

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

Subject: -

**APPEAL NO.261 OF 2020**

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No.451,  
Circular Road, Charanjit Pura, Jalandhar.

...Appellant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA  
Bhawan, Sector-62, SAS Nagar, Mohali-160062.

...Respondent

**APPEAL NO.262 OF 2020**

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No.451,  
Circular Road, Charanjit Pura, Jalandhar.

...Appellant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA  
Bhawan, Sector-62, SAS Nagar, Mohali-160062.

...Respondent

Memo No. R.E.A.T./2022/ 426

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup>  
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 30<sup>th</sup>  
day of August, 2022.



*Chamander Kaur*  
30-8-2022  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

MEMO OF PARTIES

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No. 451, Circular Road, Charanjit Pura, Jalandhar.

...Appellant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector -62, SAS Nagar, Mohali - 160062.

...Respondent

Place: Chandigarh  
Date: 10.11.2020

*Manju Goyal*

(MANJU GOYAL)  
ADVOCATE

COUNSEL FOR THE APPELLANT



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

MEMO OF PARTIES

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No. 451, Circular Road, Charanjit Pura, Jalandhar.

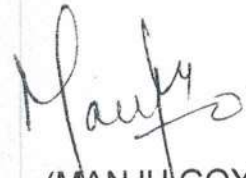
...Appellant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, sector -62, SAS Nagar, Mohali - 160062.

....Respondent

Place: Chandigarh  
Date: 08.11.2020



(MANJU GOYAL)  
ADVOCATE

COUNSEL FOR THE APPELLANT



**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**

**AT CHANDIGARH**

**APPEAL NO.261 OF 2020**

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No.451,  
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**APPEAL NO.262 OF 2020**

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Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA  
Bhawan, Sector-62, SAS Nagar, Mohali-160062.

...Respondent

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Present: Ms. Manju Goyal, Advocate for the  
complainant/allottee.

Mr. Bhupinder Singh with Mr. Balwinder Singh,  
Advocate for the PUDA/promoter.



**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)**

## APPEAL NO. 261 OF 2020 & APPEAL NO.262 OF 2020

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1. By this order we will dispose Appeal No.261 of 2020 and Appeal No.262 of 2020, preferred by the complainant(s) against the impugned order of the Authority dated 28.07.2020.
2. We have through separate orders disposed of number of appeals (Appeal No.249 of 2020 along with connected appeals) regarding the same project. In view of the primary controversy raised before us in these cases, the facts of which though peculiar to each of them, yet the difference would not hold much significance as we have already settled these issue in **Appeal No.230 of 2020 titled as Inderjeet Mohan Kaur Versus The Chief Administrator, GMADA.**
3. The time schedule for depositing instalments as reflected in the individual allotment letters is extracted below as per the letter issued to individual allottee:-

### APPEAL NO.261 OF 2020

Instalment	Due Date	Principal	Interest	Total amount payable
1	2	3	4	5
1 <sup>st</sup>	21.10.2016	1170330.00	491539.00	1661869.00
2 <sup>nd</sup>	21.04.2017	1170330.00	421319.00	1591649.00
3 <sup>rd</sup>	21.10.2017	1170330.00	351099.00	1521429.00
4 <sup>th</sup>	21.04.2018	1170330.00	280879.00	1451209.00
5 <sup>th</sup>	21.10.2018	1170330.00	210659.00	1380989.00
6 <sup>th</sup>	21.04.2019	1170330.00	140440.00	1310770.00
7 <sup>th</sup>	21.10.2019	1170330.00	70220.00	1240550.00
	<b>Total</b>	8192310.00	1966155.00	10158465.00

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APPEAL NO.262 OF 2020

Instalment	Due Date	Principal	Interest	Total amount payable
1	2	3	4	5
1 <sup>st</sup>	21.10.2016	1165553.00	489532.00	1655085.00
2 <sup>nd</sup>	21.04.2017	1165553.00	419599.00	1585152.00
3 <sup>rd</sup>	21.10.2017	1165553.00	349666.00	1515219.00
4 <sup>th</sup>	21.04.2018	1165553.00	279733.00	1445286.00
5 <sup>th</sup>	21.10.2018	1165553.00	209800.00	1375353.00
6 <sup>th</sup>	21.04.2019	1165553.00	139866.00	1305419.00
7 <sup>th</sup>	21.10.2019	1165553.00	69933.00	1235486.00
	<b>Total</b>	8158871.00	1958129.00	10117000.00

4. It is pertinent to mention here that the amount to be deposited by each individual was dependant upon the total price of the unit applied for and therefore is different in the case of each allottee. In any case, it does not impact the commonality of the issue involved. The payments which was made by each of the allottees whose cases are been discussed are given against the facts of each individual case. It is also necessary to state here that the allotment letter in each case gave out the date of possession as "after completion of development works, which is likely to be completed in one year". For the purpose of reference, the same is extracted below:-



*"Possession of the plot shall be handed over to the allottee after completion of development*

**APPEAL NO. 261 OF 2020 & APPEAL NO.262 OF 2020**

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*works, which is likely to be completed in one year. If possession is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the due date. No interest will be charged from the allottee, till the time the possession of site is offered. It is further clarified that if the possession can be given in 6 months, then the 1<sup>st</sup> installment shall include interest for the remaining 6 months and if the possession can be given in 9 months, then the first installment shall include interest for 3 months, then the first installment shall include interest for 3 months and if the development period is one year or more then no interest shall be charged with the first installment."*

5. It is evident that such a Clause of deemed possession was unilateral in character.
6. The facts are as below:-

**APPEAL NO.261 OF 2020**



7. The appellant applied for residential plot measuring 222.92 sq. mtrs. vide auction held on 21.04.2016 and was allotted Plot No.43(F.P.) @ Rs.49,000/- per sq. meter.

The total price come to Rs.1,09,23,080/- out of which a payment of Rs.27,30,770/- was made before the

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allotment letter was issued by way of 25% of the price of the plot as per requirement.

8. On 17.08.2016, an allotment letter was issued with an assertion that possession of the plot shall be handed over to the allottee after completion of development works, which is likely to be completed in one year. If possession is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the due date.

9. The date of possession was thus 17.08.2017, considering the date of allotment as 17.08.2016 but the possession was not handed over till 26.06.2018 when the appellant was called to the office of the respondent and on 27.06.2018 he was given possession of the plot.

10. The respondent started claiming interest and issued various demand letters, which is in contravention of their own terms and conditions, and even though the appellant had made substantial payment to the respondent prior to possession. A complaint was then





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preferred before the Authority, resulting in the impugned order dismissing the complaint altogether. The detail of payments made by the appellant is as under:-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1 <sup>st</sup>	11,70,330	4,91,539	16,61,869	21.10.2016		
2 <sup>nd</sup>	11,70,330	4,21,319	15,91,649	21.04.2017	20.10.2016	11,70,330
3 <sup>rd</sup>	11,70,330	3,51,099	15,21,429	21.10.2017	19.04.2017	11,70,330
4 <sup>th</sup>	11,70,330	2,80,879	14,51,209	21.04.2018	17.10.2017	11,07,912
5 <sup>th</sup>	11,70,330	2,10,659	13,80,989	21.10.2018	17.04.2018	44,60,957
6 <sup>th</sup>	11,70,330	1,40,440	13,10,770	21.04.2019	25.04.2018	2,224
7 <sup>th</sup>	11,70,330	70,220	12,40,550	21.10.2019		
<b>Total</b>	<b>81,92,310</b>	<b>19,66,155</b>	<b>1,01,58,465</b>			<b>79,11,753</b>

\* Out of Rs. 31,99,232/- claimed to be paid till 20.05.2016

### APPEAL NO. 262 OF 2020

11. The appellant applied for residential plot measuring 222.92 sq. mtrs. vide auction held on 21.04.2016 and was allotted Plot No.44(F.P.) @ Rs.49,000/- per sq. meter. The total price come to Rs.1,08,78,496/- out of which a payment of Rs.27,19,624/- was made before the allotment letter was issued by way of 25% of the price of the plot as per requirement.



12. On 17.08.2016, an allotment letter was issued with an assertion that possession of the plot shall be handed over to the allottee after completion of development works, which is likely to be completed in one year. If possession

## APPEAL NO. 261 OF 2020 & APPEAL NO.262 OF 2020

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is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the due date.

13. The date of possession was thus 17.08.2017, considering the date of allotment as 17.08.2016 but the possession was not handed over till 26.06.2018 when the appellant was called to the office of the respondent and on 27.06.2018 he was given possession of the plot.

14. The respondent started claiming interest and issued various demand letters, which is in contravention of their own terms and conditions, and even though the appellant had made substantial payment to the respondent prior to possession. A complaint was then preferred before the Authority, resulting in the impugned order dismissing the complaint. The detail of payments made by the appellant is as under:-



PAYMENT MADE BEFORE ALLOTMENT				
1.	18.04.2016	2,50,000/-		
2.	22.04.2016	13,05,419/-		
3.	20.05.16	16,31,775/-		
	Total	31,87,194/-		
PAYMENT MADE AFTER ALLOTMENT				
Sr. No.	Due Date of Payment	Amount	Actual date of payment	Amount
1.	21.10.16	11,65,553/-	20.10.16	11,65,553/-

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2.	21.04.17	11,65,553/-	19.04.17	11,65,553/-
3.	21.10.17	11,65,553/-	17.10.17	11,03,390/-
4.	21.04.18	11,65,553/-	17.04.18 25.04.18	44,42,75/- 2,215/-
5.	21.10.18	11,65,553/-		
6.	21.04.19	11,65,553/-		
7.	21.10.19	11,65,553/-		
	<b>Total</b>	<b>81,58,871/-</b>		<b>78,79,468/-</b>

15. The Authority after consideration of the complainants' and the stand of the respondents dismiss the complaints after observing as under:-

- i. *The respondent has not charged any interest till offer of possession.*
- ii. *The offer of possession was made on 26.06.2018 and the same was taken by the complainant on 27.06.2018 without any protest.*
- iii. *The building plan was sanctioned on 20.02.2019.*
- iv. *The Partial Occupation Certificate was granted on 18.10.2019.*



16. The grievance of the appellant is directed against the aforesaid directions of the Authority. It has been averred that the statutory interest ought to be available to the

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appellants for the entire period for more than three years for delayed possession.

17. The respondents in turn plead that no fault can be found with the order of the Authority. The appellants were required to adhere to the payment schedule and deposit the instalments along with interest.

18. Qua this argument, the learned counsel for the appellant has referred to the Policy of the State Government dated 31.12.2015, envisaging that no interest shall be paid by the allottee in case of delayed payment, if the possession is delayed.

19. We have heard the learned counsel for the parties and are of the opinion that the controversy is squarely covered by the ratio of the judgment rendered by us in

**Appeal No.230 of 2020** titled as **Inderjeet Mohan Kaur**

**Versus The Chief Administrator, GMADA**, wherein we

have held as below:-

14. *The policy dated 02.01.2017 contained in the letter of the Government dated 15.02.2017 has ostensibly been framed pursuant to the directions of the Hon'ble*



*Punjab and Haryana High Court in CWP No. 4108 of 2016.*

15. *We are at pains to remind ourselves that the appellant had approached the Authority under the Real Estate (Regulation and Development) Act, 2016 for his primary grievance of a delayed possession and consequently levy of interest and penalty by the respondents upon his failure to adhere to the schedule.*
16. *The grievance if analyzed is not complex. The allottee, who has made a substantial payment expects an adherence by the respondents to abide by the promised schedule of possession and upon failure to do so, questions the very justification of the developer to demand payments from him as also the interest on such delayed payments and imposition of penalty.*
17. *Since the appellant has availed of a statutory remedy, the reliefs that the Authority under the Act can grant would necessarily have to be restricted to the ones available under the statute. The waiver of interest or grant thereof in terms of the policy by the State Government would not ipso facto bind the Authority to disentitle any relief available to any allottee under the Act. However, it does not prevent the Authority from taking a holistic view and moulding the relief to an allottee to avoid an unjust enrichment or an unexpected windfall to him.*
18. *A perusal of the judgment of the Hon'ble Punjab and Haryana High Court referred to in the policy framed by the Government reveals that there are certain*



directions given to the State to deal with situations where the public bodies do not stand advantaged for their own defaults at the expense of the allottee. Since the Government framed the policy ostensibly, as a measure of compliance of the directions given by the Hon'ble High Court it would purely be in their domain to apply it while granting a benefit to an allottee. This however, does not preclude or restrict the allottee's right to approach the Authority under the Act for redressal of his grievance, since it is a statutory remedy.

19. The Authority in turn would have no jurisdiction to enforce the policy of a Government as it is bound to deal with the matters before it strictly in terms of the powers that flow from the statute i.e. RERA Act. It is purely in the domain of the Government to apply or not to apply a policy which shall be independent of the reliefs available to an aggrieved person under the Act. It matters not that the policy, the benefit of which an allottee claims, somewhat encapsulates the spirit of the Act in protecting an allottee from an unjust action of the developer or promoter, which in this case happens to be a public body.
20. Likewise, we as an Appellate Authority would have no such power to issue mandates to enforce a policy of the Government but nothing precludes the Authority or for that purpose the Appellate Tribunal to take into consideration a fact of a benefit granted under any policy of the Government and deal with it appropriately while deciding the issues brought before it.



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19. Therefore, any plea by the appellants that they were bound to make the payments regarding interest in terms of the policy would be unsustainable.
20. After the enforcement of the Real Estate Regulation and Development Act, 2016, its provisions bind both the promoter and the allottee alike. Section 18 of the Act defines the acts and rights of the allottee, in case of any default by the promoter. The provisions of the Act are adequately supported by Rule 8(1) of the Rules mandating an agreement as referred to in the language of Section 13(2) of the Act. Thus we have observed in the said judgment of Inderjeet Mohan Kaur (supra) as below:-



18. Section 18(1) of the Act, defines the rights and remedies available to an allottee in the event of a default by the promoter and since it is one that is like frequently or likely to be invoked we deem it appropriate to extract hereinbelow:-

- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,--

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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.

27. The Act is ably supported by Rules and Rule 8(1), provides that the agreement referred to in Section 13(2) of the Act, shall be in Form 'Q' and Clause 7.3 of which provides that on failure of allottee to pay the installment as per schedule given in allotment letter, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount. Clause 7.3 is extracted hereinbelow: -





7.3 Failure of Allottee to take Possession of Apartment/Plot.- Upon receiving a written intimation from the Promoter as per clause 7.2, the Allottee shall take possession of the Apartment/Plot from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the Apartment/Plot to the allottee. In case the Allottee fails to take possession within the time provided in clause 7.2, such Allottee shall continue to be liable to pay maintenance charges as applicable. On failure of allottee to pay the installment as per schedule given in allotment letter, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.

28. Clause 9.1 of the Form 'Q' read with its clause 9.2(i) provides that if the promoter fails to provide ready to move in possession ("ready to move in possession" means that the apartment shall be in a habitable condition which is complete in all respects and as per the completion/occupancy certificate issued by the competent authority) of the apartment/plot to the allottee within the time period specified, then the allottee is entitled to stop making further payments to the promoter as demanded by the promoter; and that if the allottee stops making payments, the promoter shall correct the situation by completing the construction milestones and only thereafter, the allottee will be required to make the next payment



without any penal interest. Clause 9.1 and 9.2 is extracted hereinbelow: -

9.1 Subject to the Force Majeure clause, the Promoter shall be considered under a condition of default, in the following events:-

- (i) promoter fails to provide ready to move in possession of the Apartment/ Plot to the Allottee within the time period specified. For the purpose of this clause, 'ready to move in possession' shall mean that the apartment shall be in a habitable condition which is complete in all respects and as per the completion /occupancy certificate issued by the competent authority; or
- (ii) discontinuance of the Promoter's business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.

9.2 In case of default by Promoter under the conditions listed above, the Allottee is entitled to the following:-

- (i) stop making further payments to the Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter, the Allottee will be required to make the next payment without any penal interest; or
- (ii) the Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the



*Allottee under any head whatsoever towards the purchase of the apartment/plot, along with interest at the rate specified in the Rules within ninety days of receiving the termination notice:*

*Provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate specified in the Rules, for every month of delay till the handing over of the possession of the Apartment/ Plot*

29. *Evidently non-execution of an agreement to sell in terms of Section 13 (1) has seriously imperilled the rights of an allottee. This is an issue that we have repeatedly been confronted with i.e. where the public body such as PUDA and GMADA, to name a few have been offering plots/flats while executing development projects without executing agreement to sell upon receiving 10% of the amount or even 25% of the total price. It is apparent that these public authorities are in violation of the provisions of RERA Act. We therefore direct the Authority under the Act to take appropriate steps including initiating action contemplated under Section 7 against such promoters, who are in default in complying with the provisions of the Act. Section 7 (1) (a), (b), are extracted hereinbelow:-*

- (1) *The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that-*



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(a) *the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;*

(b) *the promoter violates any of the terms or conditions of the approval given by the competent authority;*

(c) *the promoter is involved in any kind of unfair practice or irregularities.*

21. We are sanguine that steps would have been taken by the Authority to ensure that the public bodies have taken note of our observation and taken steps to execute the agreement in terms of Section 13(1) of the Act.

22. A perusal of the tables given in para 10 and 14 would show that the appellants have neither paid the entire principal amount nor paid any amount towards the interest. Whereas as per the payment schedule given in the allotment letter they were required to make the entire payment towards principal and interest to the respondents. However they are entitled to the benefit of Section 18 of the delayed possession.

23. Consequently the appeals are disposed of with the followings directions:-



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- (i) The appellants shall be entitled to interest as provided in Section 18(1) proviso (ii) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 from the date when 25% amount was deposited till the date of actual possession.
- (ii) The allottees would be entitled to the benefit of interest as above, but would have to pay interest for the delayed payment, they cannot have any benefit of the policy. However, we make it clear that three years period shall be reckoned from the date when the appellant was given possession by the PUDA.

24. The appeals of the allottees are allowed as above.

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

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

*Please see my view appended on subsequent pages (page No. 1A to 25A)*  
**ER. ASHOK KUMAR GARG, C.E. (RETD.),**  
**MEMBER (ADMINISTRATIVE/TECHNICAL)**



August 22, 2022  
AN *M*

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

30/08/2022

**Appeal No. 261 of 2020, Appeal No. 262 of 2020, Appeal No. 18 of 2021 and Appeal No. 13 of 2022**

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**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,  
PUNJAB AT CHANDIGARH**

**APPEAL NO. 261 OF 2020**

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No. 451, Circular Road, Charanjit Pura, Jalandhar.

.....Appellant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar, Mohali - 160062.

....Respondent

**APPEAL NO. 262 OF 2020**

Ashish Gupta S/o Sh. Phool Chand Gupta R/o House No. 451, Circular Road, Charanjit Pura, Jalandhar.

.....Appellant

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar, Mohali - 160062.

....Respondent

**APPEAL NO. 18 OF 2021**

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) - 160062

.....Appellant

Versus

1. Nikhil Juneja, R/o House No. 128, Shakti Nagar, Jalandhar, Punjab. (144001)
2. Real Estate Regulatory Authority, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018.

....Respondents

**APPEAL NO. 13 OF 2022**

Kokila Gupta resident of House No. WB-271, Ali Mohalla, Jalandhar, Punjab-144001

.....Appellant

Versus

The Chief Administrator, Punjab Urban Planning and Development Authority, PUDA Bhawan, SAS Nagar, Mohali Punjab, 160062

....Respondent

**Present:** Ms. Manju Goyal, Advocate for the appellant.  
Mr. Balwinder Singh, Advocate for the respondent

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**



**Appeal No. 261 of 2020, Appeal No. 262 of 2020, Appeal No. 18 of 2021 and Appeal No. 13 of 2022**

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

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),  
MEMBER (ADMN./TECH.)**

**JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./TECH.) – HIS VIEW)**

- 1.** By this common order, I shall dispose off above mentioned four appeals bearing Appeal No. 261 of 2020 (**Ashish Gupta versus Punjab Urban Planning and Development Authority**), Appeal No. 262 of 2020 (**Ashish Gupta versus Punjab Urban Planning and Development Authority**), Appeal No. 18 of 2021 (**Punjab Urban Planning and Development Authority versus Nikhil Juneja and another**) and Appeal No. 13 of 2022 (**Kokila Gupta versus the Chief Administrator, Punjab Urban Planning and Development Authority**) filed against orders dated 28.07.2020, 28.07.2020, 20.11.2019 and 06.08.2021, first two of which have been passed by Sh. Sanjeev Gupta, Member of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*), next by Sh. J.S. Khushdil, Member of the Authority and the last one by the Authority itself, in complaints bearing GC No. 1595 of 2020, 1596 of 2020, 1205 of 2019 and 1807 of 2020 filed before the Authority on 25.02.2020, 25.02.2020, 05.02.2019 and 02.01.2021 respectively.
- 2.** All these four appeals arise from the complaints pertaining to same project namely 'Old Jail Site, Jalandhar', similar allotment letters all dated 17.08.2016 for allotment of residential plots each measuring 210 or 222.92 square meters pursuant to their bids in the



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auction held on 21/22.04.2016. Therefore, common judgment is hereby being given in these four appeals.

**FIRST CASE (APPEAL NO. 261 OF 2020):**

- 3.** The facts in respect of Appeal No. 261 of 2020 (**Ashish Gupta versus Punjab Urban Planning and Development Authority**) have been discussed in detail in this case, out of which the common ones shall not be repeated while discussing other three cases hereinafter.
- 4.** The appellant-allottee filed their complaint bearing GC No. 1595 of 2020 on 25.02.2020 against Punjab Urban Planning and Development Authority (*hereinafter also referred to as the promoter or respondent*) in Form 'M' before the Authority under Section 31 of the Real Estate Regulation and Development Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate Regulation and Development Rules, 2017 (*hereinafter referred to as the Rules*), wherein he has inter alia alleged (i) that possession of the plot allotted to him was to be handed over after completion of development works, which were likely to be completed in one year, i.e. by 17.08.2017, however the respondent offered possession on 26.06.2018 without completing the development works; (ii) that as per its policy, the promoter should not charge interest till possession of plot is given to the allottee(s) and that no possession is to be given to the allottee(s) until and unless all the basic amenities are provided.
- 5.** The appellant-complainant, vide their above mentioned complaint, have prayed the Authority for directing the promoter (i) to hand over possession to his satisfaction; (ii) to provide a fresh time frame of three years for construction work from the date of





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possession; (iii) to give claim of TCS; (iv) to refund the interest charged prior to providing basic amenities with an interest of 18%; (v) to pay interest for every month of delay till the handing over of possession; and (vi) to impose penalty on the promoter for non-compliance of the provisions of the Act.

- 6.** After considering the reply dated 18.06.2020 of the respondent-promoter to the complaint bearing GC No. 1595 of 2020 and the arguments of the parties before it, the Authority passed order dated 28.07.2020, the concluding and operative parts of which read as under:-

*“Based on the above facts, the following is concluded:-*

- i. The respondent has not charged any interest till offer of possession.*
- ii. The offer of possession was made on 26.06.2018 and the same was taken by the complainant on 27.06.2018 without any protest.*
- iii. The building plan was sanctioned on 20.02.2019.*
- iv. The Partial Occupation Certificate was granted on 18.10.2019.*

*In view of above, the complaint is devoid of any merits as the possession has already been taken by the complainant almost 1½ years prior to filing of the complaint and even the construction has been completed with Partial Occupation Certificate having been duly issued by the competent authority. Hence, no cause of action as alleged in the complaint arises and the principal of estoppel shall apply as the complainant has already made all the payments and taken possession of the plot after which he has even completed the construction and is enjoying his property after obtaining Partial Occupation Certificate. The complaint is accordingly dismissed. ---  
----XXXXXXXXXXXXX-----.”*

- 7.** Aggrieved by the aforementioned order dated 28.07.2020 of the Authority, the complainant-appellant filed his appeal dated



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10.11.2020 bearing Appeal No. 261 of 2020 (**Ashish Gupta versus Punjab Urban Planning and Development Authority**).

**8.** The appellant, in his appeal and during arguments by his learned counsel Ms. Manju Goyal at length before us, whereby she ultimately cited judgment dated 31.12.2021 of this Tribunal in Appeal No. 230 of 2020 and Appeal No. 231 of 2020 (both titled as **Inderjeet Mohan Kaur versus The Chief Administrator, GMADA**), has inter alia contended as under:-

- (i) that as per the allotment letter dated 17.08.2016, the possession was to be handed over after completion of development works likely to be completed in one year i.e. by 17.08.2017, which is in contravention to the terms and conditions mentioned in the brochure, however the same was offered on 26.06.2018 and paper possession was given to him on 27.06.2018 at the respondent's office;
- (ii) That the NDC was issued to the appellant by the respondent on 11.09.2019;
- (iii) That in a similar case decided by the Authority on 20.11.2019 in GC No. 1205 of 2019 titled as **Nikhil Juneja versus PUDA Mohali**, it has been held that there is delay in handing over possession within the stipulated period and for which he is entitled to interest from the stipulated date of delivery of possession till the date of actual possession has been handed over.



**9.** The appellant-allottee has prayed in his appeal to direct the respondent-promoter to pay interest for every month of delay till handing over possession as per the Act and the Rules from the date of allotment letter which is 17.08.2016 till the date of issuance of

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no due certificate to the appellant on 11.09.2019. It is outrightly mentioned here that this prayer for interest for more than three years is far beyond the one of his own prayers in his complaint for interest for the period of delay in possession, which as made out by the appellant in his appeal itself is from 17.08.2017 to 26/27.06.2018 (i.e. less than an year).

**MY FINDINGS:**

**10.** Pursuant to bid given by the appellant in the auction held on 21.04.2016 for allotment of residential plots, the respondent-promoter allotted to the appellant-allottee residential plot No. 43 (F.P.) measuring 222.92 square meters in Old Jail Site, Jalandhar. The appellant has placed on record before this Tribunal a copy of the brochure in respect of auction held on 18.11.2016 for auction of residential plots and commercial sites at two locations, namely "Near Football Chowk (Jail Site) Jalandhar" and "Gandhi Vanita Ashram, Kapurthala Road, Jalandhar". However, the plot allotted to the appellant i.e. residential plot No. 43 (F.P.) measuring 222.92 square meter is not covered in the detail of plots in the aforementioned brochure. Hence, reliance placed by the complainant-appellant on the aforementioned brochure for auction held on 18.11.2016 is unfounded.

**11.** The appellant participated in the auction held on 21.04.2016 and their bid @ Rs.49,000/- per square meter for residential plot No. 43(F.P.) measuring 222.92 square meters at Old Jail Site, Jalandhar was accepted and an allotment letter dated 17.08.2016 was issued by the promoter to the appellant for a price of Rs.1,09,23,080/-.

**12.** Clause 3 titled "PAYMENT SCHEDULE" of the allotment letter reads as under:-



**“3. PAYMENT SCHEDULE**

- i) Payment of Rs. 27,30,770/- (in words Rupees. Twenty Seven Lac Thirty Thousand Seven Hundred Seventy only) made by you has already been adjusted towards initial 25% of the price of the Plot. Besides 2% of the allotment price has also been received as cancer cess.
- ii) The balance amount of Rs. 81,92,310/-, being 75% of the price of plot can either be paid in lump sum without any interest within 60 days from the issue of allotment letter (excluding date of issue) or in 7 half yearly equated instalments (with first instalment falling due after six month from the date of auction) along with an interest @ 12% per annum as indicated in the schedule given in below:

Installment	Due Date	Principle	Interest	Total amount payable
1	2	3	4	5
1 <sup>st</sup>	21.10.2016	1170330.00	491539.00	1661869.00
2 <sup>nd</sup>	21.04.2017	1170330.00	421319.00	1591649.00
3 <sup>rd</sup>	21.10.2017	1170330.00	351099.00	1521429.00
4 <sup>th</sup>	21.04.2018	1170330.00	280879.00	1451209.00
5 <sup>th</sup>	21.10.2018	1170330.00	210659.00	1380989.00
6 <sup>th</sup>	21.04.2019	1170330.00	140440.00	1310770.00
7 <sup>th</sup>	21.10.2019	1170330.00	70220.00	1240550.00
	<b>Total</b>	<b>8192310.00</b>	<b>1966155.00</b>	<b>10158465.00</b>

- iii) In case balance 75% payment is made in lump sum within 60 days from the date of issue of allotment letter (excluding date of issue), a rebate of 5% shall be admissible on this amount. However, in case payment of amount due is made in lump sum subsequently at any stage, a rebate of 5% on the balance principal amount shall also be admissible.

iv) to x) -----XXXXXXXXXXXXXXXXXXXXXXXXXXXXX-----

- xi) In case any installment or part thereof is not paid by the due date, then without prejudice to any action under section 45 of the Punjab Regional and Town Planning and Development Act, 1995, 18% penal interest will be levied for the period for the period of delay upto 18 months, beyond which delay shall not be condoned under any circumstances and the site shall be resumed.

xii) -----XXXXXXXXXXXXXXXXXXXXXXXXXXXXX-----

- xiii) The amount deposited by the allottee shall be adjusted in the manner that penal interest, if any, shall be deducted firstly and then the interest amount and the remaining amount as principal.

xiv) -----XXXXXXXXXXXXXXXXXXXXXXXXXXXXX-----



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xv) *In case of any advance payment which is not less than the next due installment, then the remaining installments shall be rescheduled.*

xvi) to xviii) -----XXXXXXXXXXXXXXXXXXXXXXXXX-----”

**13.** Clause 4, titled “POSSESSION AND OWNERSHIP”, of the allotment letter reads as under:-

“4. *POSSESSION AND OWNERSHIP*

i) *Possession of the plot shall be handed over to the allottee after completion of development works, which is likely to be completed in one year. If possession is not taken by the allottee within stipulated period, it shall be deemed to have been handed over on the due date. No interest will be charged from the allottee, till the time the possession of the site is offered. It is further clarified that if the possession can be given in 6 months, then the 1st installment shall include interest for the remaining 6 months and if the possession can be given in 9 months, then the first installment shall include interest for 3 months and if the development period is one year or more then no interest shall be charged with the first installment.”*

**14.** Sub clause iii) of clause 6, titled “USAGE AND PERIOD FOR CONSTRUCTION” reads as under:-

“*The allottee will have to construct the building within 3 years from the date of possession. The period can be extended by the Estate Officer, PUDA, Jalandhar in the manner and on payment of such fee as fixed by the Govt.”*

**15.** The appellant has claimed in his complaint dated 25.02.2020 that he made a payment of Rs. 1,11,10,985/- in total till that date. As per the details of the payments made by the allottees to the promoter, that have been placed on record before this Tribunal by learned counsel for the allottees on 14.07.2022, out of aforesaid amount of Rs. 1,11,10,985/-, an amount of Rs. 31,99,232/- paid till 20.05.2016 i.e. before the date of issuance of the allotment letter



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dated 17.08.2016, out of which Rs. 29,49,232/- stand accounted for under clause 3(i) of the allotment letter towards 25% of the price of the plot (i.e. Rs. 27,30,770/-) and 2% cancer cess (Rs. 2,18,462/-). The remaining amount of Rs. 81,61,753/-, paid till 24.04.2014, is hereby being tabulated, along with instalments of balance 75% payable due from time to time as per clause 3(ii) allotment letter, as under:-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1 <sup>st</sup>	11,70,330	4,91,539	16,61,869	21.10.2016	20.05.2016*	2,50,000
2 <sup>nd</sup>	11,70,330	4,21,319	15,91,649	21.04.2017	20.10.2016	11,70,330
3 <sup>rd</sup>	11,70,330	3,51,099	15,21,429	21.10.2017	19.04.2017	11,70,330
4 <sup>th</sup>	11,70,330	2,80,879	14,51,209	21.04.2018	17.10.2017	11,07,912
5 <sup>th</sup>	11,70,330	2,10,659	13,80,989	21.10.2018	17.04.2018	44,60,957
6 <sup>th</sup>	11,70,330	1,40,440	13,10,770	21.04.2019	25.04.2018	2,224
7 <sup>th</sup>	11,70,330	70,220	12,40,550	21.10.2019		
<b>Total</b>	<b>81,92,310</b>	<b>19,66,155</b>	<b>1,01,58,465</b>			<b>81,61,753</b>

\* Out of Rs. 31,99,232/- claimed to be paid till 20.05.2016

- 16.** The respondent has inter alia submitted in his reply dated 16/18.06.2020 that (i) no interest on installments was charged from the complainant till possession of the plot was offered; (ii) that 5% rebate amounting to Rs. 1,75,550/- on the balance amount deposited by the complainant had been given to the complainant; (iii) that No-Due Certificate was issued on 11.09.2019 and conveyance deed got executed; (iv) that the complainant was offered possession of the plot on 26.06.2018 which he took on 27.06.2018; (v) that the complainant got the building plan sanctioned from the competent authority on 02.09.2019 and started construction on the plot; and (vi) that after raising the building on the plot, the complainant applied for Partial Occupation Certificate for using the building, which was granted on 18.10.2019. These submissions of the respondent amply bely the contention of the appellant that possession handed over to him on 27.06.2018 was just on paper.



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17. As per sub clause i) of clause 4, titled "POSSESSION AND OWNERSHIP", of the allotment letter dated 17.08.2016, the promoter was required to hand over possession of the plot to the allottee on completion of development works, which was likely to be completed within one year.
18. The respondent has not claimed in his reply to the complaint that there was any delay on the part of the appellant in making the payments.
19. Thus, the possession of the plot was required to be handed over by the respondent latest by 17.08.2017. However, admittedly possession was handed over on 27.06.2018.
20. Therefore, in terms of the provisions under the proviso after Section 18(1) of the Act and Rule 16 of the Rules, the respondent is liable to pay interest for the delay period commencing from 18.08.2017 on the payments made on or before 18.08.2017 and from the date of payment on the payments made after 18.08.2017, till 27.06.2018 at SBI highest MCLR as prevailing from time to time plus 2%.
21. However, this Tribunal, in its judgment dated 31.12.2021 in Appeal No. 230 of 2020 and Appeal No.231 of 2020 (*supra*), has held as under:-



*"17. Since the appellant has availed of a statutory remedy, the reliefs that the Authority under the Act can grant would necessarily have to be restricted to the ones available under the statute. The waiver of interest or grant thereof in terms of the policy by the State Government would not ipso facto bind the Authority to disentitle any relief available to any allottee under the Act. However, it does not prevent the Authority from taking a holistic view and moulding the relief to an*

*allottee to avoid an unjust enrichment or an unexpected windfall to him.*

18. *A perusal of the judgment of the Hon'ble Punjab and Haryana High Court referred to in the policy framed by the Government reveals that there are certain directions given to the State to deal with situations where the public bodies do not stand advantaged for their own defaults at the expense of the allottee. Since the Government framed the policy ostensibly, as a measure of compliance of the directions given by the Hon'ble High Court it would purely be in their domain to apply it while granting a benefit to an allottee. This however, does not preclude or restrict the allottee's right to approach the Authority under the Act for redressal of his grievance, since it is a statutory remedy.*

19. *The Authority in turn would have no jurisdiction to enforce the policy of a Government as it is bound to deal with the matters before it strictly in terms of the powers that flow from the statute i.e. RERA Act. It is purely in the domain of the Government to apply or not to apply a policy which shall be independent of the reliefs available to an aggrieved person under the Act. It matters not that the policy, the benefit of which an allottee claims, somewhat encapsulates the spirit of the Act in protecting an allottee from an unjust action of the developer or promoter, which in this case happens to be a public body.*

20. *Likewise, we as an Appellate Authority would have no such power to issue mandates to enforce a policy of the Government but nothing precludes the Authority or for that purpose the Appellate Tribunal to take into consideration a fact of a benefit granted under any policy of the Government and deal with it appropriately while deciding the issues brought before it."*



**22.** In view of the above mentioned judgment dated 31.12.2021 of this Tribunal, the liability of the respondent to pay interest in terms of Section 18(1) of the Act for delay in possession for the period from 18.08.2017 to 27.06.2018 is required to be set off to the extent of amount of those parts of the interest components of the



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installments, which was not charged/waived off due to the said delay in possession.

**SECOND CASE (APPEAL NO. 262 OF 2020):**

**23.** The facts of the complaint, reply, order of the Authority, appeal before this Tribunal related to Appeal No. 262 of 2020 (**Ashish Gupta versus Punjab Urban Planning and Development Authority**) are identical to those of Appeal No. 261 of 2020 (**Ashish Gupta versus Punjab Urban Planning and Development Authority**) discussed above, in all respects except that the plot No. is 44(F.P.), the rate is Rs. 48,800/- per square meter and accordingly there is variation in various related amounts.

**24.** Because of similarity of the two cases discussed above, the reliefs are also bound to be similar.

**THIRD CASE (APPEAL NO. 18 OF 2021):**

**25.** Appeal No. 18 of 2021 (**Punjab Urban Planning and Development Authority versus Nikhil Juneja and another**) has been filed by the promoter against orders dated 20.11.2019 passed by Sh. J.S. Khushdil, Member of the Authority in complaint bearing GC No. 1205 of 2019 filed on 05.02.2019.

**26.** In this case, the complainant-allottee has alleged in his complaint filed on 05.02.2019 (i) that possession was delayed; and (ii) that the NDC applied for on 02.05.2018 has not been issued. The reliefs sought in the complaint are (i) interest on principal amount paid for delay in possession @ 18% per annum on monthly compounding basis; (ii) charge non-construction charges 3 years after the date of issue of NDC; (iii) Rs. 60,000/- as litigation charges and Rs. 1 lakh for harassment and mental agony.



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**27.** After considering the reply dated 06.06.2019 of the appellant-promoter to the complaint and the arguments of the parties before it, the Authority passed order dated 20.11.2019, the concluding and operative parts of which read as under (certain part of it, which has specifically been objected to by the appellant, has been shown in bold and underlined):-

*“6. It is an admitted fact that plot bearing NO.65C, Old Jail Site, Jalandhar was purchased by the complainant and it was allotted to him vide allotment letter dated 17.08.2016. It is also an admitted fact that the sale price of the plot has also been paid by the complainant to the respondent and it is also apparent from the copy of ledger of the respondent/PUDA. The perusal of clause 4 of the allotment letter dated 17.08.2016 shows that possession of the plot in question was to be handed over to the allottee within one year and as per clause 6(iii) the allottee was to construct the building within three years from the date of possession. The possession in this case was actually delivered on 02.07.2018 as is admitted by both sides, though, it was to be delivered by 16.07.2017 as per clause 4 of the allotment letter. The perusal of copy of the payment schedule of respondent itself shows that the payment was to be made up to 21.10.2019, whereas, the complainant already made the payment till 19.04.2017. As such, it appears that the payments have been made within the stipulated time period. In these circumstances, the submission raised by the representative for respondent that the PUDA/respondent has not charged any interest from the complainant on the instalments is devoid of any force as the interest could only be charged if there was any delay in making instalments despite demand having been raised which is not the condition in this case as the payment of instalments has been made within the stipulated period by the complainant.”*

7. Similarly, the submission of the representative for the complainant that the complainant could not get loan and he will have to pay non-construction charges, in also devoid of any force, as the possession was to be handed over to the complainant by 16.08.2017 and construction



was to be raised within three years i.e. till August, 2020, which is still about nine months away from today.

8. No doubt, delay has occurred in delivery of possession of the plot to the complainant despite of the fact that the payment huge amount towards price of the plot made by him ie. Rs.1,14,55,544/- (including cess and TDS). In these circumstances, as the promoter was under obligation to provide lawful possession of the plot within the stipulated period failing which he was to pay interest on the delayed period in delivery of possession as per the provisions of Section 18 of the Act. Apart from that, Clause 9.2 of the specimen of proforma of agreement depicted in Punjab RERA Rules prescribes the rights of the allottee in case of default by the promoter, which runs as under:

9.2 In case of default by promoter under the conditions listed above, the allottee is entitled to the following:

(i) stop making further payments to the promoter as demanded by the promoter. If the allottee stops making payments, the promoter shall correct the situation by completing the construction milestone and only thereafter the allottee will be required to make the next payment without any penal interest; or

(ii) the allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment/plot along with interest at the rate specified in the Rules within ninety days of receiving the termination notice;

Provided that where an allottee does not intend to withdraw from the project or terminate the agreement, he shall be paid by the promoter, interest at the rate specified in the Rules for



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*every month of delay till the handing over of the possession of the apartment/plot."*

9. *As the complainant side does not intend to withdraw from the project and is seeking possession of the plot, which has not been delivered so far and rather the respondent has utilized the amount paid on account of basic sale price by the complainant side and has earned interest thereon, then, the similar benefit cannot be denied to the complainant side on the said amount for the delayed period in delivery of possession of the plots as per clause 9.2 mentioned above. As such, the respondent is liable to pay interest on the amount so paid by the complainant to the respondent towards basic sale price at the prescribed rate as per Rule 16 of the Rules ie. State Bank of India highest marginal cost of lending rate plus 2% from the stipulated date of delivery of possession i.e. w.e.f. 16.08.2017 till 01.07.2018 (as the actual physical possession has been delivered to the complainant on 02.07.2018).."*

10. *Since, the complainant side could not get possession of the plot within the stipulated period and has to seek the remedy under the existing law by way of engaging representative and contesting this complaint. As such, the complainant is entitled to litigation charges and he is granted litigation expenses to the tune of Rs.25,000/-.*

11. *The complaint is, therefore, accepted to the following extent and heads:*

01.	Simple Interest	At the State Bank of India highest marginal cost of lending rate plus 2% on basic sale price from the stipulated date of delivery of possession i.e. 16.08.2017 till 01.07.2018 (as the actual physical possession has been delivered to the complainant on 02.07.2018).
02.	As litigation expenses	Rs. 25,000/-

*The respondent is directed to pay the arrears of above said amount on account of interest plus litigation*



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*expenses within sixty days from today. The parties shall remain bound by the statutory obligations laid down under the Act. A copy of this order be supplied to the parties under rules. File be consigned to record room after due compilation.”*

- 28.** Aggrieved by the aforementioned order dated 20.11.2019 of the Authority, the appellant-promoter filed an application dated 09.09.2020, bearing Review Application No. 04 of 2020, before the Authority on the grounds that due to delay in possession, the promoter itself has given relief of not charging 12% per annum interest on the balance installments because of which the respondent had deposited an amount of Rs. 48,86,700/- in four installments without interest and the rest of amount (Rs. 36,65,022/-) in lump-sum with 5% rebate; and the respondent has contended therein that the Authority has also granted interest on aforesaid amount of Rs. 48,86,700/- and the appellant-promoter has alleged that dual benefit has thus been given to the complainant.
- 29.** The review application was rejected vide order dated 27.10.2020 passed by the Authority, being barred by the period of limitation and also being devoid of any fresh evidence or material which has not been considered at the time of the decision.



- 30.** Aggrieved by the aforementioned orders dated 20.11.2019 and 27.10.2020 of the Authority, the promoter-appellant has filed present appeal, whereby and during the argument before this Tribunal it has been prayed to set aside and quash these two orders and to dismiss the complaint, inter alia on the basis of the following grounds:-

- (i) that as per the payment schedule given in the allotment letter dated 17.08.2016, if allottees opt for payment in installments,

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then they would have to pay interest @ 12% per annum and failure to timely pay the instalment would entail payment of penal interest for the period of delay in payment;

- (ii) that the terms and conditions of the allotment given in the allotment letter provide that no interest on installments shall be charged till the possession is offered and thus the delivery of possession is linked with the development and waiver of interest @ 12% per annum which is part and parcel of the installments to be deposited by the allottee-complainant;
- (iii) that the Authority granted interest on the amount of the installments deposited without interest and as chargeable interest @ 12% per annum was waived by the appellant itself, thus dual benefit has been given to the allottee;
- (iv) that litigation expenses to the tune of Rs. 25,000/- have been awarded without substance.

**31.** The terms and conditions of the allotment letter dated 17.08.2016 relating to this appeal are the same as those of the allotment letters of even date in the two cases discussed above, in all respects except that in the this case, the plot No. is 65-C (F.P.), the rate of the plot is Rs. 51,150/- per square meter and accordingly there is variation in various amounts. In this third case, the basic price of the plot measuring 222.92 square meter is Rs. 1,14,02,358/-, amount of cancer cess @ 2% is Rs. 2,28,047/- and the schedule of payment of 75% of the price of the plot in seven half yearly installments with interest @ 12% per annum is as under:-

<b>Installment</b>	<b>Due Date</b>	<b>Principle</b>	<b>Interest</b>	<b>Total amount payable</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1 <sup>st</sup>	21.10.2016	1221675.00	513103.00	1734778.00
2 <sup>nd</sup>	21.04.2017	1221675.00	439803.00	1661478.00
3 <sup>rd</sup>	21.10.2017	1221675.00	366502.00	1588187.00



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4 <sup>th</sup>	21.04.2018	1221675.00	293202.00	1514877.00
5 <sup>th</sup>	21.10.2018	1221675.00	219901.00	1441575.00
6 <sup>th</sup>	21.04.2019	1221675.00	146601.00	1368275.00
7 <sup>th</sup>	21.10.2019	1221675.00	73300.00	1294974.00
	<b>Total</b>	<b>8551722.00</b>	<b>2052412.00</b>	<b>10604134.00</b>

**32.** The complainant has claimed in his complaint dated 05.02.2019 that he made a lump sum payment of the plot on 14.04.2018 and availed 5% rebate. The appellant, in its reply dated 06.06.2019 as well as in its appeal dated 12.05.2021, has contended that though the complainant was required to pay the installments with interest as per payment schedule given under clause 3 of the allotment letter, however the complainant deposited some installments without interest and deposited the balance amount on 17.04.2018 in lump sum after availing rebate @ 5%. These pleadings of the parties have also been noticed by the Authority under paragraphs 1 and 2 of its order 20.11.2019.

**33.** Therefore, the finding of the Authority, viz *“The perusal of copy of the payment schedule of respondent itself shows that the payment was to be made up to 21.10.2019, whereas, the complainant already made the payment till 19.04.2017.”*, is erroneous. Hence, its consequential findings, which are reproduced under paragraph 27 above in bold and underlined, are also erroneous, particularly because the benefit of not charging 12% interest might have not only been limited up to the latest due date of possession i.e. 16.08.2017, but also has been extended beyond it up to atleast the date of making the balance payment in lumpsum on 14/17.04.2018, if not up to the actual date of possession i.e. 02.07.2018.

**34.** This Tribunal, vide its order dated 25.04.2022, categorically ordered learned counsel for the respondent-allottee to submit the details of the payments made to the appellant. The said order has



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not been complied with despite another opportunity provided on 12.05.2022, whereas the similar orders to her in many other appeals relating to the same project have been complied with on 14.07.2022. This non-compliance attracts provisions of Section 68 of the Act. Had the said repeated orders of this Tribunal been complied with, more clear picture would have emerged. However, being for the first time and thus taking a lenient view, I deem it appropriate to impose a fine of Rs. 10,000/- upon the complainant-allottee for this lapse under Section 68 of the Act.

**35.** Though as per the provisions of Section 18(1) of the Act the appellant is liable to pay interest for the period of delay in possession, however in view of aforementioned judgment dated 31.12.2021 of this Tribunal in Appeals No. 230 of 2020 and 231 of 2020 (**Supra**) and my above mentioned findings, the amount of those parts of interest components of the installments, which were not charged/waived off due to said delay in possession, is required to be set off against the interest admissible for the same cause i.e. delay in possession under Section 18(1) of the Act.

**36.** Therefore, the order dated 20.11.2019 of the Authority in complainant bearing GC No. 1205 of 2019 needs to be modified appropriately to this extent.

**FOURTH CASE (APPEAL NO. 13 OF 2022):**

**37.** Appeal No. 13 of 2022 (**Kokila Gupta versus the Chief Administrator, Punjab Urban Planning and Development Authority**) has been filed against orders dated 06.08.2021 passed by the Authority in complaint bearing GC No. 1807 of 2020 filed on 02.01.2021.





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- 38.** In this case, the complainant-transferee has alleged in his <sup>ho</sup> complaint that possession was delayed and has sought reliefs of (i) handing over possession with completion/occupancy certificate to her satisfaction; (ii) payment of interest for every month of delay; (iii) imposition of penalty on the promoter-appellant for non-compliance of the provisions of the Act.
- 39.** After considering the reply dated 09.04.2021 of the appellant-promoter to the complaint and the arguments of the parties before it, the Authority, vide its order dated 06.08.2021, has held the complaint to be without merit and has dismissed the same, while observing as under:-

*"4. We have considered the rival arguments carefully and find no merit in the contentions raised on behalf of the complainant. During the course of his arguments, Sh. Bhupinder Singh drew our attention to the order dated 24.08.2020 of the Supreme Court of India, in Civil Appeal No. '6239 of 2019 "Wg. Cdr. Arifur Rahman Khan and Aley Sultana and Ors. Vs DLF Southern Homes Pvt. Ltd. In para 38 of this order, it has been held that a subsequent transferee who, inspite of a delay in delivery of possession, purchases the plot from the original allottee would not be entitled for compensation on account of such delay. In this case the indicated date of delivery of possession was 28.08.2017 whereas the present complainant came into the picture on 01.02.2018, after the delay had already occurred. The matter is therefore covered under the order of the Supreme Court of India for the above case. Further this Authority had already held in the case of "Nupur Hingad W/o Garish Kumar Vs Emmar MGF Land Limited (Complaint No. GC1487/2019) that the objection that an offer of possession is not valid since the CC had not been obtained by the promoter can be sustained only till such time as possession is not taken by the allottee. Once an allottee secures possession it can not subsequently be allowed to contend that the possession was not lawful since the CC had not been obtained - rather he would be*



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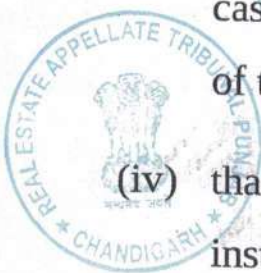
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*stopped for doing so. This finding is fully applicable to the present case since the complainant has raised construction over on the plot, and Occupation Certificate has already been received. Raising the plea of defective possession after not only obtaining possession but constructing and finishing a building thereon can not be allowed.*

*5. This complaint is accordingly held to be without merit and is dismissed.*

**40.** Aggrieved by the aforementioned orders dated 06.08.2021 of the Authority, the transferee-appellant has filed present appeal, whereby and during the argument before this Tribunal it has been prayed to direct the respondent-promoter to pay interest to the appellant-transferee from the due date of possession till the handing over of possession of the plot with all basic amenities, inter alia on the basis of the following grounds:-

- (i) that there is delay in handing over the possession;
- (ii) that the transfer is within the family from husband to wife and as per definition in the Act, the allottee includes the person who subsequently acquires the said allotment through sale, transfer or otherwise; and the Authority, in its judgment dated 03.09.2020 titled as **Kanshi Ram versus M/s Sushma Buildtech**, has awarded interest to the complainant in that case even after the conveyance deed was executed in favour of the said complainant;
- (iv) that the occupation certificate was granted on 01.01.2021 instead of 01.01.2020 as wrongly held by the Authority, which was received by the appellant after filing the complaint;



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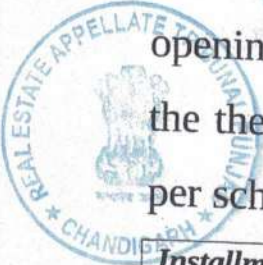
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(iv) that a similar case has been decided by the Authority on 20.11.2019 in GC No. 1205 of 2019 titled as **Nikhil Juneja versus PUDA**

**41.** The terms and conditions of the allotment letter dated 17.08.2016 relating to this appeal are the same as those of the allotment letters of even date in the three cases discussed above in all respects except that in the this case, the plot No. is 19 (F.P.) measuring 210 square meter, the rate is Rs. 48,500/- per square meter and accordingly there is variation in various amounts. In this case, the price of the plot is Rs. 1,01,85,000/-, amount of cancer cess @ 2% is Rs. 2,03,700/- and the schedule of payment of the balance 75% of the price of the plot, after reducing it by Rs. 50/- received in advance, in seven half yearly installments with interest @ 12% per annum is as under:-

<b>Installment</b>	<b>Due Date</b>	<b>Principle</b>	<b>Interest</b>	<b>Total amount payable</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
1 <sup>st</sup>	21.10.2016	1091243.00	458322.00	1549565.00
2 <sup>nd</sup>	21.04.2017	1091243.00	392847.00	1484090.00
3 <sup>rd</sup>	21.10.2017	1091243.00	327373.00	1418616.00
4 <sup>th</sup>	21.04.2018	1091243.00	261898.00	1353141.00
5 <sup>th</sup>	21.10.2018	1091243.00	196424.00	1287667.00
6 <sup>th</sup>	21.04.2019	1091243.00	130949.00	1222192.00
7 <sup>th</sup>	21.10.2019	1091243.00	65475.00	1156717.00
	<b>Total</b>	<b>7638700.00</b>	<b>1833288.00</b>	<b>9471988.00</b>

**42.** The plot was reallocated after transfer from the original allottee to the appellant-transferree vide reallocation letter dated 01.02.2018, as per opening condition of the additional terms and conditions of which, the the transferee-appellant was to pay the balance installments as per schedule given below:-



<b>Installment</b>	<b>Due Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total amount payable</b>
1 <sup>st</sup>	21.10.2016			
2 <sup>nd</sup>	21.04.2017			
3 <sup>rd</sup>	21.10.2017			
4 <sup>th</sup>	21.04.2018	1091243.00	261898.00	1353141.00
5 <sup>th</sup>	21.10.2018	1091243.00	196424.00	1287667.00
6 <sup>th</sup>	21.04.2019	1091243.00	130949.00	1222192.00
7 <sup>th</sup>	21.10.2019	1091243.00	65475.00	1156717.00

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**43.** There is no dispute that possession was due on 17.08.2017 (i.e. before the transfer of the plot on 01.02.2018), was offered on 26.06.2018 (i.e. after the transfer of the plot on 01.02.2018) and handed/taken over on 27.06.2018. Therefore, in view of the judgment dated 24.08.2020 passed by Hon'ble Supreme Court of India in Civil Appeal No. 6239 of 2019 titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others versus DLF Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.)**, the appellant's entitlement to the interest under Section 18(1) of the Act for delay in handing over the possession has to be restricted to period commencing from 01.02.2018 (the date of transfer of the plot) till 27.06.2018, as has been held by this Tribunal in Appeal No. 37 of 2021 (**Leela Gupta versus Bathinda Development Authority**) decided on 12.05.2022.

**44.** Further, in view of aforementioned judgment dated 31.12.2021 of this Tribunal in Appeals No. 230 of 2020 and 231 of 2020 (**Supra**), the amount of those parts of interest components of the installments, which were not charged/waived off due to said delay (01.02.2018 to 27.06.2018) in possession, is required to be set off against the interest admissible for the same cause i.e. delay in possession under Section 18(1) of the Act.

**MY DECISION IN THE PRESENT APPEALS:**

**45.** In view of above discussions, I deem it appropriate to order as follows:

- (i) The order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1595 of 2019, out of which Appeal No. 261 of 2020 has arisen, is hereby set aside. The respondent-promoter is directed, in terms of the provisions of



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Section 18(1) of the Act and Rule 16 of the Rules, to pay to the appellant interest for the period commencing from 18.08.2017 on the payments made on or before 18.08.2017 and commencing from the date of payment on the payments made after 18.08.2017, till 27.06.2018 at SBI highest MCLR as prevailing from time to time plus 2%. The amount of interest waived off by the respondent-promoter on account of this delay in handing over the possession of the plot shall be adjusted against the amount of interest payable under Section 18(1) of the Act to the appellant for delay in possession.

- (ii) The order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1596 of 2019, out of which Appeal No. 262 of 2020 has arisen, is hereby set aside. The respondent-promoter is directed, in terms of the provisions of Section 18(1) of the Act and Rule 16 of the Rules, to pay to the appellant interest for the period commencing from 18.08.2017 on the payments made on or before 18.08.2017 and commencing from the date of payment on the payments made after 18.08.2017, till 27.06.2018 at SBI highest MCLR as prevailing from time to time plus 2%. The amount of interest waived off by the respondent-promoter on account of this delay in handing over the possession of the plot shall be adjusted against the amount of interest payable under Section 18(1) of the Act to the appellant for delay in possession.



- (iii) The order dated 20.11.2019 passed by the Authority in the complaint bearing GC No. 1205 of 2019, out of which Appeal No. 18 of 2021 has arisen, is hereby modified to the extent that the amount of interest waived off by the appellant-promoter on account of the delay from 16.08.2017 to

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01.07.2018 in handing over the possession of the plot shall be adjusted against the amount of interest payable under Section 18(1) of the Act to the respondent-complainant for delay in possession. In this case, a fine of Rs. 10,000/- is imposed upon the respondent-allottee under Section 68 of the Act for non-compliance of orders dated 25.04.2022 and 12.05.2022 of this Tribunal.

- (iv) The order dated 06.08.2021 passed by the Authority in the complaint bearing GC No. 1817 of 2020, out of which Appeal No. 13 of 2022 has arisen, is hereby set aside. The respondent-promoter is directed, in terms of the provisions of Section 18(1) of the Act and Rule 16 of the Rules, to pay to the appellant interest for the period commencing from 01.02.2018 on the payments made on or before 01.02.2018 and commencing from the date of payment on the payments made after 01.02.2018, till 27.06.2018 at SBI highest MCLR as prevailing from time to time plus 2%. The amount of interest waived off by the respondent-promoter on account of this delay in handing over the possession of the plot shall be adjusted against the amount of interest payable under Section 18(1) of the Act to the appellant for delay in possession.

**46.** A copy each of this order be placed in each of the files of aforementioned four appeals and also be sent to the parties as well as the Authority and thereafter, the files be consigned to the record room.



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

August 22, 2022