

Complaint No. RERA/Adc No. 1797/2020

**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. 1797/2020
Dated of Decision: 31.05.2024

Sanjeev Kumar Gupta, resident of House No.109, Sector 4, Block D, Mandi Gobindgarh, District Fatehgarh Sahib, Punjab, Pin Code 147301.

...Complainant

Versus

1. APIPL HOUSING AND URBAN INFRASTRUCTURE LIMITED, The Masterpiece Golf Course Road, Sector-54, Gurugram (Haryana)-122002.
2. Daljeet Singh, Director, The Masterpiece, Golf Course Road, Sector-54, Gurugram (Haryana)-122002.
3. Giriraj Damani, Director, The Masterpiece, Golf Course Road, Sector-54, Gurugram (Haryana)-122002.

..... Respondents

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

Present: Mr. Vineet Yadav, Advocate, representative for the Complainant.
Mr. Sandeep Verma, Advocate, representative for respondents.

ORDER

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 complainant, compensation and litigation expenses, consequent upon non completion of the project and the delay in delivery of legal possession of the unit booked by the complainant in the project "Dream City" developed by the

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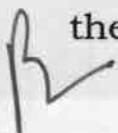
respondents at Khanna (Punjab). In view of the finding of the Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** along with connected appeals decided on 11.11.2021, vide order dated 04.01.2022, the present complaint was ordered to be segregated and one set of paper-book was ordered to be sent before the Bench of Hon'ble Sh. Ajay Pal Singh, Member, RERA, Punjab regarding the claim of refund and interest sought by the complainant and qua relief of compensation case is before this Bench.

2. In nutshell, the averments of the complainants were that complainant on 15.10.2010 booked a plot measuring 1463 Sq. Yds. in the residential project 'Dream City' of the respondents situated at Khanna (Punjab); that on the basis of the said booking plot No. P-161 was allotted in the name of the complainant on 08.02.2011 (annexure C-1) and the total price of the plot was fixed at Rs.60,09,334/- and the complete payment of the sale consideration to the tune of Rs.60,09,334/- was made by the complainant partly through cheques and partly in cash before the execution of the sale deed; that as per the allotment/agreement, the possession of the unit in question was to be handed over within a period of 18 months from the date of allotment; that the respondent without obtaining the completion certificate, under compelling circumstances made the complainant agreeable for execution of the sale deed on 30.03.2012 (annexure C-4); that the project was still not

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complete with all the requisite amenities and the possession of the plot as per recital in the sale deed was delivered in this manner; that dream city club was not functional and only its structure was completed, despite obtaining membership charges; that round the clock security was not provided of the project; that commercial space for township was sold by the respondents in plots against the sanctioned approved plan; that hundred percent power back-up was not provided; that landscape green area was not being maintained; that parking area of the residential area was being used by the visitors to the multiplex theatre, which was not having independent parking; that multiplex theatre was in the land which was assigned for parking for the celebration bazaar; that green belt area was encroached by the respondents for installation of generator set; that no kids play area or jogging track had been developed; that the respondent promoter was levying club and maintenance charges from the allottees even before the completion of the project, hence the present complaint for compensation for causing mental agony, harassment and emotional disturbance.

3. It will not be out of place to mention here that respondents no.1 to 3 initially despite service chose not to appear and were proceeded against ex parte vide order dated 25.05.2021 and subsequently, on the application of these respondents, the ex parte order was set-aside by allowing the application and the respondents filed written reply contesting the complaint by taking up preliminary objections that the



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present complaint was not maintainable; that the complaint had been filed by twisting and distorting the material facts; that the present complaint was barred under the principle of constructive resjudicata; that complainant had no cause of action to file the present complaint and the complaint had been filed after prolonged delay and was time barred. On merits, the respondents admitted the factum of booking of the plot in the project of the case in hand and allotment of the same. It was averred that as per the allotment agreement the possession of the plot in question was to be delivered within a period of 18 months from the allotment letter dated 08.02.2011. It was claimed that the possession of the plot in question was delivered and sale deed was also executed within the stipulated time. The further plea was that competent authority had issued partial completion certificate of the project of the case in hand and the project was complete in all respects, in accordance with the sanctioned plans and layout plans by the competent authority. It was averred that the construction of the Club House was initiated long back and the same was likely to be completed and made operational in proportion to the occupancy of the residents of the project. The further plea was that project of the case in hand was complete and the complaint having been filed on vague pleas and distorted facts and therefore complainant was not entitled to any compensation and prayer was made for dismissal of the complaint.

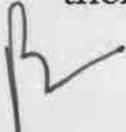


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4. In the rejoinder, complainant reiterated the averments as contained in the complaint and denied those of the reply filed by respondents. It was further contended that all material facts could not be included in the complaint because of constraint of space and limitation on availability of characters while filing the complaint online. It was also submitted that the complainant was forced to execute the Conveyance Deed on 30.03.2012 under the threat held out by the respondents of penalizing him with a hefty amount in case he did not execute the same. The next contention in the rejoinder was that due amenities had not been provided at the spot till date and hence the complainant could not enjoy the fruit of his investment. It was lastly pointed out that even after execution of a Conveyance Deed an allottee did not forfeit the right to claim compensation for the non-completion of the project.

5. The violations and contraventions 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 proceeded for further enquiry.

6. I have heard the learned authorized representatives of the parties and with their assistance have carefully gone through the record. The arguments of respective representatives for parties were on the basis of the submissions made in their respective pleadings as summarized above and the elaboration thereof shall be made in the discussion.

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7. At the outset, on behalf of the respondent promoter legal question was agitated that transaction of the case in hand took place much prior to coming into force the provisions of the Act and therefore the present complaint was not maintainable. The argument however is without merit, inasmuch as the project of the case in hand though commenced before the provisions of the Act became operational, but it was ongoing project and therefore was got registered with the Regulating Authority and in such an eventuality the provisions of the Act would be applicable to the case in hand. If any authority is needed reference in this behalf may be made to the authority of Hon'ble Bombay High Court in case ***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 has been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act are not enforceable to that extent and the provision of the Act would be applicable to cover the ongoing projects. 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.***

8. Another legal point agitated on behalf of the respondent promoter was that the part of the claim in the present complaint for seeking the refund of Club membership fee with taxes and interest was barred on the principle of



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resjudicata. However, it is a matter of record that one set of present complaint for the relief of seeking refund of club membership fee plus taxes with interest was already transferred to Hon'ble Regulating Authority vide order dated 04.01.2022 and the Hon'ble Regulating Authority vide order dated 09.08.2022 has already declined the said prayer of the present complaint. Therefore, this point does not survive for further consideration.

9. Another legal point agitated on behalf of the respondent promoter was that the possession of the case in hand was delivered on 30.03.2012 at the time of execution of the sale deed but the present complaint had been filed after prolonged delay and therefore was barred by limitation. However, this submission also lacks merit because RERA Act is a special legislation with particular aims and objects covering certain issues and violations relating to housing sector. There is no period of limitation provided under Sections 12 or 18 of the Act for filing the complaint for seeking relief of compensation etc. By virtue of Section 29 of the Limitation Act, 1963 period of limitation as assigned under the Limitation Act, 1963 is not applicable to RERA Act which is special enactment; reference in this connection may be made to **Consolidated Engg. Enterprises Vs. Irrigation Department 2008(7) SCC 169** wherein the Hon'ble Supreme Court was pleased to hold that the Limitation Act would not apply to quasi-judicial bodies or Tribunals. To the same effect is the authority of the Apex Court

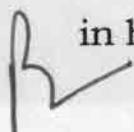


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in **M.P.Steel Corporation Vs. Commissioner of Central Excise 2015(7) SCC 58.** Therefore, I am of the considered opinion that the complaint is not barred by limitation.

10. Though on behalf of the respondent it was also agitated that complainant had no cause of action to file the present complaint, but we find that complainant was feeling aggrieved because of non-completion of the project and non-providing of the amenities and it therefore cannot be said that there was no cause of action with the complainant to file the present complaint and the argument is accordingly repelled.

11. It is not disputed between the parties that complainant booked the plot in question in the project 'Dream City' of the respondents on 15.10.2010 and on the basis of the said booking plot No. P-161 was allotted in the name of the complainant on 08.02.2011 for a total price of Rs.60,09,334/- and the entire payment of the plot in question to the tune of Rs.60,09,334/- had been paid by the complainant to the respondent promoter. It is also not disputed that as per the allotment/agreement the possession of the plot in question was to be handed over within the period of 18 months from the date of allotment and the sale deed of the plot in question was also executed in favour of the complainant on 30.06.2012 by the promoter containing a recital that possession of the plot in question was delivered. The basic dispute between the parties is regarding the question as to whether the project of the case in hand was complete before handing over the possession of the



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plot in question to the complainant on 30.06.2012. The complainant hotly contested that the project of the case in hand was incomplete and therefore the possession handed over as per recital in the sale deed was not legal possession. On the other hand, stand of the respondent promoter was that project of the case in hand was complete and the possession of the plot in question was handed over to the complainant within the stipulated period. Reliance in this behalf was placed on the partial completion certificate dated 04.09.2017 issued by the Executive Officer of Municipal Council, Khanna. In the course of arguments, it was also pointed out that subsequently completion certificate dated 02.02.2022 was also issued by the competent authority and therefore it cannot be said that the project of the case in hand was incomplete or that the possession of the plot could not be legally handed over to the complainant. If the respective contentions of the parties are closely scrutinized in the light of the pleadings and documents on record, we find that in fact no completion certificate was obtained by the promoter before handing over the possession of the plot in question as per recital in the sale deed dated 30.03.2012 executed in favour of the complainant. It is however requirement of the provisions of RERA that the legal possession of the unit sold to the allottee can only be handed over when the project is complete in all respects. As already noticed, no certificate from the competent authority was with the respondent promoter regarding completion of the project of the

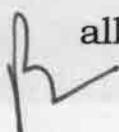


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case in hand on the date of delivery of possession under the sale deed dated 30.03.2012. Now, if the partial completion certificate dated 04.09.2017 issued by the Municipal Council, Khanna is examined, we find that this certificate is not as per the requirement of such type of certificates under Section 2(q) of the Act, which runs as under:

“Completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws.

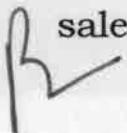
12. The said Municipal Authority did not certify that the real estate project had been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws. Therefore, this certificate cannot be considered for signifying that the project of the case in hand was partially completed as on 04.09.2017, the date of its issue. Secondly, the written reply to the complaint in this case was filed on 08.09.2021 in which there is a clear averment by the respondent promoter that the construction of the club house was initiated long time back and that the same would be completed in proportion to the occupancy of the allottees in the Society. Thus, even the respondent promoter



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himself admits that the project of the case in hand was in fact incomplete even up to 04.09.2017. For that matter even the completion certificate dated 02.02.2022 issued by the Municipal Council, Khanna will have only effect of showing that the project of the case in hand could be said to have been completed by 02.02.2022 and not earlier thereto.

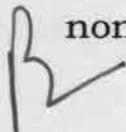
13. The complainant in his pleadings vehemently averred that the project of the case in hand was incomplete and the amenities as stated in the brochure of the project had not been completed and regarding non-providing the amenities mentioned therein besides not properly maintaining the open spaces and the parks etc. Though on behalf of the respondent, most of the contentions were controverted except for the factum that Club House was still incomplete and its structure was there. As already noticed, the document relied upon by the respondent in the shape of partial completion certificate pertains to date 04.09.2017 and the same cannot be considered as a valid document for showing completion of the project and excepting the said document no other type of document, even report from any expert regarding the existence of the amenities had been placed on record to show that the same were complete before handing over the possession under the sale deed. In these circumstances, the only conclusion which can be drawn is that the project of the case in hand will have to be taken as incomplete at the time of handing over possession under the sale deed on 30.03.2012 and the completion date of the project



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of the case in hand can only be taken as 02.02.2022 when finally, the completion certificate was issued by the Municipal Authority. The result therefore is obvious that the project of the case in hand could not be completed by the respondent within the stipulated period i.e. within 18 months from the date of allotment which comes to 08.08.2012 and there had been delay in the completion of the project for a period of almost 10 years and the complainant had to suffer inconvenience, harassment, mental pain and agony during the said period due to non-completion of the project for such a prolonged time and therefore he is certainly entitled to compensation under Section 18 of the Act due to unfair trade practice adopted by the respondent promoter.

14. It was contended on behalf of the respondent promoter that the complaint inter parties on the same cause of action for seeking delayed interest because of non-completion of the project was declined by the Authority as per order dated 09.08.2022 and therefore the complainant was not entitled to any relief of compensation also. The argument however is without merit inasmuch as the said decision of the authority is based on the finding that the possession had been handed over and therefore interest after handing over the possession cannot be granted. Whereas, in the case in hand we are to decide the claim of compensation due to non-providing of amenities and non-completion of the project and therefore, decision of the

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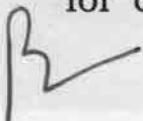
Regulating Authority has no bearing on this aspect. The argument is accordingly repelled.

15. 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.

16. For determination of the entitlement of complainant for compensation due to default of the builder/developer the



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Hon'ble Supreme 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."

17. 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.

18. The Court can also take into account certain factors which are apparent in the natural course of the existing

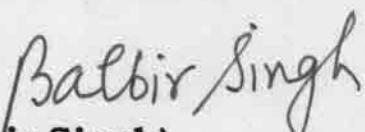
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circumstances. The facts of the case in hand are peculiar of its own kind as the complainant despite having paid the amount of Rs.60,09,334/- to the respondent promoter by March 2012 was deprived from the use of Club House and other promised amenities and this deprivation was for a period of almost 10 years and such unfair trade practice on the part of the respondent promoter would certainly cause harassment, mental agony for which the complainant is entitled to compensation to the tune of Rs.1,50,000/-(by approximation). Apart from this, the complainant had to pursue the litigations for a considerable period and had to engage an Advocate for pursuing the litigations, he is entitled to litigation expenses and in the circumstances of the case in hand, I assess the amount of compensation of Rs.25,000/-.

19. In view of above discussions and observations, the complaint stands partly accepted. The complainant is held entitled to compensation to the tune of Rs.1,75,000/- from the respondents. The respondents are accordingly directed to pay the above said amount of compensation to the complainant within ninety days from the date of this order.

Dated: 31.05.2024


(Balbir Singh)
Adjudicating Officer,
Real Estate Regulatory Authority