

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

Complaint No.0412 of 2022
Date of Institution: 09.08.2022
Date of Decision: 28.02.2025

Jaspal Singh, s/o Shri Thandu Ram, Ward No.9, Gurdwara Street
Mansa, Tehsil Mansa, Mansa, Punjab, Pin Code 151505

....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 09.08.2022 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.3,15,813/- deposited with respondents along with interest thereon for purchase of plot of 150 sq. yards

(Registration Number PBRERA-MNS50-PM0031) being developed by respondents at PUDA Enclave, Mansa.

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 Mansa @ Rs.7000/- per sq yard.
- 3.2 Nirmla Rani w/o Mithu Singh, Mansa applied for a plot of 150 sq. yards vide Application no.0059 on 17.12.2013 by depositing 10% earnest money of Rs.1,05,000.
- 3.3 Letter of Intent (LOI) was issued on 24.03.2014 demanding 15% amount of Rs.1,57,500 which was deposited on 20.03.2014 along with penal interest of Rs.2,500/-.
- 3.4 Allotment letter (Annexure A2) was issued on 11.01.2017 allotting Plot no.203.

- 3.5 Thereafter Nirmla Rani applied for transfer of ownership of the plot on 31.03.2015 in favour of the complainant along with requisite transfer fee.
- 3.6 Respondents transferred ownership of the plot in favour of the complainant vide Re-allotment letter dated 10.03.2017 (Annexure A3) after payment of due fee, penal interest with all rights and obligations of allotment.
- 3.7 The complainant has paid total of Rs.3,15,813 to respondents, described in property ledger (Annexure A4).
- 3.8 Respondents have failed to complete the project and deliver possession by the due date i.e. 10.07.2018 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 Moreover, the basic amenities like drinking water, electricity and sewage are not available till date.
- 3.11 These facts have been admitted by the respondents in letters Annexure A5(Colly) and in status report by way of affidavit dated 25.10.2018.
- 3.12 Complainant was planning to construct his house in the project, had the respondents developed it in time.
- 3.13 Identical matters have been allowed by the Bench of Shri Ajay Pal Singh, Member RERA, Punjab and also by the Bench of Sh N S Kang, Chairperson, RERA Punjab decided solely on the basis of order passed by Hon'ble Real Estate Appellate Tribunal, Punjab in Appeal no 24 and 26 of 2018 in an another case. Annexure A6.
- 3.14 Respondents issued notice dated 27.07.2020 for payment of instalment (Annexure A8) which was replied vide Annexure A9 seeking refund on the ground of delay and non availability of basic amenities. Respondents vide letter dated 30 October 2020 replied that the total amount of Rs. 15, 22, 863 is due towards principal cost of plot, interest penal interest and surcharge and after

confiscating 10% of this amount (Rs. 152,286) out of the total amount deposited the remaining amount of Rs. 1,17,174 is proposed to be refunded (Annexure A10). The said computation was denied by the complainant vide letter dated 30.10.2020 on the ground that the project is still incomplete and reiterated the demand of refund, interest and compensation (Annexure A11) by the complainant. Respondents, however, vide letter no 6832 dated 14.12.2020 refused to accede the counter request and stated that there is no provision regarding payment of deposit and interest and if the complainant wishes to get refund is proposed earlier, he should submit a written consent within a week filling which it will be treated as no refund has been sought(Annexure A12).

3.15 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 refund Rs.3,15,813/-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 26.07.2023 was filed by the respondents raising the following observations/ objections:

5.1 The complaint is bad for non-joinder and mis-joinder of necessary parties. Allotment has been made by PUDA and not by respondent no.1.

5.2 It is further 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 therefore, however the complainant failed to avail these remedies.

5.3 The complainant failed to deposit the price of the plot as per given schedule against which action was taken under the Act of 1995 and to avoid such action the complainant filed the present complaint.

5.4 It is also contended that Section 174 of the Act of 1995 provided that orders passed under the Act were final and not to be questioned in any suit or other legal

proceedings. Thus, this Authority has no jurisdiction to entertain and try the complaint.

- 5.5 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.

On merits it is stated that

- 5.6 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.

- 5.7 It is further submitted that respondent authority was constituted as per Section 29 of the Act of 1995.

- 5.8 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.

5.9 Accordingly, a scheme for allotment of 200 freehold 'residential plots' at PUDA Enclave, Mansa was opened for general public from 18.11.2013 to 17.12.2013.

5.10 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. However, the same are not being reproduced here for the sake of brevity.

5.11 The original allottee Nirmla Rani from whom present complainant purchased the plot in question with open eyes after going through the terms and conditions of the allotment applied for a plot measuring 300 sq. yards and executed 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."

5.12 The Counsel for the respondents admitted holding of draw of lots on 21.02.2013, and issuance of LOI for allotment of plot measuring 150 sq. yards to the complainant on 24.03.2014 subject to the conditions mentioned therein. The Counsel for the respondents further admitted the issuance of allotment letter on 11.01.2017 allotting Plot No.203.

5.13 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. However, the original allottee as well as the present complainant failed to pay installments as per schedule.

5.14 The Counsel for the respondents further stated that as per Condition No.4(I) of the allotment letter possession of the plot was to be handed over within 18 months from

the issue of allotment letter i.e on or before 09.07.2018. In the meanwhile plot was sold to the present complainant and who got transferred the same in his name on 01.03.2017. The complainant submitted an affidavit dated 30.03.2015 to abide by terms and conditions of the allotment.

5.15 Possession was offered on 27.12.2017 to the complainant. However, the complainant neither took possession nor quoted any reason.

5.16 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 completed. It was directed that possession be given to the allottees. It is further contended that as per letter dated 22.11.2017, the Divisional Engineer, PUDA, Bathinda, reported that development works relating to Civil, Public Health, Electricity and Horticulture had been completed. The Counsel for the respondents attached copies of proceedings dated 21.12.2017, letter dated 21.11.2017

and photographs as Annexures R-3, R-4 and R-5 respectively.

5.17 The learned Counsel for the respondents also relied upon Section 14 (Occupation and completion certificate) of this Act that 'in the case of a colony, to obtain a completion certificate from the competent authority to the effect the 'development works have been completed'. While 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.

Thus, obtaining of completion certificate under PAPR Act before handing over possession of the plots in a plotted colony is not mandatory for the respondents.

5.18 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.

5.19 It is contended that the present complainant is the subsequent transferee, thus, as per the judgement of the Hon'ble Supreme Court in the matter of "*Wing Commander Arif Khan and others Vs.DLF Southern Homes Pvt. Ltd.*" the subsequent transferee is not entitled for any relief.

5.20 Regarding another objection of the complainant about Section 11(4)(b) of the Act of 2016, it is replied by the respondents that though there is one of the functions of the promoter to obtain completion certificate but there is nowhere mention that it is to be obtained prior to handing over of possession.

5.21 Since the complainant failed to pay the installment, notice under Sections 45(1) and 45(2) of the Act of 1995 was issued to him on 27.07.2020 and 13.07.2022 respectively. In reply thereto the complainant vide his reply dated 03.09.2020 submitted that he is not liable to remit the installments since the development at site is

only for name sake and requested the respondents to withdraw the notices and refund the amount along with interest @ 12% p.a.

5.22 The request of refund by the complainant was considered as per terms and conditions of the allotment letter. The respondents vide letter dated 30.10.2020 (Annexure A-10) informed the complainant about the refund of money. The complainant vide his letter dated 06.11.2020 again quoted about the development works and requested for the entire amount with 12% interest and compensation of Rs.1.00 lakh, which was also responded to by the respondents.

5.23. Regarding the objection about the policy dated 02.01.2017, 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.

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5.24 Respondents again repeated 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. No rejoinder to the reply submitted by the respondents has been filed by the complainant.

7. The undersigned heard arguments of both the Counsels for the parties on 06.02.2025.

8. The learned Counsel for the complainant argued that the complainant purchased the plot from Nirmla Rani w/o Mithu Singh, Mansa, and on application for transfer of ownership of the plot on 31.03.2015 the respondents transferred ownership of the plot in favour of the complainant vide Re-allotment letter dated 10.03.2017 with all rights and obligations of allotment. The complainant has paid Rs.3,15,813 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. 10.07.2018 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. Learned Counsel for the complainant further argued that this Authority has allowed identical matters. The complainant sought refund and it is prayed that the respondent be directed ^{to} refund Rs.3,15,813/- along with interest.

9. On the other hand, the learned Counsel for the respondents reiterated the contents of their detailed reply raising various legal objections. They admitted the allotment of plot to Ms. Nirmla Rani w/o Shri Mithu Singh vide letter of intent and thereafter issuance of allotment letter and later on transfer of the said plot to the present complainant. The learned Counsel for the respondents relied upon letter dated 22.11.2017 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 emphasized on the photographs Annexure R-5 in support of his case. 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 further 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. Regarding the letter of request for refund submitted by

the complainant, the respondents stated that the said letter was duly replied by the respondents. 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. There is no substance in the complaint, it be dismissed.

10. The undersigned considered the above arguments and also gone through the available record of this complaint.

11. From the pleadings of the parties, it is clear that there is no dispute about allotment of plot to original allottee Nirmla Rani and thereafter transfer in favour of the present complainant.

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 there is nowhere mentioned that it is to be obtained prior to handing over the possession does not have the holistic view unless it is read with section 17 of the act which elaborates the process for transfer of title.

13. At the very outset it is concluded that none of the legal issues raised by the respondents have any merit. 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 class does not preclude the jurisdiction of this Authority.

14. Regarding the non-availability of the Completion Certificate (CC) is concerned it is true that the respondent does not have a CC for this project. The reliance placed by the respondent 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.

15. 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.

16. The bone of contention in this complaint is that there is no development work at site. Perusal of the Annexure R-4 , letter number 2990 dated 22-11-17 addressed to Superintending Engineer enclosing the completion certificate of the site and the enclosure titled as completion/partial completion attached to it would reveal that Civil Works, public health works and electrical works had been executed to the extent of only 86%, 90% and 80% respectively issued by Divisional Engineer of respective branch. The Divisional Engineers are not authorized to issue such type of completion certificate. It is the consistent case of the complainant that the development works are not complete and the project is not in a habitable condition, accordingly he prayed for refund of his deposited amount. There is no rebuttal from the side of the respondents.

16.1 During the argument the Council of respondent contended that the project was almost ready in 2017 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 2017. The counsel of complainant

however refuted the claim and submitted that even at the present scenario the plots are not ready and no one has taken possession so far. In order to ascertain the claims made by either party the Council of respondent was directed to confirm the following:

i) whether the occupancy certificate has been obtained by the respondent

ii) with a position letter issued to the complainant (inadvertently mentioned as respondent in the interim order)

iii) Submit the copy of first possession letter issued to any allottee

iv) How many persons have taken possession.

16.2 The respondent was asked to submit these details but the same was not provided on the stipulated date of hearing. Thereafter, on the day of final hearing the council of respondent assured that if available, the same will be submitted within two weeks time. However, it was not produced at the time of framing of the order.

16.3 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 partial completion certificate (supra) indicates that the project is still incomplete on several aspects. 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.

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

17.1 To refund the amount of Rs.3,15,813/- 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.

17.2 Respondents are further directed to refund the amount of Rs.3,15,813/- 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.

18. 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.

19. 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 "PUDA Enclave, Mansa". The complainant is further directed to execute a Cancellation Deed on receipt of full payment of refund and interest thereon from the respondents thereafter.

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

(Binod Kumar Singh)
Member, RERA, Punjab