

**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.1508 of 2019
Date of Order: 06.07.2021**

Harvinder Kaur wife of Sh. Rajinder Pal Singh Walia, resident of Flat No.81, Tower No.5, Homeland Heights, Site No.5, Sahibzada Ajit Singh Nagar (Mohali).

Complainant

Versus

M/s C & C Towers Limited, Plot No.70, Sector 32, Gurugram, Haryana.

Respondent

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

Present: Mr. Vipul Monga, Advocate, representative for the complainant.
Respondent ex-parte.

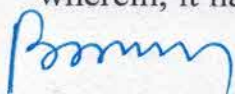
O R D E R

1. Harvinder Kaur filed the complaint against M/S C & C Towers Limited under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") seeking refund, interest and compensation etc.
2. The brief facts of the instant complaint are that complainant alongwith her husband Mr. Rajinder Singh Walia applied for allotment of commercial unit and selected the instalments payment plan vide application dated 22.1.2011 (Annexure C-1) in the respondent's project namely Bus Terminal-cum-Commercial Complex, Mohali; that the complainant paid total amount of Rs.45,40,050/- through three cheques ranging from 21.3.2011 to 11.4.2012 which were credited in the account of the respondent (Annexure C3); that respondent issued allotment letter dated

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20.4.2012 (Annexure C2) and allotted commercial space (office space or Retail Space) in Tower B, Unit No.12, Floor 4th, super area of unit 708 Sq. ft.; that as per Clause 1(3.3) of the allotment letter the construction of the said was likely to be completed within 48 months from the compliance date i.e. 16.12.2009 after all necessary approvals and sanctions had been obtained subject to however force majeure circumstances beyond the control of respondent; that respondent while accepting the money assured that the possession would be delivered till December, 2014; that as per knowledge of the complainant the work of the project in question was unfinished and far from completion even after lapse of more than 10 years; that the complainant sent application on 24.07.2018 (Annexure C4) for the refund of the total amount paid by her but to no avail. Hence the present complaint.

3. Notice of the complaint was issued to respondent builder. However, despite having been duly served respondent chose not to appear and was proceeded ex parte vide order dated 11.2.2020.
4. I have heard the learned representative for the complainant and have gone through the ex-parte evidence brought on record by the complainant.
5. As the project was not complete on the date of commencement of the Act, which covers the ongoing projects, the provisions of the Act would be applicable in the facts of the case in hand in view of the law laid down by Bombay High Court in case *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 the ongoing projects.

6. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. application dated 22.1.2011 (Annexure C-1), allotment letter dated 20.4.2012 (Annexure C2) copies of cheques and statement of account in respect of the respondent issued by the bank (Annexure C3) and application dated 24.07.2018 (Annexure C4) showing the amount of cheques issued by the complainant had been credited in the account of respondent which remained unrebutted and inspires confidence, it can be safely concluded that the complainant Harvinder Kaur alongwith her husband Rajinder Kumar Walia applied for allotment of commercial unit in the respondent project namely Bus Terminal-cum-Commercial Complex, Mohali and the complainant paid total amount of Rs.45,40,050/- through three cheques ranging from 21.3.2011 to 11.4.2012 which were credited in the account of the respondent. Respondent issued allotment letter dated 20.4.2012 and allotted commercial space (office space or Retail Space) in Tower B, Unit No.12, Floor 4th, super area of unit 708 Sq. ft. to the complainant. As per Clause 1(3.3) of the allotment letter the construction of the said was likely to be completed within 48 months from the compliance date i.e. 16.12.2009 but respondent failed to hand over the possession of the unit in question within stipulated period.
7. In the instant case, the complainant is not at all at fault and in these circumstances, the respondent was under obligation to provide



possession of the unit in question within the stipulated period as per allotment letter dated 20.4.2012.

8. 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.

9. The promoter was under obligation to provide possession of the property unit 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:-

“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."

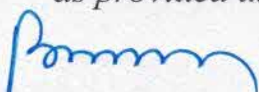
10. In view of the above provisions of the Act, the respondent was duty bound to offer the possession of the property in question within reasonable period. As such, on account of non-delivery of possession, the respondent was liable to refund the amount of Rs.45,40,050/- paid by the complainant.

11. 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. Under such a situation, the respondent is certainly at fault in not completing the project and not delivering the possession of property unit in question 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:



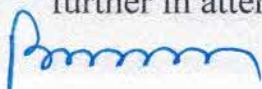
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(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.

(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."

12. The next question which arises for consideration, is as to whether the complainant is entitled to any interest on the amount paid to the respondents/promoters or not. The fact of the matter remains that the respondents/ promoters had been using the amount so paid by the complainant since the payments, as such, they are liable to refund the above said amount alongwith interest to the legal heir of complainant because once the amount is deposited with the respondents/promoters 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 to the return of principal amount of Rs.45,40,050/- 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.

13. Since the complainant 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 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. 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 fact that the complainant Harvinder Kaur could not get possession of the property unit in question despite lapse of long period and have to pursue matter with the respondent 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.50,000/-.

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


1	Refund of Principal amount	Rs. 45,40,050/-
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 date(s) of payment (s) till realization.
3	On account of mental agony and litigation expenses	Rs.50,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. In this case the complainants had obtained home loan from State Bank of India,



which shall be first charge on the above said amount. The amount if already paid by the respondent to the complainant on account of compensation for delay in delivery of possession shall be set off against above said amount. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:06.07.2021



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