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**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH**

**File No. 55/M(SG)
GC No.12182019
Date of Filing: 15.02.2019
Date of Decision: 29.10.2019
PBRERA-SAS80-PR0047**

Jagmeet Singh r/o #32A, Ward No.01, Model Town Tohana, Fatehabad, Haryana-125120

...Complainant

Versus

M/s. Emerging India Corporation Pvt. Ltd., Sector 115, Village Santemajra on Kharar-Banur Road, Tehsil and Distt. SAS Nagar, Mohali, Punjab

...Respondent

Present:- Ms. Maju Goyal, Advocate for the complainant.
Respondent Ex-parte vide order dated 17.10.2019.

ORDER

Sh. Jagmeet Singh (hereinafter called the 'Complainant') filed a complaint, received on 15th February, 2019 pertaining to the purchase on 18.05.2015 of 2BHK flat on 1st Floor, measuring area 720 sq. ft., in Tower No. 41 from M/s. Emerging India Corporation Pvt. Ltd. (hereinafter referred as the "Respondent") on 18.05.2015 in their project Premium Trinity Homes located at Emerging Valley (P) Ltd., Landra-Banur Road, Mohali, which is a non-registered project. The complainant alleged that Provisional Allotment was issued to him on 18.05.2015 and the total sale consideration price of the flat was fixed for a sum of Rs.30,00,000/-, out of which he had paid an amount of Rs.22,50,000/- as 75% payment and balance was to be paid on the offer of possession. To prove his point, the complainant has also enclosed the receipts duly issued by the respondent. Offer of possession of the flat was to be made on 31.03.2017. The details of the payment made to the respondent alongwith relevant receipt nos. are as follows:-

Sr. No.	Cheque No.	Date	Amount	Receipt No.
1	005278	23.12.2015	202977.00	002
2	000507	03.03.2015	100000.00	1362
3	405765	12.03.2015	356140.00	1363
4	007	23.06.2016	109350.00	0262
5	006	23.06.2016	30000.00	0263
6	007	23.06.2016	140650.00	0264
7	09	06.09.2016	1000000.00	1730
8	NEFT	22.09.2016	310883.00	1735
GRAND TOTAL			2250000.00	

Further, the respondent with mutual consent of the complainant issued allotment letter dated 06.09.2016 to the complainant for new 2BHK flat No. E-604 measuring total area 1285 Sq. Ft., with total sale consideration of Rs.30,00,000/- in their another project namely Emerging Heights-III having RERA Registration No. PBRERA-SAS80-PR0047 as the complainant was not anymore interested in the originally booked 2BHK flat in project 'Premium Trinity Homes' (not registered with this Authority). The already paid Rs.22,50,000/- by the complainant in respect of flat in the project of 'Premium Trinity Homes' was adjusted in new allotted project i.e. 'Emerging Heights-III'. The balance 25% payment was to be paid by the complainant at the time of offer of possession (31.03.2017). But no offer of possession was made to the complainant on 31.03.2017. Accordingly, complainant made representation to offer him possession at the earliest vide letter dated 02.08.2017 & 19.04.2018 but no reply regarding the same was received from the respondent. Accordingly, he filed the present complaint before this Authority after losing his faith in the respondent.

The contentions of the complainant are that despite having paid 75% payment of the agreed sale price well within time, no offer of possession has been made to him. He also wrote two representations, but no response has been received from the respondent so far. Now the complainant has lost faith in the respondent and is requesting for refund of entire amount already paid by him i.e. Rs.22,50,000/- alongwith interest. For ready reference, the reliefs sought by the complainant in the present complaint are as under:-

"As per the final allotment letter, the respondent was to offer possession of the allotted unit on 31.03.2017 which has not been offered till date. The Complainant followed up with respondent number of times through personal visits/letters. The complainant's letters dated 02.08.2017 and 19.04.2018 attached as Annexure C/7, did not elicit any response from the respondent. The respondent has got the project registered with the Authority vide RERA Registration Number PBRERA-SAS80-PR0047, being an ongoing project. That the residential project is still not complete and may not be able to offer possession of the allotted unit in near future after obtaining completion/occupancy certificate from the competent authorities. The complainant has lost faith in the promoters/project and wishes to withdraw from the project as

the project has already got delayed by one year and more than 10 months from the issue of final allotment letter by the respondent. In view of the above facts, the respondent has violated the provisions of Section 18, 19 of the Act. It is most respectfully prayed that the respondent be directed to refund the entire amount paid to the respondent along with interest as per provisions of the Act."

Accordingly, notice under Section 31 of Real Estate (Regulation and Development) Act, 2016 read with rule 36 (2) Punjab State Real Estate (Regulation and Development) Rules, 2017 alongwith the complaint & annexures was issued to the respondent by e-mail and by registered post to appear on 02.04.2019 in person or through his authorized representative to answer to alleged contraventions as mentioned in the complaint. Respondent was directed to submit his reply within 15 days of receipt of notice, with a copy to be sent to the complainant through registered post/speed post or a reputed courier. But, the notice was received back by this office on 25.03.2019 vide Diary No.1377 with remarks "*SCO Locked last three months, so RL RT Sender*". On the fixed date of hearing none came present on behalf of respondent nor any communication was received.

In the interest of justice, fresh notice was issued to the respondent for appearing on 26.04.2019 at 12.30 P.M. alongwith a Dasti notice through the complainant. The notice issued by this office was sent on 05.04.2019 vide Memo No. RERA/Pb/Legal/2228 and the same was received back on 11.04.2019 with remarks "*This office always remain locked, so RL R to sender*". Further the complainant made a statement that the Dasti Notice was sent through their office boy at the Project Site of the respondent. The employees of the respondent refused to receive Dasti notice. Thereafter the complainant sent the notice through courier on 20.04.2019 which was received back on 23.04.2019 with the remarks "*Always Closed*". The counsel for the complainant also attached the copy of receipt alongwith the statement and it was decided to proceed ex-parte and the matter was listed for 30.05.2019.

On 30.05.2019, the complainant requested this bench that before proceeding ex-parte, notice to the respondent be issued by way of substitute mode of service i.e. through publication in newspaper of The Tribune (English Edition) and Ajit (Punjabi Edition). But, after seeing the charges of publication which was very

high, counsel for the complainant informed that the complainant was not willing to pay the publication charges as it's costs very high. Hence, the notice was not published in the newspaper.

Further, it was ordered by this bench on 19.07.2019 that fresh Dasti Notice be issued to the respondent for appearing 22.08.2019 through an official of this Authority and in case the office is found to be locked then the official should visit the site office and serve the notice and will file a report as per the status of serving of dasti notice.

On 22.08.2019 none came present for the respondent. Further, in compliance with the order dated 19.07.2019, two officials were deputed by this authority to effect the service of notice 'Dasti' (By Hand) upon the respondent and submit a report, vide office order dated Memo.RERA/Pb./PA/Secy/2019/4835 Dated 13.08.2019. As per their report, they visited the premises of Emerging India Corporation Pvt. Ltd. at their office address SCO 46-47, 1st Floor, Sector 9-D, Madhya Marg, Chandigarh and the same was found locked and no one met them there. Accordingly, they visited the site office where none was available and the labourers present at the spot informed them that some officials of the respondent may be available in the office of Adab City Centre located at Kharar Banur Road about 1 km away from the actual site. They also visited there, where a separate reception counter was having signage of Emerging India Corporation but the officials available on the reception refused to disclose their identity or receive the notice. No one was ready to witness the refusal.

Further as an alternative to effect the service of the notice, it was ordered on 22.08.2019 that respondent be served notice that by way of affixing the copy of notice at the available addresses of the respondent, including site address, Adab City Centre, located at Kharar Banur Road as well as Notice Board of this Authority, through the official of this Authority and respondent was directed to appear on 19.09.2019 at 11.00 A.M. for answering the alleged contraventions as alleged by the complainant in the complaint.

On 19.09.2019, again none for the respondent came present, even after affixing the notice at the available address of the respondent by the officials of this Authority and it was decided to proceed ex-parte, as the respondent was deliberately

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and willfully not appearing before this bench of Authority. The matter was listed for arguments today.

Today, I have heard the counsel for the complainant at length and perused the documents brought on record by the complainant. This Bench now proceeds to dispose off this complaint ex-parte. The counsel for the complainant by and large has addressed his arguments in the light of pleadings as contained in the complaint.

Perusal of the record reveals that the provisional allotment letter dated 18.05.2015, shows that initially the flat was booked in the project Premium Trinity Homes (2BHK) and after receiving 75% payment amounting to Rs.22,50,000/-, the respondent allotted the complainant a flat of 2BHK in their another project Emerging Heights-III duly registered with this Authority vide RERA Registration No. PBRERA-SAS80-PR0047 which was duly accepted by the complainant.

There is no rebuttal to the above facts on the file as the respondent has not come present to contest this complaint. He is well within his rights to do so. As per Section 18 of the Real Estate (Development & Regulation) Act, 2016 (hereinafter called as the 'Act'), it is option of the complainant that *"if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or 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"*

In the instant case, the complainant has opted for refund of the principal amount already paid by him alongwith interest only and has not sought any compensation. In view of the facts and circumstances of this case, this Bench is of the considered opinion that the complainant is entitled to the return of the amount alongwith interest paid by him to the respondent, as provided under the Act.

As the respondent has failed to offer possession in the project till date, the complainant is entitled to return of principal amount of Rs.22,50,000/- alongwith 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 dates of deposit of each installment by complainant. The respondent, as such, is directed to return the amount of Rs.22,50,000/- alongwith interest at the State Bank of India highest marginal cost of lending rate plus 2% from the date of respective payments till the date of this order.

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 complainant and be also sent to the respondent under rules. File of complaint be consigned to record room after due compilation.

Chandigarh
Dated: 29.10.2019


(SANJIVGUPTA)
Member, 29/10/19
RERA, Punjab