

**BEFORE THE CHAIRPERSON, REAL ESTATE REGULATORY
AUTHORITY, PUNJAB**

Date of Decision 04.12.2018

Complaint No.GC-1004 of 2018

1. Kavish Singla, House No.3273, Sector 23-D, Chandigarh-160023.

Complaint No.GC-1013 of 2018

2. Sushma Singla, House No.593, Sector 7, Panchkula-134109

....Complainants

Versus

Estate Officer, the Punjab Urban Planning & Development Authority, GLADA Complex, Ferozepur Road, Near Westend Mall, Ludhiana-141001

.... Respondent

Present : Complainant in person
Shri Bhupinder Singh, Advocate for respondent.

ORDER

The above complaints will be decided by a single order since identical points of law are involved in each of these. Even on facts, the difference between the two cases, as the following table shows, is insignificant and does not affect the merits of the case at all:

Name of allottee/ complainant	Size of allotted plot (Sq. Yards)	Date of application	Date of issue of LOI	Date of allotment	Amount deposited
Kavish Singla	400	27.11.12	22.03.13	29.08.15	8,50,000
Sushma Singla	200	27.11.12	12.03.13	20.10.15	4,25,000

2. The main contention in the complaints is that the respondent had not issued possession letter within the stipulated time, even though due instalments had been paid. It is alleged that the respondent had made no attempts to carry out the development works at the site, and hence the complainants were no longer interested in retaining the allotment.

3. Notice of the complaint was served upon the respondent, who appeared, and filed a reply. The main contention in the reply is that the complainants had violated the conditions of the allotment, and had not paid any money other than the 25% deposited before the issue of allotment letter. It was also pointed out that the respondent had provided basic amenities and facilities at the site, and setting up of school and dispensary etc. would be completed when a substantial number of allottees started living at the site. It is also contended that there was an arbitration clause in the brochure, letter of intent, and allotment letter; and hence the complainants were disentitled from seeking relief under the Real Estate (Regulation and Development) Act, 2016.

4. When the matter was taken up for arguments, both sides reiterated the contents of the complaints and the reply respectively. It was pointed out that the complainants had applied for allotment of a plot in November 2012, and letters of intent were accordingly issued in March 2013. Thereafter on payment of 25% of the price of the plot, letters of allotment was issued in August 2015 and October 2015 respectively. However, possession of the site had still not been handed over, and the respondent, therefore, was in serious breach of its obligations.

Further, there was no indication in the reply about when possession would be delivered to the complainants; and hence they were entitled to withdraw from the allotment, and seek refund of their money with interest thereon.

5. Counsel for respondent contended that they had defaulted in payment of the due instalments, and hence had not approached the Authority with clean hands. The respondent had however, accepted the application for refund of the money deposited, and allowed the refund after deducting the administrative charges of 10% as per the rules of the organization. Hence, the relief claimed by complainants had already been allowed, and complaints were liable to be dismissed, counsel concluded.

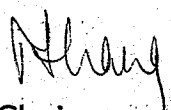
6. I have considered the rival contentions carefully. To my mind these cases are examples of both the complainants and the respondent being in default of their legal obligations. After the allotment letter was issued to the complainants in August 2015, it was specified that next instalments would be due in September 2016, March 2017, September 2017, and so on. However, the complainants have not made any further deposit at the stipulated times. Their contention is that they did not do so because the possession had not been delivered to them. They have however not produced any such document which stipulates that payment of instalments could be withheld if possession was not offered. Rather, it can be argued it is only when allottees continue to pay their instalments at the stipulated intervals that the promoter would be able to complete the development works in time. On the other hand, the respondent has also failed to

deliver possession within time stipulated in the allotment letter i.e within 90 days of its issue. In view of this failure, the complainants are still within their rights to withdraw from the transaction, and claim refund of their money. During arguments, counsel for the respondent submitted that refund had already been allowed after deducting 10% of the amount deposited as per the rules of the respondent's organization. The complainants countered this plea, and claimed that the entire amount deposited should be refunded along with payment of interest.

7. From the above, it is clear that both sides have been unable to keep their part of the bargain. In the circumstances of the case, therefore, these complaints are partly accepted, and it is ordered that the entire amount of money deposited by complainants be refunded to them without any deduction. However, since the complainants have also been in default in payment of due instalments, the claim for payment of interest is declined. The due amount may be refunded to the complainants within 2 months of the date of receipt of this order.

A copy of this order be placed in the connected file.

Announced.


Chairperson
Real Estate Regulatory Authority
Punjab