

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No. GC No.0399 of
2022UR

Date of Institution: 28.07.2022

Date of Decision: 17.01.2025

1. Amritpal Kaur
2. Harbans Singh

(Through authorized representative Shri Aman Mittal)


Both residents of D-79, Ground Floor, Unitech, Sector 97,
Bhago Majra, Sahibzada Ajit Singh Nagar, Mohali, Punjab Pin
Code 140307

...Complainants

Versus

1. BCL Homes Limited, Village Kishanpura (Adj. Sector 20,
Panchkula, NAC Zirakpur, Sahibzada Ajit Singh Nagar, Mohali,
Punjab, Pin Code 140603
2. Baldev Chand Bansal, Village Kishanpura (Adj. Sector 20,
Panchkula, NAC Zirakpur, Sahibzada Ajit Singh Nagar, Mohali,
Punjab, Pin Code 140603
3. Tarjinder Kumar Bansal, Village Kishanpura (Adj. Sector 20,
Panchkula, NAC Zirakpur, Sahibzada Ajit Singh Nagar, Mohali,
Punjab, Pin Code 140603
4. Rajeev Kumar, Village Kishanpura (Adj. Sector 20, Panchkula,
NAC Zirakpur, Sahibzada Ajit Singh Nagar, Mohali, Punjab, Pin
Code 140603

....Respondents

 Present: Shri Abhinav Singla, Advocate for complainants
Ms. Manisha Maggu, Advocate for Shri Mohit Dhiman,
Advocate for the respondents

ORDER

This complaint was instituted on 28.07.2022 in Form 'M' by the
authorized representative of the complainants under Section 31 of
the Real Estate (Regulation and Development) Act, 2016,

(hereinafter referred to as the Act of 2016) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017) against the respondents seeking refund of Rs.4,60,000/- deposited with respondents for purchase of residential apartment in the project "Chinar Homes" being developed by the respondents at Peer Muchhalla, Dhakoli, SAS Nagar along with interest thereon.

2. The brief facts submitted by the complainants in their complaint are that

2.1 They had applied for a residential apartment in the project namely "CHINAR HOMES" situated at Peer Muchhalla, Dhakoli, S.A.S Nagar, Punjab, 160104 being developed by respondent no.1.

2.2 Out of the total sale consideration of Rs.13,60,000/- the complainants have paid a total payment of Rs.4,60,000/-.

2.3 They were allotted a Unit vide Re-Allotment Letter dated 25.12.2014.

2.4 Respondent has acknowledged the receipt of Rs.4,60,000/-.

2.5 This amount of Rs.4,60,000/- was collected before entering into an Agreement for Sale.

2.6 Respondent no.1 has failed to enter into an Agreement till date.

- 2.7 No other document has been handed over by the respondent stating therein that no Unit number has been allotted to the Complainants.
- 2.8 The complainants have not received any updates regarding the progress in the project since long.
- 2.9 The complainants allegedly approached respondent no.1 for refund of the deposited amount but the respondent turned a blind eye to these requests.
- 2.10 Respondent had assured the complainants to hand over possession of the residential apartment within one year from the date of re-allotment letter, but till today same has not been handed over to them.
- 2.11 Complainants submitted that respondent miserably failed to abide by their promise and have used their hard-earned money without showing any intention of completing the project.
- 2.12 It was alleged that respondent has not received a RERA registration certificate in accordance with Section 3 of the Act of 2016 and proceedings under Section 59 of the Act of 2016 have also been initiated against the respondent.

3. It is the prayer of the complainants that respondents be directed to refund the complete amount of Rs.4,60,000/- along with interest under Section 18 of the Act of 2016. The complainants

attached annexure in support of their case including allotment letter and payment receipt.

4. Notice to the respondents was issued on 20.02.2023 for their appearance on 28.03.2023 with a direction to submit reply within fifteen days of receipt of the notice. Ms. Pooja, Advocate appeared for the respondents, submitted Power of Attorney and sought time to file reply. A brief and short reply dated 08.06.2023 was filed on behalf of all the respondents, the salient points are:

- 4.1 All the allegations and averments raised by the complainants in their complaint are false and denied.
- 4.2 Admitted the allotment of residential apartment to the complainants in their project "Chinar Homes" at Zirakpur vide their re-allotment letter dated 25.12.2014 already attached by the complainants with their complaint as Annexure C-1.
- 4.3 The respondents admitted the initial payment of Rs.2,60,000/- vide Receipt No.3413 dated 17.12.2011 duly acknowledged by them towards the booking amount already attached by the complainants with their complaint as Annexure C-2.
- 4.4 Respondent denied the receipt of additional payment of Rs.2,00,000/- as it was not substantiated with any document by the complainants in their complaint.
- 4.5 It is alleged that after booking of the Unit in their project, the complainants did not make further payment as per

payment plan despite various reminders. It is further stated that the respondents did not enter into Builder Buyer Agreement with the complainants and also did not allot Unit number to them against the booking.

4.6 The respondents further alleged that they asked the complainants to take refund of Rs.2,60,000/- without any interest as per Clause 7 of the re-allotment letter, but the complainants did not turn up.

4.7 It is submitted by the respondents that they are ready to refund the amount of Rs.2,60,000/- without any interest.

4.8 The complainants were unable to make out any case in their favour for refund along with interest.

4.9 The complainants are defaulters and have not fulfilled their obligations as per re-allotment letter, thus, cannot be allowed to take benefit of their own faults.

5. It is the prayer of the respondents that the Authority may order refund as per para 6 of their reply (para 6.4 above).

6. Rejoinder was filed by the complainants through their new Counsel Shri Abhinav Singla, Advocate replacing their earlier counsel, reiterating the contents of their complaint and totally denying and controverted the contents of the reply submitted by the respondents.

- 6.1 It is contended that the respondents have admitted only payment of Rs.2,60,000/- but denied other payment of Rs.2,00,000/- which is without any basis and any supporting document.
- 6.2 It is further submitted that the respondents admitted the allotment letter dated 25.12.2014 and then denial of Rs.2,00,000/- without any document is baseless.
- 6.3 The complainants further submitted in their rejoinder that the respondents be asked to produce proof that they raised demand for the unit, but it is the respondents who have not taken further payment.
- 6.4 The complainants further denied that they were asked by the respondents to take refund of the amount.
- 6.5 The respondents have denied the receipt of payment of additional amount of Rs.2,00,000/- but admitted the re-allotment letter dated 25.12.2014. The complainants are entitled for refund of Rs.4,60,000/- along with interest from the date of payment.
- 6.6 The complaint is maintainable before this Authority.

7. The learned Counsel for the complainants has also submitted their written arguments vide this Authority's Diary No.5229 on 12.07.2024.

8. The learned Counsel for the complainants addressed his arguments reiterating the contents of the complaint and rejoinder

which have also been detailed in the written arguments already submitted on 12.07.2024, on the stipulated date of hearing.

9. However, nobody represented the case of the respondents on the date of hearing of arguments. Perusal of the interim orders revealed that the matter is pending since 12.09.2023 for addressing arguments. On 06.08.2024, the learned Counsel for the complainants was directed to supply a copy of the rejoinder and written arguments to the learned Counsel for the respondents. On 23.09.2024 the matter was adjourned to 27.11.2024 for arguments and on this date the learned Counsel for the respondents was present. The matter could not be taken up on 27.11.2024 and the matter was adjourned to 03.01.2025 and the legal branch of this Authority updated the online cause list accordingly.

10. On this date i.e 03.01.2025, the learned Counsel for the complainants explained their case. But there was no representation on behalf of the respondents and the matter was reserved for orders.

11. The undersigned considered the submissions of the complainant and also the contents of the reply submitted by the respondents.

12. Perusal of the documents Annexure C-1 and Annexure C-2 annexed by the complainants with their complaint revealed that the receipt bearing no.3413 was issued on 17.12.2011 showing Instrument No.100917 dated 16.12.2011 drawn on Bank of Baroda, amounting to Rs.2,60,000/- and the re-allotment letter allotting apartment in "Chinar Homes" addressed to these complainants was issued on 25.12.2014 and this date of 25.12.2014 is after the date

of Receipt. The re-allotment letter dated 25.12.2014 was admitted by the respondents themselves in para no.2 of their reply dated 08.06.2023.

13. No doubt, the contents of the re-allotment letter dated 25.12.2014 are part and parcel of the proceedings of the instant complaint, yet for better understanding of the complaint, it is felt necessary to reproduce certain relevant Clauses of re-allotment letter dated 25.12.2014 even for the sake of brevity:-

"1...

2. *In response to above, the said Apartment at Chinar Homes at Zirakpur is hereby re-allotted in your favour after transfer.*
3. *The total sale price of the said apartment at Rs.13,60,000/- (Thirteen lac sixty thousand only)*
4. *We have received a sum of Rs.4,60,000/- (four lac sixty thousand only) for the above said and to be paid Rs.9,00,000/- (nine lac only) on the possession.*
5. *You will pay the payment to the company in the following manner.*

Sr.No.	Particulars	Amount
1.	<i>Installment</i>	<i>2,60,000</i>
2.	<i>Installment</i>	<i>2,00,000</i>
3.	<i>On possession</i>	<i>9,00,000</i>

14. From the above clauses it is established on record that the complainants have paid a sum of Rs.4,60,000/- out of Rs.13,60,000/- which is the total sale price of the Apartment, as admitted by the respondents in Clause 4. Thus, the respondents cannot deny their own document i.e re-allotment letter dated


25.12.2014 issued by them in favour of the complainants duly signed by their authorized representative. This, document i.e re-allotment letter dated 25.12.2014 issued by the respondents themselves in favour of the complainants, has evidentiary value and cannot be ignored.

15. Further, regarding the objection that the complainants did not make any further payment as per payment plan despite various reminders. In the Clause 5 in the tabulated form of the re-allotment letter dated 25.12.2014 there are only total three installments, one is for Rs.2,60,000/-, second is for Rs.2,00,000/- and third installment 'on possession' is of Rs.9,00,000/- making the total sum of these three installments to Rs.13,60,000/-. It was further the case of the respondents that accordingly they did not enter into builder buyer agreement with the complainants and also did not allot any unit number to them.

16. It is clear from the record i.e para no.4 of re-allotment letter dated 25.12.2014 that out of this total sale price of Rs.13,60,000/-, the complainants have made a payment of Rs.4,60,000/- and rest final payment of Rs.9,00,000/- was to be made on delivery of possession. However, the respondents failed to produce any document to show that they offered possession of the residential apartment to the complainants and they did not pay it. Even the respondents failed to place on record any copy of reminders and follow ups letter issued to the complainants asking them to pay the balance payment. Thus, mere saying in the reply, but not submitting any documentary evidence, it cannot be concluded that the

complainants were at fault in making the payment as per payment plan mentioned in the re-allotment letter.

17. It is the onerous duty of the respondents to enter into builder buyer agreement with the complainants and allot unit number to the complainants once they received Rs.4,60,000/-, out of Rs.13,60,000/- the total sale price of the apartment. It is the document to be prepared by the respondents themselves and to be got signed from the complainants. Thus, the plea of the respondents that due to further non-payment by the complainants, they did not enter into builder buyer agreement is without any merit. Further, it is the bounden duty of the respondents to mention the Unit Number in the reallotment letter dated 25.12.2014 issued to the complainants and it is not their case till date. Even the wording of the subject of the re-allotment letter dated 25.12.2014 is **"SUBJECT: Re-Allotment of Apartment in CHINAR HOMES under Down Payment plan/installment Payment Plan"**. The word 're-allotment letter' means that earlier this apartment was issued to someone with allotment letter and it must have contained Apartment Number and for any reason best known to the respondents, thereafter, re-allotted to the present complainants without mentioning the apartment number.

 18. The respondents have also referred Clause-7 of the re-allotment letter in their reply and asked the complainants to take refund of amount but without any interest. But the complainants did not come forward to take it. It is the averment of the complainants in their complaint that *"the Respondent company had assured that the possession would be delivered to the complainants within a*

period of one year from the date of re-allotment letter, but the respondent has miserably failed to abide by their promise.....". It is a matter of record that in the brief and short reply dated 08.06.2023, this averment of the complainants regarding possession within one year has not even been touched by the respondents meaning thereby that the possession of the apartment was to be delivered to the complainants within one year and the respondents failed to do so.

19. Regarding refund without any interest, Section 19(4) of the Act of 2016 comes to the rescue of the complainants which is reproduced below for the sake of convenience:

"19. (1)...

(2)...

(3)...

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder".

20. Further perusal of Clause-5 (numbered twice) of the re-allotment letter dated 25.12.2014 revealed that the respondent had specifically mentioned that '5. *In case payments are not made on due dates, you (here the complainants) shall pay @24% per annum*

for three months on due amount from the due date till the date of payment and no extension will be allowed after three months.....'.

21. In para 6 of their reply the respondent stated that '6) *That the complainants were asked to take refund of amount of an Rs.2,60,000/- without interest...'*.

22. Further, in para 8 of their reply, the respondent stated that '8) *That the respondent is willing to refund the amount of an Rs.2,60,000/- without interest as mentioned above in para 6'*.

23. From the above it is clear that the respondents are ready to refund the amount but without any interest. However, on the contrary the respondent will charge interest @24% per annum, in case payments are not made on due dates.

24. It is also noteworthy that it is a general financial principle that the interest of the money belongs to the person who owns the said money. In case the money is utilized by any other person than the actual owner of money without any due compensation then the interest earned on the amount utilized should be refunded to the actual owner. In the instant case under consideration, the complainants have deposited the amount of Rs.4,60,000/- which is also substantiated and admitted from re-allotment letter dated 25.12.2014 as per its Clause-4. It is also a fact which cannot be denied by the respondents that they utilized the deposited amount of the complainants for more than a decade and now they cannot deny the reasonable interest to the actual owners of the deposited amount i.e complainants, who are asking refund of their money along with interest. Thus, the complainants are fully entitled for

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interest on their deposited amounts with the respondents as per the prescribed rate of interest.

25. Further, if the complainants were not coming forward, the respondents might have refunded the amount to the complainants whose details were available with them.

26. From the above discussions, the contentions of the respondents mentioned in their short reply have no merits and accordingly all are rejected. It is held that since possession of the apartment was to be handed over within one year from the date of re-allotment letter which has not been handed over to the complainants, they are within their right to seek refund of their deposited amount along with interest thereon, the relevant portion of Section 18(1) of the Act of 2016 which is reproduced below:

"18. (1) ..

(a) ...

(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" (emphasis supplied)*

27. The net shot of above discussion is that this complaint is allowed and respondents are directed to refund the amount of Rs.4,60,000/-along with interest at the rate of 11.10% per annum

(today's State Bank of India highest Marginal Cost of Lending Rate of 9.10% plus two percent) prescribed in Rule 16 of the Rules, 2017 from the respective dates of payments till the date of actual refund.

28. It is also further directed that the refund along with interest should be made by the respondents to the complainants within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order and submit a compliance report to this Authority about releasing the amount along with interest as directed accordingly.

29. It may be noteworthy that in case compliance report is not submitted by the respondents after the expiry of above stated period and further any failure to comply with or contravention of any order, or direction of Authority may attract penalty under Section 63 of this Act.

30. The complainants are also directed to submit report to this Authority that they have received the amount along with interest as directed in this order. Till then the said complainants shall have the charge on the allotted residential apartment in the project "Chinar Homes". The complainants are directed to execute a cancellation deed on receipt of full payment of refund and interest thereon from the respondents thereafter.

Announced



(Binod Kumar Singh)
Member, RERA, Punjab