

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA
IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended

AND

IN THE MATTER OF

KULDIP SINGH KLER
(136054)

AND

VIRENDER KUMAR SHARMA
(133167)

CONSENT ORDER

RESPONDENT: Kuldip Singh Kler, representative, OMAX Realty Ltd.
Virender Kumar Sharma, representative, OMAX Realty Ltd.

DATE OF REVIEW MEETING: October 24, 2018

DATE OF CONSENT ORDER: October 24, 2018

CONSENT ORDER REVIEW COMMITTEE: L. Hrycan
S. Heath
E. Mignosa
R. Wong

ALSO PRESENT: E. Duvall, Chair
E. Seeley, Executive Officer
Patrick Gilligan-Hackett, Legal Counsel
for the Real Estate Council

PROCEEDINGS:

On October 24, 2018, the Consent Order Review Committee (“Committee”) resolved to accept the Consent Order Proposal (“COP”) submitted by Kuldip Singh Kler and Virender Kumar Sharma.

WHEREAS the COP, a copy of which is attached hereto, has been executed by Kuldip Singh Kler and Virender Kumar Sharma.

NOW THEREFORE, the Committee having made the findings proposed in the attached COP, and in particular having found that Kuldip Singh Kler and Virender Kumar Sharma committed professional misconduct within the meaning of section 35(1)(a) of the *Real Estate Services Act*, orders that:

1. Kuldip Singh Kler and Virender Kumar Sharma each be reprimanded;
2. Kuldip Singh Kler and Virender Kumar Sharma each pay a discipline penalty to the Council in the amount of \$1,500.00 within ninety (90) days from the date of this Order;
3. Kuldip Singh Kler and Virender Kumar Sharma each, at their own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course, as provided by Sauder School of Business at the University of British Columbia in the time period as directed by the Council; and
4. Kuldip Singh Kler and Virender Kumar Sharma each pay enforcement expenses to the Council in the amount of \$1,500.00 within sixty (60) days from the date of this Order.

If Kuldip Singh Kler or Virender Kumar Sharma fails to comply with any term of this Order, the Council may suspend or cancel their licence without further notice to them, pursuant to sections 43(3) and 43(4) of the *Real Estate Services Act*.

Dated this 24th day of October, 2018, at the City of Vancouver, British Columbia.

ON BEHALF OF THE CONSENT ORDER REVIEW COMMITTEE

“L. Hrycan”

Len Hrycan
Consent Order Review Committee

Attch.

**IN THE MATTER OF THE *REAL ESTATE SERVICES ACT*
S.B.C. 2004, c. 42 as amended**

IN THE MATTER OF

**KULDIP SINGH KLER
(136054)**

AND

**VIRENDER KUMAR SHARMA
(133167)**

CONSENT ORDER PROPOSAL OF KULDIP SINGH KLER AND VIRENDER KUMAR SHARMA

BACKGROUND AND FACTS

This Consent Order Proposal (the "Proposal") is made by KULDIP SINGH KLER ("Mr. Kler") and VIRENDER KUMAR SHARMA ("Mr. Sharma") to the Consent Order Review Committee ("CORC") of the Real Estate Council of British Columbia (the "Council") pursuant to section 41 of the *Real Estate Service Act* ("RESA").

For the purposes of the Proposal, Mr. Kler, Mr. Sharma, and the Council have agreed upon the following facts:

1. Mr. Kler (136054) has been licensed as a representative since 2001.
2. Mr. Sharma (133167)) has been licensed as a representative since 1998.
3. Mr. Kler and Mr. Sharma were at all relevant times licensed as representatives with OMAX Realty Ltd.
4. On May 19, 2015, the residential property located at XXXX – 148th St in Surrey, B.C. (the "Property") was listed for sale by Mr. Kler and Mr. Sharma acting as designated listing agents.
5. According to the New Homes Registry on the BC Housing website, the Property is an "owner-built" home, with a date of first occupancy of April 8, 2013.
6. Pursuant to the *Homeowner Protection Act* SBC 1998, within the first 10 years after initial occupancy, the owner-builder or any subsequent owner is required to provide a disclosure notice known as an Owner Builder Disclosure Notice ("OBDN") to any prospective

purchasers. The OBDN must be provided prior to entering into a purchase and sale agreement. It informs prospective purchasers: (1) that the home was built under an "Owner Builder Authorization" issued by the Homeowner Protection Office; (2) the date the 10-year period started; and (3) whether there is a voluntary policy of home warranty insurance in place.

7. As the Property was listed for sale within the 10-year period, the seller was required to provide an OBDN to a prospective buyer prior to entering into a contract of purchase and sale.
8. On August 10, 2015, a contract of purchase and sale was entered into for the Property, and included the following terms: a purchase price of \$848,000; a deposit of \$25,000 to be paid upon subject removal; a subject removal date of August 18, 2015; a completion date of September 28, 2015. The seller did not obtain or provide to the buyer an OBDN prior to entering into the contract.
9. On August 18, 2015, the subjects were removed.
10. The OBDN was issued on September 19, 2015.
11. Mr. Kler attempted to send a copy of the OBDN to the buyer's agent by email on September 19, 2015. The buyer's agent denies receiving the OBDN from Mr. Kler on that date, and denies receiving any email from Mr. Kler on September 19, 2015 at all. In any event, neither Mr. Kler nor Mr. Sharma followed up with the buyer's agent to confirm delivery of the OBDN before closing.
12. The sale completed on September 28, 2015.
13. The buyer did not receive a copy of the OBDN until September 7, 2017.
14. A Notice of Discipline Hearing was issued on May 24th, 2018 and served on Mr. Kler and Mr. Sharma.
15. Mr. Kler has no prior discipline with the Council.
16. Mr. Sharma has no prior discipline with the Council.

PROPOSED FINDINGS OF MISCONDUCT

For the sole purposes of the Proposal and based on the Facts outlined herein, Mr. Kler and Mr. Sharma propose the following findings of misconduct be made by the CORC:

1. Mr. Kler committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - a. When acting as listing agent of the property located at XXXX – 148th St in Surrey, which was a new home built by an owner-builder pursuant to the *Homeowner*

Protection Act, he failed to ensure that an OBDN was provided to the buyer as required by section 21(2) of that *Act*, contrary to section 3-3(a) (best interests of the client) and section 3-4 (reasonable care and skill) of the Rules.

2. Mr. Sharma committed professional misconduct within the meaning of section 35(1)(a) of the RESA in that:
 - a. When acting as listing agent of the property located at XXXX – 148th St in Surrey, which was a new home built by an owner-builder pursuant to the *Homeowner Protection Act*, he failed to ensure that an OBDN was provided to the buyer as required by section 21(2) of that *Act*, contrary to section 3-3(a) (best interests of the client) and section 3-4 (reasonable care and skill) of the Rules.

PROPOSED ORDERS

Based on the Facts herein and the Proposed Findings of Misconduct, Mr. Kler proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

1. Mr. Kler be reprimanded.
2. Mr. Kler pay a discipline penalty to the Council in the amount of \$1,500 within ninety (90) days of the date of this Order.
3. Mr. Kler, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division, Sauder School of Business at the University of British Columbia within the time period directed by the Council.
4. Mr. Kler pay enforcement in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
5. If Mr. Kler fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Kler's licence without further notice to Mr. Kler.

Based on the Facts herein and the Proposed Findings of Misconduct, Kuldip Singh Kler proposes that the Notice of Discipline Hearing in this matter be resolved through the following Orders being made by the CORC, pursuant to section 43 of the RESA:

6. Mr. Sharma be reprimanded.
7. Mr. Sharma pay a discipline penalty to the Council in the amount of \$1,500 within ninety (90) days of the date of this Order.
8. Mr. Sharma, at his own expense, register for and successfully complete the Real Estate Trading Services Remedial Education Course as provided by the Real Estate Division,

Sauder School of Business at the University of British Columbia within the time period directed by the Council.

9. Mr. Sharma pay enforcement in the amount of \$1,500 within sixty (60) days from the date of this Consent Order.
10. If Mr. Sharma fails to comply with any of the terms of this Order, a Discipline Committee may suspend or cancel Mr. Sharma's licence without further notice to Kuldip Singh Kler.

ACKNOWLEDGEMENTS AND WAIVER OF APPEAL RIGHT

1. Mr. Kler and Mr. Sharma acknowledge and understand that the Council may refer or decline to refer the Proposal to the CORC. If the Proposal is referred to the CORC, it may be accepted or rejected by the CORC. If the Proposal is rejected by the CORC, the matter may be referred to a disciplinary hearing.
2. Mr. Kler and Mr. Sharma acknowledge that they have been urged and given the opportunity to seek and obtain independent legal advice with respect to the disciplinary process, the allegations contained in the Notice of Discipline Hearing, and the execution and submission of the Proposal to the CORC; and, that they have obtained independent legal advice or have chosen not to do so, and that they are making the Proposal with full knowledge of the contents and the consequences if the Proposal is accepted.
3. Mr. Kler and Mr. Sharma acknowledge and are aware that the Council will publish the Proposal and the Consent Order or summaries thereof in its Report from Council newsletter, on the Council's website, on CanLII, a website for legal research and in such other places and by such other means as the Council in its sole discretion deems appropriate.
4. Mr. Kler and Mr. Sharma acknowledge and are aware that the Superintendent of Real Estate has the right, pursuant to section 54 of the RESA, to appeal any decision of the Council, including any Consent Order made by the Council in relation to this matter.
5. Mr. Kler and Mr. Sharma hereby waive their right to appeal pursuant to section 54 of the RESA.
6. The Proposal and its contents are made by Mr. Kler and Mr. Sharma for the sole purpose of resolving the Notice of Discipline Hearing in this matter and do not constitute an admission of civil liability. Pursuant to section 41(5) of the RESA, the Proposal and its contents may not be used without the consent of Mr. Kler and Mr. Sharma in any civil proceeding with respect to the matter.

"K. S. Kler"

KULDIP SINGH KLER

Dated_4th__ day of __September_, 2018

Signature of Kuldip Singh Kler witnessed on the
above date by

"A. Moses"

Witness Name (*Please Print*)

"A. Moses"

Witness Signature

VIRENDER KUMAR SHARMA

Dated____ day of _____, 2018

Signature of Virender Kumar Sharma witnessed on
the above date by

Witness Name (*Please Print*)

Witness Signature

"V. K. Sharma"

KULDIP SINGH KLER

VIRENDER KUMAR SHARMA

Dated ___ day of _____, 2018

Dated 31st _ day of __August__, 2018

Signature of Kuldip Singh Kler witnessed on the
above date by

Signature of Virender Kumar Sharma witnessed on
the above date by

Witness Name *(Please Print)*

"D. Fuller"

Witness Name *(Please Print)*

Witness Signature

"D. Fuller"

Witness Signature