

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

Complaint No.GC 1263 of 2019
Date of Institution :04.04.2019
Date of Decision : 08.10.2020

Akhilesh Khanna s/o Shri D. Khanna House No.3299, Sector 19-D,
Chandigarh 160019

....Complainant

Versus

The Chief Administrator, Greater Mohali Area Development Authority, PUDA
Bhawan, Sector 62, SAS Nagar (Mohali), Punjab – 160062

.... Respondent

Present : Shri D. Khanna, Advocate for the complainant
Shri Bhupinder Singh, Advocate for the respondent

ORDER

The main allegation in this complaint, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) by complainant against the respondent, relates to delay in handing over possession of the plot in IT City, Mohali allotted originally to Shri Vikram Rai and thereafter transferred on 10.03.2017 in the name of the complainant. Accordingly, the main relief sought is payment of interest for the period of the delay.

2. Notice of the complaint was served on the respondent who has filed a detailed reply in the matter. Subsequently, a rejoinder was also filed on behalf of the complainant.

3. In the reply filed on behalf of the respondent the following legal issues have been raised:-

- i. The letter of intent contained a clause for arbitration in case of any dispute relating to the allotment. As such, the jurisdiction of this Authority was barred.
- ii. There was no condition in the letter of intent for payment of interest in case of any delay in handing over possession to the complainant.
- iii. A statutory remedy of appeal under Section 45 of the Punjab Regional and Town Planning and Development Act, 1995 was available to the complainant and he should have availed of it rather than filing the present complaint.

Apart from the above it has been admitted that there is some delay in delivering possession of the plot to the complainant but it is because of circumstances beyond the control of the respondent; and the complainant should not derive undue benefit from this situation.

4. Before the date of arguments Counsel for the respondent has placed on record a copy of allotment letter dated 15.06.2020 issued by the respondent in favour of the complainant. The same was taken on record.

5. When the matter was taken up on 15.09.2020 through video conferencing for arguments, Shri D.Khanna, Counsel for the complainant highlighted the main facts of the case. He pointed out that a Letter of Intent for allotment of a plot measuring 256.66 sq. yards was initially issued on 22.02.2017 to Shri Vikram Rai son of Shri Himmat Rai. This allotment was subsequently transferred in the name of the complainant on 10.03.2017 on

the same terms and conditions as applicable to the original allottee. Counsel further pointed out that against the total price of Rs.43.47 lakhs, the complainant and his predecessor-in-interest had already paid a more than Rs.52.09 lakhs to the respondent. He continued that Para 15 of the Letter of Intent provided that physical possession of the plot would be handed over within a period of 1 year i.e by 22nd February 2018. This period had lapsed long ago but possession has still not been delivered to the complainant. The respondent was therefore liable to pay interest at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 for the period of delay in handing over possession, he concluded.

6. Apart from the contents of the reply as noted in para 3 above, an additional point urged by the Counsel for the respondent during the arguments was that under Section 18 of the Act an allottee was entitled for payment of interest only if the promoter was not able to give possession of the plot in accordance with the terms of the Agreement for Sale entered into between the parties. In this case there was no such Agreement for Sale and hence the allottee was not entitled to seek payment of interest under this provision.

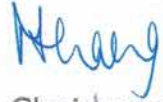
7. The respective contentions have been considered. At the outset it is held that none of the legal issues raised by the respondent have any merit. It has already been held in various orders that mere presence of an arbitration clause does not preclude the jurisdiction of this Authority. Further, the Act provides for payment of interest in case of delay in handing over possession and this legal right of an allottee cannot be defeated by the lack of such a provision in any document issued by a promoter. It is also seen the letter of intent clearly mentions that the allottee would be responsible for

payment of interest on the balance instalments and also for penal interest at the rate of 18% p.a. in case of delay in payments. Such one-sided arrangements have held to be illegal by the Supreme Court in '*Pioneer Urban Land & Infrastructure Ltd. Vs Govindan Raghavan*' (Civil Appeal No.12238 of 2018). Finally, the Act and its Rules only require that the matter pursued by a complainant should not be pending before any other court or authority. The complainant had certified to this effect in para 7 of their complaint. It was well within the complainant's right to decide which of the alternative remedies available to him should be pursued. The respondent's next argument that no interest is payable in this case since there was no Agreement for Sale entered into with the complainant is also devoid of merits. The respondent is a government agency and has issued not only a Letter of Intent but also a Allotment Letter in favour of the predecessor-in-interest which was later on transferred in favour of the complainant by the respondent on the same terms and conditions. Possibly, they do not follow the practice of executing an Agreement for Sale despite the legal stipulation to this effect. In any case the absence of this document cannot be allowed to defeat the accrued rights of the complainant. It is accordingly held that the arguments raised on behalf of the respondent are not valid; and there has been a delay on the part of the respondent in handing over possession of the plot to the complainant as agreed - in fact the delay has been admitted by respondent's counsel.

8. As a result of above discussion this complaint is accordingly accepted. In view of the nature of the functioning of the respondent a grace period of one year is allowed and the respondent is directed to pay interest at the rate prescribed in the Punjab State Real Estate (Regulation and Development)

Rules, 2017 as applicable from time to time with effect from 22.02.2019 till the actual handing over of possession. On his part the complainant is bound to take possession within the time stipulated in the Allotment Letter of 15.06.2020.

Announced



Chairperson
Real Estate Regulatory Authority
Punjab