

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

Subject: -

APPEAL NO. 219 OF 2020

Harnek Singh aged 56 years S/o Late Sh. Gurdial Singh, R/o V.P.O
Ranimajra, Tehsil - Derabassi, District SAS Nagar (Mohali) 140501 .

...Appellant

Versus

Punjab Ruban Planning and Development Authority (PUDA), PDA
Complex, Urban Estate, Phase-II, Patiala 147002, through its chief
Administrator.

...Respondent

Memo No. R.E.A.T./2022/ 382

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 02nd
day of August, 2022.



Thamul Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
AT S.A.S. NAGAR (MOHALI)

Appeal No. 219 of 2020

MEMO OF PARTIES

Harnek Singh aged 56 years son of Late Shri Gurdial Singh,
resident of V.P.O. – Ranimajra, Tehsil – Dera Bassi, District –
S.A.S. Nagar (Mohali), Punjab – 140501.

.... Appellant

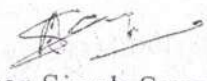
Versus

Punjab Urban Planning and Development Authority (PUDA),
PDA Complex, Urban Estate, Phase – II, Patiala – 147002,
through its Chief Administrator.

.... Respondent

Place : S.A.S. Nagar (Mohali)

Dated : 06.06.2020


(Avtar Singh Syan)

Advocate

P-880/1991

Counsel for the Appellant



BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

AT CHANDIGARH

APPEAL NO. 219 OF 2020

Harnek Singh aged 56 years S/o Late Sh. Gurdial Singh, R/o V.P.O Ranimajra, Tehsil - Derabassi, District SAS Nagar (Mohali) 140501 .

...Appellant

Versus

Punjab Ruban Planning and Development Authority (PUDA), PDA Complex, Urban Estate, Phase-II, Patiala 147002, through its chief Administrator.

...Respondent

Present: Mr. Avtar Singh Syan, Advocate for the appellant.
Mr. Bhupinder Singh with Mr. Balwinder Singh, Advocates for the respondent.

CORAM: **JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.), MEMBER (JUDICIAL)
ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./ TECH.)

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



1. The appellant has impugned the order of the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) dated 18.02.2020.
2. Briefly stated the facts of the case are that the appellant filed a complaint alleging delayed possession with regard to a plot measuring 250 sq. yards in the real estate

project being developed by the respondent at Nabha Road, Patiala. The draw of the lots was held on 22.01.2016 and a letter of intent was issued to the appellant on 04.03.2016. The total price of the plot was Rs.71,87,500/-. The allotment letter was issued on 04.01.2017. Initially the appellant deposited 25% of the price of the plot, but after the offer of possession he deposited an amount totaling Rs.68,06,251/-. The complaint was preferred and the grievances set out can be briefly summed up as below :-

- (i) That after a receipt of 25% price of the plot respondent failed to offer possession despite the clear stipulation which read "possession on 25% payment" in the advertisement and brochure.
- (ii) The possession was to be handed over to the appellant after completion of development works within 18 months from the date of issuance of allotment letter i.e. up to 04.07.2018 but the same was not done; A completely illegal process was adopted by the respondent to offer possession through a public notice on 16.11.2017, despite the fact that the development works were incomplete.



- (iii) It was alleged that the roads, water supply, sewerage and drainage system, street lights and other public utilities were incomplete.
- (iv) No completion certificate was obtained by the respondents. However partial completion certificate was issued on 08.01.2019.

3. In the backdrop of the aforesaid grievance the appellant prayed for several reliefs which can be also summarized as below :-

- (i) Since respondent violated the provisions of Section 4,11,12,14,18 and 19 of the Act, they should be directed to hand over the possession of the plot to the satisfaction of the complainant.
- (ii) Actual date of possession should be assigned after ensuring that development works are complete.
- (iii) The respondent be directed to provide fresh timeframe of 3 years for construction work from the new date of possession.
- (iv) To refund the interest charged by the respondent on installments (75% of the balance amount till actual possession is handed over complete with all amenities).



- (v) This refund be ordered along with interest at the rate 18% besides interest at the same rate for each month's delay.
- (vi) Any other relief that the Hon'ble Authority may deem fit in the circumstances of the case.

4. The respondent resisted the complaint and pleaded the fault of the appellant in not taking possession in the year 2017 particularly when the same was offered within the promised timeframe. The lack of development as alleged by the appellant was denied and merely because certain orders for LED lights etc were pending would be no ground to presume lack of development works. It was specifically pleaded by them that as per reports from the field staff the development works relating to civil, public health and electrical regarding the plot was complete. The reports were placed on record as Annexure R2 (colly). They further pleaded that the layout plan shows that the plots were easily accessible and majority of the allottees had taken possession and constructed buildings and in fact the immediate neighbor of the appellant had already raised construction after taking possession. Therefore the plea of the appellant that development works were incomplete is absolutely baseless.



5. The Authority considered the matter and declined interference by holding that the appellant had failed to establish the lack of development activities as a hindrance to taking over possession or raising construction and further concluded that the waiver of interest on delayed installments by placing reliance on minutes of the meeting dated 02.01.2017 was un-enforceable in law particularly when it pertained to another project. Besides it was held that the appellant made a payment of Rs.15,62,500/- by 04.01.2017 when the allotment letter was issued. After that the balance payment was to be made in installment at 6 months interval commencing 05.01.2018. The possession of the plot was handed over on 30.11.2017 and the partial completion certificate issued w.e.f 21.02.2018. The remaining amount was paid by the appellant after the possession was offered in November 2017. It was thus concluded by the Authority that in view of this the appellant cannot claim any benefit on the delayed possession or waiver of interest.



6. Aggrieved with the said findings the appellant is in appeal before us.
7. During course of hearing of the appeal a completely new case was introduced by the appellant when he stated that

the plot in question that was offered to him was of a bigger dimension than what he had applied for. The application was for a plot of 250 sq. yards whereas the plot being offered to him was of more than 322 sq. yards. He thus pleaded that in similar circumstances another resident of the area who had applied for a plot of 300 sq. yards was compelled to take a plot of 381 sq. yards but made to pay the price of the plot equivalent to 10% of the increased area. He thus pleaded that similar benefit be accorded to him. The respondents on our asking did consider this plea of the appellant particularly when repeatedly it was argued that there is policy to this effect but eventually they stated that there is no policy of the kind pleaded by the appellant and refused to grant the benefit of restricting the price to 10% of the increased area. An affidavit of the Competent Authority i.e. Estate Officer, PUDA was also filed in this regard.



8. Finally the matter was heard at length on other issues as well.
9. In so far as the plea raised by the learned counsel for the appellant during the course of hearing regarding restricting the price of the increased area to 10%, I am of the considered view that such a case was never pleaded before the Authority. The complaint is silent in this

regard and the appellant cannot be permitted to make out a completely new case no matter what the circumstances. Therefore such a plea as raised by him has to be rejected outright in view of the settled position of the law that appeal is a creation of the statute and a continuation of the original proceedings which restricts the parties to the pleadings and confines them to the controversy raised in the complaint. Besides we cannot force the respondents to accept something which is not even permissible in law or mandated by any policy. Even if the appellant had showed us some policy the only course available before us as an Appellate Authority under the Act would be to direct a consideration on this issue by the Competent Authority. This possibly could have been the best case scenario for the appellant but we certainly cannot mandate the Competent Authority to act in a particular way in the circumstances. Therefore this plea of the appellant has to be negated particularly when such a case was not pleaded and there is no such policy adopted by the respondents.



10. However it would be open to the respondents to consider the case of the appellant and grant him relief in terms of his prayer noticed above in case their wisdom so dictates.

11. Coming to the facts of the impugned order it is evident that the appellant has raised a plea of not taking the possession for lack of development works in the area. There is no conclusive material to hold so but in the considered opinion of this Court the fact that partial completion certificate was obtained much subsequently, could be suggestive of non completion of development works till that point of time when such a certificate is granted by the Competent Authority in the given set of the facts. We do not propose to lay this down as a general principle but looking at the material and numerous correspondence on record it would be safe to presume so.
12. We cannot also be oblivious to the fact that physical possession of the plot was not handed over to the appellant and rather during the course of proceeding before us he made a prayer that physical possession of the plot has not been given to him despite his efforts and numerous communications dated 24.12.2020, 30.12.2020, 06.01.2021, 08.01.2021, 11.01.2021, 04.02.2021, 12.02.2021 and 05.03.2021. It is only during the proceedings before us that the appellant was offered possession and it transpired that it is a plot measuring 322 sq. yards against the allotted area of 250 sq. yards, besides being of an irregular shape. It is also



necessary to state here that it is only when request was made by the appellant regarding non delivery of possession that we intervened in this regard. Evidently all these issues that were raised before us regarding the plot being of an regular or a bigger size was after we passed orders asking the respondents to look into the aspect of possession before we entered upon the controversy in appeal.

13. The aforesaid clearly establishes that the respondents have been in the wrong, they never handed over the possession to the appellant and even when the exercise was undertaken it was discovered for the first time that the plots actually measured 322 sq. yards whereas the appellant had applied in the 250 sq. yards category and was allotted plot of the said size.
14. We did indeed endeavor to end the controversy by asking the respondents to explore the possibility of an alternate plot which was indeed done but was unacceptable to the appellant.
15. In view of this we cannot mandate the respondents to act contrary to law or policy by directing that a particular amount be charged or the plot be reshaped. This is the job of the Authorities and without assessing the ground realities, we cannot take upon ourselves to either



comment upon the zoning, layout plans or demarcation of the plot/plots in any particular manner.

16. We have already observed in the foregoing paragraphs that it would be open to the respondents to consider the case of the appellant in this regard if they are so advised.

17. In nutshell the conclusion is that the respondents have delayed the possession and this plea of the appellant and his appeal has to be accepted and the relief granted to the appellant would be in the following terms:-

(i) The respondents would be at liberty to consider the prayer of the appellant to limit the amount to be charged for the excess area in case they decide to give the very same plot to the appellant. Needless to say the decision has to be well founded on reasons and whatever proceedings have taken place before the Authority or before us should not be construed as an impediment for the grant of any such relief that the respondents may in their wisdom decide to grant to the appellant.

(ii) The appellant is entitled to a plot of 250 sq yards and the respondents are bound to give him the physical possession of such a plot and to his satisfaction.



- (iii) The appellant would be at liberty to approach the Authority for grant of compensation by initiating such proceedings if so advised.
- (iv) Since the possession has still not been given to him as is evident from the fact that have come to light during pendency of the appeal, we are of the opinion that this has to be construed to be delayed possession at the hands of the respondents for no fault of the appellant. He would thus be entitled to statutory interest in terms of Section 18 of the Act till the time the physical possession is handed over to him (State Bank of India highest marginal cost of lending rate + 2% on entire amount paid by the appellant). This amount shall be calculated w.e.f 04.07.2018 or from the date of deposit of any amount by the appellant which is later till the date of possession is actually handed over.



- (v) The respondents would be entitled to interest on delayed payment of installments as per the agreed terms of the allotment.
18. With the aforesaid observations the appeal stands disposed of.
19. Files be consigned to record room and a copy of the order be communicated to the parties.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

August 01, 2022
DS



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

02/08/2022