

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3422 OF 2017

(Against the Order dated 08/06/2017 in Appeal No. 498/2016 of the State Commission
Punjab)

1. PUNJAB URBAN PLANNING & DEVELOPMENT
AUTHORITY

THROUGH ITS ESTATE OFFICER (NOW BATHINDA
DEVELOPMENT AUTHORITY BDA COMPLEX BHAGU
ROAD,
BATHINDA
PUNJAB

.....Petitioner(s)

Versus

1. PREM JINDAL
S/O. JAGAN NATH, R/O. DR. K.P. STREET MANSA TEHSIL
AND
DISTRICT-MANSA
PUNJAB

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

FOR THE PETITIONER : FOR THE PETITIONER : MS. ZEHRA KHAN, ADVOCATE
FOR THE RESPONDENT : FOR THE RESPONDENT : MR. NAEM ILYAS, ADVOCATE (VC)

Dated : 05 August 2024

ORDER

AVM J. RAJENDRA, AVSM, VSM (RETD.), MEMBER

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 08.06.2017, passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh ("State Commission") in FA No. 498 of 2016, wherein the appeal filed by the Appellant / Petitioner was dismissed and the Order dated 17.05.2016 passed by the District Consumer Disputes Redressal Commission, Mansa (the "District Commission") in CC No.202 of 2015 was partly allowed.
2. As per report of the registry there is a delay of 30 days in filing this Revision Petition. For the reasons stated in IA/17403/2017, the delay is condoned.
3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. Mr. Prem Jindal is referred as the Complainant (Respondent

herein) and Punjab Urban Planning & Development Authority, PUDA, is referred to as the Opposite Party / OP (Petitioner herein).

4. Brief facts of the case, as per the complainant, are that he initiated proceedings against the Opposite Party (OP), alleging that the OP launched a scheme on 27.09.2012 offering freehold residential plots at PUDA Enclave, Budhlada. He applied for a plot vide Application No. 2021, paying Rs. 3,00,000/- as earnest money to the OP. Following a draw of lots on 15.01.2013, the complainant was allotted a plot and subsequently issued a Letter of Intent dated 26.02.2013. Pursuant to the scheme's terms, he paid an additional 15% of the total amount via a DD of Rs.4,50,000/- dated 20.03.2013. However, the OP failed to commence development on the site or hand over possession within the stipulated period of 18 months from the date of issuance of the allotment letter. Despite his requests and other allottees, the OP did not fulfil its obligations under the scheme, causing the complainant harassment, mental agony and humiliation. The OP's actions constitute deficiency in service under the Act. He sought Rs.7,50,000/- along with interest @ 18% per annum and Rs.1,00,000 as compensation for mental harassment.
5. In reply filed before the District Forum, the OP contended that as per Second Note on Page 7 of the Brochure, the plot in question as allotted to him on an "as is where is" basis through a draw of lots. As per term No. 25 of the Letter of Intent, any dispute is to be referred to the Chief Administrator, PUDA for resolution, thereby barring the jurisdiction of this Forum. The clauses pertaining to possession and ownership are explicitly outlined at Page 5 of the brochure and Para No. 12 of the Letter of Intent. The OP alleged that the complainant deliberately concealed material facts. He is estopped from filing the complaint due to their own acts and conduct. The case involves complex questions of facts and law that cannot be adjudicated summarily under the Act. The OP acknowledged that he deposited 15% of the basic sale price with them. The development work had already been awarded through tenders to M/s Avtar Singh Construction Company Pvt. Limited, Mohali. The complaint lacks a cause of action as it was filed beyond the prescribed period of limitation. The OP prayed for the dismissal of the complaint.
6. The District Commission vide Order dated 17.05.2016, passed the following directions:-

“..... 18. For the reasons recorded above, this complaint is partly accepted with Rs.3,000/- as costs against the opposite party. Opposite party is directed to refund the amount received from the complainant alongwith interest @ 12% per annum from the date of receipt till the date of payment. The compliance of this order be made within 45 days from the date of receipt of copy of this order”.

7. Being aggrieved by the District forum order, the OP filed Appeal No. 498 of 2016 and the Ld. State Commission vide order dated 08.06.2017 dismissed the Appeal and affirm the order passed by the District Commission, with the following findings / reasons: -

“.....We find that the District Forum has correctly appreciated the controversy in this case with the aid of evidence on the record. We are bound to decide the case in view of pleadings of the parties and their respective evidence on the file. The submission of counsel for the appellant is that limitation be counted from the date of allotment letter and not from letter of intent. We find that letter of intent contains comprehensive terms and conditions governing the parties. Allotment letter cannot be issued for a long period and hence letter of intent is also an agreement to that effect for want of allotment letter, which is utter fault of OP only. We can safely rely upon this document. The complainant has paid Rs.4.50,000/- to OP being 15% of total amount by virtue of demand draft dated 20.03.2013. Letter of intent and brochure contains the terms that possession would-be delivered within 18 months from the date of issuance of allotment letter or on completion of development of the project, as gathered from the evidence of Balwinder Kaur Ex. OP-1 coupled with Ex. OP-2, the contract to develop the area has been issued by OP on 26.03.2015. The OP took no action for a period of two years altogether to develop the area from the date of issuance of letter of intent. Even otherwise, it is forcefully submitted by counsel for complainant that no development work existed on the spot in this case. The OP have not produced any photographs or other cogent evidence to prove the existence of development work on the spot, which has been carried by it. From mere affidavit of Balwinder Kaur, Executive Officer of OP Ex.OP-1, we find that this fact is not proved that OP have raised the substantial development in the project by now. On the other hand, complainant stated positively by pleading this fact that OP has not carried out any development work on the spot. The complainant has paid the amount to OP, as required within prescribed time, as per letter of intent, but OP has not performed its duty to complete the construction and has not taken any complete steps to show any development or construction on the spot. Letter of intent has been acted upon in this case and OP cannot be permitted to say that it is inconsequential without allotment letter. Consequently, we agree with the findings of the District Forum, as contained in the order. It was a residential plot and complainant cannot be made to cool his heels for an indefinite period in seeking the delivery of its possession. The consumer cannot be made to suffer for the deficient service of service provider or seller. The order of the District Forum under challenge in this appeal is, thus, found without any illegality and material infirmity and the same is affirmed in this appeal.

8. *As a result of our above discussion, we find no merit in the appeal and the same stands dismissed.*

9. *The appellant had deposited an amount of Rs.25,000/-in this Commission at the time of filing the appeal This amount, along with interest, which accrued thereon, if any, be remitted by the registry to the respondent of this appeal, being complainant, by way of crossed cheque/demand draft after expiry of period of 45 days. Remaining amount shall*

be paid by the OP to the complainant, as per order of the District Forum within 45 days from receipt of copy of the order.”

8. Being aggrieved by the Order dated 08.06.2017 passed by the State Commission, the Petitioner/Opposite Party has filed the instant Revision Petition.

9. In his arguments, the learned Counsel for Petitioner sought to limit his arguments on the point of interest awarded by the lower Fora which is on higher side and therefore he sought to reduce the interest as just and fair. On the other hand, the learned Counsel for the Respondent argued in favour of concurrent findings of the Fora below. He sought to dismiss the Revision Petition with costs.

10. We have examined the pleadings and associated documents placed on record, including the orders of both fora and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. It is the case of the petitioner that a Letter of Intent was floated by the OP for the allotment of certain plots and the complainant had appeared for the same. In terms of a scheme, the possession was to be handed over within a period of 18 months from the date of issuance of allotment of letter. Whereas, the learned District Forum had mistaken the duration of 18 months to be calculated from the letter of intent as against the letter of allotment and granted substantial relief to the complainant. While the Letter of Intent was dated 26.02.2013, the Letter of Allotment was issued in the year 2015. Therefore, the delay, if any, with respect to handing over of the possession of the plot in question ought to have been considered after a lapse of 18 months from the date of issuance of allotment letter. The State Commission had adhered to the order of District Forum and dismissed the Appeal. Notwithstanding the same, the contention of the petitioner is that, while ordering refund of the amount deposited, the District Forum erred by awarding interest @ 15% and the amount be paid within a period of 45 days and thereafter increase the interest @ 18%. She also states that the petitioner/corporation is willing to refund the amount deposited by the complainant along with interest @ 9% as is established by the Hon'ble Supreme Court in multiple judgments. On the other hand, learned counsel for the complainant/respondent states that there has been substantial delay based and payment of 25% of allotment money i.e. Rs.4,50,000/- and that for a lump sum, the OP/petitioners failed to come up with the scheme of allotment. He was made to wait for unduly long period.

12. The only issue to be determined at this stage is the compensation payable along with the refund. As regards the rate of interest applicable and the scope for payment of compensation in such matters, Hon'ble Supreme Court in *Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No.6044 of 2019* decided on 7.4.2022 has held that:-

“We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the Order impugned has granted interest from the date of last deposit. We find that this does not amount to restitution. Following the decision in DLF Homes Panchkula Pvt. Ltd. Vs. DS Dhandu and in modification of the direction issued by the Commission, we direct that the interest on the refund shall be payable from the dates of deposit. Therefore, the Appeal filed by purchaser deserves to be partly allowed. The interest shall be payable from the dates of such deposits.

At the same time, we are of the opinion that the interest of 9% granted by the Commission is fair and just.

13. In view of the facts of the case, the submissions made by the learned Counsels for both the parties and the established precedents by the Hon’ble Supreme Court in the matter, the impugned Order dated 17.05.2016 in CC No.202 of 2015 passed by the learned District Forum and affirmed by the learned State Commission vide order dated 08.06.2017 is modified as follows:-

ORDER

- I. **The Petitioner/Opposite Party shall refund Rs.4,50,000/-to the Complainant/Respondent, along with simple interest @ 9% per annum from the respective dates of deposit till the date of payment, within a period of one month from the date of this order. In the event of delay, the amount payable shall carry simple interest @ 12% per annum from the date of expiry of one month till the realization of the entire amount.**

- II. **The Petitioner/Opposite Party shall pay cost of litigation quantified as Rs.40,000/- to the Complainant/ Respondent, within one month from the date of this order.**

14. Consequently, the Revision Petition No. 3422 of 2017 stands disposed.

15. All the pending Applications, if any, also stand disposed of accordingly.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

.....
AVM J. RAJENDRA, AVSM VSM (Retd.)

