

**BEFORE SHRI J. S. KHUSHDIL, MEMBER  
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB  
PLOT NO.3, BLOCK-B, FIRST FLOOR, MADHYA MARG,  
SECTOR 18A, CHANDIGARH**

Complaint No./RERA/GC1005/2018

Date of Institution: 16.08.2018

Dated of Decision: 12.06.2019

Kapil Tandon, resident of 129/11, Central Town, Jalandhar-144001, Punjab.

.....Complainant

Versus

Hero Realty Private Ltd, plot No.1, Sector 88, SAS Nagar-160055 (Mohali), Punjab.

.....Respondent

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

*D.S. Khushdil*  
Present: None for parties

12/6/2019

**ORDER**

1. Kapil Tandon (hereinafter called as the complainant) has filed this complaint against Hero Realty Pvt. Ltd., (hereinafter called as the respondent) alongwith documents alleging that he booked a flat No.202, Tower 6, Plot No.1, in project namely Hero Homes, Mohali

Phase-I and paid an amount of Rs.19,01,888/- to the respondent. The said project is registered with this Authority against registration No.PBRERA-SAS81-PR0114. The respondent issued allotment letter dated 04.02.2016 and the possession of the flat in question was to be delivered till 04.09.2019. However, as the complainant moved out of Chandigarh and under compelling circumstances, the complainant was to cancel the said deal. When the complainant demanded back his principal amount, the respondent deducted money on account of GST credit, brokerage and interest and the complainant had to sign the letter under compelling circumstances, though, the respondent deducted Rs.10,00,000/- out of the total amount paid by him. Not

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only this, the amount was not paid within 90 days. In the end it has been prayed that the respondent be directed to make the payment of Rs.4,88,128/- plus Rs.5,21,458/- on account of the illegally deducted amount on account of GST, brokerage, interest and 10% deduction on the basis

of BSP instead of amount paid and this complaint may be accepted.

2. Upon notice, respondent appeared through representative and filed written reply to the complaint admitting the fact that the complainant booked the flat in question in the project Hero Homes, but, it has been stated that the complainant surrendered the allotment and agreed to receive the amount of Rs.8,19,092/- after necessary deductions out of the total amount paid by him and furnished acknowledgment dated 12.06.2018 annexed with the reply as Annexure-R5. As such, the complainant has not come to this Authority with clean hands and as such is not entitled to any relief claimed by him. It is further stated that the booking of the complainant was made through one Manpreet Singh Dhodhi, broker and the complainant availed the brokerage amount of Rs.1,06,420/- as discount from the respondent and this fact is also clear from the letter dated 09.02.2016 issued by the broker himself. The deductions on account of

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interest and GST have also been made rightly. Rest of the averments of the complaint have been denied and a prayer for dismissal of complaint.

3. After hearing both the parties, notice under Section 18 read with Section 11 of the Act was served upon the respondent on 05.12.2018, 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 both the parties suffered statements that they do not want to lead any further evidence/document and the evidence already on record may be read.
5. Both the parties have relied upon documents attached with their pleadings.

*J. S. K. Menon*  
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6. I have heard the learned representatives for the parties on various dates during the proceedings and have gone through the record with their able assistance. The representatives for the parties by and large have addressed their arguments in the light of their respective pleadings. The parties have also submitted their written synopses of arguments, which were also perused.
7. The registration of the project with this authority to which this complaint relates is not a disputed fact. The receipt of payment of an amount of Rs.19,01,888/- made by the complainant has also not been denied by the respondent. It is also an admitted fact that the complainant has surrendered the allotment and an amount of Rs.8,19,092/- has been refunded to the complainant by the respondent vide acknowledgment dated 12.06.2018 copy of which is Annexure-R5. Now the bone of contention between the parties is the deductions made from the amount paid by the complainant to the respondent. It is the version of the

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complainant that the respondents have wrongly deducted the following amounts:-

Sr. No.	Amount	Deducted on account of
1.	Rs.68,397/-	On account of brokerage
2.	Rs.34,665/-	On account of interest
3.	Rs.2,15,894/- and Rs.1,65,172/-	On account of GST
4.	Rs.4000/-	Loss on account of 15 days' delay in making the payment of refund
5.	Rs.5,21,458/-	10% Deducted on BSP and not on the amount paid.
Total	Rs.10,09,586/-	

8. The respondent issued letter dated 18.12.2017 to the complainant wherein they have given the calculations in the following manner:-

Hero Homes Mohali	Unit No.T-06/202
Mr.Kapil Tandon	Calculation as on 14.12.2017
Area	1565 sq.ft (3BHK)
Unit Status	Live as on 14.12.2017
BBA status with date	Executed BBA dated 22.06.2016
Booking Date	06.02.2016
Total paid	19,01,888
Deductions	
10% of BSP (Earnest money)(A)	5,21,458
Interest due (B) as on 14.12.2017	34,665
Interest paid ©	358
Service Tax Paid (D)	76,858
GST paid (E)	2,15,894
Brokerage aid (Including Tax) (F)	68,391
Total deductions (A) +(B) +(C) +(D) +(E) +(F)	9,17,624
GST applicable on total deductions (A)+(B)+(C)+(D)+(E)+(F) @ 18%	1,65,172
Net Refundable Amount	8,19,092

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As per the above table, the amount payable to the complainant is only a sum of Rs.8,19,092/-.

9. The agreement to sell Annexure-R3 dated 22.07.2016 discloses the terms and conditions, vide which, the parties bound themselves. Clause 2.4 deals with default clause vis-à-vis the cancellation of allotment letter, forfeiture of amount of Rs.10% of total sale price and refund of the balance amount. Clause 4.1 deals with the situation where the possession of the unit is delayed. Clause 16.8 deals with regard to the payment of statutory stamp duty and registration costs and Clause 16.14 deals with the commission or brokerage. According to this clause, the respondent would not be liable for any such payment. The perusal of the agreement reveals that several clauses are one sided, unreasonable and unlawful and the Hon'ble

Supreme Court in cases *Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018* and *Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and*

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*another civil appeal No.1677 of 2019* wherein, the Hon'ble Supreme Court has cracked heavily on the promoters who executed unilateral, one sided, unfair and unreasonable agreement with such clauses. Now, such transactions, as in the present case, are regulated by some provisions of law and the format of the agreement is required to be in accordance with law. The RERA Act has come into force i.e. Sections 2, 20 to 39, 41 to 58, 71 to 78 and Sections 81 to 92 came into force w.e.f. 01.05.2016 and Sections 3 to 19, 40, 59 to 70 and Sections 79 and 80 came into force w.e.f. 01.05.2017. It is worthwhile to mention here that prior to this Act in the State of Punjab, the Punjab Apartment and Property Regulation Act 1995 (in short the PAPRA) was in force and is still in force. Obviously all prior transactions are presumed to be under that law or any other relevant applicable law. The project under reference pertains to Ludhiana. Section 6 of PAPRA requires attention here and under this section only 25% of sale price of any unit

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could be accepted as advance money by the promoter and in that eventuality he will have to enter into a registered written agreement for sale under the Registration Act mandatorily. The promoter could not cancel unilaterally the agreement of sale entered into and if he has sufficient cause to cancel, he shall give due notice to the other parties to the agreement and tender a refund of the full amount collected together with interest at the rate as may be prescribed. Section 6(3) sets out the particulars required for agreement, which runs as under:-

(3) The agreement to be prescribed under subsection (1) shall contain inter alia the particulars as hereunder specified in clause (a) in respect of apartments and as specified in clause (b) in respect of plots in a colony and to such agreement shall be attached the copies of the documents specified in clause (c)

- (a) the particulars in the case of apartment,
- (i) if the building is to be constructed, the liability of the promoter to construct the building according to the plans and specifications

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- approved by the authority which is required so to do under any law for the time being in force;
- (ii) the date by which the possession of the apartment is to be handed over to the allottee;
- (iii) the area of the apartment including the area of the balconies which should be shown separately;
- (iv) the price of the apartment including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the allottee of the apartment and the intervals at which the installments thereof may be paid;
- (v) the precise nature of the association to be constituted of the persons who have taken or are to take the apartments;
- (vi) the nature, extent and description of the common areas and facilities and the limited common areas and facilities, if any;
- (vii) the percentage of undivided interest in the common areas and facilities and in the limited common areas and facilities, if any, appertaining to the apartment agreed to be sold, such percentage shall be the ratio of the built-up area of the apartment to the total built-up area of all the apartments;

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- (viii) the statement of the use for which the apartment is intended and restrictions on its use, if any; .
- (b) particulars in the case of plots in a colony,
  - (i) the date by which the possession of the plot is to be handed over to allottee;
  - (ii) the area and price of the plot; and
  - (iii) the statement of the use for which the plot is intended and restriction on its use, it any;
- (c) the copies of documents to be attached with the agreement,
  - (i) the certificate by an attorney-at-law or advocate referred to in clause (a) of subsection (2) of section 3;
  - (ii) certified copy from any relevant revenue record showing the nature of the title of the promoter to the plot or the land on which the building of apartments is constructed or is to be constructed; and
  - (iii) the plans and specifications of the apartment as approved by the authority which is required so to do under any law for the time being in force.

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10. Section 7 of the PAPRA deals with the registration of the

agreement. So, one thing is clear from these provisions that

no promoter can accept more than 25% of the sale price without getting the agreement registered in accordance with the manner prescribed under this Act. A promoter further cannot unilaterally cancel the agreement and if he finds so, he was required to give notice to the allottee(s). The promoter is required to refund the entire amount alongwith interest etc immediately. The perusal of this agreement shows that the conditions have been varied by the respondent/company accordingly to its benefits only. I am unable to find any such provision that even after cancellation, an allottee has to wait for his lawful refund till the unit is resold by the promoter/respondent. In this manner, the possibility of sale to many persons through agreements and without registering the conveyance deed could not be ruled out in such a situation.

11. Now, the project is registered before the Authority, therefore,

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 the complainants have submitted to the jurisdiction of Real Estate Regulatory Authority, Punjab. The Hon'ble Bombay

High Court in *Neelkamal Realtors Suburban Pvt. Ltd. and*

*anr. Vs. Union of India and ors. WRIT PETITION NO. 2737 OF 2017 decided on 06.12.2017* has given findings on various relevant issues, a few of which are operation and effect of the act, maintaining of separate account, ongoing projects, completion certificate and partial certificate, pre/post RERA Act agreements, role of Authority and Adjudicating Officer etc. etc. I have also given elaborate references on above points in cases titled as *Suman Mann and another Vs. JLPL, complaint No.AO/09 of 2017, Nikhil Kwatra and another Vs. JLPL, complaint No.AO/20 of 2017* and subsequent cases, the judgments/ orders of which are available on the website of this Authority.

12.As per clause 7.5 of the prescribed agreement under the provisions of the Act, if the promoter is not at fault, he can forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment.

There is no such evidence on record as to what other dues were payable by the complainant/allottee. Admittedly, the possession was never taken over by the complainant and this

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could only happen if the complainant intended to stay in the project and both the parties were to discharge their respective obligations in accordance with law. While cancelling the allotment, the deduction has been made on various counts including brokerage, interest, GST etc. The important thing which has to be born in mind is that the complainant has not intended to take the possession of the unit, rather he intended to withdraw in between and the unit remained with the promoter. Can there be imposition of double taxation on the same unit by the promoter i.e. one from the complainant and the other from the prospective buyer? The complainant can only give interest on the delayed payment of instalments had he wished to continue with the project, but, here the situation is not in that way. The forfeiture of 10% of the basic sale price is justified and duly supported by the instant present

Act also which comes to Rs.5,21,458/-, however, the other deductions such as brokerage, GST etc. are not lawful and justifiable. It is notable that the taxes can only be levied on

the allottee who purchases the unit finally. The respondent

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was liable to refund the remaining amount of Rs.13,80,430/- (after deducting the amount of Rs.5,21,458/- being 10% of the basic sale price) out of the amount deposited by the complainant i.e. Rs.19,01,888/-. The promoter was liable to refund the above mentioned amount to the complainant within ninety days from the cancellation of the unit, after adjusting the amount, if any, already paid or refunded to the complainant, but, the refundable amount has not been paid to the complainant and the respondent has utilized the same till date. As such, the respondent is also liable to pay 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 date when the amount became due to the complainant till realization.

13. Since, the complainant has to seek the remedy for his lawful claim under the existing law by way of filing this complaint

and for that obviously, he has to incur expenses to pursue his claim by way of attending the proceedings in this case. As

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such, complainant is entitled litigation expenses to the extent of Rs.25,000/-.

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

01.	Refund amount	Rs.13,80,430/- (subject to adjustment of the amount, if any, already paid or refunded to the complainant)
02.	Simple Interest	At the State Bank of India highest marginal cost of lending rate plus .2% on the principal amount from the date when he amount became due to the complainant till realization.
03.	On account litigation expenses	Rs.25,000/-

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 respective parties under rules. File of complaint be consigned to record room after due compilation.

Dated:12.06.2019

(J.S. Khushdil)  
Member 12/6/2019  
Real Estate Regulatory Authority