

**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. AdC No.1737 of 2020

Date of Decision: **03.07.2024**

1. Niklesh Dubey

2. Anuja Dubey

Both residents of #349, Sector 4, Panchkula, Haryana.

...Complainants

Versus

M/s Sushma Buildtech Limited, through Managing Director/Authorized Representative, Unit No. B-107, Industrial Area Phase-1, First Floor, Business Complex Elante Mall, Chandigarh.

..... Respondent

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

Present: Mr. Jagan Nath Bandari, Advocate representative for the complainants
Mr. Sanjeev Sharma, Advocate representative for the respondent

A composite complaint was filed 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 (hereinafter referred to as the Rules) against the respondent company for seeking refund along with interest thereon and compensation. However, in view of the finding of

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the Hon'ble Supreme 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.** alongwith connected appeals decided on 11.11.2021, vide order dated 13.12.2021, the present complaint was ordered to be segregated and one set paper-book was ordered to be sent before Hon'ble Regulatory Authority regarding the claim of refund and interest sought by the complainant and qua relief of compensation case is before this Bench.

2. The gist of the complaint is that complainants jointly booked one residential unit No.G-803, in the project of the respondent "Sushma Chandigarh Grande" for a total sale consideration of Rs.62,90,530/-; that even allotment letter in respect of the said unit in the name of the complainants was issued by the respondent promoter on 14.02.2012; that apartment buyer's agreement was executed between the parties subsequently on 26.06.2012; that the complainants paid total amount of Rs.59,92,759/- to the respondent promoter towards the price of the unit in question; that as per buyer's agreement, the possession of the unit in question was to be delivered within 48 months from the date of the execution of the agreement (including extension of 6 months) i.e. on or before 26.06.2016; that respondent promoter

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of the flat in question by the stipulated date without any justification and the project was unreasonably delayed; that respondent promoter vide letter dated 22.06.2020 offered possession of the unit but raised illegal demand of Rs.6,24,296/- without even adjusting any amount towards the unreasonable delay in accordance with the provisions of the RERA Act despite objection raised in this behalf by the complainants through emails and the complainants accordingly decided to withdraw from the project and seek compensation for the loss of rental income, which the complainants could have earned for the period for which the project had been unreasonably delayed and also compensation for mental pain, agony and harassment.

3. Notice of the complaint was issued to the respondent, who upon service appeared and filed written reply contesting the complaint by taking objections that the transaction of the case in hand pertained to the period prior to coming into force the RERA Act and the further assertion was that the project was subsequently got registered by the promoter, who at the time of registration of the project with RERA made declaration, under Section 4 of the Act regarding completion of the project by July, 2022 and therefore the present complaint was premature; that as per clause 21 of the apartment buyers agreement, in case of dispute between

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the parties, the matter was required to be referred to the Arbitrator and therefore the present complaint was not maintainable; that as per clause 14(d) of the apartment buyers agreement, in case of delay in completion of the project the complainants could only seek compensation @ Rs.5 per sq. ft. per month and not as per provisions of the RERA Act. On merits, the factum of the booking of the flat in question by the complainants in the project of the case in hand, the execution of the allotment letter and apartment buyer's agreement and the payment of sum of Rs.59,92,759/- by the complainants towards the sale consideration of the flat in question are not disputed. It was also admitted that as per apartment buyer's agreement, the possession of the flat in question was to be offered on or before 26.06.2016 i.e. within 48 months from the date of execution of the buyer's agreement (including the period of extension of 6 months). It however was asserted that the project of the case in hand was completed by the respondent and partial completion certificate in this behalf was issued by the competent authority and thereupon offer for possession of the flat in question was made to the complainant vide letter dated 22.06.2020, alongwith demand notice regarding balance payment due against the complainants but the complainants defaulted in accepting the possession of the

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flat in question by making the balance payment and rather were asserting their right of withdrawing from the project on flimsy grounds. It was asserted that when the project of the case in hand was already complete, the complainants could not be allowed to withdraw from the project and they had the obligation of accepting the offer of possession. It was averred that fault if any was attributable on the part of the complainants, who defaulted in making balance payments of the unit in question despite a valid demand of balance payment and prayer was accordingly made for dismissal of the complaint.

4. The violations and contraventions contained in the complaint 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. The arguments of respective representatives for parties were on the basis of the submissions made in their respective pleadings as summarized above.

6. The first legal point agitated on behalf of the respondent promoter was that present complaint pertained to the period prior to coming into force the provisions of the



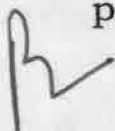
RERA Act and therefore the present complaint filed under the provisions of the RERA Act was not maintainable. The argument, however, lacks merit because the project of the case in hand was not complete prior to coming into force of the Act and it was ongoing project and was subsequently got registered under RERA (Punjab); and 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 06.12.2017, 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 will be applicable to cover the ongoing project got registered with RERA Authority"; to the same effect is the authority of Hon'ble Supreme Court in **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** Therefore, the present complaint is maintainable.

7. Another legal objection on behalf of respondent promoter was that the project of the case in hand was



subsequently registered and at the time of registration of the project with RERA in the year 2017 the promoter under Section 4 of the RERA Act made a declaration regarding completion of the project of the case in hand by July, 2022 and therefore the present complaint was premature. The argument however 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 paragraph 119 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."

8. 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)(1)(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)(1)(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)(1)(C) he is not



absolved of the liability under the agreement for sale.

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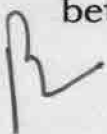
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261. In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited 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.”

9. In view of above observations, the plea of the respondent that they had given a declaration for completion of project by July, 2022 while registering the project with the Authority, is not tenable as the agreement between the parties was admittedly executed on 26.06.2012 and date given by the promoter to the allottee for handing over the possession of the flat was within 42 months plus extended period of six months i.e. upto 26.06.2016. Therefore, the promoter cannot take the benefit of the completion date of the project 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 26.06.2012 shall be applicable according to which the possession of the flat on completion of the project was to be handed over up to 26.06.2016. The argument is accordingly repelled. To the same effect is 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.** alongwith connected appeals decided on 11.11.2021.

10. The representative of the respondent also raised the objection that there was an arbitration clause contained in 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.”

11. 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

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available before in any other forums. The argument is accordingly repelled.

12. Another objection taken on behalf of the respondent promoter was that as per clause 14(d) of the apartment buyer's agreement in case of delay in completion of the project the complainants could only seek compensation @ Rs.5/- per sq. ft. of the super built-up area per month and not in accordance with the provisions of the RERA Act. However, a close scrutiny of buyer's agreement dated 26.06.2012 executed between the parties leaves no manner of doubt that this clause for the entitlement of compensation to the complainant in case of the default by the promoter is not only arbitrary, one sided but also unconscionable because in the same buyer's agreement, if there is some delay on the part of the allottee in making the payment, a very harsh penalty of 24% interest could be levied for the period of default. Therefore, the said clause of payment of compensation @ Rs.5/- per sq. ft. of the super built-up area per month in case of delay by the promoter in completion of the project being one sided and unconscionable and thus would not be applicable and the complainants could claim compensation as per the provisions of the RERA Act. If any authority is needed reference in this behalf may be made to the authority of Hon'ble Supreme Court in **Pioneer**



Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, Civil Appeal No.12238 of 2018.

13. The argument on behalf of the complainants was that the complainants had almost paid the entire amount of sale consideration to the promoter for the sale of unit in question and fulfilled their obligations as per terms and conditions of the buyer's agreement, but the promoter failed to complete the project within the stipulated period as per buyer's agreement and the project had been unreasonably delayed for a period of more than 4 years without any justification and therefore the complainants had rightly exercised their right of withdrawing from the project and seeking compensation.

14. On the other hand, the argument on behalf of the respondent promoter was that project of the case in hand was already complete and partial completion certificate in respect of the project had already been obtained from the competent authority and thereupon offer of possession of the flat in question was made vide letter dated 22.06.2020 alongwith the demand notice but the complainants failed to make the balance payment due to the promoter and accept the possession and rather on flimsy grounds wanted to withdraw from the project, to which they had no right. The further contention was that as the default was on the part of

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the complainants in not making the balance payment as per the demand notice issued alongwith the offer of possession and therefore the complainants were not entitled to any compensation.

15. As has already been noticed that the complainants were allotted flat no.803 in the project of the case in hand for total sale consideration of Rs.62,90,530/- out of which the complainants had already paid sum of Rs.59,90,530/-, but the promoter failed to complete the project within the stipulated period as per buyer's agreement dated 26.06.2012 and the project had been delayed. It is also an admitted fact that respondent promoter failed to offer possession of the flat in question by the stipulated date i.e. 26.06.2016 and there had been prolonged and unreasonable delay of almost 4 years in offering the possession of the unit in question vide letter dated 20.06.2020. As per ratio of the authority of Hon'ble 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*** it was settled that if there had been delay for a period of more than two years in offering the possession of the unit in question from the stipulated date, right was vested in the complainant to

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withdraw from the project and seek his remedy under Section 18 of the RERA Act. To the same effect is the latest authority of the Hon'ble Apex Court in in ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others.*** In view of the aforesaid authoritative pronouncements of Hon'ble Apex Court, a right is vested in the complainants to withdraw from the project of the case in hand because of the failure of the respondent promoter in offering the possession of the flat in question for unreasonable period of 4 years without justification. In this view of the matter, the complainants could not be compelled by the respondent promoter to accept the offer of possession of the flat in question after unreasonable delay of 4 years. Once the complainants acquired the vested right to withdraw from the project due to the default of the promoter in offering the possession for unreasonable period I need not further dilate on the question as to whether the promoter could agitate that the complainants had also defaulted in making payment as per the demand notice sent with the offer of possession.

16. Even the Hon'ble Member of the Regulating Authority in the connected complaint inter parties on the same cause of action was also pleased to pass the order dated 23.02.2023 for refunding the paid amount to the

 complainants with the statutory interest holding that the

project got delayed due to the fault of the respondent promoter.

17. In view of the above discussion, it can be safely concluded that fault in the case in hand is squarely attributable to the respondent promoter, who failed to offer the possession of the flat in question within stipulated time and delayed the same for unreasonable period of almost 4 years and therefore the misconduct of the respondent promoter falls within the mischief of Section 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

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.”

The complainants therefore are entitled to compensation.

18. 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:

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(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

19. For determination of the entitlement of complainants 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

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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.”

20. 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.

21. Faced with this eventuality, the argument was advanced on behalf of the respondent promoter that complainants had already been granted the relief of statutory interest alongwith refund of the amount already paid, which is in the shape of compensation. Therefore, the complainants were not entitled to any further compensation. 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 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.

22. Though on behalf of the complainants compensation was sought for loss of the rental income under Section 72(b) of the Act, which they could have earned from the stipulated date of delivery of possession of the unit till date had the possession of the unit in question been delivered to the complainants, but we find that for an assumed rental income alleged in the pleadings no credible document had been placed on record by the complainants to indicate any such rental income of similar residential unit in the close vicinity of the project of the case in hand. On the basis of merely assumptions and vague pleadings no compensation can be allowed for the alleged loss of rental income.

23. Apart from the factors for determining 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 the unit in question, we are to consider the psyche of the Indian Society. Normally Indians are emotionally attached to own a property. They are prepared to spend major share of

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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 flat 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.

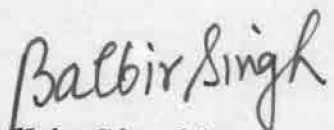
24. The Court can also take into account certain factors which are apparent in the natural course of the existing circumstances. Keeping in view the entire facts and circumstances narrated above, taking into account the amount paid by the complainants in respect of the purchase of the unit in question and the duration for which the project had been delayed for almost four years for which the complainants were deprived from the use of the said amount, which had been utilized by the promoter in commercial activities for generating the income and the complainants having been subjected to mental agony and harassment for having been made to wait for such a long period for owning residential property, amount of Rs.70,000/- is assessed as compensation in lumpsum by approximation. Apart from this, the complainants had to pursue two parallel litigations i.e. one before the Regulating Authority for seeking refund of



the amount paid alongwith interest and another before this Bench for seeking compensation and had to obtain legal assistance for pursuing the litigations, they are entitled to litigation expenses and in the circumstances of the case in hand, I assess the amount of compensation of Rs.25,000/- on that score.

25. In view of the above discussion, the complainants are held entitled to compensation to the tune of Rs.95,000/- from the respondent. The respondent is accordingly directed to pay the above said amount of compensation to the complainant within ninety days from the date of this order and the complaint is partly allowed.

Dated: 03.07.2024


(Balbir Singh)
Adjudicating Officer
RERA, Punjab