

FORM 'M'

COMPLAINT TO REGULATORY AUTHORITY

Complaint under section 31 of the Act [See rule 36(1)]

For use of Regulatory Authority(s) office:

Complaint Diary No: GCNo11632019
 Date of filing: 02-Jan-2019
 RERA Number: PBRERA-LDH45-PR0052

IN THE REGULATORY AUTHORITIES OFFICE (Name of place)

Between

ABHISHEK KAPOOR Complainant(s)

And

IREO WATERFRONT PRIVATE LIMITED Respondent(s)

Details of claim:

(1) Particulars of the complainant(s)

(i) Name of the complainant ABHISHEK KAPOOR

(ii) Address of the existing office / residence of the complainant

| | | | |
|------------------|--|----------------|-------------------|
| Address Line 1 | 48-B | Address Line 2 | Udham Singh Nagar |
| District & State | Ludhiana , Punjab | Pin Code | 141001 |
| Email Address | advocate.abhishekkapoor@gmail.com | Mobile Number | 9876753879 |

(iii) Address for service of all notices

| | | | |
|------------------|-------------------|----------------|-------------------|
| Address Line 1 | 48-B | Address Line 2 | Udham Singh Nagar |
| District & State | Ludhiana , Punjab | Pin Code | 141001 |

(2) Particulars of the Respondent(s)

(i) Name of the Respondent IREO WATERFRONT PRIVATE LIMITED

(ii) Office Address of the Respondent

| | | | |
|------------------|--|----------------|-------------------------|
| Address Line 1 | Ireo Waterfront Private Limited | Address Line 2 | Issewal Deatwal Link Rd |
| District & State | Ludhiana , Punjab | Pin Code | 141102 |
| Email Address | rajiv.gupta@ireo.in | Mobile Number | 0 |

(iii) Address for service of all notices

| | | | |
|------------------|---------------------------------|----------------|-------------------------|
| Address Line 1 | Ireo Waterfront Private Limited | Address Line 1 | Issewal Deatwal Link Rd |
| District & State | Ludhiana , Punjab | Pin Code | 141102 |

**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH**

File No. 44/M(SG)

GC No.11632019

Date of Filing: 02.01.2019

Date of Decision: 10.06.2019

PBRERA-LDH45-PR0052

Abhishek Kapoor r/o 48-B, Udham Singh Nagar, Ludhiana, Punjab-141001

...Complainant

Versus

M/s. Ireo Waterfront Private Limited, Issewal Deatwal Link Rd., District Ludhiana, Punjab –
141102

...Respondent

Present:- Complainant in person.

Respondent Ex-parte vide order dated 03.06.2019.

ORDER

Sh. Abhishek Kapoor (hereinafter called the 'Complainant') filed a complaint, received on 2nd January, 2019 pertaining to the purchase of plot (Type T, Plot No.X-095 measuring 105.49 Sq. Yds.) from M/s. Ireo Waterfront Private Limited (hereinafter referred as the "Respondent") on 05.03.2015 at Ludhiana seeking relief of refund of money alongwith interest alongwith compensation. The Basic Sale Price for the plot flat was Rs.21,09,800/- inclusive of the proposed electricity connection to the said plot upto a maximum demand load of 5KW.

The complainant alleged that he paid a total amount of Rs.21,50,917/- as per the details of the payments as below:-

| Sr. No. | Date of Payment | Amount |
|--------------|-----------------|-------------------|
| 1 | 25.11.2013 | 100000.00 |
| 2 | 25.11.2013 | 100000.00 |
| 3 | 15.03.2015 | 1950917.00 |
| TOTAL | | 2150917.00 |

The complainant further alleged that he made above payments alongwith the applicable registration charges on or before the due dates. In the Plot Buyer's Agreement (hereinafter called as 'Agreement') dated 05.03.2015 the date of possession of the plot is mentioned within 24 months from the date of execution of the agreement, with a grace period of 180 days on account of unforeseen delays, beyond the reasonable control of the respondent. The contentions of the complainant are that despite having paid 100% payment of the agreed sale price well within time, he has not been offered possession of his flat till the time of these arguments.

Now, the complainant has sought the following reliefs:-

1. Refund of amount paid to the respondent alongwith interest.
2. Compensation "*as per terms & conditions of the agreement point No. 11.1 "Possession and Holding Charges" in case of any delay in possession of the plot within a period of 24 months from date of execution of agreement a compensation of Rs.50/- per sq. yard for every month thereafter until the actual date fixed by the respondent for making the offer of conveyance of the said plot.*"
3. Any other relief.

Accordingly, notice under Section 31 of Real Estate (Regulation and Development) Act, 2016 read with rule 36 (2) Punjab State Real Estate (Regulation and

Development) Rules, 2017 alongwith the complaint & annexures was issued to the respondent by e-mail and by registered post to appear in person or through his authorized representative on 18.03.2019 at 3.15 P.M. to answer to alleged contraventions as mentioned in the complaint. Respondent was directed to submit his reply within 15 days of receipt of notice, with a copy to be sent to the complainant through registered post/speed post or a reputed courier. On the fixed date of hearing, despite serving of the notice, none came present on behalf of respondent nor any communication was received. Further, the complainant submitted additional documents in respect to his complaint & invited attention towards the orders passed by The Real Estate Appellate Tribunal, Punjab and requested this bench of Authority that he does not intend to seek the relief of compensation at this stage and prayed for hearing by this bench of Authority for refund & interest only. He further informed that he will file a case for compensation at later stage in form 'N', if so required.

The Real Estate Appellate Tribunal, Punjab vide its decision dated 27.02.2019 in Appeal Nos. 53 to 56 of 2018; 44 to 48 of 2018; 11 to 15 of 2018 and 21 of 2018 has ordered and summarized at page No. 48 to 50 the following:-

"To sum up our opinion it would be appropriate to record as follows:-

- (i) All violations and causes of action that give rise to multiple relief shall be placed before one forum for adjudication.*
- (ii) Where the Act and or the Rules identify a particular forum as empowered to adjudicate a particular violation or a cause of action, the forum so named shall alone be empowered to decide the matter.*
- (iii) A violation claiming relief of compensation can only be adjudicated by the Adjudicating Officer exercising power under Section 71 of the Act and Rule 37 of the Rules.*
- (iv) Where the violation alleged leads to a relief of compensation or if compensation is a part of multiple reliefs like return of investment with interest and compensation or refund with interest including compensation,*

- the complaint shall be placed before the Adjudicating Officer exercising power under Section 31 and 71(1) of the Act read with Rule 37 in form N.
- (v) All other matters whatever be the nature of the violation/cause of action and the reliefs flowing therefrom shall be placed before the Authority, like interest under the proviso to Section 18 and 19(7) of the Act.
 - (vi) All pending complaints/applications shall be forwarded by the Authority or the Adjudicating Officer to the appropriate forum as indicated above.
 - (vii) The parties shall be at liberty to amend their applications/complaints if the need so arises.
 - (viii) This order shall not apply to any matter that has attained finality."

The Appellate Tribunal has held, as mentioned above at point (iv) that where the violation alleged leads to a relief of compensation or if compensation is a part of multiple reliefs like return of investment with interest and compensation or refund with interest including compensation, the complaint shall be placed before the Adjudicating Officer. However, in the present case, the complainant is not seeking the relief of compensation, as stated by his counsel, although the same was initially mentioned in the complaint.

Further, the Appellate Tribunal at point (iii) has held that in case of a violation, if the relief of the compensation has been claimed the same has to be adjudicated by the Adjudicating Officer exercising power U/s. 71 of the Act and Rule 37 of the Rules. However, in the present case the complainant desires to continue with the complaint in form M which has to be dealt with as per Rule 36 of the Rules. Further, the complainant has given up relief of compensation, and this bench is, therefore, competent to proceed further with the complaint as provided U/s. 31 of the Act.

As none came present for the respondent, in the interest of justice, a reminder notice under Section 31 of Real Estate (Regulation and Development) Act

2016 read with rule 36 (2) Punjab State Real Estate (Regulation and Development) Rules, 2017 was again issued to the respondent, by way of e-mail and registered post alongwith the annexures & additional set of document, to appear in person or through his authorized representative on **11.04.2019 at 3:15 PM**. Respondent was directed to submit his reply within 10 days of receipt of notice, to the complainant through email, registered post/speed post or a reputed courier, alongwith a copy of the same to this bench of the Authority, failing which ex-parte proceedings shall be initiated.

On 09.04.2019 the file was taken up and the matter was adjourned, due to official tour of the undersigned and the matter was listed for **14.05.2019 at 10.30 A.M.** & both the parties were informed accordingly. On 14.05.2019 despite serving of the notice, again none came present for the respondent and in the interest of justice, one last opportunity was granted to the respondent and matter was fixed for 03.06.2019 at 11.30 A.M. failing which ex-parte proceedings will be initiated.

On 03.06.2019, the complainant appeared and informed that no reply has been received from the respondent till date. Despite serving of the notices & email, none came present before this bench of Authority nor any communication has been received from the respondent's side and it was decided to proceed ex-parte against the respondent.

I have heard the complainant at length and perused the documents brought on record by the complainant. This Bench now proceeds to dispose off this complaint accordingly. The complainant by and large has addressed his arguments in the light of pleadings as contained in the complaint.

The project namely Ireo Water Front, to which this complaint pertains, is registered with this Authority bearing registration No.PBRERA-LDH45-PR0052 and as such the complaint is maintainable. Perusal of the agreement dated 05.03.2015, shows

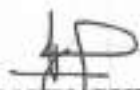
that as per its clause 11.1 (Possession and Holding Charges), the possession of the plot was to be delivered within 24 months & grace period of 180 days on account unforeseen delays beyond the reasonable control of the company from the date of execution of the agreement by the respondent, which means by 05.09.2017. The perusal of the receipts & statements submitted by the complainant further shows that the complainant has made the 100% payment of an amount of Rs.21,50,917/- towards costs of the plot. There is no rebuttal to the above facts on the file as the respondent has not come present to contest this complaint. The complainant has not been given possession of the plot in question within the stipulated period and he now wants to withdraw from the project and wants refund of the amount so paid by him to the respondent. He is well within his right to do so. As per Section 18 of the Real Estate (Development & Regulation) Act, 2016 (hereinafter called as the 'Act'), it is option of the complainant that *"if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"*

In the instant case, the complainant has opted for refund of the principal amount and has claimed interest only and has not sought any compensation. In view of the facts and circumstances of this case, this Bench is of the considered opinion that the complainant is entitled to the return of the amount alongwith interest paid by him to the respondent, as provided under the Act..

As the respondent has failed to offer possession of the plot till date, the complainant is entitled to return of principal amount of Rs.21,50,917/- alongwith interest at the prescribed rate as per Rule 16 of the Rules i.e. State Bank of India highest marginal cost of lending rate plus 2% from the dates of deposit of each installment by complainant. The respondent, as such, is directed to return the amount of Rs.21,50,917/- alongwith interest at the State Bank of India highest marginal cost of lending rate plus 2% from the date of respective payments till the date of this order.

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

Chandigarh
Dated: 10.06.2019


(SANJIV GUPTA)
Member, 10/06/19
RERA, Punjab