

**BEFORE SH.R.S.RAI, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No.AdC No.1637 of 2020.

Date of Institution:18.06.2020.

Date of Decision:12.02.2026

Manoj Gautam C/o Aditya Verma Advocate, Chamber No.T-90, District Courts, Ambala Haryana, Pin Code 134003.

.....Complainant.

Versus

M/s Sushma Buildtech Ltd. Through Its Director, Corporate Office at Unit No.B-107, Business Complex Industrial Area, Phase-1, at Elante Mall, 1st Floor, Chandigarh Pin Code-160009.

..... Respondent.

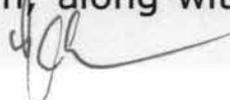
Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

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Present: Mr. Aditya Verma Advocate, for the complainant.
Mr. Sanjeev Sharma Advocate, for the respondent.

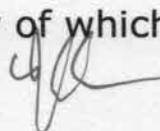
ORDER

A composite complaint had been filed by the complainant, under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter called as the Rules) before this Bench, seeking refund of the amount paid by him, along-with interest and



compensation etc. But in view of the findings of our 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.** alongwith connected appeals decided on 11.11.2021, the matters pertaining to the reliefs of refund and interest under Section 18(1) of the Act are required to be heard by the Real Estate Regulating Authority (RERA) whereas the question of compensation is to be heard and decided by the Adjudicating Authority. So vide order dated 24.02.2022 passed in this case, present complaint was segregated. It's one set of paper book was put up before the Hon'ble Authority (RERA) for deciding the claim of refund and interest sought by the complainant, whereas the present case was retained with this Bench, for adjudication of the relief of compensation.

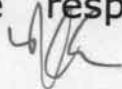
2. As per case of the complainant, he booked one apartment in "Sushma Chandigarh Grande" at Zirakpur in December 2012 and possession of the apartment was to be delivered after 48 months, which were inclusive of extension period as 6 months as per Apartment Buyer's Agreement, copy of which is Annexure C-1. Further it is averred that despite asking through e-mails, copy of which is Annexure C-6, the respondent never replied about status of the Society and Apartment. That all payments demanded by the respondent were timely paid, copy of which is Annexure C-5.



In January 2020, respondent offered possession of the apartment and demanded remaining payment, copy of which is Annexure C-2. That one relative of the complainant namely Rajiv Verma visited the apartment and he came to know that the same and the Society were not in a livable condition and there were countless defects in the apartment. That complainant is having photographs which were taken in February 2020. That said Rajiv Verma had also booked an apartment (G-901) in the same tower of the same society and he has also filed a similar complaint against the respondent. The facilities which were promised at the time of booking of the apartment were not available there. Complainant raised his concerns with the respondent, but of no use. But officials of the respondent kept on asking for the remaining payment, maintenance amount and also levied arbitrary interest on the pending amount and others charges. The account details submitted by the respondent are completely arbitrary, who has illegally demanded the amount under various heads, copy of which is Annexure C-5. That liability which has accrued on the respondent due to delay in offering possession, has been totally ignored by the respondent despite several requests. Rather, respondent started putting pressure on the complainant by increasing interest rate @ 24% compounded on monthly basis. Thereafter, complainant served a legal notice (Annexure C-

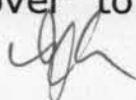


3) upon the respondent, raising all his concerns about the Society, Apartment and Account differences etc., but respondent never replied to the same. The legal notice would make the entire case clear to this Bench. However, instead of addressing the concerns of complainant, the respondent has terminated the allotment of the complainant, which is arbitrary vide Annexure C-4. The possession offered by the respondent is a "Sham offer". That attitude of the respondent would remain the same even if the complainant opts for possession of the apartment and it would result in endless trauma and litigation. The same thing has happened with Rajiv Verma which shows that respondent is habitual of doing all these things. That the complainant does not want to continue with the respondent and would like to get the refund of his entire amount alongwith compensation, expenditure and interest as per law. The complainant has raised a loan facility from HDFC Bank, Chandigarh and is paying installments and copy of calculation sheet is Annexure C-8. Since 2012 till last payment made by the complainant to the respondent, the money has been paid in US Dollars by him and since then there is a great fall in the rupee-dollar price. Further, complainant has sought refund, compensation & interest accordingly, so that he may not suffer any financial loss due to the rupee-dollar price difference. The project of the respondent has been

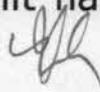


inordinately delayed and the complainant has further lost his interest in the same. If the alleged facilities promised by the respondent are not ready even after the gap of extended period and from December 2016 till 2020, then as per the present circumstances the facilities shall not be ready soon and the complainant cannot be made to wait till indefinite time. That complainant has sought refund of entire amount paid by him to the respondent, interest on the entire amount as per law, compensation of Rs.10 lac for mental agony and harassment and litigation expenses of Rs.1,10,000/-. Hence the present complaint.

3. Respondent appeared and filed written reply taking preliminary objections that the complainant is seeking interest alongwith refund of amount with interest under the Act and thus the present complaint is not maintainable being misconceived and erroneous. That the apartment in question, has duly been constructed in all aspects and money paid by the complainant has been invested in construction of his apartment. That possession has been offered to the complainant on 27.01.2020 and the competent authorities have duly granted Partial Completion Certificate for the project i.e Sushma Chandigarh Grande and Occupation Certificate for towers E, F, G & H. The apartment in dispute is situated in Tower G and same is complete and ready to hand over to the complainant.

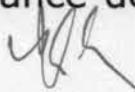


However, complainant has failed to take possession of apartment for the reasons best known to him and the allegations qua the project being incomplete, is belied from Occupation Certificate issued by the competent authorities for the project where apartment of complainant is situated. Since the complainant failed to pay due amount and to take possession of the apartment, so after issuance of reminder, the respondent was constrained to issue termination letter to the complainant for want of payment of due amounts. That the present complaint is not maintainable as the complainant himself is a defaulter and has not made payment of due amounts despite issuance of demand letters/reminders and finally the allotment was cancelled vide termination letter dated 19.03.2020. The complainant has leveled false and baseless allegations so as to conceal his own failure to pay the demanded amounts and has concealed said facts from this Bench, so he is not entitled to be heard on merits. That the unit was complete and amenities were also complete and accordingly the Municipal Counsel, Zirakpur, SAS Nagar had also issued Partial Completion Certificate of project and Occupation Certificate qua the tower on 23.07.2019. Since unit is complete and partial completion certificate has been issued, so no case of refund could be made out. That in case complainant is seeking refund of amount, the unit has been cancelled and

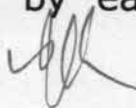


money stood forfeited as per agreed terms and conditions of the Buyer' Agreement. That the complainant has failed to hand over the original documents of the cancelled unit/apartment and failed to accept the balance amount.

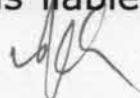
That complainant himself had executed an Apartment Buyer's Agreement dated 05.12.2012, in terms of which the time was purportedly made an essence of the contract. The respondent tried to hand over possession within 48 months (42+6 months) from the date of agreement dated 05.12.2012. That for any delay in offer of possession beyond the agreed date of offer of possession, it has duly been provided in clause 14(d) of Agreement that for any delay beyond the agreed date of possession of Agreement, respondent-company shall pay delayed compensation at the rate of Rs.5 per square feet of the super built up area, per month. The complainant accepted and agreed to the said delayed compensation, but subsequently on his request, the respondent agreed to pay compensation of Rs.8/- per square feet of the super built up area per month. That a perusal of emails attached with the complaint, also reveals that the complainant has accepted the said offer of Rs.8/- per square feet of the super built up area per month, as compensation and has condoned the delay. The adjustment of said compensation was to be done at the time of execution of conveyance deed. Further, from



the perusal of legal notice, it is apparent that the complainant has invested the money only for the purpose of getting profits and was not interested in purchasing the apartment for his residence. The case of complainant does not fall within the parameters laid down for refund of amount as he himself failed to pay the due amounts, after possession was offered to him and his allotment was cancelled as per terms of the Agreement. That the model agreement duly provides as per clause 7.3 that on failure of allottee to pay the installment as per schedule given in allotment letter, apart from paying the interest on the delayed amount, the possession of unit shall be extended to the extent of period of delay in paying the defaulted amount. The complainant has delayed the payments and interest is also payable by him for the delay, accordingly the time for offering possession has to be extended for the period of delay by complainant. That even the model Agreement as envisaged under the Act also postulates for cancellation and forfeiture of amount as per clause 7.5 of said model Agreement and the forfeiture is valid and legal. Further, it is averred that as per clause 21 of Apartment Buyer's Agreement, in the event of a dispute arising between the parties which is not resolved between them, the dispute shall be referred to the Arbitration to be conducted by two Arbitrators as appointed by each of the parties



alongwith third Arbitrator, who would be selected by two Arbitrators. That the complainant can seek possession of the unit after paying the outstanding charges alongwith delayed interest after getting his unit restored. That out of total sale price of Rs.73,92,840/- the complainant has paid a sum of Rs.69,23,546/- and still a sum of approximately Rs.8.29 lacs is due and payable by him towards sale price of apartment. The complainant is liable to pay the delayed interest as per Buyer's Agreement alongwith holding charges. The apartment was purchased by complainant under subvention scheme and as per Tripartite Agreement executed between the parties, the respondent had assumed liability of payments under the loan agreement as payable by complainant to HDFC during the period of 24 months from the date of first disbursement (as per clause 3 of Tripartite Agreement dated 05.12.2012). The respondent has paid a sum of Rs.7,13,889/- to HDFC Bank on behalf of complainant and in case this Bench comes to the finding that the refund of amount can be granted then, the sum of Rs.7,13,889/- paid by the respondent-company to the Bank on behalf of complainant is liable to be deducted from the amount paid. That as per undertaking given by respondent that project wherein apartment of complainant is situated, was to be completed by 2022 and thus the present complaint is not maintainable and is liable to be dismissed.



Copy of allotment letter dated 26.09.2012 is Annexure R-1, copy of Buyer's Agreement dated 05.12.2012 is Annexure R-2, copy of statement of account is Annexure R-3, copy of declaration made to RERA is Annexure R-4, copy of offer of possession dated 27.01.2020 is Annexure R-5, copy of Partial Completion Certificate/Occupation Certificate is Annexure R-6, copy of Tripartite Agreement is Annexure R-7, copy of reminder letter for possession dated 05.03.2020 is Annexure R-8. Copy of possession termination letter dated 19.03.2020 is Annexure R-9. Copies of frill sheet and receipts showing payment made by respondent and adjusted in accounts of complainant are Annexures R-10 to R13. Copies of clarification letter of Municipal Council with regard to Towers mentioned in Partial Completion/Occupation Certificate in response to letter of respondent-company, are Annexures R-14 & 15. Copy of Fire Safety Certificate/NOC granted to complete towers of project is Annexure R-16. That this complaint is not maintainable as the Act does not provide retrospective operation and the agreement which has been relied upon is of much prior to coming in operation of the Act and the Agreement as such was not registered with the RERA Authorities and is not on prescribed format as well. That the apartment of complainant is governed by provisions of PAPRA Act and while registering with RERA, the agreed timeline for completion of project is July 2022. The



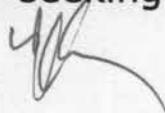
alleged violations as mentioned herein are related to the period before coming into force of the Act and had to be dealt with under the law prevalent at that time of alleged violations i.e PAPRA Act and section 31 only contemplates for violations of the Act and not for violations which came into force before operation of the Act and the complainant has not alleged violations or contraventions to the provisions of the Act or Rules and Regulations made thereunder. Denying rest of the averments of the complaint, a prayer has been made for dismissal of this complaint.

4. Rejoinder to the written reply was filed by the complainant, reiterating the contents of his complaint and denying those of the written reply, filed by the respondent.

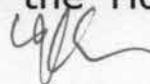
5. Violations and contraventions contained in the complaint were put to the representative for the respondent. He totally denied all of them, including allegations of the complainant. Thereafter, the complaint was proceeded for further enquiry.

6. I have heard the representatives of the parties, who addressed the arguments on the basis of their pleadings/submissions, as summarised in the earlier part of this order. I have also carefully gone through the case file, with their able assistance.

At the initial stage, a composite complaint was filed by complainant Manoj Gautam seeking refund of the

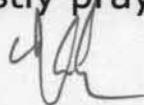


amount paid by him alongwith interest and compensation etc. Vide order 24.02.2022 passed by this Bench, this complaint was segregated and one set of paper book was put up before the Hon'ble Authority (RERA) for deciding the matter pertaining to refund of the amount and interest, whereas the present case was kept with this Bench for adjudication of relief of compensation and litigation expenses, claimed by the complainant. In December 2012 one flat was booked by complainant with the respondent and its possession was to be given within 48 months (42+6). Payments were made by the complainant, but possession of the unit was not given as per terms and conditions settled between the parties. When the possession was offered, the unit was suffering from various defects and no facility, amenities were provided. The complainant being not interested in taking possession and being fed up with the working of the respondent, he preferred withdrawal from the project and sought relief for refund etc. In the present case, he has claimed compensation to the tune of Rs.10 lacs on the ground of mental agony and harassment suffered by him at the hands of the respondent, alongwith litigation expenses of Rs.1,10,000/-. On the basis of these submissions of Ld. representative for the complainant, coupled with documents of the complainant and copy of order dated 21.11.2023 passed by the Hon'ble Authority



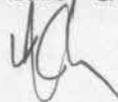
(RERA) he prayed that the present complaint may be allowed, as per its prayer.

On the other hand Ld. Representative for the respondent vehemently opposed the submissions of Ld. Counsel for the complainant and submitted that this complaint does not fulfill the requirements of Sections 18 & 72 of the Act, so it deserves dismissal. That the complainant did not make the payments as per settled terms and conditions. That the Act is not applicable to the case in hand, as the same has been implemented w.e.f the year 2017, whereas the case in hand pertains to the year 2012. That due to non compliance of the terms and conditions, financial discipline etc., allotment of the complainant was cancelled and his amount was forfeited. Even keeping in view tripartite agreement, sum amount of the loan taken by complainant to the tune of Rs.7,13,889/- has been paid to the HDFC Bank by respondent. That the complainant remained himself at fault, as is mentioned in detail in written reply filed by the respondent, so he cannot be allowed to take benefit of his own wrongs. Ld. Counsel further submitted that the order passed by the Hon'ble Authority (RERA), does not help the complainant in any manner. He lastly prayed for dismissal of this complaint, with costs.



7. I have paid a considerable thought to the submissions of both parties and have perused their pleadings, documents, placed on record.

Admittedly, complaint of the complainant Manoj Gautam seeking relief of refund and interest has been allowed by the Hon'ble Authority vide order dated 21.11.2023. This is common order vide which two complaints, one Bearing No.AdC.1637/2020 BFTR moved by Manoj Gautam (complainant in the case in hand) and another Complaint bearing No.AdC 1638/2020 BFTR, filed by Rajiv Kumar, have been allowed. This order has not been set aside by any competent authority, so it is binding upon the parties, as the same has become final. Facts of the present case and case of Manoj Gautam as per said order dated 21.11.2023, are the same, however, reliefs sought, are different. Same pleas were taken by the parties in the said complaint. Hon'ble Authority has clearly held in Para No.8 of the said order that Manoj Gautam had booked residential flat in Tower G of the project of the respondent. Agreement in this regard was also executed. As per clause 14(d) of the Agreement to Sell, possession of the allotted unit was to be handed over within 42 months from the date of execution of agreement. A grace period of 6 months was also allowed to the promoter for the purposes of completing and handing over the said unit. Accordingly, the due date for handing

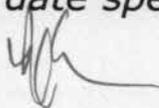


over the possession has been mentioned as 05.12.2016. It has been further held by the Hon'ble Authority that the possession was not delivered or offered by the respondent, within the stipulated period. Hon'ble Authority further held that it is an undisputed fact that the possession was offered only in the year 2020 i.e after about 4 years of the stipulated date. Accordingly, a case was made out in favour of the complainant party, for refund of the amount alongwith interest, as per provisions of Section 18(1) of the Act. Manoj Gautam complainant, was allowed refund of the amount to the tune of Rs.69,23,516/- alongwith interest etc. Vide the said order Hon'ble Authority never said that the complainant was at fault, at any stage.

Now coming to the case in hand, it is crystal clear that the complainant has withdrawn from the project of the respondent. He has been allowed refund of the amount deposited by him alongwith interest. Keeping in view all these facts and circumstances, complainant Manoj Gautam also deserves compensation, as per provisions of Sections 18(1) and 72 of the Act. These provisions are very important to be considered here, so they are reproduced 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."

72. Factors to be taken into account by the adjudicating officer: while adjudging 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:—

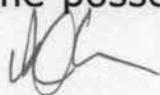
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

As per order of the Hon'ble Authority dated 21.11.2023, provisions of the Act were applicable to the complaint of complainant seeking relief of refund etc., so certainly provisions of the Act are also applicable to the complaint in hand. It stands proved on record from the documents that there is delay of about 4 years in delivering possession to the complainant. Since the complainant has withdrawn from

the project, so apart from relief of refund and interest as allowed by the Hon'ble Authority, he is also entitled for compensation as per Section 18(1) of the Act. While granting compensation, this Bench has to consider the factors as mentioned in Section 72 of the Act.

Section 72 has given scope of considering other factors, which are considered necessary in furtherance of justice. Since the complainant has not been able to get possession of the unit in question, we have to consider psyche of the Indian Society, in this regard. Normally, Indians are emotionally attached to own a property. They are prepared to spend major share of their life time earning and also ready to obtain loans from the financial institutions in the hope of getting property. Since the complainant, without his fault, has not been able to get possession of the flat in question for a long time of about 4 years and had to seek the remedy under existing law and for that has to suffer harassment, mental agony and has to incur expenses to initiate this litigation for claiming his right, so certainly he is entitled for reasonable compensation and litigation expenses.

Keeping in view the entire facts and circumstances narrated above and taking into account the amount paid by the complainant, with regard to the purchase of the flat in dispute and the duration for which the possession has been



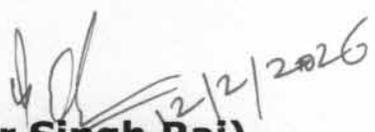
delayed coupled with his harassment, mental agony etc., an amount of Rs.2,00,000/- is assessed as compensation in lump sum by approximation. Apart from this, the complainant had to pursue this litigation by engaging the advocate, and spending considerable time from his busy schedule, for attending the proceedings of this case, so he is also entitled for litigation expenses to the tune of Rs.40,000/-. It is pertinent to mention here that the present complaint was earlier dismissed in default due to non appearance of the complainant, which was restored on his application vide order dated 19.08.2025, while disposing of M.A No.08/2025, subject to costs of Rs.1000/- to be paid by complainant to the respondent. But this amount has not been paid to respondent. Accordingly, respondent would be at liberty to deduct this amount of Rs.1000/- from the amount of compensation awarded in this complaint. This complaint deserves to be allowed partly, upto that extent.

8 As a result of my above discussion, this complaint stands partly allowed and disposed of. Complainant is held entitled to recover the total compensation to the tune of Rs.2,40,000/- (Rs.2,00,000/- + Rs.40,000/-) from the respondent. Accordingly, respondent is directed to pay the amount of compensation to the complainant within 90 days, from the date of this order, after deducting Rs.1000/- i.e amount of costs, as detailed in Para No.7 of this order.



Reasons for not disposing of this complaint within 60 days as required under Section 71 of the Act, are that no Adjudicating Officer was posted in this office w.e.f 21.10.2024 to 13.05.2025 and due to rush of work as well. Copy of this order be sent to the parties, free of costs, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:12.02.2026


(Rajinder Singh Rai)
Adjudicating Officer,
RERA, Punjab