

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

**File No.121/M(SG)
GC No. 14032019
Date of filing: 24.09.2019
Date of decision: 07.09.2020
PBRERA-ASR02-PR0169**

Inderjit Chaudhary r/o A-595, Ranjiv Avenue, Amritsar-143001

...Complainant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan,
Green Avenue, Amritsar-143001

...Respondent

Present:- Sh. Akhilesh Vyas, Counsel for the complainant.
Sh. Bhupinder Singh, Counsel 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 24th September, 2019 by Smt. Inderjit Chaudhary (hereinafter referred as "Complainant") against PUDA (hereinafter referred as "Respondent") in respect of a residential plot No.484 P.F. measuring 500 sq. yards in project titled as Guru Ram Dass Urban Estate, Airport Road, Amritsar.

The complainant had earlier filed representations to the respondent vide Diary No. 6030 Dated 31.0.2017 and Diary No. 1558/1559 requesting for possession of the allotted plot as well as regarding the discrepancy in the interest calculations. The respondent never responded to the same.

Accordingly, the complainant filed the present Complaint before this Authority and sought the following reliefs:-

1. *The respondents shall be directed to hand over the possession alongwith entire development as per agreed terms and conditions to be done by the respondents.*
2. *The respondent may be directed to refund interest which has been charged by them.*
3. *The respondent should pay interest on amount which they are liable to pay as per statutory provisions of RERA act, 2016.*

4. *The respondent shall be directed to pay litigation expenses to complainant.*
5. *That the complainant is also entitled for benefit of the judgment of Jaswant Singh Vs State of Punjab framing guidelines for this project for delayed possession which may also be given to the complainant.*
6. *The complainant may also be granted interest @ 12 % or more than that as in the terms of the order of Prem Nath Sharma Vs State of Punjab and other similar judgment pronounced by various Courts, Commissions and Tribunals."*

In response to the complaint, the respondent submitted reply on 16.12.2019. On 04.03.2020, counsel for the complainant submitted his rejoinder. Today matter came up for arguments. Both the parties made their submissions.

The counsel for the complainant alleged that the complainant was allotted a residential plot no. 484 measuring 500 Sq yards, under general category, in the above project @ total price of Rs.94,50,000/- @18000/- per sq. yards. After payment of 25% of the initial payment, the respondent issued allotment letter No. E.O./ADA/PUDA/C-1/ASR/2016/22330 Dated 27.10.2016. He argued that the complainant has made all payments within the stipulated period, as per the payment plan specified in the allotment letter and invited attention to clause 6 (i) under the Possession and Ownership handling of allotment letter vide which possession was promised to be handed over within 90 days i.e. 27.01.2017, from the date of issuance of allotment letter. He further alleged that the respondent has not offered him possession till date, as there is no development work initiated by respondent. He referred to a speaking order dated 20.09.2018 issued by Chief Administrator, PUDA, SAS Nagar based on a decision taken in a meeting held under the chairmanship of Addl. Chief Secretary (Development), Govt. of Punjab held on 02.01.2017, 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 Singh and Ors. Vs. State of Punjab and Ors. & CWP No. 4108 of 2016 titled Ram Kishan and others Vs. State of Haryana and others. He specifically invited attention towards Para No. 7, which is reproduced below:-

"7. In compliance of the aforesaid directions, passed by the Hon'ble High Court, a meeting was held on 02.01.2017 under the Chairmanship of the Additional Chief Secretary (Development), Government of Punjab, and the following decision was taken with regard to allotment of sites through draw of lots as per Para No.3 of proceedings of the meeting, which is reproduced below:-

3. *In case the site to be sold through draw of lots of the inviting application from public the following policy must be followed:-*



- (i) *Application must be invited only when the land is free from all encumbrances.*
- (ii) *After the receipt of application with 10% of the sale price, the draw of lots will be held by the Authority/Deptt. In such cases after payment of 25% of the condition price, the LOI/Allotment letter will be issued to the successful applicant and no interest must be charged till the possession of that plot is given to the Allottee.*
- (iii) *No possession in such cases must be given to allottee until and unless all the basic amenities i.e. water supply, sewerage, Roads, parking etc wherever required is made.*
- (vi) *The department Authority will duty bound to complete all the development works at site in shortest period possible not extending more than 18 months. In case of 18 months is elapsed and the possession is not handed over to the allottees, simple interest which of 12% will be provided to the allottee on the 25% amount which has been deposited by the Allottee with the Authority/Deptt."*

The counsel for the respondent confirmed the above cited speaking order and made a submission that no interest is being charged from the complainant in regards to the instalments paid/payable by him and an amount of Rs.11,59,816/- which was received as interest has been adjusted against the future instalments vide its order dated 21.11.2019. The respondent has, however, stated in his reply that no decision has been taken by the empowered committee to give interest on 25% of the basic amount deposited by the allottees. However, he did not deny the decision of the empowered committee in regards to payment of 12 % interest on the 25% amount deposited by the allottee in case the possession is not handed over within 18 months.

He further stated that the matter regarding penalty, if any, shall arise only at the time of offer of possession and the same is premature at this stage and as such no cause of action is made out in this regard.

Counsel for the respondent referred to Para 14 of 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 dismissed.

In view of the above, 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 falls within the jurisdiction of this bench. 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 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 for the same. He argued that no interest is payable on the entire amount paid by the complainant including 25% initial deposit and subsequent payment of instalments, as the interest on the instalments has already been waived off and the interest already received from him has been adjusted against future instalments.

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

1. As per allotment letter dated 27.10.2016, the possession was promised to be offered within 90 days after the issuance of the allotment letter i.e. 27.01.2017.
2. An amount of Rs.11,59,816/- (Annexure R-1) was adjusted by the respondent towards the next instalment which was to be paid by the complainant on account of interest already received.
3. The respondent has already waived off the interest chargeable from the allottees on the instalments which they were liable to pay as per Annexure R-2. For ready reference relevant extract of the same is as under:-

"No interest on the instalments on balance 75% of the price of 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."


4. The Chief Administrator vide its speaking order dated 20.09.2018 has agreed for payment of simple interest @ 12% rate of interest on 25% amount deposited by the allottees, in case possession is delayed for more than 18 months. In this case the possession was to be handed over by 27.01.2017 but the same has still not been done.

In view of the above the following is ordered:-

1. The complainants shall be entitled to a simple interest @ 12% on the 25% amount which has been deposited by the allottees with the respondent as per the decision dated 20.09.2018 of Chief Administrator, PUDA, SAS Nagar in this regard. This rate of interest shall be independent of the rate of interest as prescribed under the Real Estate (Regulation & Development) Act, 2016, since this is a decision taken by the competent authority 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 titled Jaswant Singh and Ors. Vs. State of Punjab and Ors. as per para 7(3)(iv)
2. As per Para 7(3)(ii) no interest shall be charged by the respondent from the allottees till the possession of the plot is given to the allottees.
3. 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 the respondent shall pay interest w.e.f. 28.01.2017 i.e. the date by which possession was promised to be offered, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time, till the date of this order on the amount paid by the complainant. This amount shall be paid within 60 days of this order.
4. 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 landing 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 flat to the complainant. The same shall be adjusted towards the final demand notice at the time of offer of possession.

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

SAS Nagar (Mohali)
Dated: 07.09.2020


(SANJIV GUPTA)
Member
RERA, Punjab

07/09/20