

**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 1386 of 2019 UR
Dated of Decision: 26.12.2023

Harish Jain, resident of #500/6, Street No.4, Shastri Nagar,
Jagraon, District Ludhiana. Jaswinder Singh, F-36, PDA
Omaxe City, Patiala, District Patiala, Punjab.

..... Complainant

Versus

PUDA through Estate Officer, PUDA Bhawan, Sector 62,
Sahibzada Ajit Singh Nagar, (Mohali), Punjab.

..... Respondent

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

Present: Shri Vinod Verma, Advocate, representative for the
complainant
Shri Bhupinder Singh, Advocate, representative for
respondent.

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 17.05.2021. However, an appeal was
filed against the said decision and Hon'ble Real Estate
Appellate Tribunal, Punjab vide remand order dated
11.07.2022 was pleased to direct for fresh decision of the
present complaint qua 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. The present complaint which was filed seeking composite relief of refund and interest as well as compensation, in respect of relief qua refund and interest had to be decided by the Hon'ble Regulatory Authority and qua the relief of compensation, the same was to be adjudicated by this Bench. Accordingly, vide my order dated 29.07.2022, 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. The brief facts as enumerated in the complaint are that the complainant booked residential plot in the project named "**Gateway City**", Sector 118-119, SAS Nagar Mohali, to be developed by the respondent, the particulars whereof are given as below: -

Sr. No.	Name of complainant	Plot No./size	Tentative Price	Amount paid	Date of allotment letter
1.	Harish Jain	57 of 400 sq. feet	Rs.84 Lakhs	Rs. 22,90,000/-	16.08.2016

As per clause 4 of the allotment letter, the possession of the plot was to be delivered to the complainant after completion of construction work or within 18 months from the date of the allotment letter, whichever was earlier. The plot was not feasible and capable of delivery of possession and as such the

respondent failed to deliver the possession to the complainant. The complainant made representation for refund of the amount paid by him, but, to no effect. Hence, the present complaint for compensation.

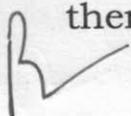
3. Upon notice, the respondent filed reply to the complaint raising the plea that the RERA Act was applicable prospectively and not retrospectively and the part of the project in question was already complete prior to coming into force of the provisions of the RERA Act and partial completion certificate had already been issued on 28.04.2017 qua that part and the remaining part of the project had been got registered with the Authority. As such, the Adjudicating Authority did not have jurisdiction to entertain the instant complaint. The scheme of project in question was launched after due permission from the Government for allotment of 417 freehold residential plots and the terms and conditions were detailed in the brochure. It was, however, admitted that the complainant applied for plot measuring 400 square yards and certificate to that effect were issued to him. It was also admitted that the complainant being successful in the draw of lots was allotted plot No.57 vide allotment letter dated 16.08.2016. As per condition No.3 (iii) of the allotment letter the complainant was required to pay the balance amount of 75% of the tentative price of plot either in lump sum without any interest within sixty days from the date of issue of allotment letter or in six equated half yearly instalments, falling due after one year from the date of issue of allotment

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letter along-with interest at the rate of 12% per annum. However, complainant Harish Jain had not deposited the amount after paying 25% of the sale consideration. As per condition No.4(i) of the allotment letter, the complainant was required to take possession of the plot, but the complainant vide his letter dated 16.08.2019 requested for refund of the amount due to the plot being non-feasible, but as per report of the field staff the plot in question was feasible and the complainant could take possession of same, after payment of due instalments along-with penal interest as stated in letter dated 05.12.2019 Annexure R5. It was further the case of the respondent that the basic amenities were available at the site and the project was complete and partial completion certificate had been obtained and this part of the project had not been registered with the RERA Authority. It was also averred that there was an arbitration clause in the terms and conditions of the allotment and the grievance of the complainant was required to be referred to the Arbitration under the Arbitration and Conciliation Act 1996; finally, it was prayed that the complaint was liable to be dismissed.

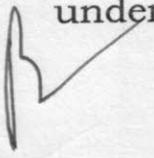
4. Complainant filed rejoinder, wherein the averments of the written reply were denied and those of the complaint were reiterated.

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



6. I have heard both the representatives for parties and have gone through the record of the case.
7. The admitted facts between the parties in the case are that the complainant booked residential plot in the project namely **Gateway City**, being developed by the respondent and in the auction the complainant being highest bidder was allotted plot No.57 of the size of 400 sq. feet. The tentative sale price of each plot was Rs.84,00,000/- and complainant Harish Jain had paid a sum of Rs.22,90,000. It is also admitted that letter of intent was issued and allotment letter was also issued and as per clause 4(1) of the allotment letter, possession of the plot was to be handed over to the allottees either after the completion of the development works at site or 18th months from the date of issuance of the allotment letter, whichever was earlier. It was also an admitted fact that the possession has not been delivered to the complainant so far.
8. The first submission made by the representative for the respondent was that as per terms and conditions of the allotment letter, the matter was required to be referred to the arbitrator under the Arbitration and Conciliation Act 1996 and the complaint under the Act was not maintainable and this Bench also did not have any jurisdiction to entertain and try this complaint. On the point of the arbitration clause contained in the allotment letter, reference is required to be made to Sections 79, 88 and 89 of the Act, which read as

under: -



“S.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.*

S.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.*

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

9. 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 the remedy available in any other forums. The argument is accordingly repelled.

10. The argument on behalf of the respondent was that the present case pertained to the period prior to the coming into force of the Act and the project was complete and partial completion certificate was also issued in favour of the respondent and rest of the project which was incomplete had been got registered with the RERA Authority and the contention then was that the provisions of the Act were not attracted to the facts of the case in hand. The argument however lacks merit as the Letter of Intent in the present case is dated 28.05.2015, whereas the allotment letter has been issued on 16.08.2016 i.e. more than one year after issuance of letter of intent. Possession of the plot was to be delivered

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within 18 months from the date of allotment letter i.e. upto 16.02.2018. If the part of the project in which the plot of the complainant falls was complete by 28.04.2017 as is being claimed by the respondent on the basis of partial completion certificate Annexure R1, then what was the hitch for the respondent to issue offer of possession letter with demand for remaining amount, is not known as it is neither the case of the respondent that they have issued any such offer of possession letter nor they have ever cancelled the allotment. In these circumstances, how the complainant could come to know about the alleged completion of the project and as such he was justified in further stopping the payments. As such, the fault lies with the respondent in not intimating the complainant regarding the status of the project and further in not making offer of possession, which they have not done till date. In such a situation, it could not be said that the project of the case in hand was complete prior to coming into force of the Act. It was an ongoing project and the plot in question was not capable of delivery to the complainant. In these circumstances, the present project was ongoing and had not been completed; 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. 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 Indi and others**, bearing Writ Petition No.2737 of 2017 decided on



06.12.2017, wherein it was held that RERA was applicable to all the ongoing projects, which remained incomplete by the time of commencement of RERA.

11. It is the stand of the complainant that the plots were not feasible being near the high tension electric wires, the level of plots being very low/deep, lack of basic amenities and farming still going on at the site and the complainant made written requests for refund of the amount paid by him, but, the respondent has taken the plea that the plots were feasible as per the report of the field staff of their office and reference has been made to letters Annexure R5 and Annexure R7. However, the alleged report of the field staff has not seen the light of the day and brought on record or sent to the complainant along-with the above said letters. So, simply by saying that the plots were feasible does not make any difference as the factum of high-tension wires around the site in question had not been denied nor it was stated that the same had been got removed or would be removed therefrom within some stipulated period. The fact of non-feasibility of the plots get strength from the fact that there was inordinate delay in delivery of possession, which was to be delivered in February, 2018, but, till date possession has not been delivered. In these circumstances, how the complainant could be forced to take possession of plot which was not fit for construction.

12. Admittedly, the respondent has failed to deliver the possession of the plot in question within the stipulated

period. The clause 5 of specimen proforma for agreement for sale prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017 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/flat 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 flat 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.

13. In the instant case, the complainant is not at all at fault and in these circumstances; the promoter was under obligation to provide possession of the plot 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/flat 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/flat."

14. As has been discussed and observed above, that the respondent has failed to offer or deliver the possession of the plot to the complainant till date and as such fault lies with the respondent and in such a situation this case is covered within the mischief of Section 18 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

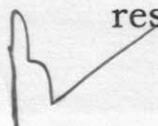
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. In view of above discussion, we hold that the project of the case in hand was not complete due to the default of the promoter without any justification and therefore the complainant is entitled to compensation.

16. 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.

17. 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."

18. 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.

19. 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 complainant had not been able to get possession of the plot 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 rightful claim, he is certainly entitled for compensation.

20. 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 plot in question was to be delivered by the respondent on or before 16.02.2018, 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 2018 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.

21. 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 at the said rate on the amount of Rs.22,90,000/- paid by complainant from the stipulated date of delivery of possession i.e. 16.02.2018 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 complainant and also the duration for which it continued even up to the RERA Appellate Authority, I assess the amount of Rs.30,000/- as compensation in the shape of litigation expenses.



22. In view of the above discussion and observations, the complaint is partly allowed. The complainant is held entitled to compensation from the respondent 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.22,90,000/- paid by complainant from the stipulated date i.e. 16.02.2018 till the date of this order
2.	compensation on account of litigation expenses	30,000/-

The respondent is directed to pay the above said amount of compensation to the complainant 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: 26.12.2023

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