

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

1. Complaint GC No.0437/2022 UR
Date of Institution: 26.08.2022
Date of Decision: 25.02.2025

Smt Arpita Garg, wife of Shri Pankaj Garg, resident of # 19-A, Civil Lines, Near Old Session Court, Ambala City, Ambala, Haryana, Pin Code 134003

.... Complainant

Vs

- 1) Punjab Urban Development Authority, through its Chief Administrator, PUDA Complex, Bhagu Road, Tehsil Bathinda, Bathinda Punjab, Pin Code 151001
- 2) Estate Officer, Punjab Urban Development Authority, PUDA Complex, Bhagu Road, Tehsil Bathinda, Bathinda Punjab, Pin Code 151001

.... Respondents

2. Complaint GC No.0438/2022 UR
Date of Institution: 26.08.2022
Dated of Decision: 25.02.2025

Smt Kusum Lata Garg wife of Shri Babu Ram Garg, # 2, Housing Board Colony, Naraingarh Road, Baldev Nagar, Ambala City, Ambala, Haryana, Pin Code 134 007.

.... Complainant

Vs

- 1) Punjab Urban Development Authority, through its Chief Administrator, PUDA Complex, Bhagu Road, Tehsil Bathinda, Bathinda Punjab, Pin Code 151001
- 2) Estate Officer, Punjab Urban Development Authority, PUDA Complex, Bhagu Road, Tehsil Bathinda, Bathinda Punjab, Pin Code 151001

.... Respondents

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

ORDER

The above mentioned two complaints are hereby decided by a common order since identical points of law and facts are involved in both of these cases. A copy of the order be placed on respective file.

2. The above titled complaints filed by the complainants in their individual capacity, are 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 Rules of 2017) against the respondent for refund of amount with interest under Sections 11 to 14, 16 to 18, 31 and 71 of the Real Estate (Regulation and Development) Act, 2016 read with Rules 16 and 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.

3. 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".

4. The brief contention of each complaint is as under:-

I. GC No.0437 of 2022 UR (Ref: Smt Arpita Garg)

5. It is submitted by the complainant in her complaint that

5.1 She applied for a plot of 200 sq. yards in General Category vide Application No.PUD000022 on 01.07.2013 after depositing of Rs.1,80,000/- towards 10% of Earnest Money for the Scheme (Annexure A1) launched by the respondents for the development of free hold residential plots @ of Rs.9,000/- per sq. yard at PUDA Enclave (Sugar Mill Site), Faridkot, although being an unregistered project.

5.2 Letter of Intent (LOI)(Annexure A2) was issued to the complainant on 03.01.2014 demanding Rs.3,06,000(15% allotment money of Rs.2,70,000+ 2% cess of Rs.36,000/-) within 30 days which was deposited by the complainant on 28.01.2014. (Annexure A3) Thus, the complainant had paid Rs.4,86,000 till date.

5.3 As per Clause 2(1) and payment schedule clauses of scheme, remaining 75% amount was to be paid in lump sum or in 6 half yearly instalments after issuance of allotment letter.

- 5.4 It is contended by the complainant that allotment letter has not been issued after a lapse of a decade.
- 5.5 As per prospectus of the scheme and LOI, possession of the plot was to be handed over within 18 months from the date of issue of Allotment letter or completion of development works at the site whichever was earlier. However, till date as stated above allotment letter has not been issued which is evident from the replies to the RTI applications (Annexure A4) and (Annexure A5) of the complainant.
- 5.6 It is further stated that the scheme was launched in 2013 i.e. much before coming into effect of the Act of 2016 which is still incomplete till date.
- 5.7 The respondents were under legal obligations to get the project registered under Section 3 of the Act of 2016 with this Authority. But respondents have not done this so far.
- 5.8 The respondents have miserably failed even to start development works of the project.
- 5.9 The complainant served legal notices (Annexure A6) and (Annexure A8) to the respondents which was never replied.
- 5.10 That a complaint bearing RERA-AdC No.0090 of 2021UR BF-TR was filed which was later on got dismissed as withdrawn vide order dated 11.02.2022 (Annexure A11) and liberty was granted to the complainant to file afresh.
- 5.11 It is also contended that the complainant came to know from judgment (Annexure A12) attached with this complaint that respondents are not owners of the project land nor they are in possession of the same.

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5.12 In view of the above facts, now complainant is no more interested in the project of the respondents and does not want to wait endlessly for possession of the plot.

5.14 The complainant prayed that the respondents be directed to refund her amount of Rs.4,86,000/- deposited with the respondents along with interest.

II. GC No.0438 of 2022 UR

6. It is submitted by the complainant in her complaint that

6.1 She applied for a plot of 200 sq. yards in General Category vide Application No.PUD000021 on 01.07.2013 by depositing of Rs.1,80,000/- towards 10% of Earnest Money for the Scheme (Annexure A1) launched by the respondents for the development of free hold residential plots @ of Rs.9,000/- per sq. yard at PUDA Enclave (Sugar Mill Site), Faridkot opened in June 2013. This is an unregistered project.

6.2 Letter of Intent (LOI)(Annexure A2) was issued to the complainant on 03.01.2014 demanding Rs.3,06,000(15% allotment money of Rs.2,70,000+ 2% cess of Rs.36,000/-) within 30 days which was deposited by the complainant on 28.01.2014. A copy of Ledger Account Summary (Annexure A3) attached with the complaint.

6.3 Thus, the complainant had paid Rs.4,86,000/- till date.

6.4 As per Clause 2(1) and payment schedule clauses of scheme, remaining 75% amount was to be paid in lump sum or in 6 half yearly instalments after issuance of allotment letter.

- 6.5 It is contended by the complainant that allotment letter has not been issued after a lapse of a decade.
- 6.6 It is pleaded that as per prospectus of the scheme and LOI, possession of the plot was to be handed over within 18 months from the date of issue of Allotment letter or completion of development works at the site whichever is earlier. However, till date allotment letter has not been issued as is evident from the replies to the RTI applications (Annexure A4, Annexure A5 and Annexure A6) of the complainant.
- 6.7 It is further stated that the scheme was launched in 2013 i.e. much before coming into effect of the Act of 2016 which is still incomplete.
- 6.8 The respondents were under legal obligations to get the project registered under Section 3 of the Act of 2016 with this Authority. But respondents have not done this so far.
- 6.9 The respondents have miserably failed even to start development works of the project.
- 6.10 It is also contended that the complainant also served legal notices (Annexure A7 and Annexure A8) to the respondents but no response was received by the complainant.
- 6.11 It is further stated that earlier complaint bearing RERA-AdC No.0043 of 2021UR BF-TR was filed which was later on got dismissed as withdrawn vide order dated 27.01.2022 (Annexure A13) and liberty was granted to the complainant to file afresh.
- 6.12 It is also contended that the complainant came to know from judgment (Annexure A12) attached with this

complaint that respondents are not owners of the project land nor they are in possession of the same.

6.13 In view of the above facts, now complainant is no more interested in the project of the respondents and does not want to wait endlessly for possession of the plot.

6.14 It is the prayer of the complainant that the respondents be directed to refund her amount of Rs.4,86,000/-deposited with the respondents along with interest.

7. In support of their complaints, the complainants have relied upon various documents including Scheme, Letter of Intent, property ledger, and RTI replies and legal notices.

8. Notice was issued to the respondents in both the complaints. Shri Bhupinder Singh and Shri Balwinder Singh, Advocates appeared for the respondents and submitted the replies on behalf of Respondent.

8.1 In the initial paras of the reply the respondents have mentioned various provisions and introduction of the Act of 2016 vide Notifications dated 26.04.2016 and 19.04.2017 issued by the Central Government and stated that the provisions thereof were made applicable prospectively w.e.f01.05.2016 and 01.05.2017 respectively and no provision of the Act has been made applicable retrospectively.

8.2 Respondents have also quoted Section-3 of the Act of 2016, and the definition of "Ongoing Projects" which has been enshrined in Rule 2 (h) of the Rules of 2017 which are not being reproduced for the sake of brevity.

8.3 It is stated that no development or development works are going on, as such this project cannot be considered as 'Ongoing Project', and the same is not registered with this

Authority. The Respondent relied upon the judicial pronouncement of Hon'ble Apex Court in the case of "*M/s. Newtech Promoters and Developers Pvt. Ltd. vs State of UP and Ors.*", and submitted that the complaint against unregistered projects does not come under the jurisdiction of RERA.

- 8.4 It is further contended that in the present case there is no agreement to sell and therefore no allotment letter was issued, thus there is no question of violating terms of the agreement for sale.
- 8.5 It is further averred that the present project is to be developed on the land transferred to PUDA under OUVGL (Optimum Utilization of Vacant Government Lands) Scheme and sale proceeds of the said land/project are to be deposited with the Government and project is to be developed under directions and guidelines of the Government. It is further contended that there is no provision in the Act of 2016 to file complaint against order/decision of the State Government.
- 8.6 It is submitted that 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 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.
- 8.7 To achieve the above objective of the Act, Punjab Urban Planning and Development Authority under Section-17 and

Patiala Urban Planning Area and Development Authority amongst other Special Authorities under section 29 of the Act ibid had been constituted by the Government of Punjab.

8.8 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.

8.9 The State Government of Punjab under a Scheme known as Optimum Utilization of Vacant Government Land (OUVGL) transferred the land of Sugar Mill Site to the Punjab Urban Planning and Development Authority (PUDA) for development and disposal.

8.10 Accordingly, PUDA framed a scheme for allotment of 428 freehold Residential Plots at PUDA Enclave (Sugar Mill Site), Faridkot and issued brochure for General Public as per terms and condition of allotment of plots and reproduced the same as under:

- (I) *Condition No. 1 under the head POSSESSION AND OWNERSHIP:- the possession of the said plots shall be handed over to the allottee after completion of development works at site or 18 months from the date of issuance of allotment letter whichever is earlier. If possession is not taken by the allottee within stipulated period, it shall be deemed to have been handed over on the expiry of said date.*
- (II) *Condition No. 1) under the Head GENERAL:- The allotment shall be governed by the provisions of the Punjab Regional and Town Planning and Development Act, 1995, Rules and Regulations & Policies framed thereunder, as amended from time to time.*
- (III) *Under the Head DISPUTES:- Subject to the provisions of the Act, all the disputes and/or differences which arise in any manner touching or concerning this allotment shall be referred to the Sole Arbitrator, Chief Administrator, Punjab Urban Planning and Development Authority (PUDA) or any person appointed/nominated by him in this behalf. The award of such Arbitrator shall be final and binding on the parties. Arbitration shall be governed by the Arbitration Conciliation Act, 1996 as amended from time to time.*

(IV) Under the Head ACCEPTANCE/REFUSAL OF ALLOTMENT:

i) In case terms and conditions of allotment, as detailed above are acceptable, allottee is required to send acceptance by registered post along with a demand draft of 15% price of the plot within 30 days of issue of letter of intent(excluding date of issue.)

ii) In case of refusal to accept the allotment offer, such refusal in writing through a registered post should be received within 30 days from the date of issue of Letter of Intent, 10% amount of earnest money shall be forfeited. In the event, such refusal is received after a period of 30 days from the issue of Letter of Intent, entire earnest money deposited shall be forfeited.

8.11 The complainant after perusing the terms and conditions of the brochure, submitted application on 01.07.2013 for allotment of plot measuring 200 Sq.Yards and given the following certificate in the application:-

"I have carefully read and understood the terms and conditions given in the brochure of this scheme which I accept without exception."

8.12 The complainant was successful in the draw held on 30.08.2013 and Letter of Intent dated 03.01.2014 was issued to the complainant mentioning therein that possession of the plot shall be handed over after completion of development works at site or 18 months from the date of issuance of allotment letter whichever is earlier.

8.13 It was however admitted that there was some technical dispute regarding mutation of the land in question in favour of the respondent which had now been cleared and efforts are being made to develop the site.

8.14 It is also averred by the respondents in their reply that the possession of the plot is to be handed over to the complainant and other allottees on completion of development works as per terms and conditions of LOI and brochure itself and conditions accepted by the complainant and is a binding contract between the parties.

8.15 It was stated that provisions of the Act of 2016 are not applicable to the instant case as the project is not registered with this Authority. As per Section 18 of the Act of 2016, the promoter is only liable to return the amount received by him along with interest if he fails to give possession of plot in accordance with the terms of the agreement for sale. In the present case the agreement for sale is the LOI dated 03.01.2014 and as per its condition No.14 possession of the plot is to be handed over after completion of development works at site or 18 months from the date of issue of allotment letter whichever is earlier. Denying the claim of complainant for any relief, it was concluded by the respondent that since the development works are yet to be completed and allotment letter is also yet to be issued, thus, there is no contravention to the agreement of sale i.e. LOI dated 03.01.2014.

8.16 Here again the learned Counsel for the respondents relied upon Section 174 of the Act of 1995, and also reproduced in the reply and for the sake of brevity the same is not reproduced here again, arbitration clause, and Section 45 of the Act of 1995. It is the prayer of the respondents to dismiss the complaint.

9. It is worth to note that reply filed in the matter of "Smt Kusum Lata Garg Vs PUDA and Anr." is the replica of reply submitted in the matter of "Smt Arpita Garg Vs. PUDA and Anr." The only difference is about application number and name of the complainant and rest of the contents are same i.e. money deposited by the complainant with the respondents, issuance of LOI, and the relief sought. Thus, the same is not being again elaborated here.

10. In both these cases no rejoinder has been filed by the complainants.

11. The undersigned heard the arguments of both the counsels for the parties, their submission and documents filed.

12. The learned Counsel for the complainant while reiterating the contents of his complaint argued that the scheme was opened in June 2013 and as per the terms and conditions of the brochure the possession was to be delivered within 18 months from the date of issue of allotment letter or completion of development Work. It was further argued on behalf of the complainant that she has deposited Rs.4,86,000/- i.e 25% out of total value of the flat being Rs.18,00,000/-and the remaining 75% of the sale consideration was to be deposited upon issuance of allotment letter.The learned Counsel for the complainant further stated that till date no allotment letter was issued to her. He further argued that the respondents themselves admitted in their reply dated 08.05.2023that they are making efforts to start the development work. Thus, it is established on record from June 2013 till 08.05.2023, the date of filing of the reply by the respondents, no development work was doneand this version of the respondents corroborates the case of the complainant. It further established that the respondents failed to abide by the terms and conditions of their brochure till date which compelled the complainant to seek refund of her deposited amount along with interest.

13. On the other hand, the learned Counsel for the respondents while reiterating the contents of the reply argued that due to certain technical issue the possession was delayed and now things are clear and the respondents are now making all efforts to complete the development work. There was no mention by the respondent as to when the allotment letters will be issued.

14. The undersigned considered the arguments of both the counsels and also perused the available record.

15. Regarding the objection raised by the complainant that the project was not got registered by the respondents as mandated under Section 3 of the Act of 2016 being the ongoing project, the learned Counsel for the respondent stated that since there was no development work was going on at the site so the project in question was not an ongoing project. However, the respondents themselves stated in their reply at para 6 and 18 that 'no development or development works are going on' and '...mutation of the land in question in favour of respondents had been cleared and efforts are being made to development the site.' It is seen that the scheme was opened in June 2013 and the reply was filed on 08.05.2023. It is acknowledged by the respondents that they are now ready to start the development work. The complainant has made a total payment of Rs.4,86,000/- by 28.01.2014 and till date possession has not been handed over to her that is why she prayed for refund of her deposited amount. Money is still lying with the respondents. As such this project "PUDA Enclave (Sugar Mill Site)" at Faridkot is held to be an ongoing project.

16. Regarding the objection taken by the respondents that in view of the judgement of the Hon'ble Apex Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Ors." it is necessary to reproduce the relevant portion of para I(a) and (b) of the Circular No.RERA/Legal/2021/8950 dated 06.12.2021 issued by this Authority.

I. Complaints against unregistered projects:

- (a) No complaint under Section 31 of the Act filed against the unregistered project shall be entertained. However, proceedings under Section 59 of the Act may be initiated by the Authority against any

defaulting promoters on the basis of the evidence available on record.

- (b) In case of complaints against unregistered projects filed prior to passing of the judgement dated 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgement dated 11.11.2021.

.....”

17. However, on challenge about the validity of this Circular dated 06.12.2021 by Shri Aman Sethi in an Appeal No.60 of 2022 and other connected Appeals before the Hon'ble Real Estate Appellate Tribunal, Punjab, it passed the order on 25.04.2021 setting aside Clause 1(a)(B) of the said Circular (supra) and the relevant para of which is reproduced below:-

"26. A generalized decision through a circular dated 06.12.2021 cannot be sustained and thus the decision of the Authority to this extent of Clause 1(a) (b) is set aside".

18. Regarding the objection raised by the respondents that the order passed by the State Government or the Competent Authority was final and were not to be questioned in any suit or other legal proceedings. However, it is worth to note that Section 31 of the Act of 2016 provides for filing of a complaint by an 'aggrieved person'. Further, Section 88 and Section 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 Act of 1995 ousted the jurisdiction of this Authority cannot be sustained.

19. The argument of the respondents that as per Section 45 of the Act of 1995 there is remedy of Appeal and Revision, but the complainant failed to avail these remedies. However, 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 availed.

20. Regarding another contention made by the respondents about the presence of an arbitration clause in the terms and conditions of the brochure, it is noted that the scope of Section 8 (1) of the Arbitration and Conciliation Act, 1996 and its relevance had been considered by the Hon'ble National Consumer Disputes Redressal Commission in its order dated 13.07.2017 in the case of "Aftab Singh Vs. EMAAR MGF Land Ltd. and Anr." In its order the Hon'ble National Commission has held as under in para 47 thereof :

"...Hence, in view of the binding dictum of the Hon'ble Supreme Court in Ayyaswamy (supra), the matters/ disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which to a large extent, are similar to the disputes falling for resolution under the Consumer Act."

21. It is a matter of record that the order of the Hon'ble National Commission had been maintained upto the level of the Hon'ble Supreme Court.

22. Complainant did not raise any dispute about submission of his application for allotment of freehold residential plots at PUDA Enclave (Sugar Mill Site) at Faridkot. Her only contention was that no allotment

was issued despite receiving 25% of the total cost i.e Rs.4,86,000/- and no development work till today is complete. Even it is the admitted case of the respondents that the technical dispute has been settled and mutation of the land has been cleared. There is more than 9 years delay in delivering the possession of the plot to the complainant.

23. From the above discussion, it is established on record that till date the respondents failed to deliver possession of the plot to the complainant(s) despite receiving Rs.4,86,000/- as 25% amount from the total sale consideration of Rs.18,00,000/-. Even till today there is no development at the site, as admitted by the respondents themselves in para 6 and 18 of their reply dated 08.05.2023. This compelled the complainant(s) to pray for refund of their amount of Rs.4,86,000/- along with interest as per the provision of Section 18(1) of the Act of 2016 which is reproduced below:-

"18. (1) ..

(a) ...

(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: (emphasis supplied)...."*

24. It is a cardinal 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 (respondent) without any due compensation to the owner of money, the interest earned on it should be refunded to the owner (complainant). Thus, from the above discussion, it is clear that failure of the respondent to deliver possession to the complainant within the time line agreed upon, compelled the

complainant to request the respondent for relief of refund of Rs.4,86,000/- deposited by them for the plot allotted to them through a process adopted by the respondent.

25. As a result of the above discussion, both the complaints are accordingly allowed and the complainants are granted the following reliefs:

GC No.0437 of 2022 UR

- i. Respondents are directed to refund the amount of Rs.4,86,000/- 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 date of deposit till the date of actual refund.

GC No.0438 of 2022 UR

- i. Respondents are directed to refund the amount of Rs.4,86,000/- 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 date of deposit till the date of actual refund.

26. It is also further directed that the refund along with interest should be made by the respondents to the complainant(s) within the statutory time i.e ninety days stipulated under Rule 17 of the Rules 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 accordingly.

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

28. The complainants are also directed to submit report to this Authority that they have received the amount along with interest as directed in this order. Till then the said complainant(s) shall have the charge on the allotted unit. The complainants are directed to execute a cancellation deed on receipt of full payment of refund and interest thereon from the respondents thereafter.

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


(Binod Kumar Singh)
Member, RERA, Punjab

Rera, Punjab