

Kavita Kant

V/s

M/s. Ansal Housing and Constructions
Private Limited

Misc. App/AO/07/2024 in
Complaint No. AdC 1280 of 2019

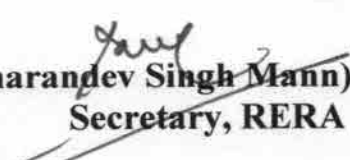
Present

Sh. Saksham Arora, Advocate for the complainant.
Sh. Ashish Verma, Advocate for the respondent.

This application under Section 39 of the RE(R&D) Act, 2016 has been filed on behalf of the complainant/applicant for seeking rectification of typographical error in the final order dated 28.08.2024 passed in the main complaint. The applicant has stated in his application that the name of the complainant i.e. Kavita Kant is wrongly mentioned as Kavita Kanta in the final order dated 28.08.2024. Notice of this miscellaneous application was served to the respondent. Today, Mr. Ashish Verma, counsel for the respondent has put in appearance and states no objection to this application. Thus, the present application is allowed. Accordingly, the order dated 28.08.2024 stands rectified to the effect that the name of complainant be read as 'Kavita Kant'. The copy of this order be uploaded on the web portal along with this the copy to this order be supplied to parties. Hence, this application is disposed off accordingly. File be consigned to record room after due compliance.

This order is being issued in terms of the Authority's Order No. 10852 dated 13.11.2024.

31.12.2024


(Charandeep Singh Mann)
Secretary, RERA

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

1.

Complaint No.RERA/AdC No.1060/2019
Date of Order: 28.08.2024

Yash Paul Kathpal son of Late Shri Narain Dass Kathpal,
resident of Pine 201, Ansal Woodburry Apartment, Near PSEB
GRID, Nabha Road, Zirakpur, District SAS Nagar (Mohali).
.... Complainant

Versus

M/s Ansals Housing and Construction Pvt. Ltd., 606, 6th Floor,
Indra Pakash, 21, Barakhamba Road, New Delhi-110001

.....Respondent

II.

Complaint No.RERA/AdC No.1280/2019
Date of Order: 28.08.2024

Ms. Kavita Kanta daughter of Dr. Surya Kant # 29 FF, Sector
21-A, Chandigarh-160022 (726, Sector 10 Panchkula,
Haryana).

.... Complainant

Versus

Ansals Housing and Construction Pvt. Ltd., 15 UGF, Indra
Pakash, Central Delhi-110001.

.....Respondent

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

Present: Mr. Saksham Arora, Advocate representative for the
complainants
Mr. Veer Singh, Advocate representative for the
respondent



ORDER

This order will decide the above two complaints filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") since they involve similar question of law and facts and in respect of same project and respondent is common; and a copy thereof be placed on each file.

2. The common facts of the complaints are taken from the pleadings of the parties, the documents appended with the complaint, in each case. The complainants applied for booking of units in the project Woodburry Apartments of the respondent situated at Zirakpur, SAS Nagar, Mohali and the price of the units, area, allotment letter and offer of possession etc. in respect of their respective unit is detailed in the tabular form as under: -

Yash Paul Kathpal

Co-allottee Sri Hari Govind Srinivasan

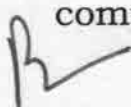
| Unit No. | Net price unit | Area | Allotment letter-cum-agreement | Offer of possession/handed over possession |
|-----------------|--------------------------------|--------------|---------------------------------------|---|
| Pine 201 | Rs.44,09062 @ 2700 per Sq. ft. | 1755 Sq. ft. | 14.05.2012 | 23.09.2013/ 31 October, 2013 |

Ms. Kavita Kanta

| Unit No. | Net price unit | Area | Allotment letter-cum-agreement | Offer of possession/handed over possession |
|-----------------|--------------------------------|--------------|---------------------------------------|---|
| CEDA R-402 | Rs.34,60158 @ 2095 per Sq. ft. | 1755 Sq. ft. | 30.03.2010 | 7.1.2011/ 27.8.2012 |

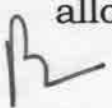
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That complainant in each case paid the sale price of their respective units to the promoter alongwith other charges, including the payment of Rs.1,50,000/- for stilt car parking under the head covered car parking charges and further amount of Rs.60,000/- was paid under the head club fee, as specified in the respective allotment letters-cum-agreements; that offer of possession in each case was issued to the complainants and after obtaining the total dues payable by the complainants in respect of their respective units, the possession of respective apartment was delivered on the dates mentioned above; that project infact had not been completed by the promoter nor for that matter completion certificate had been obtained and thus the possession in each case was handed over to the complainants of the incomplete project; that the amount of Rs.1,50,000/- had been wrongly obtained by the promoter for the stilt car parking in violation of the provisions of law; that despite obtaining club fee of Rs.60,000/- in each case, regular Club House was not constructed and only makeshift arrangement was made by encroaching stilt car parking area of the "FIR" tower of the project, which otherwise was quite inadequate for the total occupiers of the project; that the complainants and so also Resident Welfare Association of the Woodburry Apartments made various representations to the respondent promoter and Municipal Authorities pointing out the deficiencies and for seeking rectification of the same for completion of project; that the amenities as mentioned in the



brochure of the project by the promoter were not provided by the promoter. Hence, the complaints for seeking compensation for causing mental agony, pain and harassment to the complainants by putting them in possession of respective units in incomplete project and also for obtaining wrongful amount for stilt parking and not providing the promised amenities in the project.

3. The respondent filed written reply to both the complaints on similar lines contesting the complaints by taking up preliminary objections that the transactions of the case in hand pertained to the period much prior to coming into force the provisions of RERA Act and therefore the complaints were not maintainable; that the possession of the apartments was handed over to the complainants in the year 2012/2013, but the complaints having been filed after prolonged delay of 6/7 years were barred by law of limitation; that the complainants did not have cause of action to file the present complaints. On merits, the respondent however admitted the factum of execution of the allotment letters-cum-agreements with the complainants in respect of their respective units and payments of the sale price and other charges as claimed by the complainants and for handing over the possession of their respective units to the complainants. It however was claimed that all charges had been demanded from the allottees as per terms and conditions of the agreements duly executed by each allottee. It was averred that the allottees executed and



acknowledged the allotment agreement after understanding his rights and obligations under the agreement. It however was denied that any amount was wrongly claimed or against the provisions by the promoter and that the amount of covered parking had been properly obtained. It was averred that tripartite maintenance agreement was executed by each of the complainants alongwith respondent promoter in favour of Sunrise Estate Management Services. It was averred that the complainants were not regularly making the payment of maintenance charges despite availing the amenities in the project. The further plea was that project was complete as per sanctioned building and layout plans and specification approved by the competent authority and the promoter applied with the competent authority in the year 2012 for issuance of the completion certificate but the competent authority failed to issue completion certificate and had delayed the matter for which the respondent promoter was not responsible. It was also the plea that the respondent promoter was constrained to file writ petition in the Hon'ble High Court of Punjab and Haryana against the competent authority for issuance of the completion certificate but the completion certificate was not issued despite directions of Hon'ble High Court to the competent authority in this behalf. It was claimed that the complainants were offered possession of their respective units on completion of the project and they accepted the possession without raising any objection and that the complaints had been filed with the ulterior motive

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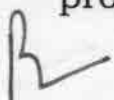
of unjust enrichment. Denying the rest of the averments of the complaints, respondent prayed for dismissal of the complaints.

4. The violations and contraventions contained in the complaints were put to the representative for the respondent to which he denied and did not plead guilty and then the complaints were proceeded for further enquiry.

5. I have heard the learned authorized representatives of the parties and with their assistance have carefully gone through the record and written submissions. 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 there of shall be made in the discussion.

6. It may not be out of place to mention here that though initially on behalf of the complainants compensation was also sought for not providing the amenities in the project as mentioned in the brochure of the project by the promoter, but in the course of arguments the complainants did not press their claim qua the other amenities mentioned in the project and restricted the claim qua three grounds specified in the pleadings.

7. On behalf of the respondent promoter legal point was agitated that transaction of the cases in hand took place much prior to coming into force the provisions of the RERA Act and therefore the complaints were not maintainable under the provisions of the RERA. 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 no completion certificate had been obtained and therefore the promoter got the project of the case in hand registered with the Regulating Authority and in such an eventuality the provisions of the Act would be applicable to the cases in hand. Reference in this connection 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 Indi and others**, bearing Writ Petition No.2737 of 2017 decided on 06.12.2017, wherein, it had been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act were not enforceable to that extent and the provision of the Act would be applicable to cover the ongoing projects. To the same effect is the authority of Hon'ble Supreme 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.** The complaints are thus maintainable.

8. Another legal point agitated on behalf of the respondent promoter was that the possession of the apartments in question was delivered in the year 2012/2013 but the complaints had been filed after prolonged delay of 6/7 years and therefore were barred by the provision of Indian Limitation Act. The argument however lacks merit because RERA Act is special legislation with particular aims and objects covering certain issues and violations relating to the Housing Sector. There is no

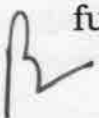
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period of limitation provided under Section 18 of the Act for filing the complaint for seeking the relief of compensation etc. By virtue of Section 29 of the Limitation Act, 1963 period of limitation as assigned under the Limitation Act, 1963 is not 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 in **M.P.Steel Corporation Vs. Commissioner of Central Excise 2015(7) SCC 58**. Moreover, in the cases in hand, even according to the own showing of respondent promoter, no completion certificate was issued by the competent authority in respect of the project of the case in hand prior to filing of the present complaints. Therefore, the present complaints are not barred by limitation.

9. Though on behalf of the respondent promoter it was also agitated that complainants had no cause of action to file the present complaints, but we find that complainants were feeling aggrieved because of non-completion of the project of the case in hand and non-providing the amenities and for wrongful charging of stilt car parking and therefore it cannot be said that there was no cause of action with the complainants to file the complaints. The argument is accordingly repelled.



10. It is not disputed between the parties that each complainant booked their respective apartment in the project of the case in hand and also paid the total price of their apartments alongwith other charges, including the charges of Rs.1,50,000/- under the head 'covered car parking' and Rs.60,000/- as Club fee. It is also not disputed that possession of their respective apartments to each complainant was handed over on the basis of offer of possession letter issued to the complainants. 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 apartments in question to the complainants. The complainants hotly contended that the project of the case in hand was incomplete and therefore the possession handed over to the complainants in each case on the basis of offer of possession was not legal possession. On the other hand, the argument on behalf of the promoter was that project of the case in hand was complete in the year 2012 and the promoter applied to the competent authority with the necessary documents for issuance of completion certificate but the said authority failed to issue the requisite certificate and the promoter even ultimately had also filed writ petition against the competent authority, in the Hon'ble High Court of Punjab and Haryana in this behalf, which was allowed against the competent authority but still the competent authority did not comply with the decision. The further argument was that completion certificate was issued by



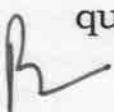
the competent authority after prolonged delay on 09.03.2022 and therefore the respondent promoter could not be blamed for the lapse on the part of competent authority. It was also contended that complainants themselves willingly made the payment and accepted the possession of their respective apartments without raising any objection and therefore they were precluded from raising this objection in the present complaints.

11. The argument in rebuttal on behalf of the complainants was that it was the sole obligation of the promoter under the Act to hand over the possession after completion of the project and obtaining the completion/occupation certificate from the competent authority. The further contention was that complainants as well as Residents Welfare Association of apartments of the project had been time and again making representations to the promoter and also to the Municipal Authorities pointing out that project had not been complete. The further contention was that even the Municipal Authorities after satisfying itself with the deficiencies and defects in the project of the case in hand had been calling upon the respondent promoter time and again for rectifying the same and for completion of project and therefore only the promoter was to be blamed for non-completion of the project of the case in hand. Another argument was that despite obtaining Club fee of Rs.60,000/- from each of the complainants of the case in hand, instead of constructing proper Club House for providing

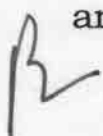
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complete facility of Club, Gymnasium and Swimming Pool, the respondent promoter constructed makeshift club by encroaching the stilt car parking area of the tower 'FIR' of the Woodburry Apartment in such a manner that two parts were created i.e. one by putting chairs and tables and the other side Gym machines were installed but the said facility was inadequate and not proper. Learned Authorized Representative of the complainants summed up his argument that due to handing over possession of the apartments of incomplete project and because of non-providing the amenities the complainants suffered loss, mental agony and harassment for considerable period and therefore they were entitled to compensation.

12. On scrutinizing the respective contentions of the Authorized Representations of the parties in the light of the pleadings and documents on record, we find that complainants of both the cases fulfilled their obligations of executing requisite documents and making the due payments as per allotment letters/agreements and the letters issued by the promoter and offer of possession of their respective apartments. Thus, no fault is either alleged or shown on the part of the complainants in fulfilling their obligations under the allotment letter-cum-agreements. It however is apparent that infact, no completion/occupation certificate was obtained by the promoter before handing over possession of the apartments in question in the year 2012/2013. It however is requirement of

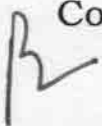


the provisions of the RERA Act that legal possession of the unit sold to the allottees can only be handed over, when the project is complete in all respects. There are documents on record to indicate that Municipal Authorities had not been issuing the completion certificate due to the deficiencies, which were being pointed to the respondent promoter from time to time. It is also a matter of record that STP was completed after prolonged delay and ultimately on completion of the STP at the appropriate place in the project, the completion certificate was issued by the competent authority on 09.03.2022. It may be that application for issuance of completion certificate was filed much earlier by the promoter but the competent authority had to satisfy itself that all the requisite conditions had been fulfilled by the promoter prior to the issuance of the completion certificate. As noticed above the lapse was on the part of the promoter and the objections raised by the competent authority from time to time in relation to the project of the case in hand had finally been removed by the promoter and thereupon the completion certificate was issued by the competent authority on 09.03.2022. Therefore, the possession of the apartments handed over to the complainant of each case in the year 2012/2013 without completion of the project cannot be said to be legal possession. It is a matter of common knowledge that allottees of the apartments generally spent their life time earnings or even obtain loans for purchasing the apartments and they are not at equal footings with that of promoter, who is



in a dominating position. Therefore, even if the allottees under compelling circumstances accept the possession of the apartments despite the project being incomplete they are not precluded from claiming compensation because the possession of the apartments in such cases is not a legal possession. The responsibility of the promoter cannot be said to have been complete simply by applying for the obtaining of completion certificate from the competent authority. The result therefore is obvious that the project of the case in hand could not be completed by the promoter by the year 2012/2013 (at the time of handing over the possession of the apartments to the complainants) and therefore there had been delay in completion of the project for a period of almost 9/10 years and the complainants had to suffer inconvenience, harassment, mental pain and agony during the said period due to non-completion of the project.

13. Another misconduct pointed out of the respondent promoter by the complainants was that amount of Rs.60,000/- in each case was charged as club fee from the complainant of each case but regular club with proper facilities was not constructed and only makeshift arrangement of some sitting area and Gym had been made by encroaching the stilt parking of FIR Tower of the project. In support of the pleadings in the complaints, the complainants placed reliance on the report of the local commissioner dated 24.07.2015 appointed by the Consumer Dispute Redressal Forum, Mohali in CC No.87 of



2015 titled **Wing Commander Siddharth Maurya Vs M/s Ansal Housing and Construction Ltd. & Ors.** The relevant extract of the said report of the project of the case in hand regarding makeshift construction of the club and the stilt parking of the tower "FIR" of the project by encroaching the car parking area was much emphasized on behalf of the complainants. In the first instance, the final decision of the Consumer Dispute Redressal Forum has not been placed on record to show whether the said report of the Local Commissioner was accepted by the Forum. Secondly, reliance cannot be placed on this report as it relates to other litigation of the respondent promoter with the third party. Except for the said report of local commissioner, no other evidence has been placed on record to substantiate the allegation by the complainants for construction of the makeshift club house in the stilt car parking area of the tower of the Woodburry Apartment. The respondent promoter has placed on record the decision of the Real Estate Regulatory Authority dated 11.02.2020 in complaint GC no.1161 of 2019 titled **Charanjeet Singh Bagga Versus M/s Ansal Housing and Construction Pvt. Ltd.** in relation to the project of the case in hand and the findings of the Authority is being quoted in extenso.

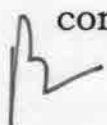
"Finally, as the report of the Municipal Council, Zirakpur makes it clear that there is no encroachment or violation in the construction of the Club house at the current location. This report does



point out 3-4 contraventions but there is nothing about the club house in this report. Hence, it can unequivocally be held that the complainant has failed to substantiate the allegations made against the respondent.”

The findings of the Real Estate Regulatory Authority dated 11.02.2020 certainly cuts at the root allegation of the complainants regarding construction of the club house in the stilt car parking area of the tower of the Woodburry Apartment of the project. In view of the above, it can be safely concluded that complainants failed to substantiate the factum of construction of makeshift club facility by encroaching the stilt car parking area of the tower of Woodburry Apartment.

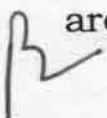
14. Another misconduct on the part of the respondent promoter pleaded by the complainants was that the promoter wrongfully obtained the amount of Rs.1,50,000/- in each case from the respective complainant under the heading of covered car parking charges which infact was stilt car parking for the common use of the owners of the apartments of the project and therefore could not be charged. Reliance in this regard was placed on the authority of Hon'ble Apex Court titled **Nihalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd. Civil Appeal No.2545 of 2010 and other connected appeals decided on 31.08.2010**. On the other hand, the contention of the respondent promoter was that the complainant in each case made the payments of the covered car



parking as per terms and conditions of the allotment letter, which would bind both the parties. The contention on behalf of the respondent promoter in this behalf lacks merit, because the law on this point is already well settled by the Hon'ble Bombay High Court in **Neel Kamal Realtors Suburban Pvt. Ltd and another Vs. Union of Indi and others (Supra)**, in which as already mentioned it was 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 provisions of the Act would be applicable to cover the ongoing projects. Therefore, the complainants will not be bound by any such terms and condition of the allotment letters of the cases in hand regarding payment of Rs.1,50,000/- for covered parking charges if the complainants are able to show that the said amount had been wrongly obtained from the complainants.

15. Now, if we closely examine the ratio of the authority of the Hon'ble Apex Court in **Nihalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd. (Supra)**, we find that interpretation of the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) and the rules of 1964 framed thereunder, Maharashtra Apartment Ownership Act, 1970 and transfer of Property Act was involved for deciding similar controversy and the Hon'ble Apex Court was pleased to formulate questions and the relevant from the same

are as under:



- i) Whether stilt parking space is a garage?
- ii) Whether stilt parking spaces are part of 'common areas and facilities'?
- iii) What are the rights of a promoter vis-à-vis Resident Welfare Society in respect of stilt carparking spaces?

After detailed deliberations and discussing the provisions, the finding was that the term 'garage' must be considered as would be understood by a flat purchaser and such person would contemplate garage which had a roof and wall on three sides and thereupon it was held that the stilt parking space would not fall within the definition of 'garage'. It was further held that stilt parking space of the building regulated by MOFA was nothing but a part of 'common areas' and, and answer to the question no.(ii) was in the affirmative. It was further concluded by the Hon'ble Apex Court that after having already held that 'stilt parking space' was not covered by the term 'garage' much less a 'flat' and that it was part of 'common areas'. As a necessary corollary to the answers of the above questions, it must be held that stilt parking space/s being part of 'common areas' of the building developed by the promoter, the only right that the promoter had, was to charge the cost thereof in proportion to the carpet area of the flat from each flat purchaser. Such stilt parking space being neither 'flat' nor 'garage' within the meaning of that provision was not sellable at all. It was further clarified that the promoter had no right to sell 'stilt parking spaces' as these are neither 'flat' nor appurtenant

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or attachment to a 'flat'. The definitions of the term and the provisions of Punjab Apartment Ownership Act 1995 and those of Real Estate (Regulation and Development) Act, 2016 are in peri materia to the above referred terms and provisions under Maharashtra Acts. Therefore, the findings of the Hon'ble Apex Court referred above are applicable to the facts of the case in hand. On that, analogy in the case in hand, the amount of Rs.1,50,000/-obtained in each case from the complainants in respect of stilt car parking of the towers of the project on the pretext of covered car parking cannot be legally charged, it being a common car parking area of the flat/apartment owners of the tower in the project.

16. In view of the above discussion, as the complainant of each case had been handed over possession of their respective apartments, when the project of the case in hand was incomplete and the complainants had to suffer inconvenience, harassment, mental pain and agony for a prolonged period, besides the promoter wrongfully obtained the amount of Rs.1,50,000/-from the complainant of each case on the pretext of covered car parking charges, complainant of each case is entitled to compensation under Section 18(3) of the Act, which runs as under:

- (3) *If the promoter fails to discharge any other obligations imposed on him under this act or the rules or regulations made thereunder 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.

17. 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: -

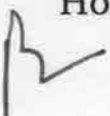
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default:

(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.

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

19. 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.

20. The claim of the complainant of each case for grant of compensation because of the misconduct of the respondent promoter in wrongfully obtaining the amount of Rs.1,50,000/-

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from the complainant of each case on the pretext of covered car parking charges falls under Section 72(a) of the Act. As has already been noticed in the light of the ratio of the Hon'ble Apex Court in the authority **Nihalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd. (Supra)** stilt car parking would not fall within the definition of 'garage' and that stilt parking spaces were part of common areas and facilities and therefore stilt parking spaces being part of building developed by the promoter, the only right that the promoter had, was to charge the cost thereof in proportion to the carpet area from each flat purchaser and that such stilt parking space was neither 'flat' nor 'garage' within the meaning of that provision was not sellable at all. However, the promoter in the case in hand in violation of the said settled principle of law and also against the provisions of Punjab Apartment & Property Regulation Act 1995 and those of Real Estate (Regulation and Development) Act, 2016 obtained the amount of Rs.1,50,000/- from the complainant of each case for stilt car parking space on the pretext of covered car parking charges, which certainly resulted into disproportionate gain/unfair advantage to that extent in each case to the disadvantage of complainant of each case. Therefore, complainant of each case is certainly entitled to compensation of Rs.1,50,000/- on that score.

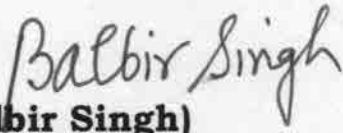
21. The Court can also take into account such other factors under Section 72(d) of the Act which it considers necessary to the case in furtherance of justice which are



apparent in the natural course of the existing circumstances. The facts of the case in hand are peculiar of its own kind as the complainant of each case despite having paid hefty amount to the respondent promoter by the year 2012/2013 were handed over possession of their respective apartments despite the fact that the project of the case in hand was incomplete and had various deficiencies and shortcomings as noticed above and due to the said default on the part of the respondent promoter had to suffer inconvenience, harassment, pain and mental agony for a considerable period of 9/10 years and also had to pursue the litigation for a considerable period and had to engage Advocate, for which each of the complainant is entitled to lumpsum compensation to the tune of Rs.40,000/- (by approximation).

22. In view of above discussions and observations, both the complaints stand partly accepted. The complainant of each case is held entitled to compensation to the tune of Rs.1,90,000/- from the respondent. The respondent is accordingly directed to pay the above said amount of compensation to the complainant of each case within ninety days from the date of this order.

Dated: 28.08.2024


(Balbir Singh)
Adjudicating Officer,
Real Estate Regulatory Authority