

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

Complaint No. 0083 of 2024
Date of Institution : 22.02.2024
Date of Decision: ...31.05...2026

Puneet Sukhija, Flat no. 17, GHS 76, Sector 20, Panchkula,
Haryana-134116

....Complainant

Versus

1. GREATER MOHALI AREA DEVELOPMENT AUTHORITY THROUGH CHIEF ADMINISTRATOR, PUDA Bhawan, Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062
2. GMADA, through its Estate Officer, PUDA Bhawan, Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062

....Respondents

(Registration Number: PBRERA-SAS81-PM0116)

Present: Shri Ranjinder Singh Sidhu, Advocate for complainant
Shri Ankit Kumar, Advocate for respondents

ORDER

1. This complaint in Form 'M' under Section 31 of the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act of 2016) read with Rule 36 (1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules of 2017) was instituted on 22.02.2024 by the complainant in his individual capacity against the respondent seeking following reliefs:

1.1 Respondents be directed to provide the canal water, basic amenities/Infrastructure as per conditions of the State Level Environment Impact Assessment Authority.

1.2 Respondents be directed to pay interest @ 12% per annum as per terms and conditions of Letter of intent on amount i.e. Rs.65,82,699/-

deposited with the respondent/seller by the complainant for the delayed period.

2. Brief facts submitted by complainants in the complaint are summarized below: -

2.1 Letter of Intent issued to complainant for residential plot measuring 262.5 sq. yard in IT City situated in SAS Nagar Mohali, Punjab. Copy of the LOI dated 11.11.2016 is annexed as C-2.

2.2 Complainant deposited entire amount of Rs.65,82,699/-. Copy of property ledger dated 19.02.2024 is annexed as C-3.

2.3 As per Clause 15 of LOI, possession of plot was to be given within one year from the date of issuance of LOI dated 11.11.2016 i.e. by 10.11.2017. However, respondents provided possession of plot on 12.06.2020 after the delay of 944 days. Copy of allotment letter dated 12.06.2020 is annexed as C-4.

2.4 Complainants obtained 'No Due Certificate' and got registered Conveyance Deed in his name on 14.09.2020. Copy of NDC and Conveyance deed is annexed as C-5 and C-6

2.5 Environment clearance was obtained by respondents on 30.08.2014 and it undertook to provide canal water to allottees. Till date, allottees as well as complainant have not been given connections for treated water as promised by respondents even after lapse of more than six years.

2.6 Possession was not offered within stipulated time period as promised in Letter of Intent i.e. within one year from the date of issuance of LOI dated 11.11.2016 despite that complainant paid full consideration without any default i.e. Rs.65,82,699/-.

2.7 State of Punjab has already formulated a policy dated 15.02.2017 vide which State Legislature clearly stated that in case of delay in possession, 12% interest be provided to allottees.

2.8 Complainant also applied for occupation certificate and same was issued vide letter dated 17.08.2023. Copy of the OC is dated 17.08.2023 is annexed as C-11.

2.9 It is the prayer of complainant to direct respondents to provide canal water, basic amenities/infrastructure and to pay interest @12% per annum as per terms and conditions of LOI on amount of Rs.65,82,699/- for the period of delay of 944 days.

3. Upon notice Sh Ankit Kumar, Advocate appeared for respondents and submitted reply dated 21.11.2024 which is summarized below: -

3.1 Respondent stated that the complainant has already taken the possession of the plot without any objection and has also got executed conveyance deed of allotted plot in his favour on 14.09.2020 and as such, no cause of action accrued to the complaint to file the present complaint before this Hon'd1e Authority.

3.2 The terms and conditions of the Allotment Letter bind both the parties to the contract and Condition no.29 of the said Allotment Letter reads as under: -

"Subject to the provisions of the Act, all the disputes and/or differences which may arise in any manner touching or concerning this allotment shall be referred to the Independent Arbitrator shall be appointed by the Chief Administrator, GMADA. Arbitration shall be governed by the Arbitration and Conciliation (Amendment) Act, 2015, GMADA and the allottee shall be liable to share the fees of the Arbitrator in equal proportion."

In view of this condition, the complainant should have approached the Chief Administrator for resolution of his dispute and the present complaint filed by him before this Authority is not maintainable.

3.3 It is emphasized that due to delay in issuance of amended environmental clearance by the State Level Environment Impact Assessment Authority, the development of area earmarked for plots of

256.66 sq. yards could not be completed. Obtaining of environment clearance was intimated to general public through notice dated 14.06.2019 published in English newspaper "The Tribune". The '*force majeure*' events are implicit in every contract. Therefore, the delay caused due to mandatory environment clearance cannot be attributed to respondents.

3.4 It is further submitted that due to Covid-19 allotment letters were not issued immediately. However, complainants were issued Plot No.1114J (Corner) measuring 262.5 Sq Yard in Sector-88 Alpha, Block-B in I.T.City Scheme, SAS Nagar vide Memo No.16801 dated 12.06.2020.

3.5 Respondents relied upon Clause 9 of terms and conditions of allotment letter dated 12.06.2020 vide which complainant was bound to take possession of plot within 90 days of its issuance. Respondents further cited Clause no.27 of allotment letter which says that if the complainant was aggrieved with the delay they could have refused to accept the allotment letter and sought refund of the deposited amount. Conveyance Deed was executed on 14.09.2020 and the complainant cannot raise the issue of delay of possession of plot.


3.6 Respondents further submitted that the force majeure events like the delay in issuance of Environment Clearance and Covid-19 are implicit, cannot be attributed to a party. Therefore, the delay caused on account of a mandatory Environment clearance to be issued by State Level Environment Impact Assessment Authority cannot be attributed to the Respondents.

3.7 In the present complaint, the complainant is seeking compensation by invoking Clause no. 15 of Letter of Intent dated 11.11.2016 issued to him vide memo no.51503 as physical possession of the plot has not been handed over the complainant within 1 year i.e. up to 10.11.2016 and claiming interest @12% on deposited amount.

3.8 Respondent also stated that vide allotment letter dated 12.06.2020, the possession of the plot was offered to the complainant, after which complainant was bound to take possession of plot within the given time of 90 days. If he was aggrieved with delay in offering of possession of plot on account of delay in completion of development works of the scheme, then as clause no. 27 of the allotment letter, he could have refused to accept the offer of Allotment within 30 days, in which case deposited amount could have been considered to be refunded to him as per rules. There was no such protest, representation or complaint filed by the complainant before Respondent's office.

3.9 Since Conveyance Deed had already been executed on 14.09.2020, the complainant cannot raise the issue of delay in delivery of possession of plot as possession of plot already stands offered. So, the complainant is not entitled for any interest.

3.10 It is further alleged that plot was allotted to the complainant at the tentative price of Rs.20,000/- per sq. yard whereas the current price is Rs.75,000/-. The complainant gained the benefit of appreciation of price of plot thus they are not entitled for any interest. In support of its case, respondents relied upon the following judgements of the Hon'ble Supreme Court: -

-  i. *"Bangalore Development Authority Vs. Syndicate Bank"*, reported at (2007) 6 SCC 711 wherein it was held that *"...The allottee who had the benefit of appreciation of price of the house is not entitled to interest on the price paid..."*

Considering the appreciation, respondents cannot be required to give plot as well as to pay interest which would result in unjust enrichment of complainants.

4. Counsel for the complainant filed rejoinder denying the averments raised by respondents in their reply and reiterated the contents of their

complaint. It is stressed that there is delay of 944 days in handing over possession to complainant. It is stated that respondents admitted that they have no environment clearance. However, despite that the respondents collected hard earned amount from the complainant. Regarding Covid-19 it is stated by complainants that it was from March 2020 whereas possession was to be given on or before 10.11.2017 as per LOI dated 11.11.2016 and allotment letter was issued on 12.06.2020 after delay of 944 days. Complainant is claiming interest @ 18% because respondents as per Clause 5(1) and 10 of LOI charged above said rate of interest. Respondents executed the Conveyance Deed on 14.09.2020 after receiving the whole sale consideration as per terms and conditions of the allotment letter and they cannot now agitate that they have not received the entire amount. Respondents have not attached any documentary proof about the current price of Rs.75,000/- per sq. yard. While not disputing clause 9 of allotment letter, it is stated that complainant took possession of the plot immediately as they wanted to settle and built their own house in the city of SAS Nagar after retirement. Regarding clause 27, the complainant urged that there is no question to refuse the acceptance of allotment as refusal would have attracted forfeiture of 10% of total amount including interest and penalty. Respondents themselves are violating their own policy formulated by the State Legislature on 15.02.2017. It is the prayer of complainant that as per Clause 15 of LOI dated 11.11.2016 whereby possession was to be given on 10.11.2017 but possession was offered vide allotment letter dated 12.06.2020 after the delay of 944 days, thus complainant is entitled for payment of interest for this period of delay by respondents.

5. The undersigned heard the arguments of both the counsels on the stipulated date.

6. Counsel for the complainant reiterated the contents of his complaint as well as rejoinder and prayed that interest for the period of delay of 944 days in handing over possession of the residential plot be granted to them.

7. On the other hand, Counsel for the respondents also reiterated the contents of reply and denied that the complainants are entitled for any interest for the period of delay in handing over possession and relied upon the contents of LOI as well as Allotment letter.

8. The undersigned has gone through the pleadings of the parties and also perused the annexed documents.

9. Objection of respondents of not complying with Condition no.29 of allotment letter by complainants regarding arbitration to exclude the jurisdiction of the Authority, this contention is rejected in view of the decision of the Supreme Court in the case "*M/s Emaar MGF Land Ltd. vs Aftab Singh*" (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos.23512-23513 of 2017).

10. Regarding the citation mentioned at para 3.10 above, the facts of the case are distinguishable from the case referred by respondent as the appreciation of price is not a subject-matter of the impugned case. There is no clause in agreement to indicate price increase due to escalation of market price.

11. The Respondent has issued a 'letter of intent' (LOI) to complainant dated 11.11.2016 intimating that the GMADA (respondent) intends to allot a plot subject to certain conditions. No definite number of plot was assigned while issuing LOI. As per LOI dated 11.11.2016 physical possession of the said plot was to be handed over to the allottee within one year from the issuance of letter of intent. It is a factual matter that it was only an intention for allotment which has been specifically mentioned in the letter of intent in the following terms:

"This is to inform you that consequent upon being successful vide serial no. 117 in the draw of lots held on 21.09.2016, with respect of allotment of plot at I.T. City, S.A.S. Nagar GMADA intends to allot a plot of the above-mentioned size to you, subject to following conditions"

11.1 The letter of intent dated 11.11.2016 was issued before the enactment of RERA Act and as per para 1 of the letter of intent dated 11.11.2016, the said intention of allotment shall be subject to the provisions of Punjab Regional and Town Planning and Development Act, 1995 read with the Rules, Regulation and policies framed there under from time to time as well as the terms and conditions of brochure on the basis of which application was made by complainant. There was no agreement for sale which was ever executed and registered between complainant and respondent. At this stage the foundational document evidencing allotment of a specific apartment/plot and contractual obligations between the parties is missing, which materially affects the maintainability and adjudication of the complaint. The relation of 'allottee' has not been established between complainant and respondent on the basis of 'letter of intent' dated 11.11.2016. LOI is a document which outlines that there is agreement to agree or to indicate that the bidder is successful and will be considered for allotment subject to meeting the further conditions.

11.2 On the other hand, the allotment letter confirms the allotment after fulfilling the conditions. The LOI typically lapses if the required conditions e.g. deposit, are not fulfilled. As per the provisions of Section 2(d) of RERA Act, a person becomes an allottee whom a plot/apartment has been allotted, sold or transferred. The provision of section 2(d) of the Act is as under:

2. Definitions —In this Act, unless the context otherwise requires: —

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the

person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

11.3 The respondent has thereafter issued allotment letter vide memo no. GMADA/2020/16801 dated 12.06.2020 vide which complainant was allotted a definite plot no. i.e.1114/Corner, Block-B sector 83-Alpha having size 262.5 Sq Yards. This is evident that LOI was issued to the complainant on 11.11.2016. Neither the relevant Sections 3 and 13 of the Act of 2016 had come into force nor the Rules of 2017 were notified and such Agreement for Sale in form 'Q' could not have been executed. Therefore, the terms and conditions stipulated in the Allotment Letter are to be kept in view and adhered to by the parties. Accordingly, considering the allotment letter as the allotment of unit, there is no default or delay in the present case as per Allotment Letter dated 12.06.2020. The Allotment Letter dated 12.06.2020 is the lone agreement between the parties. It is also noteworthy that it is the admitted case of the complainant himself that Conveyance Deed was executed on 14.09.2020 and deemed date of handing over possession is also held to be 11.09.2020 being due date as per allotment letter dated 12.09.2020.

This aspect assumes significance while examining the applicability of section 18 of the Act:

Provisions of the Section 18(1) of the Act is reproduced 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 **allottee**, 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."


Section 18 of the Act of 2016 stipulates that if the promoter fails to complete or is unable to give possession of a plot in accordance with the terms of the Agreement of Sale, he shall be liable to pay interest for the period of delay on demand to the allottee. In this case allotment letter dated 12.06.2020 is considered as Agreement to sale.

As a result of the above discussion, the undersigned find no occasion to admit the prayer of complainant for the plea of interest on delay possession of plot.

12. The prayer regarding providing the treated water to complainant, it is directed that the respondent will make all efforts and assistance with the concerned authorities to have the adequate availability of essential services including water supply.

13. As a result of above discussion, this complaint is partly allowed.

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


(Binod Kumar Singh)
Member, RERA, Punjab