

**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.RERA/AdC No.1213/2019

Dated of Decision: 01.02.2024

Anil Vivan Singh and Anita Juliet Singh, residents of Flat No.303, Block A1, Nirmal Chhaya Towers, VIP Road, Zirakpur, District Sahibzada Ajit Singh Nagar, Moahli.

...Complainant

Versus

1. M/s ATS Estate Private Limited, 711/92 Deepali Nehru Place, New Delhi, Delhi.
2. Mr. Adityajit Singh Pahwa, 711/92 Deepali Nehru Place, New Delhi, Delhi.

.....Respondents

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

Present: Mr. Mandeep Singh Khillan Advocate representative
for the complainants
Mr. J.P. Rana Advocate representative for the
respondents

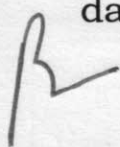
ORDER

The present complaint had been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") seeking refund along-with interest and compensation etc.; that the complaint was allowed vide order dated 13.10.2021. However, an appeal was filed against the said decision and Hon'ble Real Estate Appellate Tribunal, Punjab vide remand order dated 18.04.2022 was pleased to direct for fresh decision of the present complaint qua

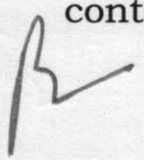
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the relief of refund and interest by the Regulatory Authority and also fresh decision qua the relief of compensation by this Bench in view of ratio of the authority of Hon'ble Apex Court in **Civil Appeals No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** along-with connected appeals decided on 11.11.2021. Accordingly, vide order dated 04.05.2022, the present complaint was ordered to be segregated and one set of paper-book was ordered to be sent before the Hon'ble Bench of Chairperson, RERA, Punjab regarding the claim of refund and interest sought by the complainant and qua relief of compensation etc. case is before this Bench.

2. As per averments contained in the complaint the complainants were allotted apartment No.7084 on 8th Floor, Tower No.7, in the project of respondent named '**ATS Golf Meadows Lifestyle**'; that the buyer's agreement was executed between the parties on 21.1.2013; that the basic sale price of the unit in question was Rs.56,80,000/-; that the complainants had paid an amount of Rs. 47,52,617/- to the respondents; that as per Clause 14 of the flat buyer's agreement possession of the flat was to be handed over within 36 months plus six months grace period from the date of execution of the agreement i.e. on or before 21.07.2016, but the respondents failed to hand over the possession of the flat in question till date. Hence the present complaint for compensation.



3. Upon notice respondents had put in appearance and filed written reply taking preliminary objections that the complainant had no cause of action to file the present complaint under the provisions of the Act as the date for completion of the project declared to RERA Authority by the promoter at the time of registration of the project was 31.8.2026; that the present complaint was liable to be dismissed in view judgment of the RERA Authority in **Complaint No.3 of 2017-Bikramjit Singh & Ors. Vs. State of Punjab;** that the present complaint under the Act was not maintainable being prospective and not being retrospective, while transaction of the case in hand pertained to the year 2013; that the HDFC Bank (hereinafter referred to as "**the Bank**") which sanctioned the loan in the name of the complainant, under the tripartite agreement was necessary party in the present litigation and therefore the present complaint was bad for non-joinder of necessary party; that there was arbitration clause in the flat buyers agreement, according to which any dispute arisen between the parties in relation to the said agreement was required to be referred to the Arbitrator. On merits, the execution of buyer's agreement and allotment of flat in question was admitted. It was however submitted that every effort was being made for completion of the project and the Tower in question. Denying rest of the contentions the promoter prayed for dismissal of the complaint.

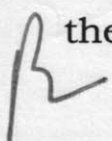


4. Complainant also filed rejoinder controverting the allegations of the written reply filed by the respondents and reiterating the averments of the complaint.

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. I have also gone through the case file carefully and the elaboration thereof shall be made in the discussion.

7. The first point raised on behalf of the respondent was that the transaction pertained to the year 2013 and the RERA Act which came into force later on, thus was not applicable to the instant matter. It may be that the transaction pertained to the year 2013 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 got registered with the RERA Authority.

8. The submission on behalf of the respondent that no cause of action had arisen to the complainant, as the time for completion of project had been declared by the respondent before the RERA Authority till 31.8.2026 at the time of registration of the project is devoid of any force as the Hon'ble Bombay High Court in a case titled **Neel Kamal Realtors Suburban Pvt. Ltd. (supra)** has been very categorical with regard to the agreements entered between the parties even prior to coming into force of this Act and in this respect the paragraph 119 is reproduced herein below:-

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the

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project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and an allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, is unwarranted, illegal and highly arbitrary in nature."

9. In the above said case, the Hon'ble Bombay High Court has also made this point clear in paragraph 256 and 261 which are reproduced below: -

256. Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale.

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261. In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a

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designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period. Even under Section 8 of MOFA on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. In other words, the liability under Section 18(1) (a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

10. In view of above observations, the plea of the respondent that they had given a declaration for completion of project by 31.8.2026 while registering the project with this Authority, is not tenable as the agreement between the parties was admittedly executed on 21.01.2013 and date given by the promoter to the allottees for handing over the possession of the flat was within 36 months plus extended period of six months i.e. upto 21.07.2016. Therefore, the promoter cannot take the benefit of the completion date of the project i.e. 31.8.2026 given at the time of registration of the project rather the date of completion of the project as per stipulation in the flat buyer's

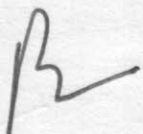
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agreement dated 21.1.2013 shall be applicable according to which the possession of the flat on completion of the project was to be handed over up to 21.07.2016. The argument is accordingly repelled.

11. Another objection taken was that complaint alleging violations of the provisions of the Act was maintainable only in respect of the agreement which had been executed as per Rules, 2017 and of the Act. However, as already noticed it was held by Bombay High Court in **Neel Kamal's** case (supra) that RERA is applicable to the projects which were ongoing and subsequently got registered under RERA. Therefore, the complaint is maintainable.

12. The representative of the respondent also raised the objection that there was an arbitration clause no.35 contained in flat buyers' agreement according to which, the dispute between the parties was to be referred to the sole arbitrator and this Bench had no jurisdiction to adjudicate the controversy between the parties. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act, which reads 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.

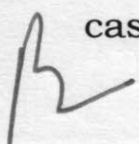
88. The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law for the time being in force.

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

13. 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 complainants under the Act still subsists as it is in addition to remedy available before in any other forums. The argument is accordingly repelled.

14. It was also agitated that the complainant had not purchased the flat for his bonafide personal use but only for the purpose of speculative gains and did not fall within the definition of consumer and therefore, he was not entitled to protection under the Act.

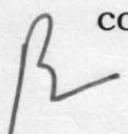
15. The argument, however, is without substance because the Real Estate (Regulation and Development) Act 2016 is self-contained Code to deal with the dispute between the allottee(s)/promoter(s) as per provisions of the said Act before the RERA Authority or the Adjudicating Officer as the case may be and under the provisions of RERA there is no



requirement that allottee must be end consumer and the provisions of the Consumer Protection Act, 2019 are not applicable for adjudicating the said dispute between the parties by the RERA Authority or the Adjudicating Officer. The argument is repelled accordingly.

16. The argument on behalf of the complainant was that the complainant had paid total amount of Rs.47,52,617/- as per terms and conditions of the flat buyer's agreement payment plan and balance amount was to be paid at the time of delivery of possession. Further argument was that as per Clause 14 of the Flat Buyers Agreement, the possession of the flat after completion was to be offered within 36 months from the date of execution of the flat buyer's agreement plus six months grace period i.e. by 21.7.2016, however, respondent-promoter unreasonably delayed the project and failed to offer the possession as stipulated and even till date possession of the flat was not offered. It was then argued that complainant wrote letter dated 6.8.2018 to the respondent seeking refund, interest and compensation which was followed by reminder dated 26.10.2018 but nothing was done by the respondent and therefore, the complainant was entitled to compensation.

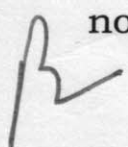
17. On the other hand, the argument on behalf of the respondent-promoter was that despite making best efforts of completing the project there had been delay in completion of the project which was because of the circumstances beyond the control of the respondent viz-a-viz due to market conditions



there was delay in execution of certain works and plea of force majeure was pressed. Further, argument was that the respondent had already spent huge amount in raising the construction of the project and at this stage the complainant could not be allowed to withdraw from the project and seek compensation.

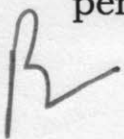
18. Admittedly the flat in question was booked by the complainant in the project of respondent named '**ATS Golf Meadows Lifestyle**' and flat buyers agreement dated 21.1.2013 was executed between the parties. As per payment plan complainant had paid Rs. 47,52,617/- to the respondents and balance amount was payable at the time of delivery of possession. It was also admitted that as per Clause 14 of the flat buyer's agreement possession of the flat was to be handed over within 36 months plus six months grace period from the date of execution of the agreement i.e. on or before 21.7.2016 and till date the project was incomplete and possession of the flat was not offered by the respondent

19. So far as the question of application of principle of force majeure is concerned, as per explanation given in Section 7 of the Act, force majeure shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of real estate project. The said definition of force majeure makes it clear that it mostly covers natural disasters and the Act of God and not normal eventualities, which the builder can foresee with normal



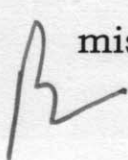
prudence and act accordingly rather than keeping the buyers in lurch and therefore principle of force majeure is not applicable to the facts of the present case. Even otherwise the circumstances which were pleaded by the respondents were such which the builder could foresee as to what was to be done in the eventuality of changed market conditions. Accordingly, the argument is repelled.

20. It is well settled that time for completion of the project in such case is always considered essence of the flat buyer's agreement for both the parties but the respondent promoter failed to complete the project by the said date. Now, even 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. The complainant had paid Rs.47,52,617/- as per payment plan and also as per ledger account of the applicant furnished by respondent and balance amount was to be paid at the time of offer of possession. The complainant is thus not at all at fault and in these circumstances, the promoter was under obligation to provide possession of the apartment within the stipulated period.



21. Admittedly payment had been made by the complainant as per payment plan without any delay and the project was incomplete till date, therefore, it cannot be said that any fault was attributable on the part of the complainant and rather the respondent itself admitted in the written reply that till date construction is completed to the extent of 40% only and that there was delay in completion of project. The ratio of the authority of Apex Court in ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018 and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another civil appeal No.1677 of 2019*** holding that if the project had been delayed beyond the period of two years from the stipulated time because of fault of the respondent-builder then the buyers could not be compelled to accept delayed possession and it was optional for the buyers either to remain in project and accept delayed compensation or in the alternative to withdraw from the project and claim relief of refund, interest and compensation is fully attracted to the facts of the present case. Thus, the complainant had the option of withdrawing from the project due to unreasonable delay in completion of project.

22. In view of above discussion, the fault on the part of the respondent in not delivering the possession of the unit in question within the stipulated period as per the relevant clause of agreement dated 21.01.2013, thus, squarely falls within 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, —

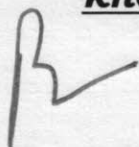
- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall 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.

Resultantly, the complainants are certainly entitled to compensation.

23. 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.

24. 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**



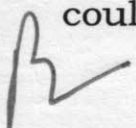
D'Lima and Others, Civil Appeal No. (s) 3533-3534 of 2017

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."

25. 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.

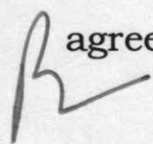
26. Apart from the factors on the quantum of compensation expressed under Section 72 Sub Sections (a), (b) and (c) this Bench, under Sub Section (d) of Section 72 has been given scope of considering other factors, which are considered necessary in furtherance of justice. Since the complainants had not been able to get possession of their units in question and could not reside peacefully and happily, we are to consider the



psyche of the Indian Society. Normally Indians are emotionally attached to own a residential house for the family. 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 home for the family. Since the complainant had not been able to get possession of the unit 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 his claim, he is certainly entitled for compensation.

27. 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 the complainant was not entitled to any further amount beyond the said interest which has been awarded by the Authority. The argument is to be outrightly 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 complainant has 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.

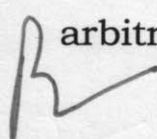
28. Faced with this eventuality, another argument on behalf of the promoter was that as per clause 15 of the buyer's agreement, the allottee could seek compensation @ Rs.5/- per



Sq. ft. per month in the event of delay by the builder in completion of the project and that the provisions of the RERA Act and the rules framed thereunder regarding payment of interest by the defaulter promoter was at the prescribed rate(today's SBI highest MCLR rate plus 2%) from the date of deposit till actual payment.

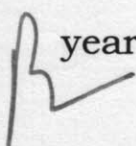
29. On the other hand, the argument advanced on behalf of the complainant was that the clause regarding payment of compensation @ Rs.5/- per Sq. ft. per month in case of delay in completion of the project was not only unconscionable but also arbitrary and to the disadvantage of the complainant and therefore would not be applicable and the interest payable as per provisions of the RERA Act would not be applicable. Reliance in this behalf was placed upon the authority of Apex Court in ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018 and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another civil appeal No.1677 of 2019.***

30. A close scrutiny of the buyer's agreement leads to the conclusion that in case of the default by the promoter the allottee was given the right of compensation to the tune of Rs.5/- per sq. ft. per month whereas in case of default of the allottee in payment of instalments the interest chargeable by the promoter was @ 8% per annum. It therefore is apparent that the promoter, who is in a dominant position viz-a-viz the allottee has included

 arbitrary and one-sided clause for fixing the right at which

compensation is to be payable by the promoter and such type of conduct of the promoter is unfair trade practice and cannot bind the allottee. There are volley of the authorities of different high Courts and also by the Hon'ble apex Court on this point. In ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018 and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another civil appeal No.1677 of 2019***, it has been held by the Hon' ble Apex Court that chargeability of different rates of interest amounts to unfair trade practice because it gives unfair advantage to the seller over the buyer. The project of the case in hand was ongoing project and had been registered as per provisions of the RERA Act and therefore the provisions of the RERA Act and rules framed thereunder would be applicable in the case in hand.

31. 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 apartment in question was to be delivered by the respondent on or before 21.07.2016, but the complainant was 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

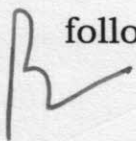


prices of the construction material during the said relevant period also got manifold increase and in view of the afore narrated circumstances, it is apparent that the builder/developer in the case in hand certainly obtained unfair advantage by non-performance of his obligation in the cases in hand for a considerable period and the developer caused wrongful loss to the complainants, which is quantifiable by approximation.

32. 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, complainant is entitled to compensation @ 6% p.a. on the amount paid from the stipulated date i.e. 21.07.2016 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. In the case in hand legal assistance has been taken by the complainant and taking into account the duration for which the complaint had to be pursued, amount of Rs.30,000/- is assessed on that score.

33. In view of the above discussion and observations, the complaint is partly allowed. The complainants are held entitled to compensation from the respondent under the

following heads: -



| Sr.No. | Head(s) | Amount (Rupees) |
|---------------|--|---|
| 1. | Compensation on account of mental agony, harassment and litigation expenses and delay in completion of project due to which complainant suffered loss and builder got advantage of undue enrichment. | @ 6% p.a. on the amount paid in this case from 21.07.2016 till the date of passing 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: 01.02.2024

Balbir Singh
(Balbir Singh)
Adjudicating Officer
RERA, Punjab