

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

**I)**

Complaint AdC No.1307/2019  
Dated of Institution: 26.07.2019  
Date of Order: 12.06.2020

Sudha Sail, resident of 16E/156-157, Anand Puri, Rank  
Road, Karol Bagh, Central Delhi-110005.

Complainant

Versus

Parsvnath Developers Limited, Parsvnath Tower, near  
Shahdra Metro Station, Shahdra, East Delhi-110032.

Respondent

**And**

**II**

Complaint AdC No.1307/2019  
Dated of Institution: 26.07.2019  
Date of Order: 12.06.2020

Lalita Sharma, resident of RZ-L/82 (Old No.27) Vijay  
Enclave, Palam Dabri Road Near Dwarka Sector-1, South  
West Delhi, Delhi-110045.

Complainant

Versus

Parsvnath Developers Limited, Parsvnath Tower, near  
Shahdra Metro Station, Shahdra, East Delhi-110032.

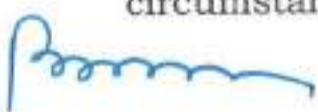
Respondent

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

Present: Shri Sushank Sharma, Advocate, representative  
for the complainants.  
Shri Mohammad Suhail, Authorized  
Representative for the respondent.

Admittedly, the flat buyer agreements were executed between the parties on 19.03.2008 and as per clause 10(a) the construction of the flat was to be completed within a period of thirty six months extendable by six months, meaning thereby that the possession was to be delivered within 42 months.

7. The first point raised by the respondent was that the construction of the project could not be completed due to recession and beyond the control of the respondent and as such, no liability could be fastened upon the respondent to make payment of refund, more particularly, when there was compensatory clause 10(a) as contained in the agreement itself. However, as far as the delay in construction is concerned, the respondent cannot wriggle out of his liability to construct and complete the project and deliver the possession within the stipulated time on the ground of alleged recession. Further, it was for the respondent to prove that the alleged circumstances were beyond their control. There may be worldwide recession and crunch in the real estate business or global meltdown, but, the respondent was bound to fulfill their commitment under the agreement for developing the project and delivering the possession of the flats to the respective complainants within the stipulated time. The alleged circumstances could have been foreseen and should



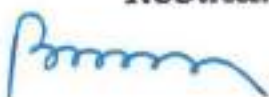
have been kept in mind while agreeing upon the terms and conditions of the agreement. If there are to be taken as an excuse to wriggle out of the condition so imposed in the agreement, then in every case such a plea would be taken by the developers as an excuse for not performing their part of the contract. I am therefore, satisfied that there was no justification for the delay in completion of the project and offering possession to the complainants.

8. As far as the point raised by the respondent that there is a compensatory clause 10(a) as contained in the agreement itself simply because of delay in delivery of possession could not seek refund of the amount paid, is concerned, the same is without substance because in case of default on the part of the respondent in delivery of possession as stipulated in the agreement, it is optional for the complainants either to withdraw from the project by seeking refund of the amount paid with interest etc or in the alternative he may continue with the ongoing project and accept the interest as per agreement because of delay in delivery of possession.
9. The next point agitated by the representative for respondent is that the complaints pertained to the agreement to sell to the year 2008 i.e. prior to the coming into force of the Act, and therefore, the case was covered under the provisions of the Punjab



Apartment and Property Regulation Act 1995 and the provisions of the Act were not applicable to the case in hand. However, this submission of the respondent is devoid of force because it may be that the agreement to sell pertained to the year 2008, 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 India 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.

10. The next submission raised on behalf of the respondent that no cause of action had arisen to the complainants, as the project had to be completed by October 2019 as per declaration given by the respondent at the time of registration of the project was devoid of any force as the Hon'ble Bombay High Court in a case titled **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 been 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*

*Poonam*

*effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature."*

11. In the above said case, the Hon'ble Bombay High Court has also made this point clear in paragraph 256 and 261, which are reproduced below:-

*"256. 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."*

*"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*

*Pravin*

*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."*

12. In view of above observations, the plea of the respondent that they had given a declaration for completion of the project by October 2019 while registering the project with this Authority, was not tenable as the agreement between the parties was admittedly executed on 19.03.2008 and date given by the promoter to the allottees for handing over the possession of the flat was within 36 months plus extended period of six months i.e. up to September, 2011. At that time, RERA was not in force, therefore, the promoter cannot take the benefit of the completion date of the project i.e. September 2019 given at the time of registration of the project. It would be appropriate to add here that as per settled



proposition of law, this declaration would not be applicable to the allottees, who have entered into agreement much prior to the coming into force of this Act. However, this may be applicable to the allottees, who have entered into agreement(s) after coming into force of this Act.

13. It is also the settled proposition of law that the promoter had to pay interest to the allottee, whose money had 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. The contractual rights were not affected by RERA since its provisions operate prospectively so as to regulate the existing contracts. The effect of the Act though is prospective in nature, but, to some extent it is retroactive. The Hon'ble Bombay High Court is of the view that liability to pay interest is from the date of payment till the amount is refunded. Under the provisions of the RERA, the vested or accrued rights are not affected by this Act. Now, the specimen proforma for agreement for sale has been prescribed under the Punjab State Real Estate (Regulation and





Development) Rules 2017. The clause 5 of said agreement says that time is essence for the promoter as well as the allottee and the promoter shall abide by the time schedule for completing the project and handing over the apartment/plot to the allottee and the common areas to the association of the allottees. Clause 7 of the said agreement deals with the possession of the apartment or plot and clause 7.5 runs as under:-

*"Cancellation by allottee:- The allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act:*

*Provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation.*

14. In the instant case, the complainants are not at all at fault and in these circumstances, the promoter was under obligation to provide possession of the flats within the stipulated period. Clause 9.2 of the said proforma of agreement prescribes the rights of the allottee in case of default by the promoter, which runs as under:-

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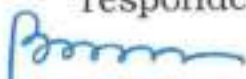
9.2 In case of default by promoter under the conditions listed above, the allottee is entitled to the following:-

- (i) stop making further payments to the promoter as demanded by the promoter. If the allottee stops making payments, the promoter shall correct the situation by completing the construction milestone and only thereafter the allottee will be required to make the next payment without any penal interest; or
- (ii) the allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/plot along with interest at the rate specified in the Rules within ninety days of receiving the termination notice;

*Provided that where an allottee does not intend to withdraw from the project or terminate the agreement, he shall be paid by the promoter, interest at the rate specified in the Rules for every month of delay till the handing over of the possession of the apartment/plot."*

15. Under this clause, the promoter is liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/plot along with interest at the rate specified in the Rules within ninety days.

16. As it has been discussed and held above, the respondent has not delivered the lawful physical



possession of the flats to the complainants within the stipulated time frame and in such a situation, the respondent is certainly at fault in not delivering the possession of flats despite lapse of prolonged period of about nine years and as such, this case is squarely covered within the mischief 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, flat 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*

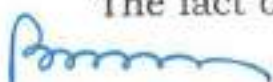
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, flat, 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."*

17. In view of the above provisions of the Act, the respondent was duty bound to offer the possession of the flats in question and on account of non-delivery of possession despite having received the due instalments, he was liable to refund the amount of Rs.14,97,715/- paid by each of the complainants to the respondent.
18. Faced with this situation, the representative for the respondent had raised the point that the construction of the project was almost complete and the complainants cannot be permitted to withdraw from the project and seek refund of the amount deposited by them. This point raised by the representative for the respondent was devoid of any force as the respondent did not point out any such provision of the present Act which supports this version of the respondent. To my mind, there is no such provision of the Act which says that after the completion of the project to a particular limit/proportion, the allottee cannot seek the refund of the amount. In the absence of the specific provision in the Act, the respondent cannot deny the refund after the expiry of the date for delivery of possession as given in the agreement entered into between the parties.
19. The next question which arises for consideration is as to whether the complainants are entitled to any interest on the amount paid by them to the respondent or not.
- The fact of the matter remains that the respondent has



been using the amount so paid by the complainants to it since respective payments, as such, the respondent is liable to refund the above said amount alongwith interest to the complainants 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 each of the complainant is entitled the return of principal amount of Rs.14,97,715/- 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 complainants till realization.

20. Since the complainants could not purchase the flats in question and could not reside therein and had to seek the remedy under the existing law and for that obviously they had to suffer mental agony and had to incur expenses to pursue their claim by way of engaging their representative. The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land 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 in view of the prolonged delay and as such, I am of the considered view that each of the complainants are held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.1,25,000/-.

21. In view of above discussions and observations, both the complaints stand accepted to the following extent and heads:-

<b>1. Complaint No. AdC No.1307 of 2019</b>		<b>Sudha Sail</b>	<b>Parsvnath Developers Limited</b>
1.	Principal amount	Rs.14,97,715/-	
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/-	
<b>2. Complaint No. AdC No.1308 of 2019</b>		<b>Llita Sharma</b>	<b>Parsvnath Developers Limited</b>
1.	Principal amount	Rs.14,97,715/-	
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 complainants within sixty days from the date of this



order. In case, any amount has already been received by the complainants from the respondent in this matter on account of delay in delivery of possession shall stand adjusted against the above said due amount. An attested copy of this order be placed on the file of complaint titled as Lalita Sharma Vs. Parsvnath Developers. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated: 12.06.2020

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

Sudha Sail Vs. Parsvnath Developers

Dated :12.06.2020

Present: Shri Sushank Sharma, Advocate, representative  
for the complainants.  
Shri Mohammad Suhail, Authorized  
Representative for the respondent.

No case law cited by either side. Arguments  
already concluded. For the reasons recorded in my  
separate detailed order of even date, the instant complaint  
is accepted. File be consigned to record room after making  
due compliance of notifying the parties this order well in  
time.

Dated: 12.06.2020

  
(Balbir Singh)  
Adjudicating Officer,  
RERA, Punjab