

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

Tr. GC of M-II/1519/ File No.70/M(SG)

GC No. 15082019

Date of filing: 06.01.2020

Date of decision: 28.07.2020

PBRERA-JAL33-PM0077

1. Om Parkash
2. Pawan Kumar
3. Seema
4. Dimple

All r/o New Parkash Avenue, Kapurthala, Punjab -144601

...Complainant(s)

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan,
Sector 62, SAS Nagar (Mohali) -160062.

...Respondent

Present:- Ms. Manju Goyal, Advocate alongwith Sh. Ved Parkash, Authorized
Representative for the complainant.

Sh. Balwinder Singh & Sh. Bhupinder Singh, Advocates for the respondent.

ORDER

The present complaint U/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'Act') was filed on 06th January, 2020 by Sh. Om Parkash (hereinafter referred as "Complainant No. 1"), Sh. Pawan Kumar (hereinafter referred as "Complainant No. 2"), Ms. Seema Kumar (hereinafter referred as "Complainant No. 3") & Ms. Dimple Kumar (hereinafter referred as "Complainant No. 4") against PUDA (hereinafter referred as "Respondent") in respect of a commercial S.C.O. in the project titled as Old Jail Site, Distt. Jalandhar.

The complainant(s) filed the present complaint on 06.01.2020 alleging that they participated in auction, in response to a brochure issued by PUDA, advertising the proposed auction in respect of both residential and commercial sites at Jalandhar on 18th November, 2016. Some of the important feature in respect of "price and mode of payment" as mentioned in the brochure (attached as C-1) are reproduced below:-

1. 7.a. No interest will be charged from the allottees till the offer of possession/deemed possession.

- b. Possession is likely to be offered within one year of the auction.
2. Possession against 25% payment was mentioned on the first page of brochure.

They further stated that commercial SCO measuring 147 sq. yards was purchased by way of a successful bid @ Rs.1,10,000/- per sq. meter at a total price of Rs.1,61,70,700/-. The complainant(s) made the required payment of 25% of the auction price amounting to Rs.40,42,500/- within 30 days of the auction and the respondent issued an allotment letter No.254 Dated 22.03.2017. The auction was held, based on the terms and conditions as mentioned in the brochure but the respondent issued an allotment letter containing condition which were contrary to what was mentioned in the brochure. Some of which are as follows:-

1. The balance amount of Rs.1,21,27,500/-, being 75% of the price of plot was demanded by way of installments alongwith interest @ 12% added to each of the installments.
2. The possession of the plot was proposed to be handed over to the allottee within 90 days of the issue of allotment letter instead of one year mentioned in the brochure
3. There is no reference to handing over possession on the payment of 25% payment which was duly made within 30 days of the auction.

This complaint was initially entrusted to Sh. J.S. Khushdil, then a Member of the Authority but was transferred to this bench on account of his retirement. The Authority, on 14.07.2020 decided that hearing in all cases relating to complaints U/s. 31 are being adjourned w.e.f. 15.07.2020, in public interest and shall be resumed w.e.f. 17.08.2020 and in case any party wishes to have a matter heard early, the reasons for seeking an out-of-turn hearing be submitted. The complainant made a request for early hearing for this case, which was allowed. She also submitted that no rejoinder is being filed in this case. Accordingly, matter was listed for today.

Today both the parties came present and made their submissions. Both the parties were heard. Counsel for the complainant(s) referred a copy of the revised policy No.29502-508 dated 31.12.2015 of PUDA in regards to the subject "*Auction of undeveloped sites- Exemption from payment of Interest till possession*", (annexed as C-VII with the complaint). This policy clearly stipulates that no interest shall be charged from the allottees till the site is ready for possession. Counsel for the complainant(s) argued that the allotment letter issued on 22.03.2017 is not only contrary to the brochure issued for attracting the buyers during auction but also in contravention of the instructions of PUDA

itself. The counsel further argued that offer of possession was made by the respondent vide No. 9226-27 Dated 26.08.2019, after a delay of almost 3 years, a fact admitted by the respondent in written reply at Para No. 19 on Page No.9 which states that *“That the possession of the site could not be delivered as per schedule given in the allotment letter due to some technical reasons as well as due to non-payment of instalments as per the schedule by the allottees like the present complainant(s). However, after completing the development works relating to water supply, electrical and roads, possession of the site is deemed to have been delivered to the complainant(s) vide letter dated 9226 dated 26.08.2019 (Annexure R-6).”*

The counsel for the complainant(s) further referred to the summary of the account statement submitted, which is reproduced below:-

Sr. no.	Date	Total
1	18.11.2016	1940400.00
2	14.12.2016	2426000.00
3	16.05.2017	1516000.00
4	17.11.2017	1516000.00
5	16.05.2018	1516000.00
6	15.11.2018	1516000.00
7	17.05.2019	5479000.00
TOTAL PAYMENTS MADE		15909400.00

He argued that the complainant(s) have made all payments within the stipulated period, as per the payment plan specified in the allotment letter and have not made the payment of interest as per conditions mentioned in the brochure & the policy of 2015. He argued that in view of the conditions mentioned both in the brochure as well as the revised policy of 31.12.2015 of PUDA, no interest is chargeable till the site is ready for possession. Hence, he averred that the respondent should revise the demand for the balance amount based on its own policy & brochure. The complainant(s) sought the relief of immediate handing over possession and providing a fresh time frame of 3 years for construction from the new date of possession. Also sought the relief of refund of interest charged prior to providing the basic amenities and also payment of interest for delayed period as provided in the Act & Rules made thereunder.

Counsel for the respondent referred to his reply and argued that the present complaint is not maintainable in form M in view of the Sandeep Mann Vs. RERA and others order of Real Estate Appellate Tribunal Punjab dated 27.02.2019 in Appeal Nos. 53 to 56 of 2018; 44 to 48 of 2018; 11 to 15 of 2018 and 21 of 2018 and is required to be adjudicated by the Adjudicating Officer. Since, the complainant has sought the relief of possession and interest for delay in handing over possession the complainant is only

entitled to relief of interest for the delayed period which does not fall within the jurisdiction of Adjudicating Officer. For ready reference Section 18 (1) Para 2 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'Act'), is reproduced below:-

“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.”

Accordingly, argument regarding maintainability of the complaint before the Adjudicating Officer is hereby rejected.

The respondent has admitted delay in offering possession of the plot due to some technical reasons but could not provide any justifiable reasons. He also admitted that after completion of development works the possession was offered/delievered to the complainant on 26.08.2019 (annexure R-6 of the reply).


The respondent accepted the revised policy of PUDA dated 31.12.2015 (annexure C-VII of the complaint) in respect to non-charging of interest till possession is handed over and also could not give any justification regarding unilaterally changing the terms and conditions of the brochure (annexure C-I of the complaint) while issuing the allotment letter (annexure C-2 of the complaint). He also could not explain the reasons as to why the period of possession was changed from 1 year to 90 days.

Based on the above, the following can be concluded:-

1. The brochure before the auction clearly stated that no interest shall be charged from the allottees till the offer of possession/deemed possession.
2. Possession was proposed to be offered within 1 year, as per the brochure.
3. Possession was to be given 25% against the payment.
4. The revised policy in regards to “auction of undeveloped sites-exemption from payment of interest till possession” clearly stipulated that no interest shall be charged from the allottee till the site is ready for possession.

5. The respondent unilaterally reduced the period for possession of plot from 1 year to 90 days without taking into consideration the actual progress of the development works at the site.
6. The respondent made an offer of possession on 26.08.2019 i.e. almost 2 years and 9 months after the date of auction and approximately 2 years 5 months after the date of issuance of allotment letter with specified possession to be handed over within 90 days. The respondent has been issuing notices for payment of balance amount based on calculation of interest on all the installments as mentioned in the allotment letter although the complainant(s) claims that they had made the entire payment (after claiming 10% rebate on the balance amount) by 17.05.2019.


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

- i. The respondent shall hand over possession of the plot within 30 days of this order without any demand for payment of interest from the allottee subject to the condition that the principal amount, claimed to have been paid by the complainant (s) (after 10% discount of balance amount) actually tallies with the principal amount of Rs.1,61,70,000/- as per the allotment letter.
- ii. No interest shall be payable by the complainant(s) in respect of instalments of the plot as per the revised policy of PUDA dated 31.12.2015 and terms and conditions mentioned at point no. 7 under the heading price and mode of payment of the brochure.
- iii. Interest paid by the complainant(s), if any, shall be refunded to them.
- iv. The respondent shall pay interest as provided in section 18 (1) proviso two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 w.e.f. 17.05.2019 i.e. the date on which complete payment of principal amount was made till 26.08.2019 i.e the date by which offer of possession was made.
- v. The complainant(s) shall take over possession within 15 days of issuance of NDC by the respondent based on this order. 

- vi. The period of 3 years for construction shall be calculated from 26.8.2019 i.e. the date by which offer of possession was made to the complainant(s).
- vii. No other relief is awarded.

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

Chandigarh
Dated: 28.07.2020


(SANJIV GUPTA)
Member **28/07/20**
RERA, Punjab