

**Before Sh. Balbir Singh, Adjudicating Officer,
Real Estate Regulatory Authority, Punjab, Plot No.3,
Block-B, First Floor, Madhya Marg, Sector 18A,
Chandigarh-160018.**

Complaint No. TR AO/52/2019

Old No. (GC.1178 of 2019

Dated of Institution: 26.02.2019.2019

Date of Order: 04.03.2020

Sundar Krishnan resident of Tower 06, Plot 62, Godrej Garden Enclave, Opp. Godrej Memorial, Hospital Vikroli East Mumbai, Maharashtra-400079. 2nd address: #102, Sector 10, Chandigarh

Complainant

Versus

ATS Estates Private Limited, 711/92, Deepali, Nehru Place, New Delhi-110019.

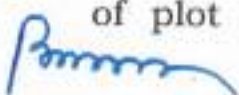
Respondent

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri Himanshu Raj, Advocate, representative for the complainant.
Shri Harsh Bunger, Advocate, representative for the respondent.

O R D E R

1. Sundar Krishnan (hereinafter called as the complainant) has filed this complaint against ATS Estates Private Limited (here-in-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 refund and interest etc. as per the provisions of the Act on account of delay in handing over possession of plot measuring 350 square yards in the project



namely ATS Golf Meadows. It is the case of the complainant that he has paid an amount of Rs.25,25,000/- i.e. the total sale price of the plot, but, till date, the possession has not so far been handed over to him though it was to be delivered within two years from the allotment of the plot bearing No.120 (with reduced area i.e. of 388.11 sq yards instead of 350 sq. yards) on 03.11.2009 i.e. by 03.11.2011. Hence this complaint.

2. Upon notice, respondent appeared through its representative and filed written reply raising the preliminary objections regarding cause of action to the complainant to file the instant complaint as there is no violation of the Act and there being no delay on the part of the respondent in handing over the possession as the period for completing the project has been given as nine years i.e. up to 31.08.2026 at the time of registration of the project. As such, the complainant is not entitled to grant of refund, interest or compensation as claimed by him. It is further alleged that no agreement to sell has been executed between the parties and the complainant being an investor only obtained an allotment letter to reap profit. It is further alleged that the project in question has already been completed. On merits, it is admitted that the complainant booked a plot measuring 338 square yards and not of 350 square yards vide



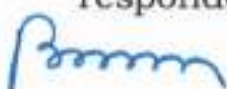
allotment letter dated 03.11.2009. The delay in completion of the project has occurred due to some public interest litigation and there is no fault on the part of the respondent and till date 26 conveyance deeds have been executed and registered in favour of the respective allottees. It is also for the complainant to get the possession of the plot in question and to get the conveyance deed registered in his favour. Rest of the averments of the complaint have been denied and prayer for its dismissal has been made.

3. It would be appropriate to mention here that originally the complainant filed complaint in Form-M vide GC No.1178/2019, which was converted to Form-N by way of amendment in the light of order dated 27.02.2020 passed by the Hon'ble Real Estate Appellate Tribunal, Punjab, in appeal bearing No.53 of 2018 titled as Sandeep Mann Vs. RERA and other connected appeals and that is why this complaint is before the undersigned for disposal.
4. I have heard the learned representatives for the parties and with their assistance have gone through the record.
5. The arguments of the learned representative for the complainant was that despite paying total amount of Rs.25,25,000/- in instalments by the complainant as per Annexure-C2 (colly), the possession of the property in question was not delivered within stipulated time,



therefore, the respondent violated the provisions of the Act and thus, the complainant was entitled to seek refund of Rs.25,25,000/- with interest as per the rules and regulations of the Act and compensation.

6. On the other hand, the argument of the learned representative for the respondent was that the project of case in hand was registered with the RERA Authority in September, 2017 and a period of nine years was granted for completion of the project, which was to expiry in August, 2026 and, therefore, the present complaint was pre-mature. The further submission on behalf of the respondent was that no agreement for sale was executed between the parties and, therefore, the complainant could not seek his relief as per the provisions of RERA Act. It was further the argument on behalf of the respondent that the present complaint pertained to the agreement, which was executed on 14.03.2008 i.e. prior to the coming into force of the Act, and thus, the provisions of the Act were not applicable in this case. Another contention on behalf of the respondent was that there was an arbitration clause according to which the dispute between the parties was to be referred to the arbitrator and this Bench had no jurisdiction to adjudicate the controversy between the parties. Further, it was argued on behalf of the respondent that no time period was specified in the



allotment letter for completion of the project and otherwise also the respondent was committed to pay the amount as per the default clause 02 mentioned in the allotment letter because of delay in handing over the possession. The further argument was that the complainant could not take benefit of the provisions of the Act, when specific provision in this behalf has already been made in the allotment letter dated 03.11.2009 and as such, the complaint was liable to be dismissed.

7. I have anxiously considered rival contentions of the learned representative for the parties.
8. It is not disputed between the parties that the complainant applied for booking of a plot with the respondent in the year 2005 and on that basis, plot bearing unique No.120 having an area 338.11 square yards was allotted to the complainant vide allotment letter dated 03.11.2009. It is also not disputed that the complainant made the total payments of Rs.25,25,000/- to the respondent in instalments as mentioned in Annexure-C2 (colly). It is also an admitted fact that till date, the possession of the plot in question has not been delivered to the complainant.
9. The main objection raised on behalf of the respondent was that the project of case in hand was registered with the RERA Authority in September, 2017 and a period of



nine years was granted for completion of the project, which was to expiry in August, 2026 and, therefore, the present complaint was pre-mature. The contention of the respondent, however, is without merit in as much as the present ongoing project, which was subsequently registered with RERA Authority, will not be deemed to have automatically extended, in respect of the present complainant, whose rights and liabilities were fixed prior to registration of the project and it will be the subsequent agreements, after registration of the project, in which, the period of completion of the project would be taken as nine years from the date of its registration.

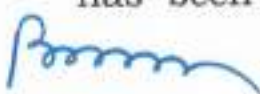
10. Another objection on behalf of the respondent was that no agreement for sale was executed between the parties and, therefore, the complainant could not seek his relief as per the provisions of RERA Act. We however, find that the complainant paid the initial booking amount and the subsequent payments were also made by the complainant and as the project has been registered, therefore, in accordance with the provisions of Section 13(1) of the Act, the respondent could not have received the amount in excess of 10% of the total sale consideration, without getting executed written agreement for sale in favour of the complainant.

Therefore, according to the settled proposition of law, it



was the responsibility of the respondent to get the agreement to sell executed from the complainant because the respondent had already obtained more than 10% of the total sale consideration and fault lies with the respondent in not getting the agreement to sell executed. Therefore, he cannot derive any benefit because of non-execution of the agreement to sell between the parties.

11. Another point agitated on behalf of the respondent was that the present complaint pertained to the allotment letter dated 03.11.2009 i.e. prior to the coming into force of the Act, and therefore, the provisions of the Act were not applicable in this case. However, this submission of the respondent is devoid of any force on account of the fact that though the allotment letter pertains to the year 2009, but, the present project was ongoing and had not been completed till date; and it is also settled law that the Act would certainly regulate the existing contracts, even though, it is prospective in nature, but, is retroactive also to some extent. On this point, reliance may be placed on the law laid down by the Hon'ble Bombay High Court in case titled as **Neel Kamal Realtors Suburban Pvt. Ltd and another Vs. Union of Indi and others**, bearing Writ Petition No.2737 of 2017 decided on 06.12.2017, wherein, it has been held that unilateral contracts of the prior



period not being in accordance with the provisions of the Act are not enforceable to that extent and the provision of the Act would be applicable to cover up the ongoing project got registered with RERA.

12. It was also contention on behalf of the respondent that there was an arbitration clause, according to which the dispute between the parties was to be referred to the arbitrator and this Bench has no jurisdiction to adjudicate the controversy between the parties. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, the remedy available to the complainant under the Act still subsists. The argument is accordingly repelled.

13. It was also the argument on behalf of the respondent that no time period was specified in the allotment letter for completion of the project and otherwise also, the respondent was committed to pay the amount as per the default clause No.2 of the allotment letter because of delay in handing over the possession. The further argument was that the complainant could not take benefit of the provisions of the Act, when specific provision in this behalf has already been made in the allotment letter. As has already been noticed, the respondent failed to get the agreement to sell executed from the complainant despite having already received



more than 10% of the sale consideration. It may be that on behalf of the respondent, there is oral assertion that the project was to be completed within two years from the issuance of the allotment letter, but, admittedly, the project was not completed despite lapse of unreasonable period i.e. more than nine years from the date of allotment and thus, the conduct of the respondent in this behalf would amount to unfair trade practice and even till date no completion certificate from the competent authority has been placed on record to show that the project was complete or that the possession of plot could be delivered to the complainant and even no offer of possession letter is shown to have been issued by the respondent in this behalf. In such a situation, the respondent is certainly at fault in neither getting the agreement of sale executed from the complainant nor for delivering the plot despite lapse of period of more than nine years and as such, this case is squarely covered under the provisions of Section 18 of the Act which runs as under:-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) 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:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

14. In view of the above provisions of this Section, the respondent was duty bound to offer the possession of the plot in question and on account of non-delivery of possession despite having received the instalments was liable to refund the amount of Rs.25,25,000/- so paid by the complainant to the respondent.
15. The next question which arises for consideration is as to whether the complainant is entitled to any interest on the amount paid by him to the respondent or not. The fact of the matter remains that the respondent has been using the amount so paid by the complainant to it since respective payments, as such, the respondent is



liable to refund the above said amount alongwith interest to the complainant because once the amount is deposited with the promoter and he is getting benefit of interest accrued upon said amount, he cannot deny the similar benefit to the buyer. As such, to conclude with, I am of the view that the complainant is entitled the return of principal amount of Rs.25,25,000/- along with interest at the prescribed rate as per Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate plus 2% from the respective dates of payments by the complainant till realization. Accordingly, the respondent is directed to return the amount of Rs.25,25,000/- along with simple interest at the State Bank of India highest marginal cost of lending rate plus 2% from the respective dates of payments by the complainant till realization.

16. Since the complainant could not purchase the plot in question and could not raise construction of a house therein and has to seek the remedy under the existing law and for that obviously he has to suffer mental agony and has to incur expenses to pursue his claim by way of engaging his representative and further in attending the proceedings in this case. The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land

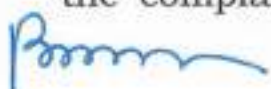
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Acquisition Act etc etc. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can also be gauged and as such, I am of the considered view that the complainant is held entitled for compensation under all the heads i.e. mental agony, litigation expenses to the extent of Rs.1,25,000/-.

17. In view of above discussions and observations, the complaint stands accepted to the following extent and heads:-

1.	Principal amount	Rs.25,25,000/-
2.	Simple interest	At the SBI highest marginal cost of lending rate plus 2% on the principal amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. In case, any amount has already been received by the complainant from the respondent in this matter on



account of delay in delivery of possession shall stand adjusted against the above said due amount. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:04.03.2020


(Balbir Singh)
Adjudicating Officer,
Real Estate Regulatory Authority, Punjab.