

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

**GC No.15892020TR
Date of filing: 20.04.2020**

Date of decision: 21.05.2021

Manjit Singh, R/o #7, Sardar Nagar, Opposite Central Jail, Ajnala Road, Amritsar, Punjab-143001.

...Complainant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector 62, SAS Nagar (Mohali), Punjab-160055

...Respondent

Present:- Sh. Akhilesh Vyas, Counsel for the complainant.
Sh. Bhupinder Singh, Counsel for the respondent.

ORDER

1. The present complaint U/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'Act') was filed on 20.04.2020 by Sh. Manjit Singh (hereinafter referred as "Complainant") against PUDA (hereinafter referred as "Respondent") in respect of a residential plot No.50, measuring 256.67 sq. yards, allotted through draw held on 09.03.2016, in project titled as Guru Ram Dass Urban Estate, Airport Road, Jail Site Amritsar. The total price was fixed at Rs.46,20,060/- @ Rs.18000/- per sq. yards.

2. The complainant has claimed that after payment of 25% i.e. Rs.11,55,015/- as the initial payment, the respondent issued an allotment letter No. No.22351 Dated 27.10.2016. As per Clause 6(i) of the allotment letter, pertaining to "POSSESSION AND OWNERSHIP", it

is stated that the "i. *Possession of the plot will be given within 90 (ninety) days from the date of issue of allotment letter.*" However, as per the brochure published by the respondent, "*Possession on 25% payment*" was promised. The complainant has chosen the period of 90 days from the date of allotment letter, to calculate the promised date of possession which comes to 27.01.2017.

3. The complainant has alleged that he has not been offered possession of the plot so far as the development works have not been completed and the respondent is not in possession of the completion certificate. As per him, he has already paid 25% of the total amount. He has sought the following reliefs:-

- a. Respondent to hand over the possession after completing the development works.
- b. To refund the interest charged wrongly from him.
- c. To pay interest for the delay period as per provisions of RERA Act.
- d. Respondent to pay litigation expenses.
- e. To extend him the benefit of decisions taken by the respondent as a consequence of the directions issued by Hon'ble Punjab and Haryana High Court vide order dated 24.04.2018 in *CWP No. 9989 of 2018* titled "*Jaswant and Ors. Vs. State of Punjab and Ors*".

- f. Respondent to pay interest 12% or more as per the order of this Authority in GC No. 10842018 titled as "*Prem Nath Sharma Vs. PUDA*".

4. In response to the complaint, the respondent submitted his reply on 01.10.2020 in which he contested the issues raised by the complainant. The brief summary of reply is as follows:-

- i. Respondent accepted that after the initial payment of 10% at the time of application, the additional payment of 15% was paid by the complainant within the stipulated period of 30 days.
- ii. The allotment letter was issued on 27.10.2016.
- iii. The balance 75% was to be paid as per condition no. 3 of the allotment letter which was payable upto 23.10.2019 by way of instalments alongwith interest calculated @ 12% per annum.
- iv. The complainant failed to make timely payment of the above instalments as a result of which his allotment is liable for cancellation.
- v. The complainant was informed vide letter dated 19.09.2019 regarding an outstanding amount of 24,22,733/- upto 31.08.2019.
- vi. The possession of the plot is delayed due to technical and other reasons including non-payment of instalments by the complainant, as per the schedule.

vii. In view of the delay in handing over possession, the Chief Administrator, PUDA by way of a speaking order dated 20.09.2018, deliberated the reliefs to be granted as a consequence of the directions of Hon'ble Punjab and Haryana High Court vide order dated 24.04.2018 in *CWP No. 9989 OF 2018* in the matter of Jaswant Singh (*supra*). The operative part of the order is reproduced below:-


"therefore, in the facts and circumstances of this case, it is directed that no interest on the installments on balance 75% of the price of the plots be charged from the allottees till the site is ready for possession by completing development works and after completion of development, possession of plots is offered to the respective allottees."

The respondent stated that no decision had been taken to give interest on 25% basic amount deposited by the allottees for allotment of plots. A copy of the above order of Chief Administrator, PUDA has been submitted by the respondent alongwith his written submissions.

viii. The respondent also referred to a decision of the Empowered Committee that administers the OUVGL scheme (under which the land was given to

respondent for this project) taken on 15.05.2019. A copy of the same was submitted alongwith the reply, and it was contended that no relief beyond this policy would be admissible.

ix. It was also contended that in view of the provisions of Section 174 of the Punjab Reagonal and Town Planning and Development Act, 1995; and also the presence of an arbitration clause in the Letter of Intent given to the respondent on 12.05.2016, the jurisdiction of this Authority was barred. However these points were not urged at the time of arguments, presumably because these objections have already been rejected by us in a number of cases.

 x. The respondent subsequently filed a Misc. Application for permission to place on record a copy of the affidavit dated 15.11.2019 filed by the respondent before the Hon'ble Punjab and Haryana High Court in *CWP No. 20288 of 2018* titled as *Ranjit Singh Vs. State of Punjab*. The same was allowed.

5. The matter was argued on 16.04.2021 by respective Counsel of the complainant and respondent. The arguments of the complainant can be summarized as below:-

i. The complainant is entitled to Interest @12% on the initial 25% amount paid by him in the light of the decision taken in the meeting presided over by Addl.

Chief Secretary (Development) held on 02.01.2017, held as a consequence of the orders of the Hon'ble Punjab and Haryana High Court in CWP No. 4108 of 2016 titled as *Ram Krishan Vs. State of Haryana*. The operative part of the said proceedings (which were also relied upon by the Chief Administrator, PUDA while passing his speaking order dated 20.09.2018) is as follows:-

"The Department/Authority will be duty bound to complete all the development works at site in shortest period possible not extending more than 18 months. In case period of 18 months is elapsed and the possession is not handed over to the Allottee, simple interest of 12% will be provided to the allottee on the 25% amount which has been deposited by the allottee with the Authority/Deptt."

- ii. The complainant is not liable to pay any interest on the delayed payments as per the above decision of the Chief Administrator, PUDA as well as that of the Empowered Committee taken on 15.05.2019.

6. The respondent during his arguments raised the following issues:-

- i. The decision of the Chief Administrator, PUDA dated 20.09.2018 did not make any reference to payment of 12% interest to the allottees on the initial 25% amount deposited by them before issue of the

allotment letter. Similarly, the Empowered committee had also not provided this relief.

- ii. As per the decision of the Empowered Committee held on 15.05.2019, the allottees who had paid 25% initial amount but had delayed the payment of the installments would be liable to pay a penalty of 3% to 5%, depending on the length of delay as specified therein. Hence, the complainant was liable to pay this penalty amount on the delayed payment of installments.
- iii. The counsel also referred to the decision of the Empowered Committee to highlight that the benefit of waiver of interest @ 12% has already been granted to those who did not pay subsequent installments after paying the initial 25% amount.
- iv. The counsel also argued that since the matter is pending before the Hon'ble Punjab and Haryana High Court in the case of *Ranjit Singh (supra)*, the present complaint is not maintainable as the matter was *subjudice* but the complainant had failed to mention these proceedings. A decision dated 07.04.2021 of this Authority in GC no. 1489 Of 2019 and other connected matters was cited in this context.

7. Based on the written submissions and the pleadings, we are of the following view:-

- i. As per the brochure issued at the time of inviting applications, the front page clearly states "*possession on 25% payment*". However, on page 9 of the same brochure it was mentioned "*the possession of the said plot shall be handed over to the allottee after completion of development works at site or 18 months*


from the date of issuance of allotment letter, whichever is earlier".

- ii. Contrary to the above, the allotment letter issued on 27.10.2016 stated at Clause 6 that "*possession of the plot will be given within 90 days from the date of issue of allotment letter*". In view of the fact that allotment letter was issued subsequent to the brochure, the date of promised possession has to be read in relation to this letter. Accordingly, the relevant date of promised possession shall be 26.01.2017.
- iii. The respondent failed to complete the development activities. Further, the respondent has not made any offer of possession to the complainant at the time of this order.
- iv. The matter pending before the High Court of Punjab and Haryana vide *CWP No. 20288 of 2018* titled as *Ranjit Singh Vs. State of Punjab* does not relate in any manner to the subject matter of the present complaint as that writ has been filed by an allottee who had deposited the complete amount of the sale price, with interest thereon, and was seeking the refund of interest paid by him. The complainant in the present case has not made the entire payment and also seeks possession of the plot rather than refund. Hence the facts of, and the relief sought in, the two cases are different and the CWP pending in the High Court does not bar the jurisdiction of this Authority.
- v. In view of the fact that the respondent has failed to offer possession despite a delay of more than 4 years at the time of this order, the complainant is entitled to relief under the Proviso to Section 18 (1) of the Act as the complainant is seeking possession and does not

intend to withdraw from the project. We are of the view that the complainant is entitled to interest on the initial 25% amount of Rs.11,55,015/- paid by him as recommended in the meeting of 02.01.2017 .

8. Accordingly, the complaint is partly accepted and the respondent is directed to pay interest at the rate of 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) to the allottee on the amount of Rs 11,55,015/- w.e.f. 27.01.2017 till the date of delivery of possession.


(Sanjiv Gupta)
Member


(Ajay Pal Singh)
Member

9. I have perused the order of my colleagues but with due respect to their lucid exposition and reasoned findings I am unable to agree with the conclusions regarding the relief admissible to the complainant. They have ordered the payment of interest on the amount of 25% deposited by the complainant from 26.01.2017 till possession of the plot is handed over; and held that no interest is to be paid by him on account of the balance price being paid in installments. The other relief claimed, of payment of interest

by the respondent to her, has also been declined on the ground that the decisions dated 20.09.2018 of the CA, PUDA and of the Empowered Committee dated 15.05.2019 have denied this to the allottees of the project.

10. In order to appreciate the matter in its correct perspective it is necessary to recapitulate the sequence of events ultimately leading to the decision of the Empowered Committee. These are as follows:-

- i. The High Court of Punjab and Haryana vide its order dated 22.11.2016 passed in CWP No.4108 of 2016 expressed displeasure about the fact that government agencies were making allotment of plots etc. without completing the development works and providing due amenities and facilities. As a consequence of this judgement a Committee under the Additional Chief Secretary (Development) held its meeting on 02.01.2017 and one of its relevant recommendations is as follows:-

"The Department/Authority will be duty bound to complete all the development works at site in shortest period possible not extending more than 18 months. In case period of 18 months is elapsed and the possession is not handed over to the Allottee, simple interest of 12% will be provided to the allottee on the 25% amount which has been deposited by the Allottee with the Authority/Deptt."

- ii. The matter regarding delay in handing over possession of plots to the allottees under the present project was decided by the Chief Administrator, PUDA on 20.09.2018 in pursuance of the orders of the High Court dated 24.04.2018 in CWP No.9989 of 2018. The operative part of the order is that no interest would be charged on the installments to be paid regarding the balance

75% of the price of the plots till the possession was offered to the allottees after completing the development works.

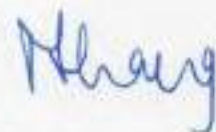
iii. The matter ultimately came up before the Empowered Committee which in its meeting on 15.05.2019 considered the situation that had arisen in relation to this very project, including the above order dated 20.09.2018, and decided as follows:-

- (a) Allottees who had paid the balance 75% of the sale price in lump-sum and had availed a rebate of 5% while doing so would be paid interest at the rate of 7% (12% - 5%) till possession was offered to them after completing the development works.
- (b) Allottees who had deposited the balance 75% in installments would be refunded the interest paid by them along with installments. In case of allottees who had not deposited the entire balance amount of 75% the interest levied on the installments paid by them would be adjusted against the principal amount still due from them.
- (c) Allottees who had deposited only 25% of the total amount and had delayed payment of the balance would not be liable to pay interest @ 12%, but only @ 3% if the delay was upto one year, 4% for delay upto 2 years, and 5% for delay upto 3 years.

11. The above sequence show that the problem being faced by allottee such as the present complainant has been considered by various agencies of the government at different times and a policy decision ultimately taken on by the Empowered Committee on 15.05.2019. In my view this Authority is not mandated to review or alter any decision of the Government or its agencies. The Government/ its agencies have the duty to respond to emerging situations and craft a response, and anybody dissatisfied with this

response has to approach a court of law, or other competent forum. This Authority has the mandate to decide disputes only between allottees and promoters of real estate projects. No doubt the parties here do fall within the definition of allottee and promoter laid down in the Act. However the dispute has already been looked into by a competent, lawful forum; and it would not be appropriate to judge the decision taken by it on the touchstone of the bare provisions of the Act. To do so would, in my opinion, deny space to legitimate efforts by a lawful intermediary to resolve an issue outside the adjudicatory process.

12. Thus I have to hold that the case of the complainant has to be dealt with only within the parameters of the policy decided by the Empowered Committee. It also has to held that the earlier decisions/recommendations of the other authorities have merged in the final decision of 15.05.2019. Under this policy him case is covered under the later part of serial no. (iii) (b) of para 11 above and he is entitled to only the relief outlined therein i.e the interest paid by him on the installments paid so far would be adjusted against the balance amount due from her.



(Navreet Singh Kang)
Chairperson

Order of the Authority (Chairperson dissenting)

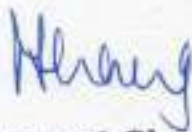
The complaint is partly accepted and the respondent is directed to pay interest at the rate of 9.30% per annum (today's highest MCLR rate of

7.30% plus 2%) on the 25% initial payment of Rs. 11,55,015/- to the complainant with effect from 27.01.2017 till possession is handed over to him after completion of development works.

Announced
Dated:21.05.2021



(Sanjiv Gupta)
Member



(Navreet Singh Kang)
Chairperson



(Ajay Pal Singh)
Member