

**BEFORE THE
REAL ESTATE REGULATORY AUTHORITY, PUNJAB
AT CHANDIGARH**

File No. 119/M(SG)
1400 OF 2019
Date of filing: 23.09.2019
Date of decision: 07.01.2020
PBRERA-ASR02-PR0169

Mehak Aggarwal R/o House No. 21, Phase-2, Urban Estate Patiala, Patiala, Punjab-147002

...Complainant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Green Avenue, Amritsar Punjab-143001.

...Respondent

Present: Sh. Dinesh Kumar Bansal, Authorized Representative (father-in-law) of the complainant.
Sh. Bhupinder Singh, Advocate for the respondent.

ORDER

The present complaint was filed on 23rd September, 2019 by Mehak Aggarwal (hereinafter referred as "Complainant") against Punjab Urban Planning and Development Authority (PUDA) (hereinafter referred as "Respondent") in respect of Plot No.407 measuring 500 Sq. Yards under General Category at Guru Ram Dass, Urban Estate, Amritsar. The complainant had alleged that Letter of Intent was issued to her vide No EO-PUDA-ASR-2016/8809 Dated 27.04.2016 and the tentative price of the plot were fixed for a sum of Rs.90,00,000/- at the rate of Rs.18000/- per Sq. Yards besides 2% Cancer Cess was also payable towards the price of the plot. The possession of the plot was to be handed over to the complainant within 90 days from the date of issuance of the allotment letter. As per terms of para 3.1(i) of the allotment letter, the complainant deposited a sum of Rs.22,50,000/- which was adjusted towards the initial 25% of the price of the plot. Remaining amount of Rs.67,50,000/- being 75% was required to be paid either in lump sum with 5% rebate on the balance 75% within 60 days from the issue of allotment letter or in 6 half-yearly equated installments @ 12% per annum interest, as per schedule given in the para 3.2 (i) of the allotment letter. Subsequently, on the request of the complainant, the schedule for installments was revised and one-year moratorium was granted to the complainant. However, the installments were payable alongwith interest as mentioned in the revised schedule vide letter No. 26435 Dated 29.12.2016. Also, in the meanwhile, a revised layout plan of the said project was approved by the Competent

Authority and the respondent relocated the plot of the complainant from 407 (old plot no.) to 454 measuring 500 sq. meters with the consent of the complainant.

The complainant had alleged and referred to the speaking order dated 20.09.2018 passed by Chief Administrator, PUDA, SAS Nagar and orders passed by this bench of Authority in GC No. 10142018 dated 27.11.2018, vide which she was first directed to deposit pending installments without interest and then take up pending grievances with PUDA and in case of non-redressal of grievances, to file a fresh complaint with RERA. For ready reference, the relevant extract of the orders passed in GC No. 10142018 (supra) is reproduced herewith:-

“...The authorized representative of the respondent informed that the complainant has so far only paid the initial 25% amount and has defaulted in respect of 3 installments as per the revised schedule for payment of the installments. He further informed that PUDA has already, by way of a speaking order dated 20.09.2018, waived off interest leviable on the installments towards the balance 75% of the amount which was required to be deposited by the allottees in 6 equated installments. He further informed that the complainant should deposit the delayed installments, without the interest and thereafter if any grievance is still pending, then he can make a representation, which shall be promptly re-dressed on merits.

In view of the reply of the respondent and the fact that the complainant has defaulted in regards to 3 installments, despite the payment schedule having been revised, the complaint is dismissed. The complainant is directed to deposit the 3 pending installments, without interest, and thereafter takeup any pending issue with the competent officer of the authority (PUDA). In case of non redressal of the same, he shall be free to file a fresh complaint which shall be decided on its merits....”

Now, she has submitted that she has deposited the installments due from 27.10.2017 to 27.10.2019 without interest @ Rs 1125000/- per installment totaling to Rs.5625000/- vide receipt number-5816 dated 23.07.2019 but the development works at the site have still not been completed. She also made a representation dated 30.07.2019 to the respondent by making prayer to pay simple interest on 25% amount of Rs.22,50,000/- which was deposited by her initially before issuance of allotment letter and interest on Rs.5625000/- which has been deposited by her in 5 equated installments till 23.07.2019 and not to charge any type of interest on installment or penal interest or surcharge from her till the offer of possession. Despite making representation to offer her physical possession of the allotted plot alongwith interest,

neither a response was received from the respondent nor has any offer of possession been made till date.

Accordingly, the complainant has now filed fresh complaint seeking the following reliefs:-

“Keeping in view the above submission, Not completing developmental works even after more than 3.5 years and not offering the possession till date, Not replying to my representation dated 07.05.2018 and not resolving my grievances till date, Not replying and resolving my grievances requested vide my representation dated 30.07.2019 even after 50 days, In terms of PUDA speaking orders dated 20.09.2018 and also in the light of RERA Punjab orders dated 09.04.2019 under similar complaint GC Number 10852018 ordering PUDA to Pay simple interest @ 12 percent, I request RERA Punjab to pass an order in my similar case also by ordering PUDA to compensate me in the following ways.

(1) Pay me the simple interest immediately @ 12% per annum on my initial 25 % deposit of Rs 2250000/- FROM THE DATE OF DEPOSIT UP TO CURRENT DATE

(2) Pay me at the time of offer of possession the Simple interest @ 12% per annum on my initial 25 % deposit of Rs 2250000/- FROM THE CURRENT DATE UP TO THE DATE OF OFFER OF POSSESSION

(3) Pay me at the time of offer of possession the Simple interest @ 12 % on my deposit of Rs 5625000/- which has been deposited by me vide PUDA Amritsar receipt number-5816 dated 23.07.2019 FROM THE CURRENT DATE UP TO THE DATE OF OFFER OF POSSESSION.

(4) Not to charge any type of interest on installments or Penal interest or surcharge from me till the offer of possession is made to the applicant.”

Counsel for the respondent filed his detailed reply on 09.12.2019. Today both the parties came present and authorized representative for the complainant submitted that he is not filing any rejoinder and requested to argue the matter.

As per the reply submitted by the respondent on 09.12.2019, the respondent has nowhere controverted the facts mentioned in the complaint in regards to payments made by the complainant. At the time of allotment, the respondent was fully aware of the factors which could contribute towards the delay in the completion of the project. It was very much within the scope of the respondent to give a more reasonable date for completion of the development and defer the payments to be made by the allottee but the respondent still chose to offer a date on which he has failed to complete its development

and offer possession. The respondent could not satisfactorily explain the reasons for the same and till date no offer of possession has been made.

The counsel further stated that as provided Clause 6 Possession and Ownership of the allotment letter, even if PUDA does not make a specific offer for possession, the same is deemed to be offered on the completion of the development works at site or 90 days from the date of issuance of the allotment letter. If possession is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the expiry of the date. This proviso has been inserted as a one-sided condition imposed by the promoter in their allotment letter on which the allottees have been forced to sign as they have no choice to change any of the conditions for the fear of cancellation of allotments. The Hon'ble Supreme Court of India in **Civil Appeal No. 12238 of 2018 with Civil Appeal No. 1677 of 2019** has held in para 6.7 & 7 as under:-

“6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder.

The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent-Flat Purchaser. The Appellant- Builder could not seek to bind the Respondent with such one-sided contractual terms.”

The allotment letter, in this case, is also one-sided in respect of deemed possession. Accordingly, the said argument of the counsel for the respondent is hereby rejected.

In this case, it is clear that the respondent has failed to offer possession of the apartment within 90 days from the date of allotment letter (27.10.2016) as till date no offer of possession has been made by the respondent, despite representation by the complainant on 30.07.2019, which reveals that the respondent has caused delay in offer of possession of approximately 2 years 11 months and 10 days till the date of this order.

Based on the merits of the case and the facts as discussed above, the following is ordered:-

1. As provided in section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest on initial payment of 25% w.e.f. 27.01.2017 i.e. the date by which possession was promised to be offered, as per State Bank of India highest marginal cost of lending rate + 2% till the date of this order. This amount shall be paid within 60 days of this order.
2. As provided in section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest on the payment of 75% from the date of payment of respective installments, as per State Bank of India highest marginal cost of lending rate + 2% till the date of this order. This amount shall be paid within 60 days of this order.
3. In the second part, as provided in section 18 (1) para two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest to the complainant from the date after the date of this order, till the date of offer of possession of the flat to the complainant as per State Bank of India highest marginal cost of lending rate + 2%.
4. The complainant will pay the remaining installment(s), if any, to the respondent, as per the schedule of payment or at the time of offer of possession, as the case may be.
5. The complainant is not entitled to any separate compensation as provided in Section 18(1) as he has sought the relief of possession and not refund and withdrawal from the project.

The complaint is accordingly disposed off. File be consigned to record room and copy of the order be provided, free of cost, to both the complainant and the respondent.

Chandigarh
Dated: 07.01.2020


(SANJIV GUPTA)
Member
RERA, Punjab