

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No.0095 of 2023
Date of Institution: 08.04.2023
Dated of Decision: 15.01.2026

Teena Goel, Flat no. 114, SBI Officers Colony, Phase-10, SAS Nagar,
Mohali, Punjab-160055

.... Complainant

Versus

1. Chief Administrator, Punjab Urban Planning and Development Authority, PUDA Bhawan Sector-62, S.A.S Nagar, Mohali- 140901.
2. Estate Officer, Gateway City, Sector 118-119, PUDA Bhawan Sector-62, S.A.S Nagar, Mohali- 140901

.... Respondents

Present: 1. Ms Manisha Maggu, for the complainant
2. Shri Sandeep Bhardwaj for the respondent

ORDER

1 This complaint in Form 'M' under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act of 2016) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017) was instituted on 08.04.2023 by the complainants in their individual capacity against the respondent seeking following reliefs:

1.1 The present complaint be allowed and order dated 06.04.2022 passed by the respondent no.2 forfeiting Rs.2,66,379.73 may please be set aside being wrong, illegal and arbitrary.

1.2 The respondents be directed to execute the agreement and issue the allotment letter to the complainant for the Convenience Shop no. 53 at Pocket B, Gateway City, Sector 118-119, SAS Nagar, Mohali in the interest of justice, equity and fair play as the

petitioner has already deposited the 25% of the total amount along with 2% cess for the shop and is ready and willing to deposit the remaining amount in one go.

2. Brief facts of the complaint as submitted by complainant are summarized below: -

2.1 The petitioner/complainant had participated in E-Auction held by PUDA, Mohali in the month of October 2019. The complainant also deposited eligibility fee amounting Rs.1,00,000/- online through e-portal for the Convenient Shop No. 53 at Pocket B, Gateway City, Sector 118-119, SAS Nagar Mohali. The complainant took part in the auction and submitted the last bid of Rs.55,316/- per Sq. Yds. The total area of the site was 40.13 Sq. Mts. The Auction was closed on 11.10.2019 at 3 pm. The petitioner was declared the highest bidder and was informed to deposit 12% of the Highest Bid amount (Annexure A).

2.2 The complainant submitted Rs.1,66,379.73/- through RTGS in the bank account of the respondent. Thereafter, the respondents kept mum and neither asked for any further payment nor any agreement with the complainant was executed as required under Section 13(1), of the RERA Act, 2016.

2.3 Thereafter, a show cause notice was received by the complainant demanding to produce the receipt of balance payment of 15% of bid amount. The petitioner immediately rushed to the respondent's office and met the concerned staff. Thereafter, acting upon the advice of the concerned staff the petitioner immediately deposited Rs.3,00,000/- vide demand draft bearing no.490752 dated 14.07.2020 against receipt no.71 (Annexure-B). The same demand draft was duly encashed by the respondent.

2.4 The complainant made a written request to the respondent, which was diarized in the office of the respondent vide receipt no. 156450 dated 14.01.2021 (Annexure-C) regarding status of payment of allotment/auction of said convenient shop.

2.5 On 20.04.2022, the complainant received an office order through courier bearing endorsement n^o. GMADA/EO(AUCTION)/2022/ 6824 dated 06.04.2022 (Annexure-D), through which it was informed that the Convenience shop no. 53, Pocket B, Gateway City, Sector 118-119, SAS Nagar Mohali, against which the complainant remained the highest bidder and was informed accordingly on 14.11.2019 but due to the reason that 15% amount was not deposited in time therefore, the deposit amount i.e. 12% amount in total Rs.2,66,379.73/- has been forfeited. There was no mention in the impugned order regarding deposit of Rs. 3,00,000/- on 14.07.2020.

2.6 Thereafter, aggrieved from the said order dated 06.04.2022 the complainant filed an appeal against the said order in a stipulated time before the Chief Administrator, GMADA on 20.05.2022 (Annexure-F) and on first hearing on 20.06.2022, it was informed that the said scheme under which the shop was allotted, belongs to PUDA and not GMADA and was relegated to the Chief Administrator PUDA. The said inadvertent mistake was caused because the order dated 06.04.2022 was issued on the letter pad of GMADA and even the endorsement number was of GMADA. That till today no hearing has been given.

2.7 That even according to section 13(1), of the Real Estate (Registration and Development) Act, 2016 the promoter i.e. PUDA in this case cannot ask for more than 10% amount before executing the Agreement. In the present case as well, there was

neither a request for entering into the agreement by the respondents nor it was informed to the petitioner about any such agreement despite his repeated visits to the respondents. Despite that, the complainant deposited additional 15% of the total amount.

2.8 The complainant also submitted that a similar order was passed in case of Shop No. 60 at Pocket B, Gateway City, Sector 118-119, SAS Nagar Mohali by the Estate Officer PUDA and was challenged in the RERA tribunal and Appeal was preferred before the Appellate Authority during which the PUDA has restored the shop no. 60 in favour of complainant/appellant in that case (Annexure F).

3. Notice of the complaint was served on the respondent who has filed a detailed reply in the matter.

4. Upon notice Shri Sandeep Bhardwaj, Advocate appeared for the respondent no. 2 and submitted his reply dated 25.09.2023 to the following effect:

4.1 Earlier paras of the reply are introduction of the Act of 2016, reproducing of Section 3(1) of the Act and definition of "Ongoing Projects".

4.2 The counsel of the respondent has submitted that part of the project in question was completed prior to coming into force of the Act of 2016 and Partial Completion Certificate (PCC) was obtained on 28.04.2017 (Annexure R-1) in respect of developed area of 91.46 Acre out of total area 121.25 Acre, thus RERA Authority has no jurisdiction to entertain the present complaint.

4.3 It is further averred that the respondent submitted an application for registration of the remaining area of 29.79 acres on 28.07.2017

which is yet to be planned, on applying for registration of the project RERA Authority registered the said area and issued RERA registration number (Annexure R-4).

4.4 The counsel of the respondent also pointed out the provision of Punjab Regional and Town Planning and Development Act, 1995 vide Punjab Act No. 19 of 2021, which was notified on 16.04.2021 vide which Section 43 sub section (8) has been inserted which is as under:

“(8) the terms and conditions for the disposal of land or building to be determined under this section shall be consonance with the provisions of Real Estate (Regulation and Development Act, 2016 (Central Act No. of 2016) and rules made there under.”

As such any action taken in accordance within the Rules and Regulations and policy decision framed under the 1995 Act, prior to 16.04.2021 is not in violation of the provisions of RERA 2016.

4.5 It is submitted that Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to Act of 1995) was enacted with an intent to develop land in a planned manner in the State of Punjab, Making Master Plan/Regional Plan and undertaking Urban Development and Housing Program by State Urban Planning and Development Authority/Special Urban Planning and Development Authorities/New Town Planning and Development Authorities.

4.6 To achieve the above objective of the Act, Punjab Urban Planning and Development Authority under Section-17 of the Act ibid had been constituted by the Government of Punjab.

4.7 Section 43 of the Act ibid empowered the authority to frame schemes for development of land owned by it or transferred to it by

the State Government and disposal of the said land with or without development on the terms and conditions as determined by the authority.

4.8 It is submitted that in view of the above provision, the respondent framed the scheme "GATEWAY CITY" for allotment of freehold residential plots and commercial sites/plots in Sectors 118-119, SAS Nagar.

4.9 The complainant had participated in E-Auction of Convenient Shops in Gateway City Project of PUDA as Sector 118-119, SAS Nagar conducted by the office of Respondents from 01.11.2019 to 14.11.2019 on the terms and conditions of auction. The respondent reproduced terms and conditions which are annexed in annexure R/6, which are not being quoted for the sake of brevity.

4.10 As per terms and conditions of the auction, in case of successful bidder does not deposit the 15% amount within 30 days to complete 25% of the bid amount from the date of auction, then the amount already deposited by him including cancer cess @2% shall be forfeited and the applicant shall have no claim in this regard.

4.11 In case of any dispute or differences arising out of the terms and conditions of the auction or allotment letter, the same shall be referred to the Chief Administrator of the Authority. The decision of the Chief Administrator in this regard will be final and binding on all the parties.

4.12 The complainant completed 10% of total bid amount and also paid 2% cancer cess as per terms and conditions of auction. The complainant, however, failed to deposit 15% amount of the bid within 30 days i.e. 02.01.2020 from the date of intimation i.e. 02.12.2019. Allotment letter was to be issued to the complainant

within 30 days only after the receipt of 25% of the bid amount.

However, the complainant failed to deposit balance 15% amount, to complete 25% of bid amount, within the stipulated time.

4.13 Thereafter, a letter was issued to the complainant by the respondent's office stating therein that she had failed to deposit 15% amount to complete 25% of the bid amount within 30 days and ask her to intimate if she had deposited 15% of the amount of the bid then receipt of the same be submitted to the office, otherwise action shall be taken to forfeit the deposited amount as per terms and condition of the auction.

4.14 The respondent submitted that after a period of more than one year of above said letter, the complainant vide her letter dated 04.08.2021 stated she was unable to deposited the balance amount of auction in stipulated 90 days (up to 02.02.2020), because she visited the PUDA office in concerned branch for deposit the amount but the staff available in office informed her that they will receive the notice for payment. Thereafter, due to lockdown the office was closed or they were not allowed to enter the office. However, she had deposited a sum of Rs.3,00,000/- on 14.07.2020.

4.15 The entire case of the complainant along with her requests had been considered by the competent authority in detail and came to conclusion that the complainant had not deposited the requisite amount of 15% to complete 25% of the bid amount within stipulated period as per condition No. 5 of the terms and condition of allotment through auction. Further, it is also observed that the complainant had not given a written request for extension of period within in 30 days from the date of auction to make payment beyond

30 days as per condition No. 5.2 of the terms and condition of allotment through auction.

4.16 In view of above that the complainant had neither deposited 15% amount within 30 days nor had sought any extension of time. Even she had deposited Rs.3,00,000/- out of Rs.3,32,975/- with a delay of 213 days, therefore action had been taken by the respondent to cancel the allotment and forfeiture of amount as per condition no. 5.1 of the terms and condition of auction. Thereafter, respondent no.2 (Estate Officer, Gateway City), PUDA, SAS Nagar passed an order dated 06.04.2022 and offer of allotment of Shop no.53 Pocket B, Gateway City Sector 11-119, SAS Nagar has been cancelled due to non-payment of requisite amount within stipulated period.

4.17 It is averred in the reply that the allotment of the plot is governed by the Act of 1995 and there are provisions of appeal and revision in the said Act. However, complainant failed to avail these remedies.

4.18 There is an arbitration clause also in the terms and conditions of the allotment and if the complainant has any grievance the matter be referred to the Arbitrator under the provisions of the Arbitration and Conciliation Act, 1996.

 4.19 Regarding execution of agreement u/s 13(1) of the Real Estate (Regulation and Development) Act, 2016, respondent submitted that part of the project in which shop no.53 located is not registered with this Hon'ble Authority under the provisions of RERA, 2016 as Partial Completion Certificate of this area has already been issued by the competent authority. Further the Counsel of Respondent stated that as per judgement of the Hon'ble Supreme Court of India in the case of M/s Newstech Promotors and

developers Pvt Ltd Vs State of UP & Others in para 54 of the order dated 11.11.2021, the provisions of the RERA are not applicable in this case.

4.20 Further, the counsel of the respondent submitted that the fact of the case (Surinder Kumar Puri Vs CA, PUDA) on which Hon'ble RERA Tribunal, Punjab has passed order are quite different from the complainant's case.

5. Complainant filed the rejoinder reiterating the contents of his complaint and denied the contents of the reply submitted by the respondent. The complainant also informed that appeal before Chief Administrator, GMADA, had been withdrawn vide order dated 21.11.2023 (copy enclosed).

6. The rival arguments were reiterated when the matter was taken up on 04.12.2025. The same has been considered carefully.

7. Brief finding of the case is that the complainant was declared highest bidder. As per terms and conditions of the Auction, the successful bidder has to deposit 10% of the total bid amount after adjusting eligibility fee paid plus 2 % as cancer fees extra of total bid amount within maximum of 3 days of bid acceptance. Further 15% of the bid amount is to be deposited within 30 days from the date of auction/date of intimation i.e. 02.12.2019. In this case the complainant has failed to deposit the remaining 15% of the bid amount within the stipulated time i.e. 02.01.2020. Further, no extension of time was sought by the complainant to pay 15% of bid amount within 90 days as provided in the terms and condition of the Auction. The complaint visited the office only after receiving the communication from the PUDA office. The complainant has made no communication with the PUDA office regarding payment of

balance amount within 30 days of date of auction/date of intimation letter. As per complainant's own version, she made one attempt to make payment Rs.1,66,379.73/- and thereafter did not pursue the matter till date of letter received from Estate Officer, Gateway City, PUDA, Mohali. There was complete inaction on part of the complainant. This fact shows that the complainant has not only failed to deposit the due amount but also did not even make any serious effort towards this end. Appeal filed by the complainant before appellate authority against Estate Office, PUDA's order dated 06.04.2022 was also pending at the time of filing of complaint i.e. on 08.04.2023 and the same had been withdrawn only on 21.11.2023. The project under which shop no. 53, Gateway City, Sector 118-119, SAS Nagar Mohali was allotted, has been completed prior commencement of RERA Act, 2016 and a partial completion certificate has also been obtained from the competent authority on 28.04.2017.

- a) No relief can therefore be granted to complainant on the prayer that the letter dated 06.04.2022 of Respondent forfeiting the amount of Rs.2,66,379.73 be withdrawn.
- b) Having inferred so there is no occasion left to issue allotment letter for the impugned unit.
- c) The complainant had deposited Rs. 3.00 lakh on 14.07.2020 through demand draft in favour of Respondent and as stated the same has been credited to Respondent. As the Respondent has forfeited the 10% +2% cess on the pretext that the complainant had failed to deposit the balance of 15% which concludes that this payment of the complainant has not been considered. There is no order of either its refund or non-receipt. It is a general financial principle that the

interest of any money belongs to the person (complainant) who owns the money. In case the money is utilized by other person (respondents) without any due compensation to the owner of money, the interest earned on it should be refunded to the owner (complainant).

From the above discussion, it is held that the only amount refundable to complainants is Rs.3,00,000/- along with interest as per Section 18(1) of the Act of 2016 which is reproduced below: -

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, apartment 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"

8. As a net result of the above discussion, this complaint is accordingly partly allowed and respondents no. 2 is directed to refund the amount of Rs.3,00,000/- along with interest at the rate of 10.80% per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 8.80% plus two percent) prescribed in Rule 16 of the Rules of 2017 from the date of receipt of payment amounting Rs.3,00,000/- till the date of actual refund.

9. File be consigned to record room after due compliance.

(Signature)
15/01/26

(Binod Kumar Singh)
Member, RERA, Punjab