

**BEFORE SHRI ARUNVIR VASHISTA, MEMBER
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

Complaint No. GC No.0147 of 2024UR

Date of Institution: 28.04.2024

Dated of Decision: 06.01.2026

Karan Sood, aged about 37 years son of Sanjeev Sood, resident of 25, Chardean Stret- Acacia Ridge Brisbane, QID-4110- Australia.

Local Address: B-3, Hemkunj, Sandal Estate, Chakkar Shimla (Himachal Pradesh)

...Complainant

Versus

M/s BCL Homes Limited, through its Managing Director having registered office at village Kishanpura, NAC Zirakpur, District Mohali, Punjab, Sector 17 C, Chandigarh.

...Respondent

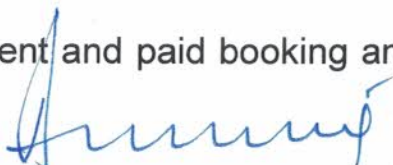
Complaint under Section 31 of the Real Estate
(Regulation and Development) Act 2016.

Present: Ms. Aakanksha Kochar, Advocate representative for the complainant
Mr. Manisha Maggu, Advocate representative for the respondent

ORDER

The present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against the respondent promoter seeking refund of the money deposited by the complainant for the allotment of flat in the project 'Chinar City' developed by the respondent at Zirakpur- Patiala Highway (Punjab).

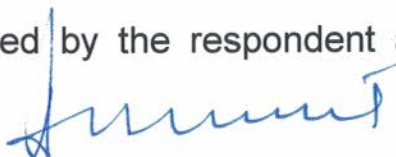
2. As per averments in the complaint, complainant booked a residential flat in the unregistered project 'Chinar City' developed by the respondent and paid booking amount of Rs.5 lacs which was



accepted by the respondent vide acceptance letter dated 23.03.2012. The construction of the flat was to be completed by 2015 as promised by the respondent at the time of booking. The total and basic price of the flat was fixed at Rs.45 lacs. Till date neither allotment letter was issued to the complainant nor any flat buyer's agreement was executed by the respondent. Complainants kept on waiting for the possession of the flat, but the same had not been given till date. Therefore, he had no other option except to seek refund of the amount paid, along with interest. Hence, the present complaint seeking refund of the amount paid.

4. Upon notice of the complaint respondent appeared and filed its reply contesting the complaint and denying claim of the complainant. In its reply respondent raised certain preliminary objections on the grounds of maintainability of complaint and suppression of material facts. While replying the complaint on merits, it was submitted that the project had already been completed but it was the complainant who defaulted in making the payment of remaining instalments and did not come forward to execute the agreement. However, as a goodwill gesture the respondent was ready to refund the amount paid by the complainant, but without interest. Rest of the averments made in the complaint have also been denied by the respondent in its reply and finally a prayer was made for dismissing the complaint having no basis and cogent ground.

5. While putting forth the case of complainant it was argued by his learned counsel that in response to the advertisements and brochure issued by the respondent and on their allurements, the



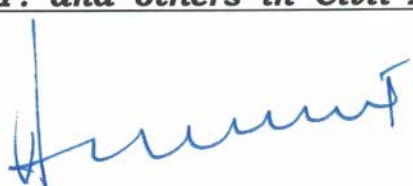
complainant booked the flat in question in the project of the case in hand and paid a booking amount of Rs.5 lacs. The construction of the flat was to be completed by 2015 as was promised by the respondent at the time of booking but the respondent failed to complete the construction work within the stipulated period despite receiving payment of Rs.5 lacs out of total sale consideration of Rs.45 lacs. It was further contended that respondent neither issued allotment letter nor executed any flat buyer's agreement. In these circumstances, complainant has been left with no other option but to withdraw from the project praying for refund of his amount paid alongwith interest as per the provisions of RERD Act.

6. On the other hand, while opposing the case of complainant it was argued on behalf of the respondent that the project had already been completed but it was the complainant who defaulted in making the payment of remaining instalments and did not come forward to execute the agreement. However, as a goodwill gesture the respondent was ready to refund the amount paid by the complainant, but without interest.

7. After giving a thoughtful consideration to the rival contentions of both the parties i.e. complainant and respondent, the authority is of the considered view that the contentions put forth on behalf of the respondent that there was a default on the part of complainant in making timeline payment had absolutely no merit or substance as it was the respondent who committed default in causing deficiency in service in not completing the project within the stipulated period. Moreover, there was nothing pointed out on record that shows as to how complainant failed to make payments as per



the payment plan. The only important document that has been executed by the respondent/ promoter concerning the transaction of booking of the flat in question between them is letter dated 23.03.2012 (Annexure C-3) addressed by the respondent to complainant. The said document contains the terms and conditions that were settled between them at the time of booking of the apartment and receiving booking amount of Rs.5 lacs thereof. It has been mentioned in the said letter that respondent accepted the amount of Rs.5 lacs as booking amount and the total consideration of the flat was Rs.45 lacs only. The remaining balance amount was to be paid by the complainant in 240 instalments of Rs.12,500/- each starting from offer of possession. But there is absolutely no document brought on record by the respondent which could show that an offer of possession was made to complainant thereafter what to talk of non-payment of instalments by complainant. Rather a letter (Annexure C-4) was addressed by the complainant to BCL Homes Ltd. asking them for return of booking amount as there was breach of agreement on the part of respondent/ promoter. There is thus nothing on record that promoter ever responded to the communication made by complainant concerning the transaction. So far as the question of limitation is concerned that does not apply in the present case as an indefeasible right has accrued in favour of complainant by virtue of Section 18 of the Act which has been held to be a retroactive statute as has been observed by the Hon'ble Supreme Court in **M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others in Civil Appeal Nos. 6745-6749 of 2021.**



8. In view of above discussions, it is held that respondent failed to deliver possession of the property unit in question to the complainant within the stipulated period even till date after having received the booking amount of Rs.5 lacs from the complainant and this act on the part of the respondent is squarely covered under the provisions of Section 18 of the RERD Act which runs as under: -

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

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

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

xxx	xxx	xxx
(2)	xxx	xxx
(3)	xxx	xxx

9. A plain reading of above makes it abundantly clear that an indefeasible right has been conferred upon an allottee in case promoter failed to complete or was unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein provided allottee wishes to withdraw from the project and refund is to be made to allottee on demand alongwith interest at such rate as may be prescribed in this behalf. Such legal

right of an allottee cannot be defeated on the ground of lack of any such provision in any document issued by a promoter as was also so observed by the Hon'ble Supreme Court in the case of '**Emaar MGF Land Ltd. Vs. Aftab Singh**' (Civil Appeals No.23512-23513 of 2017).

10. The next question which arises for consideration is as to whether complainant is entitled to any interest on the amount paid to the respondent or not? The fact remains that the respondent had been using the amount so paid by the complainant to it since the day of payment. As such, the respondent is liable to refund the above said amount alongwith interest to the complainant because once the amount is deposited with the promoter and promoter is getting benefit of interest accruing upon said amount, the similar benefit cannot be denied to the complainant/buyer.

11. As a result of the above discussion, the complaint is accepted and the respondent is directed to refund the amount deposited by the complainant along with interest thereon at the prescribed rate (today's highest MCLR rate plus 2%) from the date of deposit till the date of its refund. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.


(Arunvir Vashista),
Member, RERA, Punjab.