



Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No. 3, Sector-18 A, Madhya Marg, Chandigarh – 160018

Before the Bench of Sh. Rakesh Kumar Goyal, Chairman.

Phone No. 0172-5139800, email id: pschairrera@punjab.gov.in & pachairrera@punjab.gov.in

1. **Complaint No.** :- GC No. 0346/2023UR
2. **Name & Address of the complainant (s)/ Allottee** :- 1. Sh. Bhupender Pal Singh Dhillon
2. Ms. Navjot Kaur
Both r/o Flat No 15-B, Near Phatak No. 22, City Center Apartment, Patiala, Punjab - 147001
3. **Name & Address of the respondent (s)/ Promoter** :- Punjab Urban Development and Planning Authority
PUDA Complex, Master Tara Singh Urban Estate, Phase-II, Patiala, Punjab - 147002
4. **Date of filing of complaint** :- 21.09.2023
5. **Name of the Project** :- Fountain Chowk, Mall Road, Patiala
6. **RERA Registration No.** :- Un-registered
7. **Name of Counsel for the complainant, if any.** :- Sh. Manjinder Kumar, Advocate for Sh. Munish Gupta, Advocate for the complainant.
8. **Name of Counsel for the respondent, if any.** :- Sh. Ashish Grover, Advocate for the respondent.
9. **Section and Rules under which order is passed** :- Section 31 of the RERD Act, 2016 r.w. Rule 36 of Pb. State RERD Rules, 2017.
10. **Date of Order** :- 11.02.2025

Order u/s. 31 of Real Estate (Regulation & Development) Act, 2016 read with Rule 36 of Pb. State Real Estate (Regulation & Development) Rules, 2017.

The present complaint dated 21.09.2023 has been filed u/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'RERD Act, 2016') read with Rule 36 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the 'Rules') before the Real Estate Regulatory Authority, Punjab (hereinafter referred as 'Authority') relating to an unregistered project namely "Fountain Chowk", Mall Road, Patiala against PUDA.

2. The brief gist of the complaint is that the complainants participated in an auction advertised by the respondent for 18 SCO sites at Fountain Chowk, Mall Road, Patiala, and successfully bid for SCO Site No. 18 on 27.04.2016. They deposited 10% of the bid amount, i.e., Rs.24,24,000/-, on 24.07.2016 as per the auction terms. However, prior to the allotment, a Civil Writ Petition (CWP No. 7956-2016, "Subhash Kapoor vs. State of Punjab & Others") had been filed, seeking to declare the auctioned site as a "protected monument," leading to a "status quo" order dated 12.05.2016 by the Hon'ble High Court. Despite this, the respondent issued an allotment letter on 13.05.2016 and demanded the second installment of Rs. 42,45,151/-, even though they were not in a position to execute the sale deed due to ongoing litigation. The complainants, in protest, submitted a letter dated 19.05.2016 citing the status quo order, yet the respondent persisted with their demand through another letter on 01.11.2016. To avoid complications



and cancellation of the allotment, the complainants deposited the said amount on 30.11.2016. Subsequently, the Department of Archaeology, Museums, and Archives, Punjab, declared the site a "protected monument" on 23.08.2018, and the Hon'ble High Court disposed of the writ petition on 01.10.2018, allowing the allottees to seek appropriate remedies. The respondent refunded Rs.66,69,151/- on 27.11.2018 but without any interest for the period during which they retained the complainants' money. Despite multiple representations and a legal notice demanding interest, the respondent failed to comply, leading the complainants to approach the Permanent Lok Adalat, Patiala, which they later withdrew with liberty to file in a competent court. A subsequent complaint (AdC No. 0160 of 2021 UR) was dismissed on 07.02.2022 due to the project being unregistered. The complainants then filed a writ petition before the Hon'ble High Court, which was later withdrawn with the liberty to file afresh before the present authority, given that it now entertains complaints related to unregistered projects. A similar case (GC. 1513 of 2019) was adjudicated by this authority, reinforcing the complainants' claim. The complainants have alleged that respondent's actions have caused undue harassment, mental agony, and financial loss, making them liable to pay interest on the amounts deposited from the respective dates until the refund date, along with further interest on the unpaid interest amount until its realization.

3. In response to the same, the respondent filed its reply and raised a preliminary objection stating therein that the present complaint is barred by *res-judicata*, as the complainants had previously filed complaint AdC0160/2021UR, which was dismissed on 07.02.2022. The dismissal order granted them liberty to file a fresh complaint only after project registration with RERA, Punjab. Since they did not appeal this order, it has attained finality, and the present complaint is not maintainable.

In this regard, records have been perused which revealed that earlier these types of complaints were dismissed being not maintainable, on the common ground of having been filed in respect of project not registered with the Real Estate Regulating Authority. Subsequently, in the judgment of the Real Estate Appellate Tribunal, Punjab, delivered in **Appeal No.60 of 2022 titled Aman Sethi and another Vs. M/s Dara Buildtech and other connected appeals, dated 25.04.2021**, wherein, it has been held that the complaint against an unregistered project would be maintainable. For ready reference relevant extract of the same is as follows:-

"28. We are also of the opinion and observe at the cost of repetition that the Authority wrongly interpreted the judgment of the



Hon'ble Supreme Court. The retroactive operation of the Act, as observed by the Hon'ble Supreme Court and as the language of the statute also suggests would protect a developer from registration and consequences of the Act, only in a situation, where the project stood completed with a completion certificate but to establish a fact, whether a project is ongoing or complete to resultantly liberate the promoter of the consequences of the Act are matters of fact to be determined during the course of proceedings initiated by an aggrieved person. The non-applicability of the Act cannot be a presumption to be derived from a fact simplicitor of a project not being registered.

29. *The proceedings under Section 59 of the Act is a course available to the Authority in addition to the one that a determination of a complaint would warrant. It is not desirable to ask an allottee/complainant to file a separate complaint to invoke Section 59 of the Act. This is a provision empowering the Authority to penalize a defaulting promoter, once any complaint is filed on issues pointing out deficiencies and default of a promoter, the Authority after entering upon a complaint has to decide from itself, whether a course prescribed under Section 59 has to be resorted to. A separate complaint qua this aspect is not essential."*

Therefore, the ground on which the complaint was dismissed was no longer valid and the present complaint is maintainable before this Authority.

4. On merits, the respondent had submitted as follows:-

i. The project at Fountain Chowk, Mall Road, Patiala, was launched by PUDA over 8.49 acres of Public Health Department land, with an auction of 18 SCO sites on 27.04.2016. At that time, RERA, 2016 was not in force, but different sections were notified later in 2016 and 2017.

ii. The complainants were successful bidders for SCO Site No.18, depositing 10% of the bid amount (₹24,24,000/-) on 27.04.2016. As per auction terms, they were required to deposit 15% within 30 days, for which letters were sent on 13.05.2016 and 01.11.2016.

iii. The project was challenged in CWP No. 7956 of 2016, and on 12.05.2016, the Punjab and Haryana High Court ordered status quo on Kothi No. 11-A situated in the erstwhile office of Chief Engineer, Public Health Officer, Patiala. Subsequently, on 04.05.2017, the Director, Cultural Affairs, issued a letter regarding its protection. Further, the Government of Punjab, Department of Tourism and Cultural affairs, vide notification dated 23.08.2018, declared the site of old Public Health Building to be a protected monument, under the Punjab Ancient and Historical Monuments and Archeological Sites and Remains Act, 1964.



iv. Further, on 13.05.2016, the complainants were asked in writing to deposit 15% of the auction price within 30 days from the date of auction followed by reminder dated 01.11.2016.

v. The Punjab Government declared the site a protected monument under the Punjab Ancient and Historical Monuments and Archeological Sites and Remains Act, 1964, via notification dated 23.08.2018. Consequently, the High Court disposed of CWP No. 7956 of 2016 on 01.10.2018.

vi. A High Powered Committee meeting on 19.06.2018 (Agenda Item 48:12) decided to refund the earnest money to auction purchasers. Later, an Empowered Committee meeting on 22.01.2021 (Agenda Item 52.09) decided the site ownership would remain with PUDA, and possession would be given to the Department of Tourism and Cultural Affairs.

vii. In accordance with the meeting held on 19.06.2018 in the High Powered Committee under the Chairmanship of Chief Secretary Punjab vide Agenda Item No. 48:12 wherein it was decided to refund the earnest money deposited by the allottees, received from the auction. Subsequently, an order dated 01.11.2018 was passed, directing therein to the refund of the deposited amount to the complainant.

viii. The complainants' claim for interest on the refund is not justified, as this case falls under *force majeure* and it is submitted by the respondent that as per Rule 16 of the Punjab State RERA Rules, 2017, the complainants are not entitled to penal or normal interest. Therefore, in view of the above, the present complaint should be dismissed.

5. The violations and contraventions contained in the complaint were given to the representative of the respondents to which they denied and did not plead guilty. The complaint was proceeded for further inquiry.

6. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint.

7. That representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarised above. I have duly considered the documents filed and written & oral submissions of the parties i.e., complainant and respondents.



8. During the arguments, Sh. Ashish Grover, Ld. Counsel for the respondent argued that the project could not proceed due to *force majeure*, which refers to extraordinary and unforeseeable circumstances beyond their control. He further submitted that after the auction of commercial plots, the Government of Punjab, through the Department of Tourism and Cultural Affairs, issued a notification dated 23.08.2018, declaring the site of the Old Public Health Building as a protected monument under the Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1964. Additionally, during the pendency of CWP No. 7956 of 2016 (Subhash Kapoor & Others vs. State of Punjab & Others) before the Hon'ble Punjab and Haryana High Court, a status quo order was passed on 12.05.2016, restricting any development on the land. Furthermore, on 04.05.2017, the Department of Cultural Affairs, Archaeology, and Museums issued directives prohibiting any construction, reconstruction, demolition, or modification on the site. Consequently, the entire project had to be shelved, and the deposited amounts of the complainants were refunded. The respondent maintained that since the cancellation of the project was due to government intervention and legal proceedings, there was no *malafide* intention on their part, and thus, they could not be held liable for any penal interest or additional compensation.

9. On the other hand, Sh. Manjinder Kumar, Advocate for complainants strongly contested the respondent's *force majeure* claim, arguing that it was the sole responsibility of the respondent to conduct proper due diligence and obtain all necessary clearances before initiating the auction process. Despite knowing that the land was designated for public and semi-public use, PUDA proceeded with the auction on 27.04.2016 without ensuring the legality of the land transfer. The complainants, being the highest bidders for specific Shop-Cum-Offices (SCOs), deposited Rs.24,24,000/- on 27.04.2016 and Rs.42,45,151/- on 30.11.2016, in totality Rs.66,89,151/- which is also not disputed by the respondents. Refund of the principal amount deposited by the complainants was refunded on 27.11.2018, which is also not disputed by either of the parties. However, after two years of uncertainty, their deposits were refunded without any interest. He argued that since PUDA had unjustifiably withheld their funds for an extended period, they were entitled to penal interest for the delay.

10. While the respondent claimed that the cancellation of the project was beyond its control, the complainants highlighted that it was the responsibility of the development authority to secure all approvals beforehand. The complainants' deposits of Rs.66,89,151/- remained with the respondent upto 27.11.2018,



during which time the respondent is likely to have earned interest on the funds while the complainants suffered financial inconvenience and losses as well.

11. Accordingly, it is held that the complainants deposited an amount of Rs.66,89,151/- (i.e. Rs.24,24,000/- deposited on 27.04.2016 and Rs.42,45,151/- deposited on 30.11.2016), which remained with the respondent until the refund was processed on 27.11.2018. Section 18 of the Act, 2016 reads as under:-

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

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”



In this case, the Punjab Urban Development and Planning Authority, Patiala has auctioned a commercial plot for SCO No.18 for sale on 27.04.2016 as promoter and is liable to return the amount of Rs.66,69,151/- with interest as prescribed under Rule 16 including compensation as provided under the Act. The conditions of *force majeure* are not applicable in the case of interest to be paid on the amount received by the promoter. **The condition of *force majeure* could have been pleaded only in case the complainant had asked for the possession but this plea is not available for non-payment of interest on the amount by the promoter. It is held that the promoter is liable to pay interest on the amount received by it although delivery could not be effected due to facts and circumstances going beyond the control of promoter after auction.** The liability of promoter regarding not following the due procedure before auction for the project leading to *force majeure* condition is not being decided since there facts are not applicable for present case relating to payment of interest on the amount received.

12. In view of the above, the complaint is **Partly Allowed** and complainant is entitled to interest applicable @ 11.10% (i.e. 9.10% SBI's Highest

MCLR Rate applicable as on 15.01.2025 + 2%) as per Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The period for payment of interest will be considered from the next month in which payment was effected by the allottee to the previous month of the date in which payment has been effected by the promoter. Therefore, the calculation of interest from the dates of payment upto the date of refund (27.11.2018) is calculated as follows:-

Sr. No.	Payment made on	Interest payable from	Principal Amount paid	Interest calculated till	Rate Of Interest	Delay in months	Interest due
1	27.04.2016	01.05.2016	24,24,000/-	31.10.2018	@ 11.10% (i.e. 9.10% SBI's Highest MCLR Rate applicable as on 15.01.2025 + 2%)	30	6,72,660/-
2	30.11.2016	01.12.2016	42,45,151/-	31.10.2018		23	9,03,159/-
TOTAL			66,89,151/-				15,75,819/-

The amount of Rs.66,89,151/- has already been paid by the respondent. Therefore, it is liable to make payment of interest of Rs.15,75,819/- only.

13. The Hon'ble Supreme Court, in its judgment in the matter of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Others (Civil Appeal Nos. 6745-6749 of 2021)*, has upheld that the refund to be granted u/s. 18 read with Section 40(1) of the Real Estate (Regulation & Development) Act, 2016 is to be recovered as Land Revenue alongwith **interest** and/or penalty and/or compensation.

14. In view of the aforesaid legal provisions and judicial pronouncement, it is hereby directed that the interest shall be recovered as Land Revenue. Accordingly, the Secretary is instructed to issue the necessary Recovery Certificate and send it after 90 days as per Rule 17 of the Punjab Real Estate (Regulation & Development) Rules, 2016 to the relevant Competent Authorities under the Land Revenue Act, 1887 for due collection and enforcement in accordance with law. The concerned authorities are further directed to take expeditious steps for the recovery of the amount as per the prescribed procedure under the Land Revenue Act, ensuring compliance with all legal requirements and due process.

15. Hence, the promoter is liable to pay an amount of Rs.15,75,819/- towards the interest. The promoter is hereby informed that this amount of interest has become payable on 01.01.2018 since the allottee is entitled of simple interest.

16. The complainant & the respondent are directed to inform the Secretary of this Authority regarding any payment received or paid respectively



so as to take the same in to account. The amount of Rs.15,75,819/- has become payable as interest by the respondent to the complainant within 90 days from the date of receipt of this order by the promoter as per Section 18 of the Real Estate (Regulation & Development) Act, 2016 read with Rules 17 of the Punjab Real Estate (Regulation & Development) Rules, 2017 as determined vide this order u/s. 31 of the Real Estate (Regulation & Development) Act, 2016. The Secretary of this Authority is hereby directed to issue a Recovery Certificate immediately and send to the Competent Authority as mentioned in the Punjab Land Revenue Act, 1887 after 90 days of the issuance of this Order to be recovered as arrears of land revenue.

17. No other relief is made out.

18. A copy of this order be supplied to both the parties under Rules and file be consigned to record room.


Chandigarh
Dated: 11.02.2025




(Rakesh Kumar Goyal),
Chairman,
RERA, Punjab.

A copy of the above order may be sent by the Registry of this Authority to the followings:-

1. Sh. Bhupender Pal Singh Dhillon
2. Ms. Navjot Kaur
(Sr. No. 1 & 2 Both r/o Flat No 15-B, Near Phatak No. 22, City Center Apartment, Patiala, Punjab – 147001)
3. Punjab Urban Development and Planning Authority, PUDA Complex, Master Tara Singh Urban Estate, Phase-II, Patiala, Punjab – 147002
4. The Secretary, RERA, Punjab
5. Director (Legal), RERA, Punjab
6. The Complaint File.
7. The Master File.


(Sawan Kumar),
P.A. to Chairman,
RERA, Punjab.