

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
SAS NAGAR (MOHALI)**

APPEAL NO. 24 OF 2018

Estate Officer PUDA, PUDA Complex, Bhagu Road, Bathinda.

....Appellant

Versus

1. Real Estate Regulatory Authority, Punjab, through its adjudicating officer, Punjab Mandi Board, Sector-65A, SAS Nagar (Mohali).
2. Gursimran Kaur wife of Jagtar Singh, resident of Village Akliya Tehsil and District Mansa C/o Jagtar Singh, Advocate, Chamber No. 41, District Courts Mansa (Punjab).

....Respondents

APPEAL NO. 26 OF 2018

Gursimran Kaur W/o Jagtar Singh R/o Vill. Akliya Tehsil and District Mansa C/o Jagtar Singh Advocate, Chamber No. 41, District Courts, Mansa Punjab.

....Appellant

Versus

Estate Officer, PUDA, Bathinda

.....Respondent

Present: Sh. Aashish Grover Advocate, for the appellant in Appeal No. 24 of 2018 and for the respondent in Appeal No. 26 of 2018.

Sh. Puneet Batish and Jagtar Singh Advocates for the respondent No.2 in Appeal No. 24 and for the appellant in Appeal No. 26 of 2018.

**CORAM: JUSTICE RAJIVE BHALLA,(RETD), CHAIRMAN
S.K. SHARMA, IPS (RETD.), MEMBER**

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JUDGMENT: (Rajive Bhalla (J) (Retd): (oral)

By way of this order, Appeal No. 24 of 2018 titled as "Estate Officer PUDA, PUDA Complex Bathinda Versus Real Estate Regulatory Authority & anr." and Appeal No. 26 of 2018 titled as "Gursimran Kaur V/s Estate Officer, PUDA, Bathinda", shall be disposed of as they impugn the same order, dated 25.06.2018, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.

The Estate Officer Punjab Urban Development Authority, Bathinda, appellant in Appeal No. 24 of 2018 prays that order directing refund, interest and compensation to Gursimran Kaur (Respondent No.2) may be set aside whereas, Gursimran Kaur W/o Jagtar Singh, the appellant in Appeal No. 26 of 2018 prays for refund of penal interest of Rs. 29,000/- deposited for delay in payment of instalments and ^{as} compensation of Rs. 25,000/-, may be enhanced.

Gursimran Kaur, filed a complaint before the Adjudicating Officer, alleging violation of Section 18 of the Real Estate (Regulation and Development), Act 2016, (hereinafter

referred to as the Act), by the Estate Officer, PUDA, Bathinda and therefore seeking refund of Rs. 4,78,155/- with interest @ 12% per annum and compensation of Rs. 3,00,000/- for delay in handing over possession. Gursimran Kaur alleged that she had applied for allotment of a plot measuring 250 square yards by depositing Rs. 1,75,000/- on 16.12.2013 as the booking amount. The area of the plot was enhanced to 256.66 sq. yards, leading to an increase in the price to Rs. 17,96,620/-. Gursimran Kaur deposited Rs. 4,78,155/- being 25% of the price of the plot i.e. Rs. 1,75,000/- on 16.12.2013, Rs. 2,91,500/- on 22.09.2014 and Rs. 11,655/- on 02.08.2016. It was further alleged that development works were to be completed by 05.01.2018, as prescribed by the allotment letter, dated 05.07.2016 but possession was offered without completion of development works, entitling the complainant to refund, interest and compensation.

The Estate Officer filed a reply denying averments in the complaint and pleading that as per report submitted by the Divisional Engineer (PH), (Elect.) and Divisional Engineer (C-1) of BDA, Bathinda, development works are complete. Gursimran Kaur was informed, vide letter dated 22.12.2017, that she could take possession by 10.01.2018, failing which it shall be presumed that she has taken possession. Despite being aware that development

works are complete, the complainant raised frivolous pleas to avoid taking possession. The Estate Officer therefore prayed that the complaint may be dismissed.

After considering the pleadings, the documents on record and affording opportunities to parties, under Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules), the Adjudicating Officer served a notice upon the Estate Officer asking him to plead guilty or not guilty to violation of provisions of the Act. The Estate Officer pleaded not guilty. The Adjudicating Officer called upon the Estate Officer to furnish his explanation and as the explanation was found unsatisfactory, proceeded to hold an enquiry. At this stage it would be necessary to point out that the Estate Officer has not challenged interim orders passed by the Adjudicating Officer but has only challenged the final order.

The Adjudicating Officer thereafter passed the impugned order rejecting the completion certificates relied by the Estate Officer on the ground that they have not been issued by the competent authority, namely the Chief Administrator/Additional Chief Administrator of PUDA, as notified in paragraph No.4 (1) of notification No. 4966-CTP(PB)/SP-458, dated 02.09.2014, and therefore held that the project is incomplete and extended the

period of completion declared at the time of registration of the project is irrelevant. The Adjudicating Officer thereafter proceeded to hold that as the project is incomplete, Gursimran Kaur is entitled to refund along with simple interest at the State Bank of India highest marginal cost of lending rate plus 2% on the principal amount from the respective dates of deposit of each instalment but is not entitled to penal interest paid for delay in deposit of instalments. The Adjudicating Officer also ordered the Estate Officer to pay compensation of Rs. 25,000/-.

Counsel for the Estate Officer, PUDA Complex Bathinda, submits that possession was offered on 27.12.2017, before the date fixed for delivery of possession. The allottee should have withdrawn from the project as condition No. 29 of the Allotment letter allows an allottee to withdraw from the scheme within 30 days of issuance of the letter of intent. The allotment letter also provides that the entire earnest money shall be forfeited if the allottee fails to take possession. Gursimran Kaur accepted the letter of intent and the allotment letter without protest and was therefore bound by the contract to take possession. It is further submitted that condition No.4 of the allotment letter dated 05.07.2016 records that if possession is not taken by the applicant within the stipulated period possession shall be deemed to have been delivered. The

Adjudicating Officer has ignored this clause and accepted frivolous objections filed by Gursimran Kaur, alleging non completion of development works. The Adjudicating Officer has also erred in rejecting completion certificates issued by letter dated 22.11.2017 written by the Sub Divisional Engineer to Superintending Engineer, PUDA Bathinda, enclosing partial completion certificates showing completion of 95% of civil works, 80% of public health works and 75% of electrical works. The letters along with letter dated 26.02.2018 addressed by the Divisional Engineer, Bathinda Development Authority to the Superintending Engineer have been rejected without assigning any cogent reasons.

Counsel for the Estate Officer also contends that even if it is presumed, though not admitted, that a few development works were not complete, they could always be completed between the applicant filing for and obtaining sanctioned building plans but as the applicant never took possession, she has no right to file a complaint. It is also argued that completion certificates issued by the Estate Officer have been rejected, as the Chief Administrator/Additional Chief Administrator have never issued completion certificates for any project. It is also argued that the Adjudicating Officer has not considered that Gursimran Kaur had defaulted in payment of instalments and therefore had no right to

file the complaint. The applicant having violated terms and conditions of the allotment letter, the impugned order, passed without considering the "allotment letter" deserves to be set aside.

Another argument put forth is that the plot was liable to be resumed under Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995 for failure to take possession and to deposit the remaining payment. The complaint was therefore not maintainable and the dispute was required to be referred to the Chief Administrator PUDA, as sole arbitrator.

Counsel for the Estate Officer, submits with respect to the quantum of compensation awarded, that though while awarding Rs. 25,000/-, the Adjudicating Officer has referred to Section 72 of the Act but no reasons have been assigned. The award of compensation would necessarily inhere a consideration of the material adduced by the claimant, the pleas if any raised by the builder in defence, the conduct of both parties and other relevant factors as provided by Section 72 of the Act. The Adjudicating Officer has, arrived at the figure of Rs. 25,000/- without referring to any principle, factor or material.

Counsel for Gursimran Kaur on the other hand submits that the impugned order does not suffer from any error of fact or of law except to the extent that compensation awarded is paltry and

may therefore be enhanced. It is contended that Gursimran Kaur was waiting for a plot since long and had arranged funds but when she visited the site to take possession, was shocked to discover half completed roads, no treated water supply, a few electricity poles, no boundary wall, no sewerage works, no street lights, no HTV wires, no STP plant, no water pipes etc. The respondents were required to offer possession of a completed project. The certificates produced by the Estate Officer to prove completion of the project have been rightly rejected as completion/partial completion certificates can only be issued by the Chief Administrator/Additional Chief Administrator. The delays in payments by Gursimran Kaur have already invited penal interest thereby estopping the Estate Officer from raising a plea that she is a defaulter. The argument that possession stood automatically delivered, in view of a clause in the allotment letter disregards the fact that such an inference may only arise if the project is complete. The argument that default in taking possession could lead to resumption or that the matter has to be referred to the Chief Administrator for arbitration disregards the fact that the present Act prevails over all other enactments.

Counsel for Gursimran Kaur also submits that defaults in payment alleged on behalf of Gursimran Kaur are irrelevant as

what has to be considered is the deficiency in amenities and whether Gursimran Kaur was justified in alleging failure to complete development works. Counsel for the Gursimran Kaur also submits that the Adjudicating Officer has wrongly rejected the prayer for refund of penal interest.

We have heard counsel for the parties and as already recorded, shall decide both appeals by a common order. The facts, do not require repetition except to the extent that Gursimran Kaur has prayed for and been granted refund with interest and compensation, on the ground that development works are incomplete and while holding as above, the Adjudicating Officer has rejected completion certificates produced by the Estate Officer on the ground that they have not been issued by the competent authority i.e. the Chief Administrator PUDA/ Additional Chief Administrator PUDA. The Adjudicating Officer has also held that mere registration of the project does not extend the date for completion of project. The Adjudicating Officer has also awarded compensation of Rs. 25,000/- but rejected the prayer for refund of penal interest.

Before proceeding any, further it would be necessary to record that the Estate Officer was directed, vide order dated

22.10.2018, to file a report regarding development works. The order dated 22.10.2018, reads as follows: -

“A prima facie consideration of the arguments reveals that many parts of the development works may be incomplete like HTV wires, sewerage lines, water supply, STP plant, connection of the sewer line/STP to the municipal sewer etc.

Counsel for the respondent is directed to seek instructions within the time frame in which these amenities can be provided. We would not like to record whether these amenities are not available or deficient.

Adjourned to 26.10.2018 for arguments.

The Estate Officer, PUDA, Bathinda has filed a report, dated 25.10.2018. A perusal of the report reveals that the Estate Officer alleges that street lights have been installed, 100% roads and civil work are complete and the respondent may apply for an electricity connection. It is however, admitted that treated water is not available. Counsel for Gursimran Kaur, strenuously refutes the correctness of the report. It would be necessary to point out that the report contains a significant admission that treated water is not available and admittedly completion certificates have not been issued by the Chief Administrator/Additional Chief Administrator as required by notification No. 4966-CTP(PB)/SP-458, dated 02.09.2014. Even eleven months after possession was offered, basic

amenities like treated drinking water, proper street lights etc. are not available and once again reliance has been placed upon the completion certificate issued by the Sub Divisional Engineer (civil) instead of any certificate issued by the Chief Administrator/Additional Chief Administrator. The Adjudicating Officer has rightly held that the project is incomplete. Gursimran Kaur was thus fully justified in refusing to take possession of an incomplete project and praying for refund and compensation. A person cannot be expected to take possession without proper supply of treated water, proper street lights, assured electricity supply, a sewerage treatment plant and amenities that are integral to and essential for a housing project and most significant of all a legally valid completion certificate issued by the Chief Administrator/Additional Chief Administrator, in accordance with notification No. 4966-CTP(Pb)/SP-458, dated 02.09.2014. The appellant was thus remiss in its obligation to obtain a legally valid completion certificate before offering possession. The issuance of a completion certificate by the competent authority is a sine qua non for offering possession. The Rules provide for a partial completion certificate but this certificate also must have been issued by the competent authority, in this case as provided by the notification referred to above.

An innocent home buyer shall not be allowed to suffer for the faults of a builder. The tendency to offer possession without completion of essential and promised infrastructure and amenities confers a right upon an allottee to refuse possession. Any clause in the allotment letter, buyers agreement or any such other agreement or contract providing for "deemed possession" may be invoked only if the developer/builder is able to prove that all essential/promised infrastructure, amenities and facilities were complete and completion/partial completion certificate has been obtained. It would be necessary to record that more often than not organizations responsible for executing building projects offer possession without completion of the project and or obtaining completion/partial completion certificates. It is, therefore reiterated that not only should projects be completed within time but possession may only be offered after all promised infrastructure, amenities and necessary facilities etc. are complete. The finding recorded by the Adjudicating Officer, that the project is incomplete, is devoid of any error of fact or of law and must therefore be affirmed.

Before parting with this part of the order it would be necessary to reproduce paragraph No. 9 of the impugned order, so

as to place our opinion in its correct perspective. Paragraph No.9 of the impugned order reads as follows: -

"9. The possession was to be delivered to the complainant upto 05.01.2018. The offer of possession was made by the respondent vide letter dated 27.12.2017, but, the complainant raised certain objections vis-a-vis incomplete development work of the project. I have taken into consideration the alleged completion certificate relied upon by the respondent treating the project being complete. The certificate has been issued by the three Engineers, but, not by the competent authority, as per notification No. 4966-CTP(Pb)/SP-458, dated 02.09.2014, the competent authority is the Chief Administrator/Additional Chief Administrator of the concerned development authority as per paragraph 4(1). With this parameter, the certificate relied upon by the respondent stands negated. The fact remains that the project is not complete moreso, within the stipulated time period. The extended period at the time of registration of the project has no relevance when the terms and conditions of the allotment letter are specific. Therefore, it is held that the complainant did not get the possession within the stipulated time and cause of action to her is recurring one."

An argument that Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 Act, entitles the Punjab Urban Development Authority to resume the plot,

disregards the fact that after the coming into force of the Act, the said enactment shall prevail in matters provided for, namely registration, refund, compensation, interest etc. The rights of a builder flowing from the buyers agreement/allotment letter/letter of intent, in so far as they are not inconsistent with provisions of the Act and the Rules, shall also be taken into consideration. The argument that the complaint is not maintainable as the matter has to be referred to the Administrator, Punjab Urban Development Authority, as sole arbitrator must be rejected for the aforesaid reasons. The Adjudicating Officer was thus fully justified in ordering refund and interest.

At this stage, it would be necessary to deal with Gursimran Kaur's prayer for refund of penal interest levied by the Estate Officer, PUDA for delay in payment of instalments. The Adjudicating Officer has rejected this prayer without assigning any reason. A reading of Section 18(1) of the Act reveals that in case an allottee wishes to withdrawn from the project and puts forth a claim for refund, the promoter shall in the eventuality of the project being incomplete "return the amount received by him in respect of that apartment/plot/building". The words used in Section 18 of the Act, leave no ambiguity that while ordering refund, the Adjudicating Officer shall order return of "the amount received".

Gursimran Kaur is therefore entitled to return of penal interest levied by the Estate Officer, PUDA, in addition to the price of the plot.

The question that remains is the legality of part of the order awarding compensation?

Section 72 of the Act prescribes factors to be considered by the Adjudicating Officer, while adjudging compensation and reads as follows: -

"72. Factors to be taken into account by the adjudicating officer: -

While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors, namely: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.*
- (b) the amount of loss caused as a result of the default;*
- (c) the repetitive nature of the default;*
- d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

A perusal of Section 72 reveals that sub sections (a) to (d) set out four different factors that are required to be considered by the Adjudicating Officer while adjudging compensation or

interest, as the case may be. Section 72 (a) to (c) refer to specific factors whereas Section 72 (d), confers power on the Adjudicating Officer to consider "such other factors as he may consider necessary in furtherance of justice", thereby clearly postulating that Section 72 is not exhaustive but merely illustrative of the factors that an Adjudicating Officer may take into consideration while adjudging compensation.

A person praying for compensation shall be required to adduce relevant material to satisfy factors set out in Section 72 of the Act. A promoter may also adduce material to rebut the claim for compensation. The Adjudicating Officer shall thereafter consider the material on record in the context of the factors enumerated in Section 72 and only after assigning reasons proceed to allow or disallow a prayer for compensation. The factors or facts that may be relevant for adjudging a claim for compensation cannot be placed in a straight jacket, as they would vary from project to project, locality to locality and city to city. It is true that adjudging compensation is not an exact science and may involve a degree of guess work but the opinion so recorded must be founded upon a perceptible process of reasoning, based upon relevant facts/material/factors. An Adjudicating Officer, exercising power under Section 72 as already held, is duty bound to assign reasons,

refer to factors and the material on record while arriving at a figure of compensation.

The part of the order awarding compensation reads as follows: -

13. *Since the complainant has not received the possession of the plot within the stipulated period and she has to seek the remedy under the existing law and for that obviously, she has to suffer mental agony and had to incur expenses on litigation to pursue her claim. I have considered all the factors as enunciated in Section 72 of the Act and, though, no exact amount can be assessed on this count, but, by applying some guess-work in the light of the factors, I am of the considered view that the complainant is also held entitled for compensation under all the heads i.e. mental agony and litigation expenses to the extent of Rs. 25,000/-.*

A perusal of the aforesaid extract reveals that the Adjudicating Officer has indeed, recorded that factors enumerated in Section 72 of the RERA Act, have been considered but without referring to any particular factor or fact or assigning any cogent reason has awarded compensation. The absence of a reference to any particular factor/relevant fact or any clear and cogent reasons, renders the award of compensation illegal.

Consequently, the appeals are partly allowed, the order of refund is affirmed alongwith return of Rs. 29,000/- received by

the Estate Officer, PUDA as penal interest for delayed payment but part of the order awarding compensation to Gursimran Kaur is set aside and the matter is remitted to the Adjudicating Officer for adjudication of compensation afresh after granting an opportunity to the parties to adduce relevant material/evidence in support of their respective pleas.

The Registrar of the Tribunal is directed to hand over demand draft No. 002676 dated 06.09.2018 amounting to Rs. 1,88,081/-deposited in favour of Smt. Gursimran Kaur W/o Sh. Jagtar Singh, against receipt after due identification. Any other application that may have remained pending shall be deemed to be having been decided.

The parties are directed to appear before the Adjudicating Officer on 14.12.2018.



JUSTICE RAJIVE BHALLA (RETD.)

CHAIRMAN



S.K SHARMA, IPS (RETD.)

MEMBER

October 26, 2018

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