

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

Subject: -

APPEAL NO. 191 OF 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001

...Appellant

Versus

1. Yash Pal Gupta, S/o Sh. P.M. Gupta R/o #2456, Sector 23-C,
Chandigarh; Presently residing at House No.2190, Sector
27-C, Chandigarh-160019.

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

APPEAL NO. 192 OF 2022

Estate Officer, BDA/PUDA Bathinda, PUDA Complex, Bhagu
Road, Bathinda, Punjab-151001

...Appellant

Versus



1. Dr. Pankaj Garg S/o Dr. B.R. Garg, resident of 19-A, Civil
Lines, Near Old Sessions Court Ambala City, Tehsil and
District Ambala, Haryana-134003.

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

APPEAL NO. 190 OF 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001

...Appellant

Versus

1. Asha Rani wife of Prem Kumar, resident of Back Side Raman
Cinema College, Link Road, Mansa, Tehsil and District Mansa,
Punjab-151505.

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

Memo No. R.E.A.T./2022/ 631-633

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 appeal 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 14th
day of December, 2022.

Dhanraj Kumar

REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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**BEFORE THE REAL ESTATE APPELLATE, TRIBUNAL,
PUNJAB, SECTOR 17, CHANDIGARH-160017.**

Appeal No. 191 of 2022

MEMO OF PARTIES


Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001 ...Appellant

Versus

1. Yash Pal Gupta, S/o Sh. P.M. Gupta R/o #2456, Sector
23-C, Chandigarh; Presently residing at House No. 2190,
Sector 27-C, Chandigarh - 160019. ...Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda, Punjab-
151001. ...Performa Respondent

Place: Chandigarh
Date: 04.10.2022


(Bhupinder Singh, Balwinder Singh & Kunal Choksi)
Advocates
Counsel for the Appellant



BEFORE THE REAL ESTATE APPELLATE, TRIBUNAL,
PUNJAB, SECTOR 17, CHANDIGARH-160017

Appeal No. 192 of 2022

MEMO OF PARTIES

Estate Officer, BDA/PUDA Bathinda, PUDA Complex, Bhagu
Road, Bathinda, Punjab-151001. ...Appellant

Versus

1. Dr. Pankaj Garg son of Dr. B.R. Garg, resident of 19-A,
Civil Lines, Near Old Sessions Court Ambala City, Tehsil and
District Ambala, Haryana, Pin-134003. ...Respondent
2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex Bhagu Road, Bathinda District
Bathinda, Punjab-151001. ...Performa Respondent

Place: Chandigarh
Date: CA .10.2022

(Bhupinder Singh, Balwinder Singh & Kunal Choksi)
Advocates
Counsel for the Appellant



BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB, SECTOR 17, CHANDIGARH-160017.

Appeal No. 190 of 2022

MEMO OF PARTIES



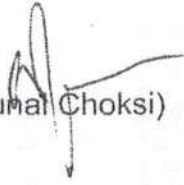
Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001 ...Appellant

Versus

1. Asha Rani wife of Prem Kumar, resident of Back side
Raman Cinema College, Link Road, Mansa, Tehsil and District
Mansa, Punjab, Pin Code 151505. ...Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda, Punjab-
151001. ...Performa Respondent

Place: Chandigarh
Date: 04.10.2022

  
(Bhupinder Singh, Balwinder Singh & Kumar Choksi)
Advocates
Counsel for the Appellant



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

APPEAL NO. 191 of 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001.

...Appellant

Versus

1. Yash Pal-Gupta, S/o Sh. P.M Gupta, R/o #2456, Sector-23 C,
Chandigarh, presently residing at H.No. 2190, Sector-27 C,
Chandigarh. Pincode 160019.

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

APPEAL NO. 192 of 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001.

...Appellant

Versus

1. Dr. Pankaj Garg S/o Dr. B.R Garg R/o 19-A, Civil Lines, Near
Old Sessions Court, Ambala City, Tehsil and District Ambala,
Haryana Pincode 134003.

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent



Appeal No. 190 of 2022, Appeal No. 191 of 2022 and
Appeal No. 192 of 2022

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APPEAL NO. 190 of 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001.

...Appellant

Versus

1. Asha Rani W/o Prem Kumar, R/o Back side Raman Cinema
College, Link Road, Mansa, Tehsil and District Mansa, Punjab,
Pincode 151505.

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

Present: Mr. Balwinder Singh and Mr. Bhupinder
Singh, Advocates for the appellants.

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. This appeal is directed against the order dated
31.05.2022 passed by the Real Estate Regulatory
Authority, Punjab (hereinafter known as the Authority).

Appeal No. 190 of 2022, Appeal No. 191 of 2022 and
Appeal No. 192 of 2022

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2. The respondent (hereinafter known as the allottee) had booked a 150 sq. yards plot in the project being developed by the appellant i.e. PUDA Enclave, Mansa. Being successful in the draw of lots she deposited 10% of the total sale consideration as required and was issued a letter of intent according to the provisions of which she was required to pay 15% amounting to Rs.1,60,000/-. She was allotted Plot No. 157 on 23.06.2016 and the terms and conditions of the allotment letter stipulated handing over of possession of the plot within 18 months i.e. 22.12.2017 after completion of development work. The complainant submitted that even after a lapse of 27 months the project was still undeveloped and thus prayed for refund of an amount of Rs.2,65,000/- along with interest and compensation.

3. The appellant as a developer opposed the complaint and took up the pleas that the Authority would have no jurisdiction; that the letter of allotment contemplated an arbitration clause which could be invoked by the allottee; that as per condition 3(II) of the allotment letter the complainant failed to deposit the amount as per the schedule and defaulted in two installments prior to the offer of possession on 07.01.2018; that the possession was offered within the stipulated period of 18 months;



Appeal No. 190 of 2022, Appeal No. 191 of 2022 and
Appeal No. 192 of 2022

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that the plea of the allottee that the development works were incomplete is baseless and completion certificates Annexures R2 to R4 were relied upon in this regard.

4. The authority looked into the matter and concluded in favour of the allottee, to direct a refund of an amount of Rs.2,65,000/- along with the statutory interest as is envisaged under the RERA Act and the Rules herein.
5. The appellant (developer) is thus in appeal before us.
6. After hearing the learned counsel for the appellant at some length, we are of the opinion that the controversy raised in present appeal is akin to the one raised in Appeal No.103 of 2022, which already stands decided. Accordingly, we dispose of the present appeal in same terms. For the purposes of understanding the ratio decidendi, judgment rendered in Appeal No.103 of 2022, shall form a part of the reasoning in this appeal as well and hence be appended to this short order.

File be consigned to the record room.



Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sdr
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

My views in this appeal is appended on subsequent pages
ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER (ADMINISTRATIVE/TECHNICAL)
Sdr

December 5, 2022
DS

Certified To Be True Copy

Tonamab Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

14/12/2022

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

Appeal No. 190 of 2022

**Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001**

.....Appellant

Versus

1. **Asha Rani** wife of Prem Kumar, resident of Back side Raman Cinema College, Link Road, Mansa, Tehsil and District Mansa, Punjab, Pin Code 151505.

.....Respondent

2. Bathinda Development Authority, through its Chief Administrator, PUDA Complex, Bhagu Road, Bathinda, Punjab-151001.

.....Performa Respondent

Appeal No. 191 of 2022

**Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001**

.....Appellant

Versus

1. **Yash Pal Gupta**, S/o Sh. P.M. Gupta R/o #2456, Sector 23-C, Chandigarh; Presently residing at House No. 2190, Sector 27-C, Chandigarh - 160019.

.....Respondent

2. Bathinda Development Authority, through its Chief Administrator, PUDA Complex, Bhagu Road, Bathinda, Punjab-151001.

.....Performa Respondent

Appeal No. 192 of 2022

**Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001**

.....Appellant

Versus



1. **Dr. Pankaj Gargson** of Dr. B.R. Garg, resident of 19-A, Civil Lines, Near Old Sessions Court Ambala City, Tehsil and District Ambala, Haryana, Pin-134003.

.....Respondent

2. Bathinda Development Authority, through its Chief Administrator, PUDA Complex Bhagu Road, Bathinda District Bathinda, Punjab-151001.

.....Performa Respondent

Present: Mr. Bhupinder Singh and Mr. Balwinder Singh, Advocates for the appellants

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

1. By this order, I will dispose of above mentioned three appeals all dated 04.10.2022 (Diary dated 14.10.2022) bearing Appeal No. 190 of 2022 (**Estate Officer, PUDA Bathinda versus Asha Rani and another**), Appeal No. 191 of 2022 (**Estate Officer, PUDA Bathinda versus Yash Paul Gupta and another**) and Appeal No. 192 of 2022 (**Estate Officer, PUDA Bathinda versus Dr. Pankaj Garg and another**), filed by the respondent No. 1 in each case against the orders dated 31.05.2022, 13.05.2022 and 17.05.2022 passed by Sh. Ajay Pal Singh, Sh. Sanjiv Gupta and Sh. Ajay Pal Singh, the Members, Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaints bearing AdC Nos. 16122020, 01742021 and 00402021 instituted on 23.03.2020/11.06.2020, 19.08.2021 and 02.02.2021/05.07.2021 respectively.



Appeal No. 190 of 2022 (Estate Officer, PUDA Bathinda versus Asha Rani and another):

2. Ms. Asha Rani(*the respondent No. 1 in the present appeal, hereinafter may also be referred to as the complainant or the allottee or the buyer*) has filed a complaint on 23.03.2020/11.06.2020 against the respondent No. 2 and the appellant (*hereinafter also referred to as the promoters or the developers*) in Form 'N' before the Adjudicating Officer of the Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) read with its section 71 and rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).
3. It has been claimed/alleged in the complaint that (i) in a scheme opened on 18.11.2013 to 17.12.2013 by the promoters for allotment of plots @ Rs. 7,000/- per square yard at PUDA Enclave, Mansa, the complainant applied for a plot of 150 square yards on 17.12.2013 by depositing Rs. 1,05,000/- (10% of the plot price of Rs. 10,50,000/-); (ii) that the promoters issued letter of intent (LOI) dated 24.03.2014 demanding Rs. 1,57,500/- (15% of the plot price) within 30 days; (iii) that after seeking extension of time vide application dated 22.04.2014, which was granted vide letter dated 13.05.2014, the complainant deposited Rs. 1,60,000/- on 20.05.2014; (iv) that allotment letter dated 23.06.2016 was issued by the promoters, thereby allotting plot No. 157 to the complainant followed by corrigendum letter dated 13.07.2016; (v) that the promoters promised in the prospectus of the scheme, the LOI and the allotment letter to hand over the possession of the plot within 18 months from the date of the allotment letter or at the completion



of the development works at the site whichever earlier i.e. by 22.12.2017; (vi) that the project was incomplete even at the time of the complaint and the promoters failed to provide even basic amenities like water, electricity and sewage and handed over the possession of the plot vide letter dated 27.12.2017 in the incomplete project; (vii) that the complainant was no more interested in the project.

4. The complainant has prayed in his complaint for refund of his amount of Rs. 2,65,000/- deposited by the complainant with interest and compensation of Rs. 1,00,000/- on account of litigation expenses, transportation charges, harassment and loss of time and money etc.
5. The promoters, in their reply dated 17.09.2020 to the complaint, have inter alia submitted that (i) the complainant failed to pay even a single penny towards the balance 75% price of the plot within the stipulated period as per the schedule given in the allotment letter, due to which, the plot allotted to him was liable to be resumed under section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*) and that notice under section 45(1) of the PRTPD Act had already been issued on the complainant; (ii) that there is a remedy of appeal and revision under section 45 of the PRTPD Act; (iii) that two installments were due to be paid by the promised date of possession and Rs. 7,74,375/- were due towards installments to be paid till 22.12.2019, for which notice under section 45(1) of the PRTPD Act had been issued to the complainant on 10.07.2020; (iv) that possession of the plot was offered to the complainant vide letter dated 27.12.2017 but the complainant neither took possession of the plot nor cited any reason for not taking over the possession;



(v) that the development of works of the site in question had been completed as per report dated 22.11.2017 by the promoters' Divisional Engineer and as per proceedings of meeting held on 21.12.2017 under the chairmanship of the promoters' Chief Administrator; (vi) that being a local authority as well as a statutory body, the provisions of the Punjab Apartments and Property Regulation Act, 1995 (*hereinafter referred to as the PAPER Act*), including the provisions of its section 14 regarding responsibility of the promoter to obtain a completion certificate from the competent authority, are not applicable to the promoters; (vii) that the Act and the Rules also provide that the allottee should make payments as per agreed schedule and if there is delay on the part of the allottee to make payment as per the schedule then the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.

6. The Authority, after considering the written and oral submissions of the parties, passed order dated 31.05.2022, wherein it is *inter alia* mentioned that (i) the show cause notice dated 10.07.2020, issued by the promoters under section 45(1) of the PRTPD Act, was replied by the complainant (Annexure A12, not placed on record before this Tribunal) stating therein that installments were not being paid as the project had not been completed as per norms; (ii) that after the said reply, the promoters issued another show cause notice to the complainant (Annexure A13, not placed on record before this Tribunal), asking for objections to the refund of Rs. 3,44,164/-, out of Rs. 4,92,750/- (*these two figures are not in consonance with the total amount of Rs. 2,65,000/- claimed by the complainant in her complaint to have been deposited with the promoters as well as not with the amount of Rs. 2,65,000/- ordered*



by the Authority on 31.05.2022 to be refunded to the complainant), after deducting an amount of Rs. 1,48,586/- i.e. 10% of the total sale price of Rs. 14,85,860/-, including BSP, interest, penal interest and surcharge; (iii) that complainant filed reply to the said show cause notice (Annexure A14, not placed on record before this Tribunal); (iv) that the promoters again sent a notice (Annexure A15, not placed on record before this Tribunal), rejecting the complainant's request; (v) that no order has been passed in this case, under section 45 of PRTPD Act; (vi) that on the question of exemption from completion certificate, the complainant has relied upon the circular dated 02.09.2014 of the Government of Punjab to argue that competent authority for issuance of completion certificate would be Chief Administrator/Additional Chief Administrator of the concerned authority; (vii) that the complainant has also relied upon the order passed by the Authority in complaint No. 1601 of 2020 titled **Harpreet Kaur versus Bathinda Development Authority and other** pertaining to the same project wherein the Authority has held that at the time of offer of possession, the project was incomplete in as much as there was no completion certificate issued by the competent authority as per above said circular dated 02.09.2014 of the Government of Punjab; (viii) that this Tribunal, in cross appeals bearing Appeal No. 24 of 2018 and Appeal No. 26 of 2018 titled **Estate Officer PUDA versus Real Estate Regulatory Authority and another and Gursimran Kaur versus Estate Officer PUDA** respectively in respect of the same project, had held that the offer of possession in December, 2017 was not a valid one (ix) that the promoters have not delivered lawful possession within the stipulated period and in the circumstances, any default in making timely payments cannot



take away the right of the complainant to seek relief under section 18(1) of the Act.

7. The operative part of the order dated 31.05.2022 of the Authority reads as under:-

"7. In view of above discussions, the respondents are directed to refund the amount of Rs.2,65,000/- to the complainant, along with interest as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2% in view of the provisions of Section 18(1) of the Act, read with Rule 16 of Punjab State (Regulation and Development) Rules 2017, with effect from the respective dates of payments, till refund and this amount shall be paid within ninety days from the date of this order."

8. Aggrieved by the above said order dated 31.05.2022 of the Authority, the appellant has filed present appeal before this Tribunal and prayed to set aside the impugned order dated 31.05.2022 and also to dismiss the complaint.

9. The appellant has also filed, along with his aforesaid appeal, an application bearing Application No. 282 of 2022 for condoning a delay of 75 days in filing the said appeal claimed to be caused due to lengthy procedure of their office etc as detailed by the appellant under paragraphs 3 to 5 of the said application. I deem it appropriate to condone the said delay, especially in view of judgment dated 27.10.2022 passed by Hon'ble High Court of Punjab and Haryana in RERA-APPL-32-2020 (O&M) (**Punjab Urban Development Authority (PUDA) versus Jasneet Kaur Chahal and another**) and connected matters.

10. The appellant, besides its written/oral submissions before the Authority, has not taken any other new grounds for filing the present appeal, except that the promoters have contended that as



per Engineer Certificate dated 03.08.2020 duly approved by the Chief Administrator, PUDA on 25.11.2020, 100% development works had been completed (Annexure-A/4 of the appeal)..

MY FINDINGS:

11. As per brochure/prospects of the scheme and the LOI 24.03.2014, an amount of Rs. 1,57,500/- was payable towards 15% of the price of the plot within 30 days from the date of issue of the LOI i.e. by 23.04.2014. However, the allottee defaulted in paying the same timely and paid Rs.1,60,000/- after a delay of 27 days on 20.05.2014, which includes part of amount of applicable surcharge @ 1.5% for 27 days and penal interest @ 18% for the delayed period as stipulated in the brochure and the LOI.
12. As per said brochure and LOI as well as per allotment letter dated 23.06.2016, the balance 75% of the price of the plot could be paid either in lump sum without interest (but with a rebate @ 5% thereon) in 60 days from the issuance of the allotment letter or in six equated half-yearly installments along with interest @ 12% per annum, with the first installment becoming due after one year from the date of issue of allotment letter i.e. on 22.06.2017.
13. As per said brochure and LOI as well as per allotment letter dated 23.06.2016, possession of the plot was to be handed over to the allottee after completion of development works at site or 18 months from the date of issuance of the allotment letter whichever happened to be earlier i.e. by 22.12.2017.
14. Thus, the payment of first installment amounting to Rs. 2,25,750/- had fallen due on 22.06.2017 whereas possession was to be handed over by 22.12.2017. It is also worth mentioning here payment of second installment amounting to Rs. 1,70,625/- had also fallen due



on 22.12.2017, besides penalty for delay (rather non-payment) of the first installment as per provisions in the brochure, the LOI and the allotment letter.

15. Thus, the allottee has again defaulted even before the due/promised date of possession in making the timely payment towards the balance 75% of the price of the plot as per agreed terms. Since the allottee has never paid even a single penny towards the balance 75% of the price of the plot and applicable penalty/interest for delay in payments, the default on the part of the allottee is continuing since 22.06.2017 i.e. since the time before the due/promised date of possession viz 22.12.2017.
16. Thus, it is the allottee who has squarely defaulted first since 22.06.2017 i.e. even before the promised date of possession and has thus violated the provisions of section 19(6) of the Act.
17. The promoters, vide their letter dated 27.12.2017, offered possession of the plot; invited the allottee to take possession of the plot on 08.01.2018 to 10.01.2018; and it was informed therein that if the possession is not taken over on these dates, then the possession shall be deemed to be handed over with effect from 10.01.2018.
18. Even clause 4(I) of the allotment letter dated 23.06.2016 inter alia stipulates that if possession is not taken by the allottee within stipulated period, it shall be deemed to have been handed over on expiry of the said period.
19. In response to above mentioned offer of possession dated 27.12.2017, the allottee neither came forward to take possession nor made any representation showing any cause of not taking possession of the plot, till filing of the complaint on



23.03.2020/11.06.2020 i.e. for a period of more than two years after the said deemed date of possession viz 10.01.2018.

20. As per clause 7.3 of the Form 'Q' (i.e. the 'agreement for sale' prescribed in terms of section 13(2) of the Act read with Rule 8(1) of the Rules) appended to the Rules, 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.
21. As the allottee was continuously under default since 22.06.2017 for non-payment of installments and penalty/interest for delayed payment thereof, possession of the plot continued to be extended in terms of the aforementioned provisions of clause 7.3 of the aforesaid Form 'Q' to the extent of period of delay in paying the defaulted amount.
22. As per clause 7.5 of the aforesaid Form 'Q', the allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act, provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter is entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment.
23. Despite being fully aware of at least the provisions of the brochure, the LOI dated 24.03.2014 and the allotment letter dated 23.06.2016 to the effect of resumption of the plot and forfeiture of an amount not exceeding 10% of the total amount of the consideration money, interest and other fees payable in respect of the plot in case of non-payment of any amount due together with the penalty, the



allottee continued with his default ever since 22.06.2017 of non-payment of any amount towards the balance 75% price of the plot and penalty/interest for the delayed payment, and the said default is continuing since the time before the due/promised date of possession.

24. Even the sixth installment (the last one) has fall due on 22.12.2019 i.e. before the complaint filed on 23.03.2020/11.06.2020. However, the allottee still has not paid a single penny towards the balance 75% price of the plot.
25. In view of above, in my opinion, the allottee is not entitled to refund, interest and compensation in terms of section 18(1) of the Act.
26. Hence, I deem it appropriate to set aside the impugned order dated 31.05.2022 passed by the Authority in the complaint bearing AdC No. 16122020 and to dismiss the complaint.

Appeal No. 191 of 2022 (Estate Officer, PUDA Bathinda versus Yash Pal Gupta and another):

27. In this case the complainant applied for a plot of 300 square yard in the same scheme/project by paying Rs. 2,10,000/- (10%) on 13.12.2013. An amount of Rs. 3,15,000/- (15%) was paid, in compliance of the LOI dated 24.03.2014, on 16.10.2014 instead of paying the same on its due date of 23.04.2014 i.e. with a delay of almost six months. As per allotment letter dated 30.09.2016, (i) the possession of the allotted plot No. 113 was to be handed over by 29.03.2018; (ii) the first, second and all the six installments of the balance 75% of the price of the plot, amounting to Rs. 4,51,500/-, Rs. 3,41,250/- and Rs. 20,00,250/- fell due on 29.09.2017, 29.03.2018 and 29.03.2020 respectively. However, the complaint



did not pay even an amount of Rs. 37,412/- towards penal interest and surcharge for delay in payment of 15% of the price of the plot despite reminder dated 05.09.2016 for the same. Possession of the plot was offered to the complainant vide the promoters' letter dated 27.12.2017 for taking over the possession of the plot on 08.01.2018 to 10.01.2018 failing which, deemed to be taken over with effect from 10.01.2018. The complainant has not paid even a penny towards the balance 75% of the price of the plot despite the promoters' notice dated 27.07.2020 under section 45 of the PRTPD Act and the complainant's assurance vide reply dated 21.08.2020 thereto to pay the same at the earliest. The promoters have contended that as per Engineer Certificate dated 03.08.2020 duly approved by the Chief Administrator, PUDA on 25.11.2020, 100% development works had been completed (Annexure-A/4 of the appeal). The complaint bearing AdC No. 01742021 was filed on 19.08.2021. The refund of entire amount, along with interest, has been allowed by the Authority vide its order dated 13.05.2022 in the complaint.

28. This case, in essence being similar to the first one relating to appeal 190 of 2022, deserves similar treatment.

Appeal No. 192 of 2022 (Estate Officer, PUDA Bathinda versus Dr. Pankaj Garg and another):

29. In this case the complainant applied for a plot of 500 square yard in the same scheme/project by paying Rs. 3,50,300/- (10%) on 16.12.2013. An amount of Rs. 5,25,000/- (15%) was paid, in compliance of the LOI dated 14.03.2014, on 12.05.2014 instead of paying the same on its due date of 13.04.2014 i.e. with a delay of 29 days. The penal interest and surcharge amounting to Rs.



15,383/-, which was payable in terms of the provisions of the LOI and in terms of the promoters' permission letter dated 22.07.2014 to condone the said delay of 29 days, was paid by the complainant on 01.08.2014.

30. As per clause 3 of the allotment letter dated 06.07.2016, the balance 75% of the price of the plot was payable in installments/lumpsum with 5% rebate as admissible and was paid in installments/lumpsum as under:-

Installments due as per clause 3(II) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1 st	4,37,500	3,15,000	7,52,500	05.07.2017	05.07.2017	7,52,500
2 nd	4,37,500	1,31,250	5,68,750	05.01.2018	31.10.2017	5,50,000
3 rd	4,37,500	1,05,000	5,42,500	05.07.2018	20.11.2017	16,30,000
4 th	4,37,500	78,750	5,16,250	05.01.2019	28.11.2017	27,300
5 th	4,37,500	52,500	4,90,000	05.07.2019	05.07.2018	(-) 1,581
6 th	4,37,500	26,250	4,63,750	05.01.2020		
Total	26,25,000	7,08,750	33,33,750			29,58,219

31. Thus, there is no default on the part of the complainant in making the payments except for some delay in payment of 15% of the price of the plot. However, the complainant has already paid even the penal interest and surcharge for the same.

32. As per allotment letter dated 06.07.2016, the possession of the allotted plot No. 33 was to be handed over by 05.01.2018.

33. The promoters offered the possession of the plot to the complainant vide the promoters' letter dated 27.12.2017 for taking over on 08.01.2018 to 10.01.2018 failing which, deemed to be taken over with effect from 10.01.2018, allegedly in an incomplete/undeveloped project and without having completion certificate issued by the competent authority.

34. The complainant, vide its legal notice dated 03.09.2020, sought refund of his entire money along with interest and



compensation,alleging inter alia that (i) the development works have been carried out just for namesake which are of poor quality; and (ii) that even basic amenities such as electricity, water, sewerage, boundary wall, street lights, park, footpath, STP plant, etc. are either incomplete or not there at all.

35. The promoters have contended that as per Engineer Certificate dated 03.08.2020 duly approved by the Chief Administrator, PUDA on 25.11.2020, 100% development works (Table-‘B’) had been completed (Annexure-A/4A of the appeal).
36. In the said ‘Engineer’s Certificate’ dated 03.08.2020, it has inter alia been mentioned that the balance cost of completion of Civil, PH, Electrical works is nil and it has been certified that cost of the Civil, PH, Electrical works for the project as completed on the date of this certificate is as given in Table B annexed therewith.
37. There are two ‘Table B’, as reproduced below, which are annexed with the said ‘Engineer’s Certificate’ dated 03.08.2020:-

*“Table-B
Internal & External Development Works in Respect of the entire Registered*

S. No.	Common areas and Facilities, Amenities	Proposed (Yes/No)	Percentage of Work done	Details
1.	Internal Roads & Footpaths	Yes	100%	
2.	Water Supply	Yes	100%	
3.	Sewerage	Yes	100%	Connected with concerned M.C.
4.	Storm Water Drains	Yes	100%	
5.	Landscaping & Tree Planting	Yes	---(Not legible)---	As per instructions in Head Office Letter No. 5870-74 dt. 7/10/2015
6.	Street Lighting	Yes	100%	
7.	Community Building	Yes	0%	
8.	Treatment and disposal of sewage and sullage water	No	--	
9.	Solid Waste management & Disposal	No	---	
10.	Water conservation, Rain Water harvesting	Yes	100%	
11.	Energy management	No	---	
12.	Fire protection and fire safety requirements	Yes	100%	Fire Hydrant
13.	Electrical meter room, sub-	Yes	100%	HT/LT system handed



	<i>station, receiving station</i>			<i>over to PSPCL</i>
14.	<i>Others (Option to Add more)</i>	<i>No</i>	<i>--</i>	
	<i>Sd/- S.D.E.(E)</i>	<i>sd/- sd/- D.E.(PH/E/C-1)</i>	<i>sd/- D.E.(H)</i>	<i>sd/- S.E."</i>

and

"Table-B

(to be prepared for the entire registered phase of Real Estate Project)

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amounts</i>		
1	<i>Total Estimated cost of the Internal and External Development Works including amenities and Facilities in the layout as on date of Registration is</i>	<i>2638.44 Lakh</i>		
2	<i>Cost incurred</i>	<i>1794.26 Lakh</i>		
3	<i>Work done in Percentage</i>	<i>90%</i>		
4	<i>Balance Cost to be incurred</i>	<i>Yet to be discovered</i>		
5	<i>Cost incurred on Additional/Extra on Items not included in the Estimated Cost (Annexure A)</i>	<i>--</i>		
	<i>Sd/- S.D.E.(E)</i>	<i>sd/- sd/- D.E.(PH/E/C-1)</i>	<i>sd/- D.E.(H)</i>	<i>sd/- S.E.</i>

* Note

1. to 5.

-----XXXXXXXXXXXXXXXXX-----"

38. In the light of the said 'Engineer's Certificate' dated 03.08.2020 and the photographs taken at site (Annexure-R/3 of the promoters' reply to the complaint), I am not inclined to believe the unfounded allegations of the complainant that (i) the development works have been carried out just for namesake; and (ii) that even basic amenities such as electricity, water, sewerage, boundary wall, street lights, park, footpath, STP plant, etc. are either incomplete or not there at all.

39. Even in the complaint bearing AdC No. 00402021 filed on 02.02.2021/05.07.2021, it has simply been alleged that the project is incomplete/undeveloped and no evidence has been placed on record to support the same.

40. Under these circumstances, I deem it appropriate to set aside the order dated 17.05.2022 passed by the Authority in the complaint bearing AdC No. 00402021, whereby the refund of the entire



amount deposited by the complainant i.e. Rs. 38,48,902/-, along with interest, has been allowed.

MY DECISION:

41. In view of above, all the three appeals are hereby accepted and the orders dated 31.05.2022, 13.05.2018 and 17.05.2022 passed by the Authority in the complaints bearing AdC Nos. 16122020, 01742021 and 00402021 are hereby set aside and all these three complaints are hereby dismissed.
42. File be consigned to record room after filing a copy of this order in the files of these three appeals and after sending a copy to each of the parties as well as to the Authority.



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

December 5th, 2022

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

14/12/2022