

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

Complaint No.RERA/AdC No.0278/2021
Dated of Decision: 15.03.2024

1. Saurabh Sehgal son of Sat Pal Sehgal,
2. Mrs. Yamini Gambhir wife of Saurabh Sehgal,
both residents of # 30, GH-32, Mansa Devi Complex, Sector
5, Panchkula (Haryana)

...Complainants

Versus

1. M/s ATS Estate Private Limited, 711/92 Deepali Nehru
Place, New Delhi, Delhi.
2. Mr. Adityajit Singh Pahwa, 711/92 Deepali Nehru Place, New
Delhi, Delhi.

..... Respondents

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

Present: Mr. Vijay Goyal Advocate representative for the
complainants
Mr. J.P. Rana Advocate representative for
respondent no.1
Respondent no.2 exparte vide order dated
04.08.2022

ORDER

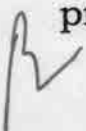
The present complaint had been filed under Section
31 of the Real Estate (Regulation and Development) Act, 2016
(hereinafter referred to as "the Act") against respondent no.1
seeking compensation etc. on account of delay in handing over
possession of the apartment in the project 'ATS Golf Meadows

Lifestyle'

2. As per averments contained in the complaint the complainants were allotted flat no.7073 on 7th Floor, Tower No.7, in the project of respondent named '**ATS Golf Meadows Lifestyle**'; that the buyer's agreement was executed between the parties on 18.06.2014; that the basic sale price of the unit in question was Rs.51,76,000/-; that the complainants had paid an amount of Rs. 45,76,000/- to the respondent promoter; that the complainant also took a loan of Rs.38,52,098/- from respondent no.2 HDFC Bank, which was credited by the banker to respondent no.1 on behalf of complainant; that as per Clause 14 of the flat buyer's agreement possession of the flat was to be handed over within 36 months plus six months grace period from the date of start of construction of the tower in question i.e. December 2017 but the respondents failed to hand over the possession of the flat in question till date. Hence the present complaint for compensation.

3. Notice of the complaint was issued to the respondents. However, respondent no.2 despite having been duly served did not turn up and was accordingly proceeded against exparte vide order dated 04.08.2022.

4. Respondent no.1 had put in appearance and contested the complaint by taking up the preliminary objections that the complainant had no cause of action to file the present complaint under the provisions of the Act as the date for completion of the project declared to RERA Authority by the promoter at the time of registration of the project was



31.8.2026; that the present complaint was liable to be dismissed in view judgment of the RERA Authority in **Complaint No.3 of 2017-Bikramjit Singh & Ors. Vs. State of Punjab;** that the present complaint under the Act was not maintainable being prospective and not being retrospective, while transaction of the case in hand pertained to the year 2014; that there was an arbitration clause in the flat buyers agreement, according to which any dispute arisen between the parties in relation to the said agreement was required to be referred to the Arbitrator; that the complainants had not purchased the flat in question for his bonafide personal use but only for the purpose of speculative gains and therefore did not fall within the definition of consumer and was not entitled to protection under the Act; that only the civil court at Noida had the jurisdiction to decide the controversy between the parties in view of the stipulation in the flat buyer agreement dated 18.06.2014 in this behalf. On merits, the execution of buyer's agreement and allotment of flat in question was admitted. It was however submitted that every effort was being made for completion of the project and the Tower in question. Denying rest of the contentions the promoter prayed for dismissal of the complaint.

5. The violations and contraventions contained in the complaint were put to the representative for the respondents to which he denied and did not plead guilty and then the complaint was proceeded for further enquiry.

6. That respective representatives for parties addressed arguments on the basis of the submissions made in their respective pleadings. I have also gone through the case file carefully and the elaboration thereof shall be made in the discussion.

7. The first point raised on behalf of the respondent was that the transaction pertained to the year 2014 and the RERA Act which came into force later on, thus was not applicable to the instant matter. It may be that the transaction pertained to the year 2014 but the present project was ongoing and had not been completed. It is also settled law that the Act would certainly regulate the existing contracts, even though it is prospective in nature, but, is retroactive also to some extent. On this point, reliance may be placed on the law laid down by the Hon'ble Bombay High Court in case titled as **Neel Kamal Realtors Suburban Pvt. Ltd. and another Vs. Union of India and others** bearing **Writ Petition No.2737 of 2017** decided on 6.12.2017 wherein it has been 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 provision of the Act would be applicable to cover the ongoing project got registered with the RERA Authority.

8. The submission on behalf of the respondent was that no cause of action had arisen to the complainant, as the time for completion of project had been declared by the respondent before the RERA Authority till 31.8.2026 at the



time of registration of the project is devoid of any force as the Hon'ble Bombay High Court in a case titled **Neel Kamal Realtors Suburban Pvt. Ltd. (supra)** has been very categorical with regard to the agreements entered between the parties even prior to coming into force of this Act and in this respect the relevant extract is reproduced herein below:-

“**119.** Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and an allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of

the parties, is unwarranted, illegal and highly arbitrary in nature.”

9. In the above said case, the Hon'ble Bombay High Court has also made this point clear in paragraph 256 and 261 which are reproduced below: -

256. Section 4(2)(l)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(l)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(l)(C) he is not absolved of the liability under the agreement for sale.

XXX

XXX

XXX

261. In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period. Even under Section 8 of

MOFA on failure of the promoter in giving possession in accordance with the terms of the agreement for sale, he is liable to refund the amount already received by him together with simple interest @ 9% per annum from the date he received the sum till the date the amount and interest thereon is refunded. In other words, the liability under Section 18(1) (a) is not created for the first time by RERA. Section 88 lays down that the provisions of RERA shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”


10. In view of above observations, the plea of the respondent that they had given a declaration for completion of project by 31.8.2026 while registering the project with this Authority, is not tenable as the agreement between the parties was admittedly executed on 18.06.2014 and date given by the promoter to the allottees for handing over the possession of the flat was within 36 months plus extended period of six months grace period from the date of start of construction of the tower in question i.e. upto December 2017. Therefore, the promoter cannot take the benefit of the completion date of the project i.e. 31.8.2026 given at the time of registration of the project rather the date of completion of the project as per stipulation in the flat buyer's agreement dated 18.06.2014 shall be applicable according to which the possession of the flat on completion of the project was to be handed over up to December 2017. The argument is accordingly repelled.

11. Another objection taken was that complaint alleging violations of the provisions of the Act was maintainable only in respect of the agreement which had been executed as per Rules, 2017 and of the Act. However, as already noticed it was held by Bombay High Court in **Neel Kamal's** case (supra) that RERA is applicable to the projects which were ongoing and subsequently got registered under RERA. Therefore, the complaint is maintainable.

12. The representative of the respondent also raised the objection that there was an arbitration clause no.35 contained in flat buyers' agreement according to which, the dispute between the parties was to be referred to the sole arbitrator and this Bench had no jurisdiction to adjudicate the controversy between the parties. On this point, reference is required to be made to Sections 79, 88 and 89 of the Act, which reads as under: -

"79. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

88. The provisions of this Act shall be in addition to and not in derogation of, the



provisions of any other law for the time being in force.

“89. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

13. A conjoint reading of Sections 79, 88 and 89 of the Act leaves no manner of doubt that despite there being arbitration clause, the remedy available to the complainants under the Act still subsists as it is in addition to remedy available before in any other forums. The argument is accordingly repelled.

14. It was also agitated that the complainant had not purchased the flat for his bonafide personal use but only for the purpose of speculative gains and did not fall within the definition of consumer and therefore, he was not entitled to protection under the Act.

15. The argument, however, is without substance because the Real Estate (Regulation and Development) Act 2016 is self-contained Code to deal with the dispute between the allottee(s)/promoter(s) as per provisions of the said Act before the RERA Authority or the Adjudicating Officer as the case may be and under the provisions of RERA there is no requirement that allottee must be end consumer and the provisions of the Consumer Protection Act, 2019 are not applicable for adjudicating the said dispute between the parties

by the RERA Authority or the Adjudicating Officer. The argument is accordingly repelled.

16. Though, it was argued on behalf of the promoter that there was stipulation in the flat buyer's agreement in Para no.37 that only the Civil Court at Noida, Uttar Pradesh would have the exclusive jurisdiction to entertain and decide the dispute between the parties in relation to the agreement in question but we find that the project of the case in hand is situated in Derra Bassi (Punjab) and the agreement between the parties was also executed in the State of Punjab and the project of the case in hand was got registered with the RERA, Punjab being an ongoing project therefore this Bench has the jurisdiction to entertain and decide the dispute between the parties of the case in hand and the argument is accordingly repelled.

17. The argument on behalf of the complainant was that the complainant had paid total amount of Rs.45,76,000/- as per terms and conditions of the flat buyer's agreement payment plan and balance amount was to be paid at the time of delivery of possession. Further argument was that as per Clause 14 of the Flat Buyers Agreement, the possession of the flat after completion was to be offered within 36 months from the date of start of construction of the tower in question i.e. by December 2017, however, respondent-promoter unreasonably delayed the project and failed to offer the possession as stipulated and even till date possession of the flat was not


offered and therefore, the complainant was entitled to compensation.

18. On the other hand, the argument on behalf of the respondent-promoter was that despite making best efforts of completing the project there had been delay in completion of the project which was because of the circumstances beyond the control of the respondent viz-a-viz due to market conditions there was delay in execution of certain works and plea of force majeure was pressed. Further, argument was that the respondent had already spent huge amount in raising the construction of the project and at this stage the complainant could not be allowed to withdraw from the project and seek compensation.

19. Admittedly the flat in question was booked by the complainant in the project of respondent named '**ATS Golf Meadows Lifestyle**' and flat buyers agreement dated 18.06.2014 was executed between the parties. As per payment plan complainant had paid Rs.45,76,000/- to the respondent promoter and balance amount was payable at the time of delivery of possession. It was also admitted that as per Clause 14 of the flat buyer's agreement possession of the flat was to be handed over within 36 months plus six months grace period from the date of start of construction of the tower in question i.e. by December 2017 and till date the project was incomplete and possession of the flat has not been offered by the respondent so far.

20. So far as the question of application of principle of force majeure is concerned, as per explanation given in Section 7 of the Act, force majeure shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of real estate project. The said definition of force majeure makes it clear that it mostly covers natural disasters and the Act of God and not normal eventualities, which the builder can foresee with normal prudence and act accordingly rather than keeping the buyers in lurch and therefore principle of force majeure is not applicable to the facts of the present case. Even otherwise the circumstances which were pleaded by the respondents were such which the builder could foresee as to what was to be done in the eventuality of changed market conditions. Accordingly, the argument is repelled.

21. It is well settled that time for completion of the project in such case is always considered essence of the flat buyer's agreement for both the parties but the respondent promoter failed to complete the project by the said date. Now, even the specimen proforma for agreement for sale has been prescribed under the Punjab State Real Estate (Regulation and Development) Rules 2017. The clause 5 of said agreement says that time is essence for the promoter as well as the allottee and the promoter shall abide by the time schedule for completing the project and handing over the apartment/plot to the allottee and the common areas to the association of the allottees. The



complainants had paid Rs.45,76,000/- as per payment plan and also as per ledger account of the applicant furnished by respondent and balance amount was to be paid at the time of offer of possession. The complainants are thus not at all at fault and in these circumstances, the promoter was under obligation to provide possession of the apartment within the stipulated period.

22. Admittedly payment had been made by the complainants as per payment plan without any delay and the project was incomplete till date, therefore, it cannot be said that any fault was attributable on the part of the complainant and rather the respondent itself admitted in the written reply that till date construction is not completed and that there was delay in completion of project. In view of ratio of the authority of Apex Court in ***Pioneer Urban Land & Infrastructure Ltd Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018 and Pioneer Urban Land and Infrastructure Ltd Vs. Geetu Gidwani Verma and another civil appeal No.1677 of 2019*** holding that if the project had been delayed beyond the period of two years from the stipulated time because of fault of the respondent-builder then the buyers could not be compelled to accept delayed possession and it was optional for the buyers either to remain in project and accept delayed compensation or in the alternative to withdraw from the project and claim relief of refund, interest and compensation is fully attracted to the facts of the present case. Thus, the complainants had the option of

withdrawing from the project due to unreasonable delay in completion of project.

23. It will not be out of place to mention here that even the Hon'ble Regulating Authority in the connected complaint inter parties having been filed on the same cause of action for seeking possession and payment of interest for the period of delay in handing over possession of the apartment in question, vide order dated 19.01.2024 was pleased to direct the respondent to allow interest for the period of delay in handing over possession of the apartment because of the prolonged delay in completion of the project.

24. In view of above discussion, the fault on the part of the respondent in not delivering the possession of the unit in question within the stipulated period as per the relevant clause of agreement dated 18.06.2014, thus, squarely falls within the mischief of Sec. 18 (3) of the RERA 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) xxxx xxxx

(b) xxxx xxxx

(2) xxxx xxxx

(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.*



Resultantly, the complainants are certainly entitled to compensation.

25. 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.

26. For determination of the entitlement of complainant for compensation due to default of the builder/developer the Hon'ble Apex 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."

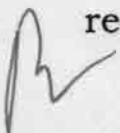
27. In the aforesaid case the Hon'ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession.

28. Apart from the factors on the quantum of compensation expressed under Section 72 Sub Sections (a), (b) and (c) this Bench, under Sub Section (d) of Section 72 has been given scope of considering other factors, which are considered necessary in furtherance of justice. Since the complainants had not been able to get possession of their units in question and could not reside peacefully and happily till date, we are to consider the psyche of the Indian Society. Normally Indians are emotionally attached to own a residential house for the family. They are prepared to spend major share of their lifetime earnings and also ready to obtain loans from financial institutions in the hope of getting home for the family. Since the complainants had not been able to get possession of the unit in question and had to seek the remedy under existing law and for that had to suffer mental agony due to harassment and had to incur expenses for obtaining legal assistance for pursuing their claim, they are certainly entitled for compensation.

29. It has been vehemently argued on behalf of the respondent promoter that complainants had already been granted interest on the amount paid and therefore they were not entitled to any further amount beyond the said interest which

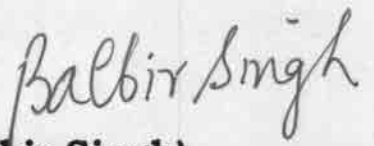
has been awarded by the Authority. The argument is to be outrightly rejected because as per provisions of Section 18(3) of the RERA Act due to the default of the respondent in completion of the project the complainants have the three separate remedies on withdrawing from the project i.e. refund of the amount paid; interest on the said amount as per provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017 and also compensation as per the provisions of Section 72 of the RERA Act.

30. The Court can also take into account certain factors which are apparent in the natural course of the existing circumstances. In the case in hand, the possession of the apartment in question was to be delivered by the respondent on or before 01.06.2016, but the complainants were left in lurch by the developer from the said date till the date of passing of this order. During this interval of eight years the complainants have been deprived of their right of occupying the flat in question and they must have spent sufficient amount for the accommodation during the said intervals. Besides, they are yet to await in future when the possession would be ultimately handed over to them after completion of the project. We also cannot lose sight of the fact that complainants in this case paid huge amount of Rs.45,76,000/- in the year 2014, out of which amount of Rs.38,52,098/- was directly transferred by the respondent bank to the account of the promoter and the complainants were required to pay heavy interest for returning the said amount



despite the fact that the default was of the respondent promoter in not completing the project within the stipulated time for handing over possession of the unit in question to the complainants for residing therein. Apart from this, the complainants had to pursue the two parallel litigations, one before the Authority for seeking interest etc. and second before this Bench for seeking compensation for a considerable period and had to engage an Advocate for pursuing both the litigations. As a collective effect of the default of the promoter for a period of almost seven years in not completing the project and the resultant sufferings of the complainants as narrated above taken together, legal expenses which must have been spent by the complainants for the litigation, they are entitled to compensation to the tune of Rs.1,50,000/- (by approximation) from the respondent. The respondents are accordingly directed to pay the above said amount of compensation to the complainants within ninety days from the date of this order.

Dated: 15.03.2024


(Balbir Singh)
Adjudicating Officer
RERA, Punjab