

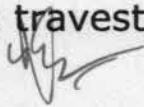
Renu Bala Vs Manohar Infrastructure & Constructions
Pvt.Ltd & Ors.

Complaint No.AdC No.0095 of 2024

Present: Mr. Agam Bansal Advocate, for the complainant-respondent.
Mr.Manmohan Sharma Advocate, counsel for Applicants-respondents No.1, 2, & 4.
Respondent No.3 ex-parte vide order dated 22.08.2024.

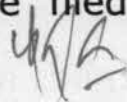
An application has been moved on behalf of the respondents No.1,2 & 4, for dismissal of the main complaint moved by complainant Renu Bala, under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules 2017, against the respondents/promoters.

2. Respondents have alleged in their application that the documents annexed with the complaint, by the complainant, show that she has not come to this Bench, with clean hands and has dishonestly, fraudulently concealed true and material facts. She has filed this complaint, with misleading statements, false and concocted averments, with a clear intent to abuse the process of law. It is further submitted in this application that averments stated in the complaint may not be deemed to have been admitted by the respondents, save and except what are expressly specifically admitted and the rest may be read as travesty of facts, and

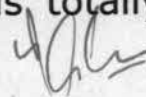


are expressly denied. That the present complaint being misconceived, erroneous and devoid of any merit is liable to be dismissed. It is further averred that the complainant has dishonestly and deliberately concealed the fact that she had already withdrawn her expression of interest on 18.07.2018, as a result of which the respondent-company had returned her whole amount, deposited with the company. Copy of the sworn affidavit of the complainant to surrender the EOI (Expression of Interest) alongwith the account statement have been placed on record as Annexures A-1 & A-2. That the complainant is not entitled to invoke the jurisdiction of this Bench. That she has misled this Bench by concealing all these material facts and by not producing the surrendering documents. That respondent company and complainant, now have no relation with each other, as the complainant has already withdrawn from the project of the respondents, by withdrawing her expression of interest in the year 2018 and had received her deposited amount, from the respondents. A prayer has been made for dismissal of the present complaint.

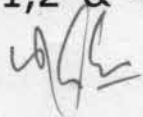
3. Reply to the application of the respondents, was filed by the complainant by taking preliminary objections that respondents No.1,2 & 4 have failed to file reply to the main complaint, even after availing various opportunities. After more than one year, they have filed the present



application for dismissal of complaint, which is a delaying tactic. That the averments and submissions made in this application, could also have been taken in the main reply to the complaint, by respondents, so the present application deserves to be dismissed on this ground alone. That the application has been filed without supporting the same with a duly notarized affidavit and as such, the same deserves dismissal. Making false statements before a Court of law, entails criminal consequences under the Bhartiya Nyaya Sanhita 2023, punishable with both fine and imprisonment. That the complainant has not concealed any material fact from this Bench. In fact, the respondents have filed the present application, just to delay the proceedings by presenting false facts. It is further denied that complainant has approached with unclean hands or has tried to mislead this Bench. The affidavit dated 18.07.2018 and Ledger Account attached with the application as Annexures A-1 & A-2 respectively, are vehemently denied by the complainant, being false documents. It is also averred that the purported affidavit dated 18.07.2018, does not contain either the amount paid by the complainant or the amount refunded by the respondents. It is settled law that any purported settlement being arrived at between the parties, has to be effected by a registered compromise deed. The affidavit being relied upon by the respondents is totally false and

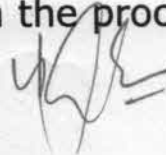


concocted. It is denied that the complainant has withdrawn her expression of interest, from the project. It is also denied that respondent-company has returned the whole amount to the complainant, deposited by her. That she has deposited a total sum of Rs.38,87,500/- with respondent No.1-company. But the ledger and copy of cheques show that the company has allegedly refunded an amount of Rs.8,87,500/- via RTGS. So the ledger placed on record by the respondents No.1,2 & 4 cannot be relied upon, since the same does not contain the payment of Rs.27,00,000/- made by the complainant vide cheque No.372009 dated 25.03.2011 as advance payment and duly acknowledged by respondent No.1 in its application acknowledgment dated 08.03.2014 (Annexure C-5 of complaint). That copies of cheque No.453630 dated 30.10.2021 and Cheque No.453631 dated 07.10.2021, attached with the application depicting an alleged payment of Rs.10,00,000/- to the complainant, do not find mentioned in the ledger account annexed by the respondents No.1,2 & 4. In fact, the respondents have illegally retained the hard earned money of the complainant and have failed to deliver the possession of the unit, even after a period of more than 14 years. Lastly it is prayed that the application filed by respondents No.1,2 & 4, deserves dismissal with costs.



4. I have heard Ld. Counsel for the parties, who addressed their arguments on the basis of their pleadings, as summarized in earlier part of this order. They have also referred to the contents of the complaint of the complainant and documents placed on record, by both the parties.

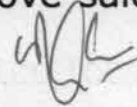
As per Para No.4 of the application, respondents have challenged the main complaint on the ground of maintainability. It is also their case that the complainant has concealed material facts from this Bench, and has not come with clean hands to seek reliefs. It is also part of their complaint that the complainant had already withdrawn her expression of interest on 18.07.2022, as a result of which the respondent-company had returned her payment deposited by her. Documents Annexure A1 & A2 have also been placed on record in support of their said plea. Since parties have no relation of allottee and promoter, so the main complaint is not maintainable. On the other hand, it is the stand of the complainant that neither she has ever withdrawn her expression of interest, nor received the amount deposited by her, from the respondent. That she has not concealed the said fact from this Bench and that the documents relied upon by the respondents are not genuine ones. It is further her stand that the application has been moved by respondents just to cause delay in the proceedings



of the main complaint, whereas her complaint is maintainable in the eyes of law.

5. Keeping in view the pleadings and submissions of the parties coupled with the plea of non maintainability of the main complaint, adopted by the respondents, I have to go through the main complaint of the complainant alongwith the application under consideration, its reply and documents of the parties.

Admittedly, complainant has sought relief of compensation @ 10% of the basic sale price of the plot in question, interest @ 10.95% w.e.f 24.03.2014 till the date of passing of final order in the main complaint, alongwith litigation expenses to the tune of Rs.50,000/-. Complainant has moved the main complaint under Section 18(1) of the Act seeking the said reliefs. Brief facts as pleaded in the main complaint are that complainant Renu Bala had booked a 500 square yards plot with the respondents vide her application dated 28.02.2011. She deposited total amount of Rs.38,87,500/-, whereas Rs.90 lacs was the sale price of the said plot. As per her case, possession of the plot was to be given to her within 3 years from the date of booking. But possession was not given to her, inspite of issuance of two legal notices to the respondents. That delay of more than 10 years has been caused by the respondents in delivery of possession, so she has prayed for the above said reliefs, on



possession, as she has prayed for the above said relief, on the ground of irreparable loss etc., suffered by her. Keeping in view the entire facts and circumstances of this case, Section 18(1) of the Act is very important to be considered here, which is 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

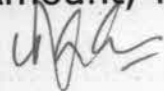
*he shall be liable on demand to the allottees, **in case the allottee wishes to withdraw from the project**, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed 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."*

A close scrutiny of the aforesaid Section 18(1) of the Act, leaves no manner of doubt that this Section deals with the matters, in which the project of the case is not completed by the promoter, within the stipulated period as per terms and conditions settled between the parties. In

completed by the promoter, within the stipulated period as per terms and conditions provided between the parties. In such like case, the allottee has the option of withdrawing from the project and seek the relief of refund of the paid amount alongwith interest, as per rules and also compensation. However, if the allottee chooses to remain in the project, then the only remedy provided for the default of the promoter in completion of the project, is to get interest on the paid amount from the stipulated date of possession, till the actual date of delivery of possession.

6. Now coming to the case in hand, as per her stand, the complainant has not withdrawn from the project, as is also clear from her complaint and her reply filed to the application of the respondents. Meaning thereby, she has not withdrawn from the project of the respondents. Section 18 (1) of the Act makes it crystal clear that the allottee who does not intend to withdraw from the project, is entitled to interest for every month of delay, till the handing over of the possession, as such rate as may be prescribed. Section 18 (1) of the Act further makes it clear that the allottee who withdraws from the project is entitled for refund of the amount with interest and also for compensation. In view of the findings of our Hon'ble Supreme Court in **Civil Appeal 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, remedy seeking relief of Interest, Refund Amount, lies with



the Hon'ble Regulatory Authority (RERA), whereas remedy qua compensation lies with the Adjudicating Officer. Para No.86 of **M/s Newtech Promoters and Developers (supra)** is very much clear on this point, which is reproduced as under:-

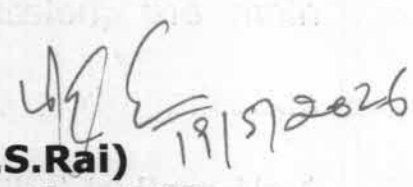
*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and Adjudicating Officer; what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that **when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the Adjudicating Officer as prayed, that, in our view, may intend to expand the ambit and scope of the powers and functions of the Adjudicating Officer under Section 71 and that would be against the mandate of the Act 2016.**"*

In the case in hand, since the complainant has chosen to continue with the project, so she is entitled for interest for the delayed period as per Section 18 (1) of the Act and this remedy lies before the Hon'ble Authority (RERA, Pb.) and not before this Bench. She has also claimed compensation through her complaint, but has not withdrawn

from the project, so her main complaint is also not maintainable qua claim of compensation, before this Bench. Meaning thereby, main complaint of complainant Renu Bala before this Bench seeking reliefs of compensation, interest alongwith litigation expenses is not maintainable. Since the main complaint is not maintainable, so the application under consideration moved by respondents No.1,2 & 4, as detailed in Para No.1 of this order is also not maintainable before this Bench. Accordingly, complaint of complainant Renu Bala and application of respondents No.1,2 & 4 deserve dismissal.

7. As a result of my above discussion, the main complaint moved by complainant Renu Bala and application moved by respondents No.1,2 & 4, as detailed in Para No.1 of this order, both stand dismissed and disposed of being not maintainable before this Bench, with no order as to costs. A copy of this order be sent to both the parties, free of costs, under rules. File be consigned to the record room, after necessary compliance under rules.

Pronounced
Dated:19.05.2026


(R.S.Rai)
Adjudicating Officer,
RERA, Punjab.