

Ashish Gupta

Vs.

PUDA

RERA Regn .No. PBRERA-JAL33-PM0077

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

Sh. Bhupinder Singh, Advocate for the respondent.

Counsel for the complainant submitted that the complainant applied for a Residential Plot No. 44 (F.P.) measuring 222.92 sq. mtrs. in auction held on 21.04.2016 and he was allotted Plot no. 44 (F.P.) @ 49000/- per sq. mtr. and the total price of plot was 1,08,78,496/-. She further submitted that complainant made an initial payment of 25% i.e. Rs.27,19,624/- before issuance of allotment letter No.EO-PUDA-Jal-A2-2016/1433 Dated 17/08/2016 and till date the complainant had made a payment of Rs. 1,10,66,662/- in total. She further alleged that in a meeting of the state government, the current policy for sale of sites through draw of lots/auction after inviting application from public was convened and it was fixed that "No interest must be charged till be possession of the plot is given to the allottee" and "No possession in such cases must be given to the allottee until and unless all the basic amenities i.e. water supply, sewerage, roads, parking etc. wherever required is made". She also alleged that the complainant moved a representation to the respondent for handing over the possession of Residential Plot where he stated that the basic civil works have not been completed and the site is in an incomplete abandoned look. Also, alleged that there is no Completion Certificate or Occupancy Certificate available with respondent.

2. Upon notice, respondent contested the complaint and submitted his reply on 18.06.2020.

3. 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.

4. The complainant has the following reliefs in his complaint:-

- i. Handing over possession of the plot to the satisfaction of the complainant.
- ii. To provide fresh time frame of 3 years for constructions work from the new date of possession.
- iii. To refund interest charged prior to providing basic amenities.
- iv. Interest for every month of delay till handing over of possession.
- v. Any othe relief as deemed fit.

5. 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 Adjuiciating Officer is hereby rejected.

6. The complainant argued that he bought the plot in auction which was widely circulated by the PUDA by way of brochure and advertisements in the media. She invited attention to the proviso 7 of the brochure which is reproduced below:-

"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.*

In case the allottee fails to take possession of the plot/site within the stipulated period, it shall be deemed to have been handed over on the due date."

She accordingly, objected to demand for payment of interest as specified in the allotment letter, as she asserted that no interest was payable by the complainant till the possession of the same is offered by the respondent.

7. The respondent argued that as stated in his reply on page 8 at para 8 no interest has been charged from the complainant till the offer of possession. He invited attention to page 6 of the reply & quoted the relevant portion of the allotment letter in support of above assertion:-

"...No interest will be charged from the allottee, til the time of the possession of the site is offered. It is further clarified that if the possession can be given in 6 months, then the 1st instalment shall include interest for the remaining 6 months and if the possession can be given in 9 months, then the first instalment shall include interest for 3 months and if the development period is one year or more than no interest shall be charged with the first instalment..."

The counsel argued that the assertion of the complainant in regards to provisions of brochure being different from provision of allotment letter do not hold any ground as no interest has been charged from the complainant till the date of offer of possession. Further, he referred to Para 10 on Page No. 9 which states that not only the interest on instalments was not charged from the complainant till possession was offered but a rebate of 5% amounting to Rs.174833/- on the balance amount deposited by the complainant had also been given to him.

8. He further stated that the possession of the plot was offered on 26.06.2018 which was duly taken over by the complainant on 27.06.2018. The building plan of the complainant was sanctioned by the competent authority on 20.02.2019 and after completing the construction of the building on the plot, a Partial Occupation Certificate (POC) was granted on 18.10.2019. The No Due Certificate was issued on 11.09.2019 and

conveyance deed executed in favour of the complainant. Documentary evidence in regards to above assertions were submitted alongwith the reply.


9. The counsel for the complainant did not rebut the above assertions of the respondent and confirmed the facts and the documents submitted by the respondent.

Based on the above facts, the following is concluded:-

- i. The respondent has not charged any interest till offer of possession.
- ii. The offer of possession was made on 26.06.2018 and the same was taken by the complainant on 27.06.2018 without any protest.
- iii. The building plan was sanctioned on 20.02.2019.
- iv. The Partial Occupation Certificate was granted on 18.10.2019.

In view of above, the complaint is devoid of any merits as the possession has already been taken by the complainant almost 1 ½ years prior to filing of the complaint and even the construction has been completed with Partial Occupation Certificate having been duly issued by the competent authority. Hence, no cause of action as alleged in the complaint arises and the principal of estoppel shall apply as the complainant has already made all the payments and taken possession of the plot after which he has even completed the construction and is enjoying his property after obtaining Partial Occupation Certificate. The complaint is accordingly dismissed. File be consigned to record room and copy of order be provided, free of cost, to both the complainant(s) and the respondent.

Chandigarh
Dated: 28.07.2020


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