

**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. AdC0017/2023
Dated of Decision: 08.10.2024

Dr. Pankaj Garg son of Dr. B.R. Garg, resident of 19-A,
Civil Lines, near old Sessions Court, Ambala City, Tehsil &
District Ambala (Haryana).

..... Complainant

Versus

1. Bathinda Development Authority, through its Chief Administrator, PUDA Complex, Bhagu Road, Bathinda, District Bathinda.
2. Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road, Bathinda, District Bathinda.

Respondents

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

Present: Shri J.S. Dhaliwal, Advocate, representative for the
complainant
Shri Ashish Grover, Advocate, representative for the
respondents

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") read with Rules 37 of the
Punjab State Real Estate (Regulation and Development) Rules
2017, (hereinafter called as the Rules) before this Bench
against the respondents seeking compensation.

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2. The main averments in the complaint were that the complainant had booked a residential plot in the project of the respondent at PUDA Enclave, Mansa, on 16.12.2013; that the complainant after being successful in the draw of lots, the respondent issued letter of intent (LOI) on 14.03.2014 in the name of the complainant for plot measuring 500 Sq. Yd. at a tentative price of Rs.35 lacs; that after making payment of 25% of the price, the complainant was issued allotment letter dated 06.07.2016 by the respondent; that subsequently, the complainant paid the balance 75% of the sale consideration; that complainant made total payment of Rs.38,48,902/- to the respondent; that as per the allotment letter, the respondents were to hand over possession of the plot after completion of the development works at the site or within 18 months of the allotment letter i.e. on or before 05.01.2018, whichever was earlier; that the respondents issued letter for offering possession dated 27.12.2017 of incomplete project without providing basic amenities and without obtaining completion certificate from the competent authority; that the project was still incomplete despite lapse of more than three years from the stipulated date of handing over of possession and therefore, the complainant lost interest in the project and opted to withdraw from the project and sought compensation because of the default of the respondents in completion of the project; hence the complaint for compensation.



3. Upon notice, the respondents contested the complaint by taking preliminary objections that separate remedy was provided under the provisions of Punjab Regional and Town Planning and Development Act 1995 to the complainant for filing appeal/revision under Section 45 and therefore, the present complaint under the provisions of RERA Act was not maintainable; that the complainant had already filed complaint before the Regulating Authority against the respondents for seeking refund of the amount paid with interest and compensation, which had been decided vide order dated 17.05.2022 by granting the relief of refund and interest and therefore, the present complaint for compensation was barred, because no permission of the Regulating Authority was obtained in this behalf; that there was arbitration clause in the allotment letter for settlement of the dispute and therefore, the matter was required to be referred to arbitration and the present complaint thus was not maintainable. On merits, though the averments of the complaint with respect to booking of the plot in the project, issuance of letter of intent and the allotment letter to the complainant of the plot in the project had not been contested nor for that matter the payments as claimed by the complainant by way of sale consideration of the plot had been contested; however, respondents claimed that as per proceedings of the meeting held on 21.12.2017 under the chairmanship of the Chief Administrator of the Authority, the development work of the site in dispute had been completed



and that there was further certificate issued by the Divisional Engineer, PUDA, Bathinda vide letter dated 22.11.2017 intimating that development works of the project relating to civil, public health, electricity and Horticulture had been completed. The further plea was that possession of the plot was offered to the complainant after completion of the project and therefore it was the complainant who failed to take possession of the plot despite legal and valid offer of possession having been issued by the respondents within the stipulated time. The respondents accordingly prayed for dismissal of the complaint.

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

5. I have heard the learned authorized representatives of the parties and with their assistance have carefully gone through the record including the written submissions on behalf of the complainant. The arguments of respective representatives for parties were on the basis of the submissions made in their respective pleadings as summarized above and the elaboration there of shall be made in the discussion.

6. The argument on behalf of the respondent/promoter at the outset was that the complainant had the remedy under the provisions of Punjab Regional and Town Planning and

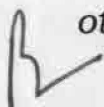


Development Act, 1995 and therefore the present complaint was not maintainable. The argument is without merit because the departmental remedies provided under the Punjab Regional and Town Planning and Development Act, 1995 may be there but RERA Act is complete Code in itself which provides certain remedies in case of violation by the promoter in completion of the project and therefore the complaint under the provisions of the RERA Act is certainly maintainable.

7. The second objection raised on behalf of the respondent/promoter was that there was an arbitration clause contained in the allotment letter 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.”


8. 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 complainant under the Act still subsists as it is in addition to remedy available before any other forums. The argument is accordingly repelled.

9. Another legal argument advanced on behalf of the respondent promoter was that complainant filed complaint before the Regulating Authority for seeking the relief of refund of the amount paid with interest and compensation and the said complaint was allowed by the Regulating Authority vide order dated 17.05.2022 in respect of the relief of refund of the amount with statutory interest and that permission of the Regulating Authority had not been obtained for filing the complaint before this Bench for seeking the relief of compensation. The argument however is without merit, inasmuch as in view of the law laid down by the Hon'ble Apex Court in **Civil Appeals No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.**, wherein the Hon'ble Apex Court while interpreting the provisions of RERA Act was pleased to hold that the jurisdiction to deal with refund and interest was within the domain of regulating authority, while the question

of grant of compensation was within the exclusive domain of Adjudicating Officer. In view of the aforesaid authoritative pronouncement of the Hon'ble Apex Court, the jurisdiction of the Regulating Authority is with respect to grant of refund of the paid amount and interest, in case of violation of the provisions of Section 18 of the RERA Act whereas the relief of compensation for the violation of the provisions of Section 18 of the RERA Act is within the domain of the Adjudicating Officer. Therefore, the present complaint is maintainable for seeking the relief of compensation even without obtaining of specific permission from the Regulating Authority in this behalf. The argument is accordingly repelled.

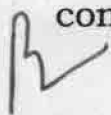
10. There is however no dispute between the parties that letter of intent and allotment letter were issued to the complainant and the plot was allotted to the complainant as noticed above. The price of the plot and the amount paid by the complainant is also not disputed and as already noticed entire sale consideration of the plot in question had been paid by the complainant. As per terms and conditions of the allotment letter the possession of the plot in question was to be handed over within 18 months from the date of issuance of the allotment letter or on completion of the development work, whichever was earlier. There is also no dispute that offer of possession of the plot was made to the complainant on

27.12.2017.



11. The controversy between the parties pertained to the fact that the promoter was claiming that development work of the project was complete as per completion certificate dated 22.11.2017 and that offer of possession was validly made within the stipulated period on 27.12.2017. The further contention was that complainant in fact failed to take possession and as such was not entitled to any relief. On behalf of the complainant, it was hotly contended that project of the case in hand was complete by claiming that project was underdeveloped and no basic amenities were provided by the promoter within the stipulated period and therefore offer of possession made by the promoter was invalid and therefore the complainant could validly withdraw from the project and seek compensation.

12. It is apparent from the allotment letter issued in the case in hand that possession of the plot was to be offered to the allottee after completion of the development work within 18 months from the date of issuance of the allotment letter or on completion of the development, whichever was earlier. The allotment letter was issued to the complainant on 06.07.2016 and as per the allotment letter the possession was to be delivered on or before 05.01.2018. The offer of possession made in this case on 27.12.2017 is based on the basis of completion certificate dated 22.11.2017 issued by the Divisional Engineer, PUDA, Bathinda. A close scrutiny of the completion certificate indicates that the same had been issued



on the basis of the report of the three Engineers. However, as per the notification dated 02.09.2014, only the Chief Administrator/ Additional Chief Administrator of the concerned authority is competent authority to issue the completion certificate. But, in the case in hand the completion certificate had not been issued by the said competent authority and therefore cannot be considered a valid and legal. On the basis of the said certificate which had not been issued by the competent authority, we cannot construe that the project was complete. The said certificate dated 22.11.2017 issued by the Divisional Engineer, PUDA, Bathinda was also the subject matter of dispute in complaint AdC No.1601/2020 Harpreet Kaur versus BDA, alongwith connected complaints of the same project and decided by this Bench on 08.01.2024 and finding was recorded, 'If the basis of the completion certificate i.e. report of three engineers is scrutinized we find that the said undated report is also cryptic and does not satisfy the requirement of law that all internal and external development of the project are required to be completed as per the sanctioned plan'. And this completion certificate was not relied upon. Though, on behalf of the promoter it was further agitated that under the provisions of PAPRA the promoter was exempt from obtaining the completion certificate. The said argument is not available to the promoter because the project of the case in hand was ongoing and subsequently got registered under the provisions of RERA and thus the



provisions of RERA Act are applicable to the facts of the present case under which there is no such exemption. Thus, the project of the case in hand cannot be said to be completed at the time of offering the possession to the complainant of the case in hand. Even for that matter the Regulating Authority in the decision of the complaint inter parties decided on 17.05.2022 also came to the same finding that the project of the case in hand was incomplete. Therefore, the offer of possession made in the case in hand cannot be said to be legal or valid.

13. In view of the above discussion, if the document i.e. completion certificate relied upon by the promoter in support of its plea of completion of the project is discarded there is no credible document on record from the side of promoter to indicate that the project of the case in hand was completed before issuance of the offer of possession. In such a situation, the promoter failed to establish that the project of the case in hand was complete and valid offer of possession was made. Therefore, the only inference which can be drawn is that the project of the case in hand remained incomplete and the development works at the site were not completed within the stipulated period and the project was delayed for a period of more than three years from the stipulated period and the complainant therefore could certainly withdraw from the project and seek compensation because the promoter failed to complete the project without any justification. Reference in

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this connection made to the authority of Hon'ble Apex Court in **Civil Appeals No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.**

14. The default of the respondents in the aforesaid circumstances attracts the mischief of S. 18(1) 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) 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."

15. 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. Section 72 of the RERA Act runs as

under:



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

16. 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.”

17. 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.

18. 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. Normally Indians are emotionally attached to own a property. 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 property. Since the complainants had not been

able to get possession of the plots 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 rightful claim, they are certainly entitled for compensation.

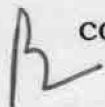
19. It has been vehemently argued on behalf of the respondent promoter that complainant had already been granted interest on the amount of refund and therefore he was not entitled to any further amount beyond the said interest which had been awarded by the Authority. The argument is rejected because as per provisions of Section 18(1) of the RERA Act due to the default of the respondent in completion of the project, the complainant has 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.

20. 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 plot in question was to be delivered by the respondent on or before 05.01. 2018 (i.e. within 18 months from the date of issuance of allotment letter or on completion of development work, whichever was earlier), but the complainant was left in lurch by the developer from the said date till the date of passing of

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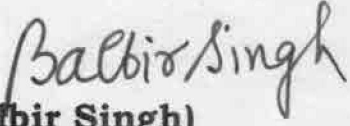
this order. During this interval there had been substantial rise in the real estate in the area of District Mansa in relation to developed colonies in and around the project in question and the same is also suggestive from the increase in the Collector Rate of the concerned area from the year 2018 till the passing of this order i.e. almost for a period of more than 6 years because of which the complainant must have suffered lot of mental pain, agony and harassment. Besides, the price index indicating rising prices of the construction material during the said relevant period also got manifold increase and in view of the afore narrated circumstances, it is apparent that the builder/developer in the case in hand certainly obtained unfair advantage by non-performance of his obligation in the cases in hand for a considerable period and the developer caused wrongful loss to the complainants, which is quantifiable by approximation to the tune of 75,000/-. Even for determining the amount for seeking legal assistance and other expenses for pursuing the litigation has to be assessed by approximation. Keeping in view the nature of litigation which had to be initiated by the complainant and also the duration for which it continued even before the RERA Authority, I assess the amount of Rs.20,000/- as compensation in the shape of litigation expenses.

21. In view of the above discussion and observations, complaint is partly allowed. The complainant is held entitled to

 compensation of Rs.95,000/- (by approximation) from

respondents. The respondents are directed to pay the above said amount of compensation to the complainant within ninety days from the date of this order.

Dated: 08.10.2024


(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority