

**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 AdCNo.1336 of 2019  
Date of Order: 30.03.2021**

Nazim Ali, #AV/88, Aman Vihar Colony, Opposite Maruti Suzuki Sales and Service Centre, Near Madrassa of Girls, Ambala Road, Saharanpur, Uttar Pradesh.

2<sup>nd</sup> address:

#253, Sector 4, Mansa Devi Complex, Panchkula, Haryana.

Complainant

Versus

1. Universe Colonizers Pvt Ltd, Office at House No.3506, Sector 69, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062 through Director/Managing Director/Authorized representative.
2. Jaswinder Singh Grewal, Director, M/s Universe Colonizers Pvt Ltd resident of House No.2437-B, Sector 39C, Chandigarh-160039
3. Paramjit Singh, director, M/s Universe Colonizers Pvt Ltd resident of House No.3506, Sector 69, Sahibzada Ajit Singh Nagar, (Mohali) Punjab-160062.

Respondents

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

Present: Shri Sanjeev Gupta, Advocate, representative for  
the complainant.  
Respondents ex-parte.

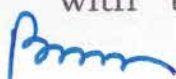
**O R D E R**

1. Complainant Nazim Ali filed this complaint against respondents M/s Universe Colonizers Pvt Ltd and others for refund of a sum of Rs.2,65,000/- alongwith interest, compensation and litigation charges. It is the case of the complainant that he booked a residential plot bearing NO.725 measuring 125 square yards at the rate of Rs.8900/- per square yards in Akal City being developed by the respondents at village Dappar, Tehsil Derabassi, District SAS Nagar, Mohali for a total sale consideration

*Param*

of Rs.11,12,500/-. The respondents promised to deliver possession within two years from the date of booking claiming that they were having requisite approvals and sanctions. The complainant paid an amount of Rs.2,65,000/- and agreement to sell was executed on 08.09.2012 making a mention of the paid amount. A copy of the lay out plan reflecting the plot No.725 was supplied to the complainant. The respondent failed to start the development work of the project in question and also did not have the requisite approvals for that purpose. The complainant requested the respondents many times to refund his amount as he did not want to remain in the project due to above reasons, but, to no effect. Hence, the instant complaint

2. Consequent upon issuance of the notice, on behalf of the respondents, their counsel appeared and took adjournments, but, subsequently, absented and were proceeded against ex parte vide order dated 10.02.2020.
3. I have heard the learned representative for the complainant and have gone through the documents and ex-parte evidence brought on record by the complainant.
4. The representative for complainant addressed arguments on the basis of the submissions made in his pleadings.
5. I have anxiously considered the contentions of the learned representative for the complainant.
6. In this case, the project under reference is not registered with the RERA Authority, however, in view of the



decision delivered by the Hon'ble Real Estate Appellate Tribunal, Punjab, in appeal No.49 of 2018 titled as ***M/s Silver City Construction Vs. State of Punjab and others***, complaints against unregistered projects were maintainable before this Bench.

7. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. affidavit of complainant Nazim Ali Ex.C1, agreement to sell Ex.C2, copy of cheques regarding payment of Rs.80,000/-, Rs.1,00,000/-, Rs.35,000/- and Rs.50,000/- Ex.C3 (colly) and copy of lay-out plan Ex.C4, which remained unrebutted and inspires confident and therefore, it can be safely concluded that complainant booked residential plot No.725 and buyer's agreement was executed on 08.09.2012. The payment of an amount of Rs.2,65,000/- by the complainant to the respondents is evident from the receipt Ex.C3 (colly). As per version of the complainant the possession of the plot was promised to be delivered within two years from the date of booking, but, no development had taken place at the site and as such the complainant requested for refund of the amount paid by him to the respondents, but, to no effect. In these circumstances, the complainant was left with no other alternative but, to withdraw from the project. In such a situation, the respondents are certainly at fault in not delivering the possession of plot after lapse of long period from 2014



till date and the case is squarely covered within the mischief of 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.*

*Praman*

*(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."*

8. In view of the above provisions of the Act, the respondent No.1 is duty bound to refund the amount of Rs.2,65,000/- paid by the complainant.
9. 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 respondents or not. The fact of the matter remains that the respondents have been using the amount so paid by the complainant to them since the payments, as such, the respondent No.1 is liable to refund the above said amount alongwith interest to the complainant because once the amount is deposited with the respondents and they were getting benefit of interest accrued upon said amount, they could not deny the similar benefit to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs. 2,65,000/- 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 (as on today) plus 2% from the dates on which the respective payments were made to the respondents till realization.



10. Since the complainant 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 a 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 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 from the prolonged delay for delivery of possession 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 etc to the extent of Rs.25,000/-.

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

1.	Refund of Principal amount	Rs. 2,65,000/-
2.	With Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above amount w.e.f. the dates on

*Bram*

		which the respective payments were made to the respondents till realization.
3.	On account of mental agony and litigation expenses	Rs.25,000/-

The respondent No.1 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 sent to the parties under rules and file be consigned to record room.

Dated:30.03.2021

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