

**Before Sh. Balbir Singh. Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot-3 Block-B,
First Floor, Madhya Marg, Sector-18-C, Chandigarh- 160018**

**Complaint No. ADC 1225 of 2019
ADC 1226 of 2019
Date of Order: 29.01.2020**

Satish Kumar Sharma & Kusum Sharma R/o 859, Gillco Palm, Landran - Kharar Road, Sector-115, near Nulife Hospital, SAS Nagar, Mohali, Punjab – 140307

Versus

Credo Assets Pvt. Ltd. Through MD, SCO 146-148, Ist Floor, Sector 43-B, Chandigarh – 160022

Present Mr. Satish Kumar Sharma complainant in person.
 Mr. Maninder Singh Advocate representative for the respondent.

Order

This order shall decide complaint no. ADC 1225 of 2019 and complaint no. ADC 1226 of 2019 filed by Sh. Satish Kumar Sharma as the respondent in both the complaints is the same and though the initial booking was for two separate flat nos. i.e Flat no. 618 and 619 but subsequently the booking amount was adjusted in respect of flat no. 619 only of which initially booking was in the name of Sh. Paras Ram Sharma father of Sh. Satish Kumar Sharma but it was then transferred to the name of the present complainants.


2 In brief the case of the complainant was that booking of the flat was made by the complainants in Project SBP City of dreams, Landran-Kharar Highway, Sector- 116, SAS Nagar, Mohali, Punjab and total sum of Rs.4,65,800/- was paid in respect of two flats and the said payment as per request of the applicants was adjusted in respect of flat no. 619. It was averred that there was no forfeiture clause as per the proposal of the booking of the



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flat; neither any allotment letter was issued to the complainants for making them aware of terms and conditions nor any agreement had been executed between the parties. The complainants through e-mail to the respondent intimated to withdraw from the said project. However after persistent demand of the complainants, the respondent agreed to reimburse the paid amount if the loan amount of the complainants was not sanctioned. But subsequently, despite persistent request of the complainants, the amount was not refunded and the complaint was accordingly filed for seeking refund of the initial payment with interest and compensation for mental harassment.

3 On behalf of the respondent it was claimed that though initially two separate units no. i.e 618 and 619 on the 6th Floor, Tower No. LR03, Lifestyle Residency, City of Dreams, Sector – 116, Landran- Kharar Road, were booked but subsequently the initial booking amount and other payments made by the complainant were adjusted in respect of property unit no. 619 booking of which was transferred in the name of present complainants. It was claimed that the complainants failed to make the payment of installments and only the amount of Rs.4,65,800/- was paid out of the total sale consideration of Rs.45,58,000/-. It was averred that draft agreement was also transmitted to the complainants but the same was not signed by the complainants or returned and rather the complainant unilaterally asked for withdrawing from the project because of non-availability of the funds without any fault on the part of the respondent. It was averred that in such a situation respondent was left with no option but to issue letter dated 09.10.2018 intimating the complainants regarding rejection of his application of the booking of the flat in-question.

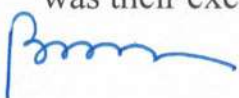


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4 I have heard the arguments on behalf of the complainant and the representative of the respondent and with their assistance have gone through the record.

5 It is the admitted case of the parties that though initially two separate flats no. i.e 618 and 619 were booked; one in the name of the present complainants and other in the name of the father of the complainant, Satish Kumar Sharma. However, subsequently at the request of the applicants the total amount paid on behalf of the complainants was adjusted in respect of flat no. 619 booking of which was transferred in the name of the present complainants. It is also not disputed that on behalf of the present complainants total amount of Rs.4,65,800/- had been paid to the respondent. The complainants specifically wrote to the respondent expressing their inability to arrange the balance funds and withdrawing from the project and seeking refund, initially by the e-mails dated 24.07.2018. However getting encouraged because of the telephonic conversation with the authorized representative of the respondent, complainants sought further time for arranging the loan amount and the said request of the complainants was accepted by the respondent. The complainants however, could not arrange further funds and ultimately sought to withdraw from the project and sought the refund.

6 The moot point between the parties at present is left only to the extent that claimants are claiming full refund with interest in accordance with the law and compensation because of the respondent not returning the amount received from the complainants within reasonable time, despite seeking cancellation of the booking by the complainant; whereas the respondent is claiming that it was the complainants, who failed to arrange the funds, which was their exclusive responsibility and the respondent was not at fault and



therefore the rejection of the booking application of the complainants in respect of unit no. 619 was made by the respondent vide letter dated 09.10.2018 and further the complainant was not entitled to any refund and their entire amount would stand forfeited.

7 As already noticed the total amount of Rs.4,65,800/- had been paid by the complainants in respect of flat no. 619 and there are receipts issued by the respondent in this behalf which are placed on record and also admitted by the respondent as noticed earlier. The e-mail request of the complainants on 24.07.2018 seeking further time of three months for arranging the amount of loan to making the outstanding payments to the respondent was accepted by the respondent, on the same day, through e-mail, intimating that "It has already been discussed and assured that SBP will refund the full deposited amount without any deduction i.e Rs.4,65,800/- in case loan is not approved". Even the authorized representative of the respondent vide E-mail dated 30.07.2018 assured the complainant that if loan was not be sanctioned, your amount would be refunded. However subsequently the complainants was unable to arrange the amount of loan and e-mails were send by him on 05.02.2019 and 05.03.2019 calling upon the respondent to honour their terms. Needful was not done whereas letter dated 09.10.2018 written by the respondent (Annexure R-6) for rejecting the application form of the complainants in respect of flat no. 619; but as indicated above when the respondent themselves through their e-mail assured the complainants to refund the entire paid amount of Rs.4,65,800/- if the complainants could not succeed in arranging the loan amount for making payment of the balance sale price of the flat within reasonable time, the respondent was precluded from rejecting the application/booking form of the complainants nor the respondent




could forfeit any amount as they had already given up their right of forfeiting 10% of the initial payments if the cancellation had been sought by the complainants without any fault on the part of the respondent.

8 In view of the above discussion the complainant are certainly entitled to refund of the amount of Rs.4,65,800/- from the respondent which respondent failed to pay despite persistent demand by the complainants. So far the question of payment of interest is concerned, as the amount has been unauthorizedly retained by the respondent, the said amount remained available with the respondent for using the same and earning profits and interest on the same, the complainants certainly are entitled to interest @ 9% p.a on the said amount. So far as the claim for compensation is concerned, as already noticed the complainants unilaterally withdrew from the project and even were unable to make the payment of different instalments as per schedule of payment for purchasing the property. Therefore the complainants are not entitled to any compensation.

9 Resultantly both the complaints are accordingly decided and the respondent is directed to pay the refund of Rs. 4,65,800/- to the complainant with interest @ 9% from the date of payment till realization within sixty days from the date of this order. In case any amount has already been received by the complainants from the respondents in this matter on account of delay in delivery of possession, that would stand adjusted against above said due amount.

Dated 29.01.2020


(Balbir Singh)
Adjudicating Officer
RERA, Punjab