

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

**File No. 126/M(SG)
GC No. 14922019
Date of filing: 12.12.2019
Date of decision: 01.06.2020
PBRERA-SAS81-PR0022**

Ramandeep Kaur w/o Gagandeep Singh R/o #2951, Sector 42-C, Chandigarh-160036.

...Complainant

Versus

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

...Respondent

Present:- Sh. Vinod Verma, Advocate for the complainant.
Sh. Bhupinder Singh, Advocate for the respondent.

ORDER

The present complaint was filed on 12th December, 2019 by Ramandeep Kaur (hereinafter referred as "Complainant") against Punjab Urban Planning and Development Authority (PUDA) (hereinafter referred as "Respondent") in respect of plot No. 60 measuring 400 Sq. Yards of General Category at Gateway-City, Sector 118-119, SAS Nagar. Letter of Intent was issued to her vide No PUDA-E.O.-Gateway City/2015/20041 dated 28.05.2015.

Allotment Letter was issued to the complainants vide No PUDA-E.O.-Supdt-2-(-238/118-119)/2016/37366 on 10.08.2016 and the tentative price of the plot was fixed for a sum of Rs.84,00,000/- (Rupees Eighty Four Lakhs only) at the rate of Rs.21000/- per Sq. Yard. In addition 2% Cancer Cess was also payable towards the total price of the plot. The possession was to be handed over to the complainants after the completion of development works at site or 18 months from the date of issuance of allotment letter, whichever is earlier. As per terms of para 3(i) of the allotment letter, the complainants had already deposited a sum of Rs.21,00,000/- which was adjusted towards initial 25% of the price of plot. Remaining amount of Rs.63,00,000/- was required to be paid either in lump sum without interest within 60 days from the issue of allotment letter (upto 10.10.2016) or in 6 equated half-yearly installments alongwith an interest @ 12% per annum upto 05th February, 2020, as per schedule given in the para 3 (iii) of the

allotment letter. Accordingly, complainants deposited an amount of Rs.59,85,000/- the balance amount within 60 days of the issue of the allotment letter and availed rebate of 5% on the total price of the plot.

Now, the complainant had alleged that as the allotment letter was issued on 10.08.2016, the possession of the plot was required to be handed over within 18 months from the date of issuance of allotment after completion of development work by 09.02.2018, but the same was not done. Accordingly, the complainant filed various applications/reminders dated 13.09.2018; 12.03.2019; 08.05.2019; 29.08.2019; 25.09.2019 and 27.11.2019 before the respondent and requested for the physical possession of the allotted plot. The complainant also alleged that before moving representation dated 08.05.2019 he came to know the plot no. allotted to the complainant is not feasible as the area is very deep, heaps of garbage are lying and there is no boundary wall and after knowing the situation he moved the representation alongwith photographs of the plot on dated 08.05.2019 before the respondent. But no response was received from the respondent's, nor any offer of possession has been made till date.

Accordingly, in view of delay in offering possession and other grievances, the complainant filed the present General Complaint before this Authority and have sought the following reliefs:-

"Relief Claimed: It is therefore humbly prayed that the complaint of the complainant may kindly be accepted and respondent be directed to :-

- A) *Give physical possession of the plot along with all the amenities, sewerage facilities etc and redress grievance regarding the sewerage discharge etc from the neighboring area coming on to his plot as shown in the photographs annexed with representation.*
- B) *Pay interest @ 18 % upon the total price of the plot, from the day of initial deposit as the respondent has violated the terms and conditions of the agreement and failed to give the possession in time, till the final possession of the plot.*
- C) *Litigation charges to the tune of Rs 1.00 Lac including the representations and filing of the present complaint.*

D) *Any relief which this Hon'ble Authority may pass or deem fit and proper in the interests of justice. The complainant reserves its right to file complaint for mental agony and harassment etc in separate form."*

The respondent submitted a reply to the complaint, as the complaint is not maintainable, since the project area to which it pertains had been granted a Partial Completion Certificate on 28.04.2017 i.e. prior to the notification of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the "Act"). He invited attention to the decision of the Authority in **Bikramjit Singh and Others, Complaint No. 3 of 2017**, of 13.12.2017 which held that the complaints against non-registered projects are not maintainable.

However, Real Estate Appellate Tribunal, Punjab vide its judgment dated 24.07.2019 in matter of *M/s. Silver City Construction Ltd. Vs. State of Punjab through Principal Secretary, Department of Housing and Urban Development and others* has held the following:-

- i. *Appeal No. 49 of 2018 is allowed and the impugned order dated 21.12.2017 (A-1) passed by the Real Estate Regulatory Authority, Punjab is quashed and set aside.*
- ii. *The proceedings of complaints No. 5 & 7 are remitted to the Real Estate Regulatory Authority, Punjab for decision on merits of the complaints.*
- iii. *The Real Estate Regulatory Authority, Punjab shall also decide the validity of the revisional order dated 04.03.2016 (A-2) on its own merits after hearing the rival parties.*
- iv. *The Full Bench judgment dated 13.12.2017 passed in complaint No. 3 of 2017 titled as "Bikramjit Singh and other Versus State of Punjab and others" holding that the complaints against promoters in relation to the projects that are not registered with Real Estate Regulatory Authority, Punjab are not maintainable is declared as no longer good law with reference to para 41(2) thereof".*

Accordingly, the Appellate Tribunal has held that Authority is competent to proceed against the projects, irrespective of the fact whether they are registered or not. The project titled as Gateway City, Sector 118-119, SAS Nagar, Mohali stands registered with the authority vide RERA No. PBRERA-SAS81-PR0022 but area in which the plot in question is located is not registered, in view of the fact that Partial Completion

Certificate in respect of this area was granted on 28.04.2017. In view of the orders of the Appellate Tribunal, this bench proceeded further with the complaint as provided under the Act and Rules made thereunder and the respondent was directed to file a detailed reply. On 26.02.2020, counsel for the complainant submitted copy of rejoinder and the matter was listed for arguments.

Today both the parties came present and counsel for the complainant requested to argue the matter. Both the parties also invited attention that they had reconciled their accounts in the office of respondent and no balance payment is pending towards the complainant. The counsel for the respondent submitted an affidavit duly signed by Estate Officer, GMADA/PUDA on behalf of respondent alongwith a copy of the same to the counsel for the complainant. He further invited attention towards the Para No. 5 of the affidavit, which is reproduced as under:-

“5. That however as a gesture of good will, as per directions of Government the Respondent being a Public Authority has decided to fill earth in deep plots including Plot No. 60 allotted to the complainant...”

As per the reply submitted by the respondent on 11.02.2020, the respondent has nowhere controverted the facts mentioned in the complaint in regards to the timely payments made by the complainants and the date of offer of possession as mentioned at Para No.4(I). 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 by the allottee but he 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.

The counsel further stated that as provided Clause 4(I) 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 18 months from the date of issuance of the allotment letter, whichever is earlier. If possession is not taken by the allottee within stipulated period, it shall deemed to have been handed over on the expiry of the date. This argument is not tenable as the respondent has itself admitted in this case that the possession cannot be offered as the development activities at the site have not been completed. This proviso has been inserted as a one sided condition imposed by the promoters in their allotment letters 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 18 months (09.02.2018) from the date of allotment letter (10.08.2016), which reveals that the respondent has caused delay in offer of possession of approximately 2 years and 3 months 20 days.

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 for the delayed period w.e.f. 09.02.2018 as per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time. This amount shall be paid within 60 days of this order.
2. 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, as

per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time, to the complainant from the date after the date of this order, till the date of offer of possession of the plot to the complainant.

3. As regard the grievance in respect to filling of deep earth in the said plot, the respondent has submitted an affidavit stating that the plot shall be filled up very soon. Hence, no relief in this regard is required.
4. The complainants 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 order be provided, free of cost, to both the complainants and the respondent.

Chandigarh
Dated: 01.06.2020


(SANJIV GUPTA)
Member 01/06/20
RERA, Punjab