

**BEFORE SH. ARUNVIR VASHISTA, MEMBER-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT
CHANDIGARH**

Complaint No. RERA/ GC No.0255 of 2024

Date of filing: 23.07.2024

Date of decision: **10.02.2026**

Kamal Raj Singh Thind, resident of # 2368, Pushpac First Society,
Sector 48-C, Chandigarh

... Complainant

Versus

Greater Mohali Area Development Authority through its Chief
Administrator, PUDA Bhawan, Sector 62, Sahibzada Ajit Singh
Nagar (Mohali) Punjab

... Respondent

Complaint under Section 31 of the Real Estate (Regulation
and Development) Act 2016.

Present: Advocate Nitish Garg, representative for the complainant
Advocate S.S. Chatrath, representative for respondent

ORDER

The main allegation in this complaint, filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") by complainant against the respondent, relates to delay in handing over possession of the residential plot measuring 500 sq. yards allotted to him in IT City, Mohali in the draw of lots conducted by the respondent on 29.09.2016. Letter of Intent (LOI) was issued on 15.11.2016 by the respondent concerning the said plot. As per condition No. 15 of the letter of intent the physical possession of the plot was to be handed over to the allottee within a period of one year from the date of issuance of letter of intent i.e. by 15.11.2017. Thereafter, allotment letter was finally

issued to the complainant on 23.02.2022. Since the complainant paid the entire amount, as such respondents were bound to pay back interest @ 12% on the deposited amount and further to refund the amounts paid by the complainant towards interest and penal interest. Hence, the present complaint.

3. Upon notice, respondent filed written reply contesting the complaint primarily on the ground that the complaint was not maintainable as the Allotment Letter of the plot had already been issued to the complainant but since he failed to make timely payments as per the schedule, he was not issued the allotment letter and the offer of possession of the allotted plot. Hence, the question of refund of the interest, penal interest and interest on the deposited amount did not arise at all. The respondent department instead of resuming the allotted plot and deducting 10% of the total consideration amount let off the complainant by charging applicable interest as per the terms and conditions of letter of intent. As the interest as well as penal interest had been charged as per the terms and conditions of the letter of intent, there was no scope for refund of the same on any ground. Denying the rest of the averments of the complaint, prayer was made for dismissal of the complaint.

4. Complainant filed rejoinder reiterating the averments of the complaint and controverting the allegations of the written reply filed by respondent.

5. Learned counsel for the complainant pointed out that Para 15 of the Letter of Intent the provided that physical possession of the plot would be handed over to the allottee within a period of one year

from the date of issuance of letter of intent i.e. by 15.11.2017. The respondents however failed to hand over and deliver the physical possession within stipulated period causing delay of more than 4 years. The respondent was therefore liable to pay interest at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 for the period of delay in handing over possession.

6. On the other hand, learned counsel for respondent reiterated the legal contentions noted above. He further contended that as per the Allotment Letter, possession of the plot was offered to the complainant and as per clause 9 of the allotment letter, the allottee was required to take physical possession within 90 days from the date of issue of allotment letter, and in case of failure to do so the possession was deemed to have been delivered to the allottee. He also contended that in the Letter of Intent as well as in the Allotment Letter issued to the complainant, there was no such condition for payment of interest, in case there was any delay in handing over possession of the plot to the complainant or otherwise. It was also submitted that as the interest as well as penal interest had been charged as per the terms and conditions of the letter of intent, there was no scope for refund of the same on any ground.

7. This authority has carefully considered the rival contentions of both the parties and perused the record of the case.

8. At the outset it is held that none of the legal issues raised by the respondents have any merit. Moreover, the Act provides for payment of interest in case of delay in handing over of possession and this legal right of an allottee cannot be defeated by the lack of such a

provision in any document issued by the promoter. It is also seen that the letter of intent clearly mentions that the allottee would be responsible for payment of interest on the balance instalments and also for penal interest at the rate of 18% p.a. in case of delay in payments. Such one-sided arrangements have been held to be illegal by the Hon'ble Supreme Court in '**Pioneer Urban Land & Infrastructure Ltd., Vs Govindan Raghavan (Civil Appeal No.12238 of 2018 and 'Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd.'** (Civil Appeal No.6239 of 2019. It is accordingly held that the arguments raised on behalf of the respondent are not valid; and there has been a delay on the part of the respondent in handing over possession of the plot to the complainant as agreed. Admittedly the Allotment Letter of the plot was issued to the complainant on 23.02.2022, i.e. after more than four years of the promised date. Therefore, violation of Section 18(1) of the Act is therefore established; and the complainant is entitled to the relief provided therein. The provisions of Section 18 of the Act grant an indefeasible right in favour of an allottee which cannot be taken away under any circumstance. Section 18 speaks 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:

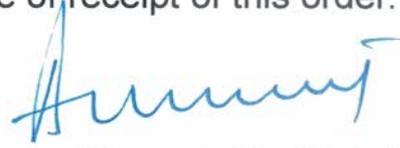
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

9. With regard to the other relief claimed by the complainant concerning refund of penal interest charged by the respondent/promoter, this bench of the Authority, however, does not find itself in agreement with the complainant side. The complainant has neither explained as to how much excessive amount as penal interest has been paid and charged by the respondent nor that if such an amount was not received in accordance with the terms and conditions of the buyer's agreement. In these circumstances, he cannot be held entitled to the refund of that amount. Otherwise also, u/S 18 of the Act there is only one option available with the complainant i.e. either to seek refund of the amount paid alongwith interest prescribed in case he did not intend to remain in the project or in case he intended to remain in the project he could only seek interest on the amount paid for the period possession is delayed. And in the case in hand, complainant does not intend to withdraw from the project.

10. As an outcome of the above discussion, this complaint is accordingly allowed partly and the respondent is directed to pay interest at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 i.e. State Bank of India highest marginal cost of lending rate (as on today) plus 2% on the



amount paid by the complainant w.e.f. 15.11.2017 (the promised date for delivery of possession) till 23.02.2022 i.e. the date of issuance of the Allotment Letter. The payment of interest should be made by the respondent 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.



**(Arunvir Vashista),
Member, RERA, Punjab**