

**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 AdC No.1657 of 2020UR
Date of Order: 13.08.2021**

Nand Kishore Kalsi son of late Shri Dharam Pal, resident of House No. HIG 685, Phase 9, Sahibzada Ajit Singh Nagar (Mohali).

Complainant

Versus

1. Tricity Media Cooperative House Building Society, SCO No.545, Sector 70, Sahibzada Ajit Singh Nagar(Mohali).
2. S. Meetinder Singh, SCO No.545, Sector 70, Sahibzada Ajit Singh Nagar(Mohali).
3. Mr. Arvind Jaggar, SCO No.545, Sector 70, Sahibzada Ajit Singh Nagar(Mohali).
4. Geetu Construction Private Limited, House No.1510, Ground Floor, Sector 22-B, Chandigarh

Respondents

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

Present: Mr. Sushant Kareer, Advocate, representative for the complainant.
Mr. A.D.S. Jatana, Advocate representative for respondents no.1,2 and 3.
Respondent no.4 ex-parte.

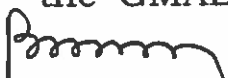
O R D E R

1. Mr. Nand Kishore Kalsi filed this complaint against Tricity Media Cooperative House Building Society and others under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") seeking refund, interest and compensation etc.

2. It was the case of the complainant that respondent society was registered under the Punjab Cooperative Societies



Act, 1961 vide registration no.81/2010 for development of a residential complex; that respondent society invited applications for allotment of plot and in this regard a letter (Annexure A) signed by the President of the respondent society containing terms and conditions was issued to its members; that respondent society informed its members that residential complex having approximately 250 plots of various sizes i.e. 200, 250, 300 and 500 Sq. yards was to be carved out and tentative cost of the plot was fixed to Rs.9000/- per sq. yard + Rs.2000/- to 2500/- development charges; that the complainant opted for allotment of 300 sq. yard plot and submitted application on 28.1.2011 and paid an amount of Rs.2,25,000/- through cheque; that respondent society vide letter dated 12.6.2011 (Annexure B) intimated that the land for the residential complex had been confirmed; that respondent society issued share certificate (Membership Registration Certificate) No.0049 dated 14.9.2011 (Annexure C) to the complainant for the ownership of a plot measuring 300 Sq. yard; that the complainant paid Rs.30,75,000/- i.e. total cost of the plot from 24.1.2011 to 10.7.2013 (Detail Annexure D); that respondent society vide letters dated 3.7.2013 (Annexure E) intimated that change of land use was granted vide letter dated 4.5.2012 (Annexure F) in favour of respondent society and promoter M/s Geetu Construction Pvt. Ltd; that respondent society also intimated that promotor licence had been granted on 16.7.2012 and letter of intent for setting up of residential colony has been issued by the GMADA vide letter dated 17.6.2013 (Annexure G); that



vide letter dated 14.7.2013 (Annexure H) President of the respondent society assured the members of the society that infrastructure development would be started at the site soon and plot would be allotted to the members of the respondent society by 31.12.2013; that respondent society intimated vide letter dated 1.11.2014 (Annexure I) to the complainant that developed plots of first phase shall be delivered by 31.3.2015; that despite visiting the office of the respondent society many times and sending written requests vide letters dated 4.11.2019, 21.1.2020 and 24.2.2020 (Annexures J, K and L respectively) either for allotment of plot or to refund the entire amount deposited by the complainant with interest but respondent society neither allotted the plot nor refunded the amount nor possession of the plot was delivered to the complainant; that the respondent instead of allotting the plot distributed blank option forms (Annexure M) to its members for getting their option either to take immediate possession of the flat from other project of respondent no.4-builder in Tricity or possession of stilt plus four storey type floors in Sector 113 for which the construction work would start immediately or refund of the amount paid to the society by way of one fourth amount immediately and remaining amount in three months through cheques. Hence the present complaint.

3. Upon notice, respondent no.1 to 3 appeared whereas respondent no.4 despite having been duly served chose not to appear and was proceeded exparte vide order dated 6.11.2020.



4. Respondent no.1 to 3 through their authorised representative filed written reply raising the preliminary objections that the respondent society was duly registered cooperative society under the Punjab Cooperative Societies Act, 1961 (Certificate Annexure R/1) and after its registration the society become a corporate body; that respondent society had got approved its laws/by-laws for its operation (Annexure R/2); that there were 316 members of the respondent society and the society was not a builder and working on 'no profit no loss' basis and for the interest of its members like the complainant; that the respondent society with approval of its members engaged M/s Geetu Constructions Pvt. Limited, which deals into land development; that the respondent society purchased about 14 acres of the land at Sector 113, SAS Nagar through M/s Geetu Constructions Pvt. Limited in the name of the society and the revised layout plans had already been submitted for approval to the GMADA; that the respondent society decided to allot the plots to all its members who had paid full cost of the plot in the 1st draw of lots; that the delay in development of the project was because of non payment of dues by large number of members of the society and delay in getting sanction/approval of the layout plans from GMADA/Govt. of Punjab; that M/s Geetu Constructions Pvt. Limited which was engaged as a facilitator sought approval of revised layout plans vide letter dated 5.12.2015 from the competent authority and finally got approval vide letter dated 6.4.2018 from GMADA; that the complainant was also a member of the



society and he could not level allegations against the respondent society because decision that was taken by the respondent society was put to vote before the general house and it was the members of the society including complainant who took the final decision; that in case of any dispute, members of the society could raise his grievance in view of bye-law 67 under the Punjab Cooperative Societies Act, 1961 and could not invoke jurisdiction of this Bench and that under Section 31 of the Act powers of this Bench could be invoked against 'promoter' or 'allottee', or the 'real estate agent'. On merits, facts regarding booking of plot, receipt of payments etc and circulating options were admitted. Further, while denying the rest of the averments of complaint, prayer was made for dismissal of complaint.

5. Complainant also filed replication controverting the averments of the written reply filed by the respondents no.1 to 3 and reiterating the averments of the complaint.

6. The violations and contraventions contained in the complaint were put to the representative for the respondents no. 1 to 3 to which he denied and did not plead guilty and then the complaint was proceeded for further enquiry.

7. That respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings as summarized above and the elaboration there of shall be made in the discussion.

8. The admitted facts in this case are that respondent no.1 society was registered society and invited applications for allotment of plot. It is not disputed that the complainant



applied for 300 Sq. yards plot and deposited the total cost including the development and others charges of to the tune of Rs. 30,75,000/- from 24.1.2011 to 10.7.2013. It is also admitted that share certificate entitling the complainant to plot of 300 sq. yard was issued by respondent no.1-society and plots was to be allotted to the members who had paid fully cost in the first draw of lots by 31.12.2013. It is also admitted that promoter licence was granted on 16.7.2012 and vide letter dated 13.7.2013 letter of intent for setting up of residential colony was issued by the GMADA. It was also not disputed that vide letter dated 14.7.2013 that the members of the society were assured that possession of the developed plots of first phase shall be delivered by 31.3.2015. However till date neither the plot were allotted nor possession was delivered to the complainant. The respondent instead of allotting the plot distributed blank option form to its members for getting their option either to take immediate possession of the flat from another project of respondent no.4-builder in Tricity or possession of stilt plus four storey type floors in Sector 113 for which the construction work would start immediately or refund of the amount paid to the society by way of one fourth amount immediately and remaining amount in three months through cheques.

9. The first objection raised on behalf of the respondents was that no agreement to sell was executed in this case and it was merely membership of the society which was given to the individual members and therefore, the present complaints under the provisions of the Act was not maintainable.



10. The argument however is without merit inasmuch as the provisions of Act are applicable to the cooperative societies registered under the law relating to the cooperative societies. Under Section 2(d) of the Act 'allottee' has been defined which runs as under:-

"2 (d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

Under Section 2(zg) of the Act 'Person' has been defined which runs as under:-

(zg) "Person" includes,—

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;
- (v) a competent authority;
- (vi) an association of persons or a body of individuals whether incorporated or not;
- (vii) a co-operative society registered under any law relating to co-operative societies;
- (viii) any such other entity as the appropriate Government may, by notification, specify in this behalf."

Moreover, under Section 2(zk) of the Act 'Promoter' has been defined which runs as under:-

2 ((zk) "promoter" means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into



apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
 (ii)(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) (iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(iv) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(v)(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.”

11. As per admitted case of the parties the complainant applied for membership of the respondent society and he was issued registration certificate/share certificate and in the share certificate it was mentioned that the holder the certificate was entitled to ownership of one plot measuring 300 sq. yards in Sector 113, SAS Nagar (Mohali), therefore,



the complainant falls within the definition of allottee as noticed above under the Act and even the respondent being cooperative society falls within the definition of promoter under the Act as noticed above. Person mentioned in the definition of 'Promoter' under Section 2(zk(i)) and Section 2(zg) (vii) includes a cooperative society registered under any law relating to cooperative societies as quoted above. Therefore, the complaint is certainly maintainable under the provisions of the Act as the complainant falls within the definition of allottee and respondents falls within the definition of promoters as per relevant provisions of the Act and the dispute between the parties being in connection with non delivery of possession of the plot in violation of the Act.

12. Further argument was that the present complaint was not maintainable under the provisions of the Act as respondent no.1-society was registered under the Punjab Cooperative Societies Act, 1961 and specific remedy was provided to the present complainant for approaching the Registrar of the Cooperative Societies under the said Act.

13. On the other hand counsel for the complainant submitted that even if some remedy is available to the complainant under the Punjab Cooperative Act, 1961 then also the remedy available under the Act was additional remedy over and above the other remedies including those made available under any special statutes and that the availability of an alternate remedy was no bar in entertaining a complaint under the Act. Reliance was placed



upon the judgment of the Hon'ble Apex Court in **Imperia Structures Limited Vs. Anil Patni and another (2020) 10 Supreme Court Cases 783.**

14. So far as the question of remedy under the provisions of the Punjab Cooperative Act, 1961 being available to the complainant is concerned we find that relevant provisions of Sections 88 and 89 of the Act are attracted to the facts in the case in hand and are being quoted in extenso as under:-

“88. The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.

“89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

A bare perusal of these two Sections leads to the only inference that even if some remedy is available to the complainant under the Punjab Cooperative Act, 1961 the remedy available to the complainants under the Act still subsists as it is in addition to remedy available before any other forums. The Hon'ble Apex Court in **Imperia Structures Limited's case (supra)** while relying upon the judgment of the Apex Court in **Virender Jain Vs. Alaknanda Cooperative Group Housing Society Limited and others (2013) 9 Supreme Court Cases 383** wherein the issue was whether complaint of members of the Cooperative Society with regard to termination of their membership and refund of amount deposited for allotment of flat was maintainable before District Consumer Dispute




Redressal Forum or only remedy available with them was to file a petition under the Cooperative Societies Act. The Hon'ble Apex was held as under:-

"It has consistently been held by this Court that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act."

The argument is accordingly repelled.

15. It was also argued on behalf of the respondent that the transaction pertained to the year 2011 and the RERA Act which came into force later on, was not applicable to the instant matter. It may be that the transaction pertained to the year 2011 but the present project was ongoing and had not been completed. 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 6.12.2017 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 project.

16. The argument on behalf of the complainant was that despite obtaining full amount of the plot in question


including the development and other charges from the complainant neither the plot was allotted nor possession was delivered within the stipulated period i.e. on or before 31.3.2015. Further argument was that the respondent delayed the project unreasonably for such a long period and virtually intend to abandon the initial project by giving option to the members either to take immediate possession of the flat from another project of respondent no.4-builder in Tricity or possession of stilt plus four storey type floors in Sector 113 for which the construction work would start immediately or refund of the amount paid to the society by way of one fourth amount immediately and remaining amount in three months through cheques and blank forms in this behalf were to be provided to the members who had paid full payments and therefore, the complainant opted to withdraw from the project and sent letter of withdrawal from the project but the needful was not done by the respondents. Therefore, the complainant was entitled to seek refund alongwith interest.

17. On the other hand argument on behalf of the respondent-society was that the claimants being members of the society were part and parcel of the decision making by the society in its various general body meetings and the decisions had been taken from time to time as per majority members and the due to non payment of due amount by members of society the project could not be completed within stipulated period. Further argument was that the respondent society was not transacting any business for



profit and rather it was working for the welfare of its members for obtaining plot at affordable price. The argument then was that due to price rise in the real estate sector and due to non payment of the dues by number of members it was not possible for the society to get the project completed as per the original plan. Therefore, the only option was left for providing alternative in the shape of flats in another project of respondent no.4 which was near completion or in the second project of respondent no.4 in which construction was to start within a short period and that respondent no.4 had already obtained the permissions/sanctions of the competent authority for the said project. The contention accordingly was that the complainant was therefore precluded to withdraw from the project at this stage and he was not entitled to refund.

18. As earlier noticed that the complainant applied for 300 Sq. yards plot and deposited Rs. 30,75,000/- as the total cost of the plot from 24.1.2011 to 10.7.2013 and share certificate . entitling him for the said plot was issued by respondent no.1-society and plot was to be allotted to him in the first draw of lots by 31.12.2013. Promoter licence was granted on 16.7.2012 and vide letter dated 13.7.2013 letter of intent for setting up of residential colony was issued by the GMADA in favour of respondent no.4 who was engaged as a facilitator for purchasing of land and development of project by respondent no.1-society. The possession of the developed plots of first phase was to be delivered by 31.3.2015 but till date neither the plots were allotted nor possession was



delivered to the complainant. Instead of allotting the plots respondent society distributed blank option form to its members for getting their option either to take immediate possession of the flat from another project of respondent no.4-builder in Tricity or possession of stilt plus four storey type floors in Sector 113 for which the construction work would start immediately or refund of the amount paid to the society by way of one fourth amount immediately and remaining amount in three months through cheques. The project of the case in hand had been unreasonably delayed and was not yet complete till date; and respondent no.1 had engaged respondent no.4-M/s Geetu Construction Pvt. Ltd. for developing the project and permissions/sanctions were issued jointly in the name of both respondents by the competent authorities. So far as the plea of force majeure by respondent no.1 is concerned, the said plea is not tenable because according to own showing of the respondent-society it was promised to the members who had already paid total sale consideration of the plots and against whom no dues were payable to the society (which included the present complainant), the plot were to be allotted through draw of lot till 31st March, 2013 and possession was to be delivered by 31.12.2015 and the proportionate land for the project of the case in hand had already been purchased through respondent no.4. However, neither the plots were allotted to the said members including the complainant nor the possession had been delivered without any justification. It was respondent society itself who issued blank option form



giving options to the members either to take immediate possession of the flat from projects of builder in Tricity or possession of stilt plus four storey type floors in Sector 113 for which the construction work would start immediately or refund of the amount paid to the society by way of one fourth amount immediately and remaining amount in three months through cheques; but when the present complainant opted to withdraw from the project by writing letter dated and 24.2.2020(Annexure L), the amount was not refunded. The decision of the society was taken by its majority of members but when it was against the interest of any member, he can certainly challenge the decision of the society. Initially the project was sought to be abandoned by the respondent society and later on aforesaid options were given to the members of the society including the complainant instead of allotting the plot which were against the interest of the complainant.

19. In such a situation, the complainant cannot be compelled to opt for taking another flat and due to unreasonable delay the complainant is entitled to withdraw from the project and seek refund of the amount deposited by him.

20. In view of above discussed facts and circumstances of the case, because of the project of the case in hand got delayed sole due to fault on the part of the respondent in not delivering the possession of the plot in question within the stipulated period, thus, squarely falls 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, 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.”

21. In view of the above discussion, the respondents was liable to refund the amount of Rs.30,75,000/- to the complainant.

22. 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 remains that the respondent had been using the amount so paid by the complainant since its payment for pecuniary gains, as such, the amount is required to be refunded alongwith interest to the complainant as similar benefit cannot be denied to the complainant. As such, I am of the view that the complainant is entitled the return of principal amount of Rs. 30,75,000/- 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 respective dates of payments by the complainant till realization.



23. In the instant complaint, the complainant had to seek the remedy under the existing law. He has to undergo this litigative process by pursuing the matter and to spend money and for that obviously he had to suffer mental agony and harassment. 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 in view of the above mentioned facts and especially delay in delivery of possession, 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 tune of Rs.75,000/-.

24. As respondent no.4-Geetu Constructions Private Limited was engaged for development of the project land was purchased through the said respondent and all the permissions/sanctions/approvals in the joint names i.e. respondent no.1-society and respondent no.4 M/s Geetu Constructions Pvt. Ltd. which is clear from letter dated



4.5.2012 whereby CLU had been issued by the PUDA, Mohali. Both the respondents no.1 and 4 were also privy to the documents and the developmental work was to be carried out by the respondent no.4, both the respondents are liable for the liability arising out of the project in question.

25. In view of above discussions and observations, the complaint is partly accepted to the following extent and heads:-

1.	Principal amount	Rs. 30,75,000/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above said amount from the date of respective payments till realization
3.	On account of compensation etc.	Rs.75,000/-

The respondents no.1 and 4 are 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 amount. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated:13.08.2021

Balbir Singh
Adjudicating Officer
Real Estate Regulatory Authority