

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

Appeal No. 229 of 2020

Mandeep Kumar son of Sh. Ram Saroop, R/o # B-21, Officers Colony, Fatehgarh Sahib, Punjab.

.....Appellant

Versus

PDA, Patiala through Chief Administrator, Nabha Road, PUDA Enclave-1, Patiala, Punjab.

.....Respondent

Appeal No. 240 of 2020

Estate Officer, Punjab Urban Planning and Development Authority, Patiala

.....Appellant

Versus

1. Mandeep Kumar, # B-21, Officer Colony, Fatehgarh Sahib, District Fatehgarh Sahib, Punjab-140407.
2. Real Estate Regulatory Authority, Plot No.3, Block-B, Madhya Marg, Sector-18 A, Chandigarh-160018.

.....Respondents

Memo No. R.E.A.T./2022/67

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,
SECTOR-18, CHANDIGARH-160018.**

Whereas appeals titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeals is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this
07th day of February, 2022.



T. Ranveer Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

07/02/2022

(1)

**BEFORE THE HON'BLE REAL ESTATE APPELLATE
TRIBUNAL, PUNJAB.**

APPEAL NO. 229 OF 2020

(Arising out of Complaint No. 1438 of 2019)

[Date of decision: 18.02.2020]

MEMO

Mandep Kumar Son of sh. Ram saroop, r/o #B-21,
Officers Colony, Fatehgarh Sahib, Punjab

Email – er.mandip@gmail.com

.... Appellant

Versus


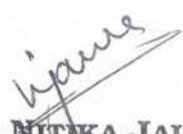
1. PDA, Patiala through chief Administrator, Nabha
Road, Puda Enclave-1, Patiala, Punjab

Email – pdapatiala@hotmail.com

....Respondent



PLACE: CHANDIGARH
DATED: 12.06.2020



[AMANINDER PREET & NITIKA JAURA]
P/976/2007 P/3746/2018
ADVOCATES FOR THE APPELLANT

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BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE
TRIBUNAL, PUNJAB, FOREST COMPLEX, SECTOR 68,
MOHALI, SAS NAGAR PUNJAB-160062

Civil Appeal No. 240 of 2020

MEMO OF PARTIES


Estate Officer, Punjab Urban Planning and
Development Authority, Patiala Appellant
...Appellant.

Versus

1. Mandeep Kumar
B-21, Officer Colony, Fatehgarh Sahib, District
Fatehgarh Sahib. Punjab-140407.

2. Real Estate Regulatory Authority, Plot No. 3,
Block-B, Madhya Marg, Sector-18 A Chandigarh-
160018
... Respondents.

Place: S.A.S Nagar
Date: 02.09.2020


(Bhupinder Singh)
Advocate
Counsel for the Appellant



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, AT CHANDIGARH

Appeal No. 229 of 2020

Mandeep Kumar son of Sh. Ram Saroop, R/o # B-21, Officers Colony, Fatehgarh Sahib, Punjab.

.....Appellant

Versus

PDA, Patiala through Chief Administrator, Nabha Road, PUDA Enclave-1, Patiala, Punjab.

.....Respondent

Appeal No. 240 of 2020

Estate Officer, Punjab Urban Planning and Development Authority, Patiala

.....Appellant

Versus

1. Mandeep Kumar, # B-21, Officer Colony, Fatehgarh Sahib, District Fatehgarh Sahib, Punjab-140407.
2. Real Estate Regulatory Authority, Plot No.3, Block-B, Madhya Marg, Sector-18 A, Chandigarh-160018.

.....Respondents

Present:-

Mr. Amaninder Preet, Advocate for the appellant in Appeal No. 229 of 2020 and for respondent in Appeal No. 240 of 2020.

Mr. Bhupinder Singh, Advocate for the appellant in Appeal No.240 of 2020 and for respondent in Appeal No. 229 of 2020.

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.), MEMBER (JUDICIAL)

ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMINISTRATIVE/TECHNICAL)

JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

(Majority view)



1. By this order, we will dispose of two appeals bearing Appeal No. 229 of 2020 (**Mandeep Kumar Versus PDA, Patiala through Chief Administrator**) preferred by the complainant and Appeal No. 240 of 2020 (**Estate Officer, Punjab Urban Planning and Development Authority, Patiala versus Mandeep Kumar and Anr.**) preferred by the Chief Administrator Patiala Development Authority, against the same impugned order and arising out of the same complaint with commonality of facts. The decision that we propose to give would essentially cover the grievances raised in the appeals, which is restricted to the grant of a statutory benefit of interest to the complainant on account of delayed possession.
2. That the complainant-appellant in Appeal No.229 of 2020 claims that vide the impugned order the benefit of interest has been granted with effect from 25.06.2018 till 18.02.2020, whereas it ought to have been granted with effect from 06.12.2017.
3. The Punjab Development Authority opposes this prayer to contend that the possession was to be given within 18 months of the issuance of the allotment letter (letter of intent) or the completion of the development works at the site. The date for handing over possession



was fixed at 10.05.2018 but the possession was given to the complainant on 06.12.2017 much prior to the promised date of possession. However, it is a common case of the complainant and the appellant that there were indeed HT Lines (High Tension) passing over plot, which rendered it impractical for the complainant to make any use of the plot. The said HT lines were removed as has been admitted by both the parties but according to the complainant, the said lines were not totally removed as was claimed by the respondent/PDA by June, 2018. But even upto year 2019, the work to remove the lines were in progress. Therefore the complainant asserts that he has been denied the benefit of the plot, which would entitle him to interest as the entire amount had been paid in lump sum, from 2017 because development work i.e. removal of HT Lines continued well into 2019.

4. The case of respondent/PDA on the other hand is that since the possession was to be given by May, 2018 and was indeed given prior to the promised date, the existence of HT lines would in any case give no rise to the complainant of any cause of action considering that they were also removed by June, 2018, almost around the time of date promised for possession.



5. The Real Estate Regulatory Authority, Punjab had vide the impugned order held that time limit for construction of a building should be reckoned from 18.02.2020 i.e. the date of the impugned order with a further direction to the PDA/respondent to issue the revised possession letter, which the complainant would be obligated to accept and that in view of the entire deposit having been made by the complainant in lump sum, interest as prescribed under the Punjab State Real Estate (Regulation and Development) Rules, 2017 be paid to the complainant with effect from 25.06.2018 i.e. 18 months after the allotment till the 18.02.2020, the new date assigned for reckoning three years period for construction of a building.
6. We have heard the learned counsel for the parties and notice the grievance, which is in restricted parameters. On facts there is hardly any dispute except on the issue of removal of HT lines. The complainant asserts that the HT lines were not removed till June, 2018 as claimed by the PDA/respondent and even in the year 2019, 75% of the work had been done and for this he placed reliance on Annexure A-10 communication dated 19.08.2019 from the Estate Officer, Punjab Urban Planning and Development Authority, Patiala,



wherein he has referred to a report from the Divisional Engineer, Electricity, which is as below: -

- “1) *The HT Lines passing through the site at PUDA Enclave-I, Nabha Road, Patiala have been got shifted during June 2018 to December 2018. During this period, 75% of shifting work of these lines was completed and remaining work was done after that.*
- 2) *For shifting these lines, for preparing estimate, cheque No.032256 dated 11.01.2017 and Cheque No.001834 dated 10.03.2017 amounting to Rs.500/- each were deposited with PSPCL vide Letter No.35 dated 12.01.2017 and letter No.211 dated 10.03.2017.*
- 3) *After preparation of estimate and taking approval of competent officer, for shifting these lines, an amount of Rs.51,483/- and Rs.26,87,715/- was deposited vide Cheque No.343223 and Cheque No.0508694 dated 17.11.2017 and dated 13.02.2018 and letter No.1464 and letter no.154 dated 17.11.2017 and dated 13.02.2017.*

Apart from this, as per the report of Building, Branch, the trees are standing along with wall of BML Department, in the area which are adjoining to the plot and only their branches are coming to plot regarding which BML has already been written by the



Gardening Wing of PUDA for taking action.”

7. The learned counsel for the PDA/respondent could not refute this document, which clearly indicates that even in the Year, 2019, not only the works of shifting the HT lines were in progress but there were trees standing in the plot, which would render the effective usage of the plot impracticable and possibly out of question.
8. The possession of the plot was clearly offered to the appellant-complainant on 06.12.2017 but it remained illusory in view of the existence of the HT Lines wires and the trees, which were removed possibly towards the end of 2019 if (Annexure A-10) is to be seen. It is pertinent to mention that document is of the PDA/Respondent itself and not denied by them. If that be so, it would be unfair to accept the plea of PDA/respondent that possession stood delivered within 18 months i.e. in June, 2018 with the plot free from the existence of HT lines wires and ready for construction.
9. To our minds, the equities would be well-settled if the date of possession is taken as the one on which the possession was offered to the appellant-complainant on 06.12.2017, and interest be calculated from this date instead of the June, 2018 keeping in view the fact that



even in 2019, the plot was not completely free of the hindrances. Possession of a unit or a plot has to be real, not illusory or platitudinal. It should be in a form ready for usage and not merely be an empty formality. We fail to understand, that if in the year 2019 the entire work of removing hindrances of HT lines and trees had not been completed then of what use would a plot be to an allottee. We cannot afford to leave an allottee at such mercies of the developer more so when it is state burdened with a greater responsibility of fairness in dealings. The complainant would thus be entitled to interest from 06.12.2017. Rest of the directions given in impugned order would remain unchanged.

10. With the aforesaid observations, both the appeal stand disposed of and the order of the Authority modified accordingly.
11. The appeal of the complainant is partly allowed while that of the PDA/respondent is dismissed. Files be consigned to record room.

Sd/-
JUSTICE MAHESH GROVER (RETD.),
CHAIRMAN



Sd/-
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)

AN
February 01, 2022

Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

07/02/2022

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, AT CHANDIGARH

Appeal No. 229 of 2020

Mandeep Kumar son of Sh. Ram Saroop, R/o # B-21, Officers Colony, Fatehgarh Sahib, Punjab.

.....Appellant

Versus

PDA, Patiala through Chief Administrator, Nabha Road, PUDA Enclave-1, Patiala, Punjab.

.....Respondent

Appeal No. 240 of 2020

Estate Officer, Punjab Urban Planning and Development Authority, Patiala

.....Appellant

Versus

1. Mandeep Kumar, # B-21, Officer Colony, Fatehgarh Sahib, District Fatehgarh Sahib, Punjab-140407.
2. Real Estate Regulatory Authority, Plot No.3, Block-B, Madhya Marg, Sector-18 A, Chandigarh-160018.

.....Respondents

Present:- Mr. Amaninder Preet, Advocate for the appellant in Appeal No. 229 of 2020 and for respondent in Appeal No. 240 of 2020.
Mr. Bhupinder Singh, Advocate for the appellant in Appeal No.240 of 2020 and for respondent in Appeal No. 229 of 2020.

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)**

**JUDGMENT/DISSENT: (ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER (ADMINISTRATIVE/TECHNICAL)**



1. The Chairperson of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*), vide order dated 18.02.2020, has accepted the complaint No. GC-1438 of 2019 of Sh. Mandeep Kumar against the Chief Administrator, Patiala Development Authority and has ordered as under:-

“6. The complaint is accordingly accepted and it is directed that the time limit of 3 years for construction of building should be reckoned with effect from today i.e. 18.02.2020. A revised possession letter should be issued, upon which the complainant would be obliged to accept possession. Also since the complainant had deposited the entire amount as lump sum, interest as prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 should also be paid to the complainant with effect from 25.06.2018 i.e. 18 months after the allotment, till the above date of 18.02.2020.”

2. One of the reliefs sought by the complainant-appellant Sh. Mandeep Kumar in his Appeal No. 229 of 2020 is grant of interest on the amount deposited by the appellant **w.e.f. 06.12.2017 till the issuance of the revised letter of possession**. In this regard, the complainant-appellant contends:- (i) that as per terms and conditions of the scheme, **the possession of the plot was to be handed over to the allottee after completion of development works at the site or 18 months from the date of issuance of allotment letter whichever is earlier;** (ii) that it is clear from letter dated 6.12.2017 (Annexure A-6 of Appeal No. 229 of 2020) that the possession of the plot was offered on **6.12.2017 after completion of the development works as alleged;** (iii) that therefore, the complainant-appellant was required to be held entitled to the grant of interest on the deposited amount with effect



from 6.12.2017 till the issuance of the revised letter of possession and not from 25.6.2018.

3. During arguments on 01.02.2022, the complainant-appellant has relied on letter dated 19.08.2019 (Annexure A-10 of Appeal No. 229 of 2020) of the Estate Officer, Punjab Urban Planning & Development Authority to contend that even as per report of Divisional Engineer (Electricity) vide his letter dated 23.07.2019, 75% of the work of shifting of the HT Lines passing through the site at PUDA Enclave-I had been completed during June 2018 to December 2018 and the remaining work had been completed thereafter.
4. On the other hand, Punjab Urban Planning & Development Authority, through its Appeal No. 240 of 2020 against aforementioned order dated 18.02.2020 of the Authority, has prayed to set it aside and to dismiss the complaint; and its learned counsel has argued on 01.02.2022 that the complainant had been intimated vide memo dated 15.10.2018 (Annexure-A/5 of Appeal No. 240 of 2020) in response to the complainant's letter dated 16.08.2018 (*in fact it is letter dated 02.08.2018 which bears PUDA's diary dated 16.08.2018*) that as per report of Divisional Engineer (Electrical), PUDA, Patiala, 11 kV Feeder lines passing through the complainant's plot had been shifted. He also argued that the work of shifting of the HT line **from the complainant's plot was completed before the date of aforementioned intimation dated 15.10.2018** and 75% of the work of shifting of the HT Lines **passing through the site of the project**



PUDA Enclave-I had been completed during June 2018 to December 2018 and the remaining work had been completed thereafter as per report of Divisional Engineer (Electricity) vide his letter dated 23.07.2019.

5. The fact that 75% of the work of shifting of the HT Lines **passing through the site of the project PUDA Enclave-I** had been completed during June 2018 to December 2018 is corroborated from the memo dated 10.6.2019 of PSPCL, which is mentioned in and is attached with aforesaid report dated 23.07.2019 of Divisional Engineer (Electricity).
6. Clause 4(I) of the allotment letter dated 26.12.2016 issued to the complainant-appellant reads as under:-

“The possession of the said plot shall be handed over to the allottee after completion of the development works at the site or 18 months from the date of issuance of allotment letter whichever is earlier. If possession is not taken by the allottee within stipulated period, it shall be deemed to have been handed over on the expiry of said date.”

7. Though the Punjab Urban Planning & Development Authority, Patiala while offering possession of the plot in question vide its memo dated 06.12.2017, has claimed therein that development works at site had been completed as per clause 4(I) of the allotment letter, but the letters dated 14.05.2018 & its reminder dated 02/16.08.2018 of the complainant-appellant read with aforesaid memo dated 15.10.2018 of the Punjab Urban Planning & Development Authority reveal that the HT line passing through the complainant's plot was shifted before or on 15.10.2018.



8. The complainant has been contending in his complaint, rejoinder dated 06.01.2020 and arguments on 04.02.2020 & 01.02.2022 that offer of possession vide letter dated 06.12.2017, without completing the development works including the work of removing the HT lines, is invalid.
9. In the complaint, the complainant has inter alia sought reliefs of (i) cancellation of the possession letter dated 06.12.2017 & issuance of offer of possession afresh after removing snags; (ii) payment of interest @ 12% for delay in possession **from the date of deposit**. As stated by the complainant in his appeal, he deposited Rs. 18.75 lakh by **04.04.2016** and the balance amount on **27.02.2017**. Now, the complainant is claiming that interest should have been allowed from **06.12.2017 (i.e. the date of offer of possession which he himself has alleged to be invalid and sought cancellation thereof)** instead of from **25.06.2018 i.e. 18 months after the allotment** letter dated 26.12.2016 as allowed by the Authority vide impugned order dated 18.02.2020. As contended by the complainant, the Authority has inter alia directed that a revised possession letter be issued. Therefore, the mention in the alleged invalidated offer of possession dated 06.12.2017 that the development works had been completed, can not be considered valid even for the purpose of computing the delay in possession and payment of interest for such delay.



The contention of the complainant, that interest on the amount deposited by the appellant be granted w.e.f. 06.12.2017 i.e. the date

when the possession of the plot was offered after completion of the development works as alleged, shall be counter-productive for the complainant himself because that will imply that the development work was complete on 06.12.2017 itself in terms of above quoted clause 4(I) of the allotment letter and in that case possession offered on 06.12.2017 shall be valid one and possession would have to be deemed, in terms of aforesaid clause 4(I) of the allotment letter, to be taken over within 30 days as stipulated in the offer dated 06.12.2017 i.e. by 05.01.2018.

11. Therefore, in view of my above discussion, the order dated 18.02.2020 of the Authority, which has been impugned by both the parties in their respective appeals, be modified to the extent that interest as prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 should be paid to the complainant **with effect from 25.06.2018 i.e. 18 months after the allotment, till 15.12.2018 i.e. two months after the memo dated 15.10.2018 of the Punjab Urban Planning & Development Authority vide which the complainant had been intimated in response to the complainant's letter dated 02/16.08.2018 that 11 kV Feeder lines passing through the complainant's plot had been shifted.**

01.02.2022



Sd/-

Er. Ashok Kumar Garg
Member (Administrative/Technical),
Real Estate Appellate Tribunal Punjab

Certified To Be True Copy

T. Narinder Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

01/02/2022