promoter under RERA. What is registered under Section 3 of RERA is a project and not a promoter. This is a crucial distinction which needs to be understood while analyzing the scheme of RERA. In a given fact situation of the case, the authority may ask the promoter to sell already constructed flats for generating finances so that one is not put to any loss and the remaining development work is carried out. We cannot encompass all the situations for all the times to come at this stage. It is left to the wisdom of the authority concerned, which is expected to deal with the facts of each case while discharging its

obligation in implementing the provisions of RERA in letter and spirit.”

23.It has also been held in paragraph 191 of the judgment as under:-

“The promoter has to deposit 70% of the amounts realized for the project from the allottees from time to time in the separate account to be maintained in a Scheduled Bank to cover the cost of construction and the land cost and shall be used only for that purpose. Interest accrued thereon is credited to that account. The promoter retains with himself 30% realized from the allottees. The provisions thereto enable the promoter to withdraw the amount subject to satisfying the conditions stipulated therein as per Section 4(2)(1)(D). As per Section 5(3) the registration granted under Section 5 is valid for a period declared by the promoter under Section 4(2)”.

24.It has also been held in para No.261 of the judgment as under:-

“In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70%

amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period. Even under Section 8 of MOFA on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. In other words, the liability under Section 18(1)

(a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the os-wp-2737-17 & ors-RERA-JT.doc provisions of any other law for the time being in force.”

25.It has also been held in paragraph 101 of the judgment as under:-

“We are, therefore, of the view that provisions of Section 4(2)(l) (C)(D) are reasonable and are not contrary to Articles 14, 19(1)(g) and 300-A of the Constitution of India.”

IV

Ongoing project, completion certificate and Partial Completion certificate.

26.The fourth foremost point is regarding issuance and relevance of completion certificate and the concept of ongoing projects and when the projects are required to be registered.

27.First of all, I would like to make reference to the provisions of the Act and the Rules made thereunder by the Government of Punjab (Department of housing and Urban Development by notification dated 08.06.2017.

28.The present Act has been enacted with the aim and object to seek protection to the interests of the large number of aspiring house buyers, to put in place the effective regulatory mechanism for orderly growth of the sector which is the second largest employer after agriculture. For ordinarily, which is second and to bring about accountability and

transparency in this housing sector. Though the Consumer Protection Act 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. Hon'ble Bombay High Court in para No.148 has highlighted the aims and objects of the Act which is reproduced as below:-

“148. We perused the report of the Standing Committee. The Standing Committee on Urban Development (2013-2014) submitted its draft report in respect of the Real Estate (Regulation and Development) Bill, 2013 (Thirtieth Report to Fifteenth Lok Sabha). Paras 1 and 2 of Chapter - I titled as "Background" read as under :

"1. Over the past few decades, the demand for housing has increased manifold. In spite of Government's efforts through various schemes, it has not been able to cope up with the increasing demands. Taking advantage of the situation, the private players have taken over the real estate sector with no concern for the consumers. Though availability of loan both through private and public banks have become easier, the high rate of interest and the higher EMI has posed

additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. At this juncture the need for the Real Estate (Regulation and Development) Bill is felt badly for establishing an oversight mechanism to enforce accountability of the Real Sector and providing adjudication machinery for speedy dispute redressal.

2. The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of

industry. Therefore, the need for regulating the sector has been emphasized in various forums." The Standing Committee had gone through the written memorandum and suggestions of number of organizations, individuals on the subject matter. The organizations included Developers' Associations, Consumers' Organizations, Institute of Real Estate and Finance, Design & Engineering Consultants Pvt. Ltd., Builders' Federation, National Real Estate Development Council, Apartment Owners Association, Advocates and Solicitors, Indian Institute of Public Administration (Delhi Regional Branch), Department of Economics, University of Mumbai, Confederation of Indian Industry, Federation of Indian Chambers of Commerce and Industry. The representatives from these organizations/the individuals appeared before the Committee for the oral evidence."

29. Section 2, Sections 20 to 39, Sections 41 to 58, Sections 71 to 78, Sections 81 to 92 came into force w.e.f. 1.5.2016 vide notification No.1544(E) dated 26.04.2016 and Sections 3 to 19, Sections 40, 59 to 70 and Sections 79 to 80 came into force w.e.f. 01.05.2017 vide notification No.1216(E) dated

19.04.2017. Section 3 of the Act deals with prior registration of the real estate project with the authority which runs as under:

“3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and

regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

30. According to the proviso, the project for which the completion certificate has not been issued, would fall in the category of ongoing project. The ongoing project has not been defined under this Act, but, has been defined under Rule 2(h) of Punjab State Real Estate (Regulation and Development) Rules 2017 (hereinafter called as the Punjab Rules, which is as under:-

“2(h) “ongoing projects” means the Real Estate Projects which are ongoing in which development and development works as defined in Section 2(s) and Section 2(t) of the Act are still under way, excluding the area of portion of the Real Estate Project for which partial completion or occupation certificate as the case may be, has been obtained by the promoter of the project.”

31. The term development, development works, external development work, internal development work have been

defined under Sections 2(s), 2(t),2(w) and 2(zb) respectively. The completion certificate and occupancy certificate have been defined under Section 2(q) and 2(zf). The Hon'ble Bombay High Court has dealt with a query, where 80% of the work was already complete and members were residing there after getting possession of their respective units and it was contended by the learned counsel that it would be injustice to petitioner to get itself registered under RERA because the project shall not be treated as ongoing project and the petitioner to get registration under Section 3 of the Act. The learned ASJ had referred to an affidavit submitted by the Union of India wherein it is mentioned that the projects which have received completion certificate prior to 1st May 2017 are not covered under the Act. Rather it applies to the ongoing project which is not received completion certificate. Reference may be made to paragraph 14 of the judgment. The Hon'ble Bombay High Court has observed that the completion of construction of buildings/projects has not been included in the statutory scheme of MOFA. The Hon'ble Bombay High Court has given detailed findings giving reasoning in para 181 and 182 of the judgment, which are as under:

“181. There was no accountability as to entity or persons responsible and/or liable for delivering on several projects that were advertised and in respect of which amounts had been collected from individual purchasers. What was promised in advertisements/broachers, such as amenities, specifications of premises etc. was without any basis, often without plans having been sanctioned, and was far from what was finally delivered. Amounts collected from purchasers were either being diverted to other projects, or were not used towards development at all, and the developer would often be left with no funds to finish the project despite having collected funds from the purchasers. For a variety of reasons including lack of funds, projects were stalled and never completed and individual purchasers who had invested their life-savings or had borrowed money on interest, were left in the lurch on account of these stalled projects. Individual purchasers were often left with no choice but to take illegal possession of premises offered to them under the guise of fit-outs etc., and without the developer having obtained an occupation/completion certificate, which in turn would be on account of a range of

different acts of omission and commission such as non-adherence to the sanctioned plans, excess construction, lack of having obtained the requisite permissions etc. Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/ completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.

“182. The real estate sector has largely been opaque, with consumers often unable to procure complete information, or enforce accountability against builders and developers in the absence of effective regulation. The biggest fallout affecting the sector has been (1) the delay in project completion; (2) diversion of funds collected from buyers, (3) one-sided contracts due to power asymmetry; (4) reneging on contractual commitments by both the developers and the buyers; and (5) constraints in financing and investment

options available to the sector, thereby affecting its long-term growth”.

32. The findings of the Hon’ble Bombay High Court in respect of the registration of ongoing projects are in paras No.194 and 260, which are as under:-

“194. First proviso to Section 3(1) lays down that projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter has to make an application to the Authority for registration of the said project within a period of three months from the date of commencement of the Act. Sub-section (2) of Section 3 lays down that no registration of the real estate project shall be required in respect of clauses (a) to (c). Explanation thereto lays down that for the purpose of Section 3, where the project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under the Act for each phase separately. Section 4(2) requires the promoter to enclose documents set out in clauses (a) to (m).”

“260. As noted earlier, because of the failure on the part of the promoter in completing the project within a reasonable time and handing over possession to the prospective purchasers, the Parliament has thought it fit to enact RERA so as to ensure completion of project or phase, as the case may be, in a time bound manner. Before RERA coming into force, the provisions of MOFA were applicable. However, the completion of construction of building/project was not envisaged in MOFA. This was a serious lacuna in the law which gave rise to institute suits for specific performance of contracts and/or claiming damages. The object of RERA is that the prospective purchasers can consider booking apartment at the time of launching of the project or when the building is under construction. It is common knowledge that there is substantial difference in price when the apartment is booked at the time of launching of the project or when the building is under construction vis-a-vis when the building is complete in all respects along with Occupation Certificate. Naturally the buyers are interested to book the apartment at the time of launching of the project or when the building is under construction. RERA assures

completion of a project in time bound manner. If for any reason the promoter is required to be replaced under Section 8, the promoter's obligation to complete the project is taken over by the Authority.”

33. Partial completion certificate has also not been defined under the Act, but, has been defined under Rule 2(g), which runs as under:-

“2(g) “partial completion certificate” means a certificate issued by the authority competent to issue the same for a part of project area on completion of development works in that part or of a building block in case of built up projects as the case may be.”

34. The procedure for obtaining completion certificate as well as partial completion certificate has been laid down in notification bearing No.4966-CTP (Pb.)/SP-458 dated 02.09.2014.

35. The crux of the whole discussion on this point leads to this conclusion that the projects, which have not obtained the completion certificate or partial completion certificate, are required to be registered with the authority failing which, this may attract penal consequences as laid down under this Act.

Chapter VIII deals with the penalties and adjudication. Reference may also be made to para 67 of the judgment of the Bombay High Court, which is as under:-

“67. The learned counsel referred to Sections 4(2)(l)(D), Sections 12, 14(3), 18(1)(2)(3), 40, 59, 60, 61, 62, 63, 65, 67, 59(2), 64, 66 and 68 of RERA. By referring to these provisions and the settled principles and the case laws, the counsel submitted that these provisions prescribed that certain penalties are made applicable on the failure to discharge obligation by promoter under RERA. These provisions are made in the larger public interest and only on the failure of the promoter, such penalties could be imposed in given facts and situation of the case by the concerned authority.”

(V)

Pre/post RERA Agreement

36. Now, the next point is regarding past agreement executed before the coming into force of the present legislation. Several provisions of the Act were challenged on legal side and Hon'ble Bombay High Court in the above mentioned judgment has dealt with this proposition at various places in it. It was contended before the Hon'ble Bombay High Court that

RERA Act will effect retrospectively as far as the past agreements were concerned. The Hon'ble Bombay High Court in paragraph 256 of the judgment has categorically held that *“in other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(1)©, he is not absolved of the liability under the agreement for sale.”* The intention of this Act is to bring the complaints of allottees before one authority and to simplify the process. The Hon'ble Bombay High Court is also of the view that the liability to pay interest is from the date of payment received by the promoter till the amount is refunded. Reference may be given to the paragraph Nos.261 and 264, which are as under:-

“261. In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and

used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period. Even under Section 8 of MOFA on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. In other words, the liability under Section 18(1) (a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

“264. Insofar as challenge to Sections 59, 60, 61, 63 and 64 is concerned, these provisions fall in Chapter VIII entitling "Offences, Penalties and Adjudication". A perusal of these provisions shows that these provisions are prospective in nature and on account of contravention of certain provisions of RERA, the Authority is empowered to impose penalty. Section 76(1) lays down that all sums realized, by

way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union Territories, shall be credited to the Consolidated Fund of India. Sub-section (2) thereof lays down that all sums realized, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, is to be credited to such account as the State Government may specify. Payment of interest and compensation under Sections 12, 14, 18 and 19 is to be adjudicated by the Adjudicating Officer as per Section 71. The amount of interest and compensation is payable by the promoter to the allottee or by the allottee to the promoter [under Section 19(7)]. As against this, under Section 76 the sums realized by way of penalties imposed by the Appellate Tribunal or the Authority in the Union Territories, is to be credited to the Consolidated Funds of India and in a State it shall be credited to such account as the State Government may specify. In short, the penalties imposed by the Appellate Tribunal or the Authority are not payable to either promoter or the allottee as the case may be but are compulsorily required to be credited either in the Consolidated Funds of India or such account as the State Government may specify.

Section 76 does not include determination of Adjudicating Officer under Section 71 of RERA. This is also pointer to indicate that the interest and compensation determined by the Adjudicating Officer under Sections 12, 14, 18 and 19 is not by way of penalty but is essentially compensatory in nature. As the penalties under Sections 59, 60, 61, 63 and 64 are on account of acts of commission or omission on the part of either promoter or the allottee as the case may be and which are prospective in nature, it cannot be said that these provisions are violative of Articles 14 and 19(1)(g) of the Constitution of India and amount to unreasonable restrictions.”

37. In other words, in my opinion, allottee is entitled for the interest on the amount which he has paid to the promoter till the same is refunded by the promoter and the Act will be retroactive to that effect.

VI

Role of Authority and Adjudicating Officer

38. In this Act, the grievance redressal mechanism under one authority, or under one roof has been provided. As mentioned earlier, the Consumer Protection Act was only curative in nature, whereas,

the present Act is not only curative but, also preventive. The Real Estate Regulatory Authority has a big role to play on preventive side, whereas, the legislation by its true wisdom has assigned the curative or remedial mechanism to the adjudicating officer. The present Act has been passed by the Hon'ble Parliament of India and the powers, roles, domain and jurisdiction of the Authority as well as Adjudicating Officer have clearly been defined and demarcated by this Legislation (hereinafter referred to as the Punjab Rules made thereunder.) The interpretation of the law has to be done keeping in view the whole scheme, aim and object of the act and not in isolation. The Legislation in its own wisdom has used the word "authority" as well as "adjudicating officer" wherever it is required. Furthermore, the Legislation has clearly, intentionally and suitably used the word penalty or interest and compensation or interest. Section 38 of the Act has no overriding effect over the relevant Section of the Act which prescribes the jurisdiction of the Adjudicating Officer. The Adjudicating Officer has no power to impose penalty or recommend prosecution or to grant registration of the project

or grant registration certificate to the agents or to implement the provisions except sections 12, 14, 18 and 19.

39. Section 31 of the Act lays down procedure for filing the complaints with the Authority or the adjudicating officer to the extent that any aggrieved person may file complaint with the authority or adjudicating officer as the case may be for any violation or contravention of the provisions of the Act or the Rules made thereunder against any promoter as the case may be. Section 71 deals with the power to adjudicate. The Adjudicating Officer has to be appointed by the authority in consultation with the appropriate Government for adjudicating the compensation under Sections 12, 14, 18 and 19. Section 71(3) of the Act runs as under:-

“71(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections

specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

40. Section 72 of the Act lays down the factors which are to be taken into account by the adjudicating officer, which are enumerated in the following manner:-

“While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely:

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused as a result of the default;*
- © the repetitive nature of the default;*
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

41. The Sections 12, 14, 18 and 19 are given in tabulated form as under:-

S.12: Obligations of promoter regarding veracity of the advertisement or prospectus:	S. 14: Adherence to sanctioned plans and project specifications by the promoter :	S.18: Return of amount and compensation:	S. 19: Rights and duties of allottees:-
<i>Where any person</i>	<i>The proposed project</i>	<i>If the promoter fails to</i>	<i>The allottee shall</i>

<p><i>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 the Act.</i></p> <p><i>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</i></p>	<p><i>shall be developed and completed by the promoter</i></p> <p>.....</p> <p>.....</p> <p>.....</p> <p><i>In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act.</i></p>	<p><i>complete or is unable to give possession of an apartment, plot or building ,-</i></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p><i>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.</i></p>	<p><i>be entitled to obtain the information.....</i></p> <p>.....</p> <p>.....</p> <p>.....</p> <p><i>The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act.</i></p>
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<i>manner provided under this Act.</i>			
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42. Section 10(1) of the Consumer Protection Act 1986, runs as under:-

(1) Each District Forum shall consist of :-

(a) a person who is, or who has been, or is qualified to be a District Judge, who shall be its President;

(b) Two other members, one of whom shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty five years of age

(ii) possess a bachelor's degree from a recognized university

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.”

43. In other words, the qualification for appointment of the President of the Consumer is the same as is required for appointment of the Adjudicating Officer. The Punjab RERA Rules have been made and notified vide notification dated

08.06.2017 and Rule 36 lays down the procedure for filing of complaint with the authority and Rule 37 lays down the procedure for filing the complaint with the adjudicating authority.

44. From the above mentioned facts and figures, it is crystal clear that domain of Adjudicating Officer is only restricted to the matters which are covered under Sections 12, 14, 18 and 19.

45. The compensation has not been defined under this Act, however, the compensation has been defined under some other statute, such like Workman Compensation Act, Land Acquisition Act etc. etc. To settle the claim under the Motor Vehicle Act, this term compensation is being used invariably and compensation is awarded accordingly. In my opinion compensation can be granted under the heads pecuniary and non-pecuniary. Under this Act, Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. In case *Mr. R.D. Hattangadi vs M/S Pest Control (India) Pvt. Ltd, AIR 1995 Supreme Court page 755*, the Hon'ble Supreme Court has held as under:-

“Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant : (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship,

discomfort, disappointment, frustration and mental stress in life.”

46. So while awarding compensation under this Act all factors are to be taken into consideration by the Adjudicating Officer. It is necessary to add here that the procedure to be adopted or disposal of the complaint is summary in nature. Under the Motor Accident Claims Tribunal cases, the procedure is also summary.

47. Now, it will be appropriate to have a glance over the judgment of the Hon'ble Bombay High Court relating to the provisions to award compensation more specifically under Section 18 of the Act. A submission was made before the Hon'ble Bombay High Court that there is no provision made in the RERA to refund money invested by the promoter in the project in case the promoter desires to leave the project or his registration gets cancelled. The Hon'ble Bombay High Court considered the submission of learned counsel for ASJ in paragraph No.43 of the judgment and it was observed that the interest and compensation to be awarded under Section 18 cannot be termed as penalty. The penalty is to be imposed for reasons

where a party violates order passed by the authority/Tribunal. These provisions have been made, so that the timely compliance of the order passed by the authority is made. The Hon'ble Bombay High Court has given categorical findings in para 61 of the judgment, which is reproduced as under:-

“61. The obligation imposed on the promoter to pay interest until such time as the flat is handed over to the flat purchaser is not unreasonable. Interest is merely compensation for use of money. It is commonly ordered by courts for money to be returned together with interest. The interest would be payable as a consequence of the promoter's own default. In the circumstances, the provisions of RERA for payment of interest are reasonable restrictions and are also in furtherance of the public interest.”

48. In para 64 of the judgment, the Hon'ble Bombay High Court has held as under:-

“64. None of the provisions of RERA imposes any penalty retrospectively even in the case of ongoing projects. The offences referred to in Chapter VIII (Sections 59 to 68)

apply to offences committed after the commencement of RERA. The requirement to pay interest under Section 18 of the RERA is not a penalty since payment of interest is compensatory in nature in the light of the delay being suffered by the flat purchaser, who had paid for his flat but did not get the possession. Even assuming that the interest is penal in nature, the levy of interest is not retrospective but is only based on antecedent facts; it operates prospectively. The interest payable under Section 18 as per the definition of interest in Section 2(za) Explanation (ii), is the same interest that would have been payable by the flat purchaser for causing delay in payment.”

49. The Hon'ble Bombay High Court is very categorical with regard to the agreements entered between the parties even prior to coming into force of this Act and in this respect the paragraph 119 is reproduced herein-below:-

“119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under

RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and an allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature.”

50. In para 255 of the judgment referred above, it has been held as under:-

“The intention of RERA is to bring the complaints of allottees before one Authority and simplify the process. If the interpretation suggested by the petitioners, namely, that the provision is applicable only after coming into force RERA is accepted, this would result in allottees having to approach different fora for interest prior to RERA and subsequent to RERA. In fact Section 71 of RERA provides that the cases pending before the Consumer Court can be transferred to Authority. Reference to pending cases is obviously a reference to claims for interest and/or compensation pending when the RERA came into force.”

51. It has also been held in para 256 of the said judgment which is reproduced as under:-

“Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for

sale. Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale.”

52. In paragraph No.257 of the judgment it was held that interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but, has not received possession of it. It is further held that it is not a penalty or punishment at all. The object of Section 18 is to recompense an allottee for depriving him of the use of the funds paid by him. In paragraph 259 of the judgment, the Hon'ble Bombay High Court has held as under:-

“259. A perusal of Section 18 indicates that payment of interest including compensation or interest, as the case may be, is payable on account of default committed by the

promoter. Although this Section does not consider a situation where the promoter is unable to complete or handover possession for no fault of his own, it would be open to him to claim frustration in such a case and return the money to the allottee with interest thereby stopping the interest that is to be paid till handing over possession. The provisions of RERA ensure that the allottees' money is not misused or unreasonably retained by the promoter.”

53. The Hon'ble Bombay High Court has also held in paragraph No.261 of its judgment that “in my opinion Section 18 is compensatory in nature and not penal and the paragraph 262 (g) seeks our attention, which is as under:-

“262 (g) of the Constitution of India. I do not find any merit in this submission. The promoter is liable to pay interest on account of suspension or revocation of the registration under the Act or for any other reason. The basic presumption is that the promoter was unable to complete the construction despite prescribing the time period under Section 4(2)(l)(C). The amount of 70% is already credited in a dedicated bank account under Section 4(2)(l)(D). The

promoter has retained 30% paid by the allottee to him. Thus the allottee has parted with entire consideration for purchasing the apartment and still he is not given possession. The allottee cannot be said to be acting gratuitously. The promoter enjoying the benefit is bound to make compensation to the allottee. In other words though it is a case of unjust enrichment on the part of the promoter, still he is not liable to compensate the allottee by paying interest on the amount retained by him. In view thereof, it cannot be said that Section 18(1)(b) is violative of Articles 14 and 19(1)(b) of the Constitution of India. It also cannot be said to be a penal provision.”

54. In a nut-shell it is clear from the aforesaid statutory legal position that the complaint can only be entertained in respect of the projects which are registered with the authority. The promoters are required to get the on-going projects registered and they are also required to adhere to the Rules and Regulations while carrying out all the activities under this Act. The authority has a bigger role to play, whereas, the Adjudicating Officer has to perform the duty, which is curative

in nature vis-à-vis to award compensation that is the refund of the amount, interest and other related matters.

55. As a sequel of aforesaid discussion, the legal position emerges out to the effect 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 clearly settled this position in a case titled as Bikramjit Singh and another, bearing complaint No. 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 against registration No. PBRERA-SAS81-PM002, as such; the complaint is very much maintainable.

56. The complaint in Form-M is to be dealt with by the Authority or its Benches, whereas, the complaint in Form-N is to be entertained and to be decided by Adjudicating Officer. Therefore, the jurisdiction of the Authority as well as Adjudicating Officer is well-defined not only in the statute itself, but, also in the detailed judgment of the Hon'ble

Bombay High Court. It is also a settled proposition that under Section 18 of the Act, the allottee may seek compensation firstly when he withdraws from the project in toto and secondly when he does not withdraw from the project but, claims interest or compensation on the amount so paid by him to the promoter in one go or on different dates. The operation of this Act is by and large prospective in nature and in certain cases, it is retroactive. The Hon'ble Bombay High Court made it crystal clear about the operation of the statute qua pre/post RERA agreement. Rule 8(2) of the Punjab Rules further protects the rights of the parties to the agreement. No doubt, the parties are bound by the terms and conditions of the agreement unless the same is not contrary to the law. It is notable that under Punjab Rules the specific specimen of the agreement for sale has been prescribed which the parties are supposed to enter into. In the previous transactions, the promoters were using a stereo type of agreement which was by and large a unilateral and beneficiary to the promoter. Even in several cases, the promoters were not even executing the agreement for sale, rather, giving allotment letter, which was generally unilateral and not signed by the buyer, however the

position in this case is different as there is agreement for sale executed in this case. A specific time frame for handing over the possession of the dwelling unit, apartment or plot is given in the agreement or in its absence, in the allotment letter. After coming into force of the RERA Act, the promoters are giving fresh time of completion of their project, whereas, they have given another date or time in the agreement or allotment letter and they are subsequently taking the plea that the stipulated time limit given by them at the time of registration of the project has not expired. As such, they are absolved from any such earlier liability, but, this stand of the promoter is not in accordance with the settled law and Hon'ble Bombay High Court has made this point clear in paragraph No.261 and 256 (supra). 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.

57. There is an agreement for sale on the file as *Annexure-B* and its execution has been duly admitted by both sides. The execution of the agreement is the mandatory requirement under Section 13 of the Act and the same has duly been complied with.

58. There is no dispute with regard to the factual position regarding allotment of flat under reference. This is also evident and admitted fact that the first instalment amounting to Rs.10,00,000/- was received by the respondent on 21.04.2014 and subsequent to that the agreement to sell was executed on 05.08.2014 and allotment was issued vide allotment letter dated 06.08.2014. Thus, there is no dispute regarding execution of the documents. In normal circumstances, the parties are bound by the terms and conditions laid down in the document, which set out the obligations cast upon the parties. It is also admitted fact that the total sale consideration amount of the apartment was Rs.95,10,800/-, which is also evident from the above documents.

59. There is no dispute with regard to the sale consideration of the apartment No.J-1104, which is to the tune of Rs.95,10,800/- as per allotment letter dated 06.08.2014 as *Annexure-A*. The

payment is construction linked as is apparent from the allotment letter. The agreement executed between the parties is dated 05.08.2014 and the allotment letter was issued on 06.08.2014 and as per these documents, the possession was to be delivered within twenty four months i.e. upto 06.08.2016, but, the possession of the apartment has not still been delivered to the complainants.

60. For the sake of repetition, it is worthwhile to mention here that the complainants are before the Adjudicating Officer in Form-N. However, even if there is no agreement for sale, the claim or case of the complainants cannot be brushed aside because it is fully covered under Section 18 of the Act "i.e. as the case may be". In this case there is agreement for sale. There is no denial about the payments made by the complainants, rather, the complainants have successfully proved that they have made the entire consideration of the costs of the apartment under reference. It is further made clear that the actual amount (excluding taxes etc) can only be considered. In case the promoter seeks fresh line of time limit for completion of the project and if the same is not suited to the allottee, he has the option either to continue with the project or to rescind the

contract. Here it is important to note that when fresh time limit for new buyer after the registration with the authority is given then such time limit will apply and any such allottee or buyer cannot seek refund before the expiry of stipulated time limit, however, if any such complaint is filed, then it would be treated as pre-mature.

61. For a limited purpose, this authority has to take into consideration the admitted agreement dated 05.08.2014 and allotment letter dated 06.08.2014. From both these documents, the factual position with regard to allotment of flat under reference is clear. This is also evident and admitted fact that the first instalment amounting to Rs.10,00,000/- was received by the respondent on 21.04.2014 and subsequent to that the allotment was issued vide agreement to sell dated 05.08.2014 and allotment letter dated 06.08.2014. Thus, there is no dispute about execution of the documents. It is the case of the respondent that they have paid compensation to the tune of Rs.2,92,800/- which fact has not been denied by the complainants. It is also admitted fact that the total sale consideration amount of the apartment was Rs.95,10,800/-,

which is also evident from the agreement to sell dated 05.08.2014 and allotment letter dated 06.08.2014.

62. The promoter has already received the sale consideration and utilized the same towards the cost of construction, or 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 buyers. The respondent has given the grounds for delay of the project on various reasons as mentioned in the written reply as well as in the written submissions the same are not acceptable to the reasoning when the buyer is not at fault. 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 complainants are entitled for the interest after the contractual date of handing over of the possession till the actual date of handing over the possession. In this case, the actual date of delivery of possession was 06.08.2016 i.e. after 24 months from 06.08.2014, the date of allotment letter and also as per clause 21 of the agreement to sell dated 05.08.2014. The complainants paid an amount of Rs.79,45,611/- till date, but,

the possession of the apartment has not so far been delivered to them. The rate of interest under rules is 10.1% and the interest amount on the above principal amount works out to be Rs.23,68,436/-. Admittedly, the complainants have already received compensation amount to the tune of Rs.2,92,800/- and while deducting this amount, the complainants are held entitled to receive an amount of Rs.20,75,636/- towards interest.

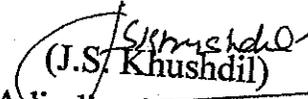
63. Since, the complainants have not received the possession of the apartment within the stipulated period and they have to seek the remedy under the existing law and for that obviously, they have to suffer mental agony and had to incur expenses on litigation to pursue their claim. I have considered all the 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 complainants are also held entitled for compensation under all the heads i.e. mental agony and litigation expenses to the extent of Rs.1,00,000/-.

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

01.	Interest	Rs.20,75,636/-
02.	Compensation on account of mental agony and litigation expenses	Rs.1,00,000/-
3.	Total	Rs.21,75,636/-

65. The respondent is directed to pay the above-said amount of Rs.21,75,636/- on account of compensation and interest within sixteen days from the date of this order, failing which, the complainants shall be entitled to receive further interest on the total amount of compensation at the rate of 6% per annum from the date of order till realization of the amount due. A copy of this order be supplied to both the parties and file of complaint be consigned to record room after due compilation.

Dated: 14.05.2018


 (J.S. Khushdil)
 Adjudicating Officer 14/5/2018
 Real Estate Regulatory Authority