

**Before Sh. Balbir Singh, Adjudicating Officer,  
Real Estate Regulatory Authority, Punjab, Plot No.3, Block-B, First  
Floor, Madhya Marg, Sector 18A, Chandigarh-160018**

**Complaint GC No.0042 of 2021UR  
Date of Order: 15.07.2021**

Mr. Narpinder Singh son of Shri Gurnam Singh, resident of Flat No.403,  
Ruby Tower 05 Somdutt Landmark Landran Kharar Road, Sector 116,  
Mohali.

Complainant

Versus

Sky Rock City Welfare Society Regd. through its President Sh. Najeet  
Singh, SCO No.672, Sector 70, Sahibzada Ajit Singh Nagar(Mohali).

Respondent

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

Present: Ms. Manju Goyal, Advocate, proxy counsel for  
Mr. Surinder Pal Advocate, representative for the complainant.  
Respondent ex-parte.

### **O R D E R**

1. The present complaint was filed by complainant Narpinder Singh against respondent Sky Rock City Welfare Society Regd. through its President Mr. Navjeet Singh for refund of Rs.19,60,000/- alongwith interest at the rate of 18% per annum as well as compensation and litigation expenses. As per version of the complainant, he intended to purchase residential plot measuring 200 Sq. yards for a sale consideration of Rs.20,00,000/- in the residential project namely 'Sky Rock City Welfare Society' launched by the respondent. The complainant was made member of the Sky Rock City Welfare Society vide membership No.R-2296 and was registered holder of



share No.762432 of 200 Sq. yard; that the complainant paid total amount of Rs.19,60,000, the details of which are as under:-

Sr.No.	Amount	Receipt No. and Date	Purpose	Annexure
1.	10,000/-	2297 dated 10.6.2011	Membership fee	C-7
2.	5,00,000/-	2992 dated 10.6.2011	Land cost.	C-1
3.	5,00,000/-	8259 dated 4.6.2012	Land cost.	C-2
4.	5,00,000/-	8258 dated 4.6.2012	Land cost.	C-3
5.	1,50,000/-	8181 dated 14.6.2012	Land cost (EDC)	C-4
6.	1,50,000/-	15026 dated 15.1.2015	Land cost.	C-5
7.	1,50,000/-	14098 dated 30.1.2015	Land cost	C-6
Total	19,60,000/-			

The respondent issued provisional allotment letter in the name of the complainant on the basis of application dated 12.12.2012 in respect of plot No.E-86, Residential Project in Sector 111-112, SAS Nagar Mohali measuring 200 Sq. yards, and as per Clause 13 of allotment letter possession of the plot was to be delivered within 36 months from the date of allotment; that possession of the plot had not been delivered till date and the respondent did not complete the project nor any completion certificate was obtained from the competent authorities; that due to the failure of the respondent in completing the project and handing over the possession of the plot the complainant filed the present complaint.

2. Notice of the complaint was issued to respondent society. However, despite having been duly served respondent chose not to appear and was proceeded exparte vide order dated 25.05.2021.
3. I have authorized representative of the complainant and have gone through the pleadings and ex-parte evidence placed on record by the complainant.





4. As the project was not complete on the date of commencement of the Act, which covers the ongoing projects, the provisions of the Act would be applicable in the facts of the case in hand in view of the law laid down by Bombay High Court in case *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 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. Besides the project of the case in hand was unregistered. However, the complaint before this Bench is maintainable against unregistered on going projects in view of the decision dated 24.07.2019 of Hon'ble Real Estate Appellate Tribunal, Punjab in complaint titled **M/s Silver City Construction Ltd. Vs. State of Punjab and others, Appeal No.49 of 2018.**
5. The allotment letter dated 12.12.2012 contained arbitration clause according to which, the dispute between the parties was to be referred to the arbitrator under the provisions of Arbitration and Conciliation Act, 1996. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act. A conjoint reading of said Sections 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 any other forums.
6. On the basis of the pleadings of the complainant duly supported with documents placed on record i.e. copy of share certificate dated 6.6.2012 (Annexure C-8), copy of allotment letter dated 12.12.2012



(Annexure C1A) and copies of receipts of the amounts (Annexures C2 to C7) which remained unrebutted and inspires confidence, it can be safely concluded that the complainant Narpinder Singh was allotted Plot No.E-86 vide allotment letter dated 12.12.2012 and total amount of Rs.19,60,000/- was paid by the complainant. The respondent issued allotment letter dated 12.12.2012 and as per Clause 13 of the said letter possession of the plot was to be possession within 36 months from the date of allotment. The complainant despite payment of almost entire sale consideration and charges etc. kept on waiting but no response was received from the respondent nor any further demand of any amount was made by the respondent and the respondent failed to complete the project and obtain necessary approvals/permission in the shape of completion/occupation certificate and the possession of the allotted plot had not been delivered to the complainant despite lapse of considerable period of more than eight years. In these circumstances, the conduct of the respondent in this behalf amount to unfair trade practice and respondent is certainly at fault in not delivering the possession despite issuance of allotment letter and as such the case is squarely covered within the mischief of the provisions of Section 18 of the Act, which runs as under:-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the





allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

7. In view of the above provisions of the Act, the respondent was duty bound to offer the possession of the property in question within reasonable period and as such, on account of non-delivery of possession, the respondent is liable to refund the amount of Rs.19,50,000/- (though the complainant had claimed Rs.19,60,000/- in the complaint but he had paid a sum of Rs.10,000/- vide receipt No.2296 dated 10.6.2011 on account of membership fee and as such the same is to be deducted) to the complainant.

8. The next question which arises for consideration, is as to whether the complainant is entitled to any interest on the amount paid to the respondents/promoters or not. The fact of the matter remains that the



respondents/promoters had been using the amount so paid by the complainant since the payments, as such, they are liable to refund the above said amount alongwith interest to the legal heir of complainant because once the amount is deposited with the respondents/promoters and they were getting benefit of interest accrued upon said amount, they could not deny the similar benefit to the complainant. As such, I am of the view that the complainant is entitled to the return of principal amount of Rs.19,50,000/- alongwith interest at the prescribed rate as per Rule 16 of the Act i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% from the dates on which the respective payments were made to the respondents till realization.

9. Since the complainant had to seek the remedy under the existing law and for that obviously they had to suffer mental agony and had to incur expenses to pursue their claim by way of engaging a representative and further in attending the proceedings in this case. The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land Acquisition Act etc. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can also be gauged from the fact that the complainant Narpinder Singh could not get possession of the property unit in question despite lapse of long period and have to pursue matter with the respondent as such, I am of






the considered view that the complainant is held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc. to the extent of Rs.50,000/-.

10. In view of above discussions and observations, the complaint stands accepted to the following extent and heads:-

1	Refund of Principal amount	Rs. 19,50,000/-
2	With Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above amount w.e.f. the date(s) of payment (s) till realization.
3	On account of compensation	Rs.50,000/-

The respondent is directed to pay the above said amount to the complainant within sixty days from the date of this order. The amount if any already paid by the respondent to the complainant on account of compensation for delay in delivery of possession shall be set off against above said amount. A copy of this order be sent to the parties under rules and file be consigned to record room.

Dated:15.07.2021

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