

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A, MADHYA
MARG, CHANDIGARH.**

Complaint No. AdC 1695 of 2020

Date of Decision: 04.12.2023

1. Lt. Col. Manoj Dhiman son of Lt. Shri Rattan Chand Dhiman,
 2. Neelam Bhardwaj wife of Lt. Col. Manoj Dhiman,
- Both residents of House No.807, Majhin, Kangra, Himachal Pradesh-176032.

...Complainants

Versus

1. ATS Estates Private Limited, 711/92 Deepali Nehru Place, Central Delhi, Delhi-110019.
2. ATS Infra Structure Limited, 710/92 Deepali Nehru Place, New Delhi, Delhi-110019.
3. Dynamic Colonizers Private Limited, 710/92 Deepali Nehru Place, New Delhi, Delhi-110019.
4. HDFC House, HT Parekh Marg, 165-166 Back Bay Reclamation, Church Gate, Mumbai Maharashtra – 400020.

...Respondents

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

Present: Mr. Vipin Kumar, Advocate representative for the complainant.
Mr. J.P. Rana, Advocate representative for respondents no.1 and 2
Respondent no.3 i.e. M/s Dynamic Colonizers Private Limited is exparte vide order dated 13.06.2022
Ms. Neetu Advocate, representative for respondent No.4 (HDFC Ltd.)



O R D E R

This complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") seeks refund of the amount deposited by the complainants, consequent upon the delay in delivery of possession of the unit booked by the complainants in the project "**ATS Golf Meadows Lifestyle**" developed by the respondents at Dera Bassi. In view of the finding of the Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** along with connected appeals decided on 11.11.2021, vide order dated 11.03.2022, the present complaint was ordered to be segregated and one set of paper-book was ordered to be sent before Hon'ble Regulatory Authority regarding the claim of refund and interest sought by the complainant and qua relief of compensation case is before this Bench.

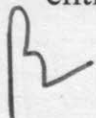
2. The averments in the complaint are that apartment no.10073 on the 7th floor in Tower-10 of the above project was allotted to the complainant on 27.06.2016. An agreement for sale was executed on the same day. The price of the apartment as per this agreement was Rs.49.40 lakhs and the complainants had deposited a sum of Rs.24.45 lakhs, most of it through the loan obtained from respondent no.3 Housing Development Finance Corporation Limited (HDFC Limited). The possession of the unit was to be delivered within 48 months (42 months plus 6 months grace period) i.e. by 27.06.2020 but had not even been offered so far. The relief claimed accordingly is compensation for the delay in project.



3. Notice of the complaint was served upon the respondents. The following legal objections have been raised in the reply filed on behalf of respondent no.1:

- i. No retrospective effect could be given to the Act;
- ii. The presence of an arbitration clause in the agreement for sale between the parties precludes the jurisdiction of this Authority;
- iii. The relevant date for delivery of possession was the date till which the registration of the project by the Authority was valid, and not the date mentioned in the agreement for sale;
- iv. Compensation for any delay in delivery of possession has to be given as per the amount mentioned in the agreement for sale, and not by the payment of interest at the prescribed rate since the latter would be a novation of the contract between the parties.

On merits, it had been contended that the construction of the project started in November 2017 and possession was therefore due only by November 2021. Hence, the complaint was premature since it had been filed before the delivery of possession had become due. It was also alleged that the complainants had defaulted in making payment of instalments by the due dates and were therefore themselves responsible for the delay in completion of the project. It was finally contended that the respondent was entitled to the benefit of Circular No.RERA/ENF-2020/2023 dated



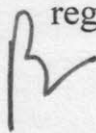
date of possession and date of possession should be deemed to be extended by six months.

4. Respondent no.4/HDFC Ltd. has also filed a reply stating therein that out of the sanctioned loan of Rs.39,12,000/- a sum of Rs.17,11,881/- had been disbursed. A tripartite agreement had been entered into between respondent no.1, complainants and respondent no.4. A sum of Rs.17,12,175/- was outstanding till the date of filing of reply.

5. The violations and contraventions contained in the complaint were put to the representative for the respondents to which he denied and did not plead guilty and then the complaint was proceeded for further enquiry.

6. 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. I have carefully gone through the case file including the written submissions of the parties.

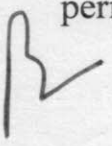
7. The first objection taken on behalf of the respondent/promoter was that transaction of the case in hand pertains to year 2016, whereas the RERA Act was made applicable subsequently w.e.f. 01.07.2017 and therefore the present complaint was not maintainable under the provisions of the RERA Act. The argument, however, lacks merit because the project of the case in hand was not complete prior to coming into force of the Act and it was ongoing project and was subsequently got registered under RERA (Punjab); 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. Reliance may be made to 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 had been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act were not enforceable to that extent and the provision of the RERA Act would be applicable to cover the ongoing project got registered with RERA Authority; to the same effect is the authority of Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** Therefore, the present complaint is maintainable.

8. Another objection on behalf of the respondent/promoter was that no cause of action had arisen to the complainants to file the complaint as time for completion of the project had been permitted by the RERA Authority on the basis of the declaration of the promoter at the time of registration of the project i.e. 9 years from 01.09.2017 when the project was got registered.

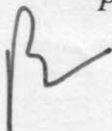
9. The argument on behalf of the respondent is devoid of force, as the Hon'ble Apex Court in **Imperia Structures Ltd. Vs. Anil Patni and another-Civil Appeal No.3581-3590 of 2020** has held that period for completion of the project and handing over the possession is not to be taken from the date declared by the promoter to the RERA Authorities at the time of subsequent registration of the ongoing project but the original period fixed by the parties in the buyer's agreement.



10. In view of above observations of the Apex Court, the stipulation in the buyer's agreement regarding handing over possession was 48 months from the date of agreement (including 6 months of grace period) would be applicable and binding on the parties. The subsequent declaration given at the time of getting the ongoing project registered with RERA for completion of the project would not be applicable in the case in hand. The argument on behalf of the respondent regarding complaint being premature is thus repelled.

11. Another objection taken on behalf of the respondent was that there was an arbitration clause contained in buyer's agreement dated 27.06.2016 according to which, the dispute between the parties was to be referred to the arbitrator and therefore this Bench had no jurisdiction to adjudicate the controversy between the parties. The present complaint has been filed for seeking compensation alleging the violations of the provisions of the Act by the respondent/builder. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act, which runs as under: -

"79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.



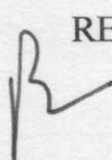
88. *The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.*

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

12. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, the remedy available to the complainant under the Act still subsists as it is in addition to remedy available before in any other forums. The argument is accordingly repelled.

13. It was also the objection that even if for argument's sake, it was taken that there had been delay in completion of the project, the liability of the respondent/promoter was restricted to the extent of penalty as provided in the terms and conditions of the buyer's agreement and not as per the provisions of the RERA Act pertaining to compensation.

14. The argument advanced on behalf of the promoter does not hold much water because if the provisions of the RERA Act as noticed above are applicable to the project of the case in hand which was ongoing and having been got registered when the RERA Act came into existence, in case of default of the promoter in completion of the project as per provisions of Section 18(1) of the RERA Act the complainants are certainly entitled to compensation as provided under Section 72 of the RERA Act as the RERA Act is not only prospective but also retroactive in

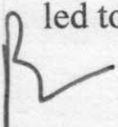


case of ongoing projects. Reliance may be made to the law laid down by the Hon'ble Apex Court in **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.**

15. The argument on behalf of the complainants was that complainants fulfilled their obligations under the buyer's agreement, but the promoter failed to complete the project and handover its possession within the stipulated period without any justification and therefore the complainants had the right to withdraw from the project and seek compensation.

16. On the other hand, argument on behalf of the respondent/promoter was that the complainants did not make the requisite payments as per the payment schedule and the delay in completion of the project was due to lockdown as a result of Covid-19 and therefore the complainants were not entitled to withdraw from the project nor could seek compensation.

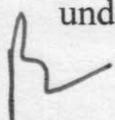
17. The admitted facts between the parties are that complainants had booked the apartment in question in the project of the respondents at Dera Bassi vide agreement dated 27.06.2016 the possession of which was to be delivered by the promoter within 48 months i.e. by 27.06.2020. It is also an admitted fact that out of the total sale consideration of the unit in question, the complainants had already paid a sum of Rs.24.45 lakhs. However, possession had not been offered so far by the promoter, which led to filing of the present complaint by complainants.



18. So far as the argument of the promoter that there had been lapses on the part of the complainants in not making the payment as per the payment schedule is concerned, even if it was so, in that eventuality the promoter had the option of cancelling the allotment. However, due to reason best known no such option was availed and therefore the promoter could not agitate any such lapse on the part of the complainants in making the payments because under the buyer's agreement he had the right to claim interest on the delayed payment. So far as argument in the shape of justification for delay in completion of the project due to lockdown of Covid-19 virus and the consequent relaxation in extension is concerned, even if that aspect is taken into account, the promoter even in that eventuality failed to complete the project and till date the project remained incomplete because no completion certificate or occupancy certificate had been obtained from the competent authority so far. Therefore, the lapse for non-completion of the project was of the promoter because of which the complainants can certainly withdraw from the project and seek compensation. If any authority is needed reference in this connection may be made to **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others'** case in which Hon'ble Apex Court was pleased to hold that allottees were at liberty to withdraw from the project and seek the relief of compensation under Section 18 of the RERA Act in case the builder fails to complete the project.

19. The default of the respondents in the aforesaid circumstances attracts the mischief of Section 18(1) of the RERA 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) xxxx xxxx

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.”

20. In my considered opinion compensation can be granted under the heads pecuniary and non-pecuniary. Though compensation has not been defined under the RERA Act; however, Section 72 of the RERA Act mentions about the factors to be taken into consideration for determination of the quantum of compensation. Section 72 of the RERA Act runs as under:

72. Factors to be taken into account by the adjudicating officer: - while adjudicating the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer



shall have due regard to the following factors,
namely: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default:
- (b) the amount of loss caused as a result of the default:
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

21. For determination of the entitlement of complainant for compensation due to default of the builder/developer the Hon'ble Apex Court in M/s. Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Others, Civil Appeal No. (s) 3533-3534 of 2017 decided on 12.3.2018 held as under: -

"Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises, then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical."

22. In the aforesaid case the Hon'ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession.

23. Apart from the factors on the quantum of compensation expressed under Section 72 Sub Sections (a), (b) and (c) this Bench, under Sub Section (d) of Section 72 has been given scope of considering other factors, which are considered necessary in furtherance of justice. Normally Indians are emotionally attached to own a property. They are prepared to spend major share of their lifetime earnings and also ready to obtain loans from financial institutions in the hope of getting property. Since the complainants had not been able to get possession of the flat in question and had to seek the remedy under existing law and for that had to suffer mental agony due to harassment and had to incur expenses for obtaining legal assistance for pursuing their rightful claim, they are certainly entitled for compensation.

24. It has been vehemently argued on behalf of the respondent promoter that complainant had already been granted interest on the amount of refund and therefore they were not entitled to any further amount beyond the said interest which has been awarded by the Authority. The argument is rejected because as per provisions of Section 18(1) of the RERA Act due to the default of the respondent in completion of the project, the complainants have



the three separate remedies on withdrawing from the project i.e. refund of the amount paid; interest on the said amount as per provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017 and also compensation as per the provisions of Section 72 of the RERA Act.

25. The Court can also take into account certain factors which are apparent in the natural course of the existing circumstances. In the case in hand, the possession of the unit in question was to be delivered by the respondent on or before 08.06.2020, but the complainants were left in lurch by the developer from the said date till the date of passing of this order. During this interval there had been substantial rise in the real estate in relation to developed colonies in and around the project in question and the same is also suggestive from the increase in the Collector Rate of the concerned area from the year 2016 till date. Besides, the price index indicating rising prices of the construction material during the said relevant period also got manifold increase and in view of the afore narrated circumstances, it is apparent that the promoter in the case in hand certainly obtained unfair advantage by non-performance of his obligation in the case in hand for a considerable period and caused wrongful loss to the complainants, which is quantifiable by approximation.

26. As per observations of Hon'ble Apex Court in Civil Appeal No.6239 of 2019 titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd.**

(now known as BEGUM OMR homes Pvt. Ltd.) and Ors., it is held that for default of the promoter compensation @ 6% p.a. is to be paid to the allottee/home buyer. Accordingly, complainants are entitled to compensation at the said rate on the amount of Rs.24.45 lakhs paid by complainants from the stipulated date i.e. 27.06.2020 till the date of this order. Even for determining the amount for seeking legal assistance and other expenses for pursuing the litigation has to be assessed by approximation. Keeping in view the nature of litigation which had to be initiated by the complainants and also the duration for which it continued even before the RERA Authority, I assess the amount of Rs.30,000/- as compensation in the shape of litigation expenses.

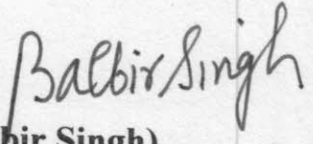
27. In view of the above discussion and observations, the complaint is partly allowed. The complainants are held entitled to compensation from respondents no.1 to 3 to the following extent and under the following heads: -

Sr.No	Head(s)	Amount (Rupees)
1.	compensation on account of delay in completion of project resulting into promoter getting unfair advantage/disproportionate gain, mental agony and harassment.	@ 6% p.a. on the amount of Rs.24.45 lakhs paid by complainants from the stipulated date i.e. 27.06.2020 till the date of this order
2.	compensation on account of litigation expenses	30,000/-



The respondents are directed to pay the above said amount of compensation to the complainants within ninety days from the date of this order. A copy of this order be provided to both the parties free of costs and file be consigned to record room after necessary compliance as per rules.

Dated: 04.12.2023


(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority