

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

Complaint No.0327 of 2022
Date of Institution:21.06.2022
Date of Decision: 06.02.2025

Indu Aggarwal W/o Sh. Jagdish Aggarwal, Resident of House no. 205/87, Mohna Mandi, Hissar, Tehsil Hissar, Haryana, Pin Code-125001

....Complainant

Versus

1. The Chief Administrator, Bathinda Development Authority, PUDA Complex, Bhagu Road, Tehsil Bathinda, Bathinda, Punjab, Pin Code 151001
2. Estate Officer, PUDA Complex, Bhagu Road, Tehsil Bathinda, Bathinda, Punjab, Pin Code 151001

....Respondents

Present: Shri Jagtar Singh Dhaliwal, Advocate for the complainant
Shri Bhupinder Singh and Shri Balwinder Singh,
Advocates for the respondents

ORDER

This complaint in Form 'M' was instituted on 21.06.2022 by the complainant in his individual capacity 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) against the respondent seeking refund of Rs.2,25,000/- deposited with respondents along with interest thereon for purchase of plot of 150 sq. yards **(Registration Number PBRERA-MNS50-PM0035)** being developed by respondents at PUDA Enclave Sugar Mill Site at Budhlada.

2. For the sake of convenience, Section 31 of the Act of 2016 read with Rule 36(1) of the Rules of 2017 are reproduced as under:


**"31. Filing of complaints with the Authority or the
Adjudicating Officer.-- (1) Any aggrieved person may**

file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations".

"Rule 36. Filing of complaint with the Authority and inquiry by the Authority.[Section 31,71 (1) and 84(2)(zc)]-- (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated".

 3. The complainant submitted the following points in his complaint:

3.1 Respondents opened scheme (Annexure A1) for development of free hold residential plots at Budhlada @ Rs.6000/- per sq yard.

- 3.2 The Complainant applied for a plot of 150 sq. yards vide Application no.5071 in general category by depositing 10% earnest money of Rs.90,000.
- 3.3 Letter of Intent (LOI) was issued on 26.02.20213 demanding 15% amount of Rs.1,35,000 which was deposited on 24.06.2013.
- 3.4 Allotment letter (Annexure A5) was issued on 20.10.2016 allotting Plot no.482 of the Project.
- 3.5 Thereafter due to non-delivery of possession of plot within the stipulated period i.e. 19.04.2018 as per the terms and conditions of the Scheme, LOI and allotment letter, the complainant filed consumer complaint CC No. 66 of 2019 for refund before DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, BATHINDA as the office of respondents is situated at Bathinda which was withdrawn vide application (Annexure A6) to approach RERA Authorities, the same was allowed vide Order (Annexure A7) granting Liberty to approach this Authority.
- 3.6 The complainant filed complaint AdcNo.1650 (Annexure A8) for refund in form N which was bifurcated in view of supreme court judgment.
- 3.7 The complainant mentioned that plot number was changed from 482 to 210 by letter of respondent(Annexure A9) citing technical reasons in a so called re-planning as it was without consent of complainant as well as other allottees of the project.

Similarly the possession was offered, without completion of development works, through a camp to be held from 21.02.2018 to 23.02.2018, 27.02.2018, 28.02.2018 and 01.03.2018 with a rider that if the complainant does not come on above stated dates then it will be presumed that possession is deemed to have been given from 01/03/2018 .

3.8 Respondents have failed to complete the project and failed to deliver possession by the due date i.e. 19.04.2018 as promised by the respondents in the scheme, Letter of Intent and Allotment letter that possession of the plot will be delivered within 18 months from the date of Allotment letter or at the completion of the development works at the site whichever is earlier.

3.9 It is alleged that the project is still incomplete and not in a habitable condition even after passing about four years.

3.10 These facts have been admitted by the respondents in letters Annexure A11(Colly).

3.11 The respondents have deserted the project. There is no completion certificate issued by competent authority.

4. It is the prayer of the complainant that the respondent be directed to refund Rs.2,25,000/-along with interest as per the provisions of section 18 and 31 of the Real Estate (Regulation and development) Act 2016 read with rule 36 of Real Estate (Regulation and development) Rules 2017.

5. upon notice, reply dated 13.04.2023 was filed by the respondents raising the following observations/ objections:

- 5.1 It is contended that allotment has been made under the Punjab Regional and Town Planning and Development Act, 1995, (hereinafter referred to as the Act of 1995) and there is a remedy of appeal and revision under Section 45 the Act of 1995, however the complainant failed to avail these remedies therefore the complaint is not maintainable.
- 5.2 It is also contended this Authority has no jurisdiction as Section 174 of the Act of 1995 provides that orders passed under the Act were final and not to be questioned in any suit or other legal proceedings.
- 5.3 The Counsel for the respondents further stated that there is an arbitration clause in the allotment letter, thereby the matter is required to be referred to the Arbitrator under the provisions of Arbitration and Conciliation Act, 1996. However, the complainant has failed to avail this alternative remedy also.
- 5.4 The complainant failed to deposit the price of the plot as per given schedule against which action was taken under section 45(3) the Act of 1995 and to avoid such action the complainant filed the present complaint.
- 5.5 The complaints filed application in District Consumer Disputes Redressal Forum, Bathinda and also with RERA Complaint No. 160 of 2020 on the same ground and for

same relief which were dismissed as withdrawn on 30.06.2020 and 01.02.2022 respectively for.

6. On merits it is stated by respondent that

6.1 Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to Act of 1995) was enacted to develop land in a planned manner in the State of Punjab.

6.2 It is further submitted that respondent authority was constituted under Section 17 Act ibid by the Government of Punjab.

6.3 As per Section 43 of the Act of 1995 the respondents were empowered to frame schemes for the development of land owned or transferred by the Government to the respondents. Accordingly, the present project for allotment of 976 freehold 'residential plots' at PUDA Enclave (Sugar Mill Site), Budhlada was conceptualized .

6.4 It is further contended that terms and conditions of the said scheme was detailed in the brochure for the information of the general public. The Counsel for the respondents has also reproduced the terms and conditions (a) to (j) of the brochure to support its case. It mentioned that possession will be offered within 18 months with a deeming clause that if such offer of possession is not availed the allotment may be cancelled. The same are not being reproduced here for the sake of brevity.



- 6.5 That the complainant purchased the plot in question with open eyes after going through the terms and conditions of the allotment applied for a plot measuring 150 sq. yards and affirmed the following certificate:

"I have carefully gone through and understood the terms and conditions of the scheme applied for, as contained in the brochure and do hereby undertake to abide by the same."

- 6.6 The respondents admitted holding of draw of lots on 15.01.2013, and issuance of LOI for allotment of plot measuring 150 sq. yards to the complainant on 26.02.2013 subject to the conditions mentioned therein. The issuance of allotment letter on 20.10.2016 allotting Plot No.482 (subsequently changed to 210) was also admitted to be correct.

- 6.7 It is stated that as per condition no.3(II) and (III) of the allotment letter the original allottee was required to pay 75% of the tentative price either in lumpsum with 5% rebate without any interest within 60 days (excluding date of issue) from allotment letter or in 6 equated half yearly installments (with first installment falling due after one year from the date of issue of allotment letter) along with interest @12% per annum as per schedule mentioned in the allotment letter.

- 6.8 The respondent stated that the complainant had defaulted in payments and on the scheduled date of giving possession i.e. 19.04.2018, two instalments were

unpaid. After paying 25% of the price of the plot, the complainant filed to pay the balance due installments towards the price of the plot.

6.9 The respondents further stated that as per Condition No.4(I) of the allotment letter dated 20.10.2016 possession of the plot was to be handed over within 18 months i.e. on or before 19.04.2018. It was informed to all allottees that a special camp is being organized on 21.02.2018, 22.02.2018, 27.02.2018, 28.02.2018 and 01.03.2018 for handing over possession of the plots at site in the presence of senior officials of the Authority. The complainant neither took the possession nor quoted any reason for it.

6.10 The Counsel for the respondent stated that Finance and Accounts Committee of PUDA in its 92nd meeting held on 28.06.2019 has decided not to charge interest on instalments from allottees till 01.03.2018, the date of the camp organized to offer of possession of plots to the allottees.

6.11 To rebut the claim of the complainant that possession was offered without development of the site it is stated that as per meeting held on 21.12.2017 under the Chairmanship of Chief Administrator, the development works of the site had been reported as completed. It was directed that possession be given to the allottees. It is further contended that as per letter dated 27.06.2018, the Divisional Engineer, PUDA, Bathinda, reported that

development works relating to Civil ,Public Health, Electricity , and Horticulture had been completed.

6.12 The respondent referred clause 7(i) of allotment letter which stipulate that allotment are done by PUDA as per Section 17 of Act of 1995. The provisions under section 44 Act of 1995 was also quoted to emphasize that the promoter is exempted from obtaining OC/CC . The respondents also relied upon Section 14 (Occupation and completion certificate) of PAPRA Act that it is the responsibility of promoter to obtain a completion certificate from the competent authority to the effect the 'development works have been completed'. Further quoting the definition of the completion certificate given under Section 2(q) of the Act of 2016, it is stated that in the present case the development works stood completed before issuance of letter of offer of possession. It was concluded by the respondent that obtaining of completion certificate under PAPR Act before handing over possession of the plots in a plotted colony is not mandatory for the respondents.

6.13 The respondent further stated that the averments made by the complainant regarding issue of allotment-cum-offer of possession letter is misleading rather through this letter, the information regarding change of plot number had been informed, size and location was same. It was specifically informed to the complainant that the other terms and conditions of allotment letter shall remain the same. It was alleged by the respondent that

complainant has booked this unit for the sole purpose of investment and due to slowdown of market he is seeking refund. It was further submitted that any person cannot be enriched on the cost of public exchequer.

6.14 Further on the contention of the complainant that the possessions were offered without any development work, it was submitted by the respondent that there is no violation of the terms and conditions and this very issue is already settled by RERA appeal number 112 of 2021.

6.15 Regarding the desertion of the project, the Counsel for the respondent stated that the refund of money deposited by the complainant and other such allottees ought to be made with deduction as per terms and conditions of allotment but the respondent being public Authority, refunded the money without any deduction.

6.16 That another objection regarding the non-availability of basic amenities like water and sewerage etc. at the site raised by the complainant is without any substance. The complainant was required to get the building plan sanctioned and thereafter apply for water connection but the complainant never applied for sanction of building plan and water connection.

6.17 Regarding the objection about the policy, the respondents relied upon the decision of the Hon'ble Real Estate Appellate Tribunal, Punjab in the matter of "Inder Mohan Jeet Kaur Vs GMADA" wherein it has been held that it is not within their jurisdiction as well as RERA

Authority to implement the policies framed by government or its agencies.

6.18 The respondent further stated that PUDA and BDA are two separate legal entities established under different sections of the PAPR Act, 1995. Respondents again referred Sections 45 and 174 of the Act of 1995 and Arbitration clause in the letter of allotment in support of their case and prayed that the complaint be dismissed.

6.19 The respondent argued that non-payment of instalment as per mutually agreed payment schedule creates impediment in development of site which is also a basic responsibility of allottee under RERA Act. Since the allottees is on default no relief be granted.

7. Rejoinder to the reply submitted by the respondents has been filed by the complainant. Complainant denied the arguments extended by the respondent. In support of the contention that development work is still not complete, the complainant referred and enclosed the report of local Commissioner submitted before the honourable REAT for the same project but in another case appeal number 133-136 of 2022 dated 03.12.2022. The complainant offered that in case any document not legible then the same are provided to the respondent. The report was not rebutted or denied by the respondent.

8. The undersigned heard arguments of both the Counsels for the parties on the date(s) of hearing, considered the above arguments and also gone through the available record of this complaint.

9. The complainant has paid Rs.225,000/- to respondents detailed in property ledger. It is further argued that the respondents failed to complete the project and deliver possession by the due date i.e. 19.04.2018 as promised by the respondents and the project is still incomplete and is not in a habitable condition even after passing of about four years and even the basic amenities like drinking water, electricity and sewage are not available till date. The complainant sought refund and it was prayed that the respondent be directed refund Rs.2,25,000/-along with interest.

10. On the other hand, the learned Counsel for the respondents reiterated the contents of their detailed reply raising various legal objections. The learned Counsel for the respondents relied upon letter no 1525 dated 27.06.2018 of the Divisional Engineer, PUDA, Bathinda whereby he reported that the development works relating to Civil, Public Health, Electricity and Horticulture had been completed. He also produced the photographs of the site in support of their argument about completion of development work. He further argued that the complainant has not applied for sanction of building plan and water connection and in the absence of these documents, the complainant cannot allege that the basic amenities are not available at site. He also argued that the complainant failed to pay the installments as per agreed schedule so the respondents issued notice under Section 45(1) and 45(2) of the Act of 1995. Lastly, it is argued that there is an arbitration clause and other legal remedies available to the complainant, however, the complainant failed to avail these remedies. It was concluded that since there is no substance in the complaint, it be dismissed.

11. From the pleadings of the parties, it is clear that there is no dispute about allotment of plot, the due date agreed upon for giving possession and the amount of payment.

12. The plea of respondent that although the promoter is bound to obtain the completion certificate from the competent authority as per the provisions of section 11 (4) (b) of the act but nowhere it is mentioned that it has to be obtained prior to handing over the possession is not a comprehensive argument and the same has to be read with section 17 of the act which elaborates the process for transfer of title.

13. The respondent has raised several legal issues and contended that the impugned application filed is not maintainable.

13.1 Regarding the availability of Arbitration clause which is not availed by the complainant, the judicial pronouncements of the Hon'ble Supreme Court in the matter of '**Emaar MGF Land Ltd. Vs. Aftab Singh**' (Civil Appeals No.23512-23513 of 2017) held that mere presence of an arbitration clause does not preclude the jurisdiction of this Authority.

13.2 Regarding the non-availability of the Completion Certificate (CC) is concerned it is an admitted fact that the respondent does not have a CC for this project. The reliance placed by the respondents on Section 44 of the PAPRA Act also cannot be accepted. A Completion Certificate is a requirement under the Act of 2016 which is a Central legislation and has to prevail in case of conflict with a State law.

13.3 Section 31 of the Act of 2016 further provides for the filing of a complaint by an aggrieved person. Sections 88 and 89 of the Act of 2016 provide that its provisions would be in addition to those of any

other law in force at the time; and also that the Act of 2016 would have overriding effect in case of inconsistency with any other law. The Act of 2016 is a Central legislation and its working cannot be restricted by any State law. Thus, the contention that Section 174 of the Punjab Regional and Town Planning and Development Act, 1995 ousted the jurisdiction of this Authority cannot be sustained. Similarly, the Act of 2016 provides an alternative remedy to an aggrieved allottee; and this remedy cannot be denied on the ground that the remedy available in the pre-RERA days should have been pursued.

14. The other bone of contention in this complaint is that there is allegedly no development work at site. Perusal of the Annexure R-2, letter number 1525 dated 27.06.2018 written by Divisional Engineer C-1, PUDA reveal that Civil Works, public health works and electrical works had been executed to a large extent (percentage marked) but the development works are not fully complete and accordingly project is not in a habitable condition

14.1 During the argument the Council of respondent contended that the project was almost ready and at present it is fully ready. It was further submitted that it is only after the completion which was certified by the divisional engineer (supra), the possession was offered to the complainant in Feb 2018. It was also agreed that possession was offered through a camp organized for few days but complainant failed to take possession without citing any reason which is deemed to have taken possession.

15. Any offer of possession without completion of essential and promised infrastructure and amenities confers the right upon the allottee to refuse the proposal of taking possession. Any provision in

the argument which provides for deeming provisions for taking possession may be invoked only if the promoter is able to prove unconditionally that all the essential/ agreed infrastructure, amenities and facilities are complete and the possession is being offered on time. In the present case the respondent was unable to manifest that the project was complete to the extent of agreement even after the due date agreed upon. The project which was started in 2013 is still not complete to the extent as promised even the possession was scheduled to be offered on 19.04.2018. Having said that, complainant is well within its right to ask for refund along with interest under section 18 of the act if the unit promised to him has not been provided within the stipulated time.

16. As a net result of the above discussion, this complaint is accordingly allowed and respondents are directed

16.1 To refund the amount of Rs.2,25,000/- along with interest at the rate of 11.10%per annum (today's State Bank of India highest Marginal Cost of Lending Rate of 9.10%plus two percent) prescribed in Rule 16 of the Rules of 2017 from the respective dates of deposits till the date of actual refund.

16.2 Respondents are further directed to refund the amount of Rs.2,25,000/- along with interest thereon to the complainant within the statutory time i.e ninety days stipulated under Rule 17 of the Rules of 2017 from the date of receipt of this order and submit a compliance report to this Authority about releasing the amount along with interest as directed.

17. It may be noteworthy that in case compliance report is not submitted by the respondents after the expiry of above stated period of ninety days and further any failure to comply with or contravention of any order, or direction of this Authority may attract penalty under Section 63 of this Act of 2016.

18. The complainant is also directed to submit report to this Authority that they have received the amount along with interest as per directions issued in this order. Till then the complainant shall have the charge on the allotted plot in the project under consideration. The complainant is further directed to execute a Cancellation Deed on receipt of full payment of refund and interest thereon from the respondents thereafter.

19. File be consigned to the record room after due compliance.



(Binod Kumar Singh)
Member, RERA, Punjab