

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 131 OF 2021

(Against the Order dated 05/11/2020 in Complaint No. 213/2020 of the State Commission
Punjab)

1. PUNJAB URBAN PLANNING & DEVELOPMENT
AUTHORITY (P.U.D.A)
THROUGH ITS ESTATE OFFICER, BATHINDA
DEVELOPMENT AUTHORITY PUDA COMPLEX, BHAGU
ROAD
BATHINDA

.....Appellant(s)

Versus

1. SUREKHA SINGLA
W/O. SH. DIVENDER SINGLA, 2518, SECTOR 35C
CHANDIGARH

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MR. SHUBHAM BHALLA, ADVOCATE
(THROUGH VIDEO CONFERENCING)
MS. RAGINI SHARMA, ADVOCATE
MR. ALEX NOEL DASS, ADVOCATE
FOR THE RESPONDENT : MR. VANSH MALHOTRA, ADVOCATE
(THROUGH VIDEO CONFERENCING)

Dated : 19 August 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") by Punjab Urban Planning & Development Authority, assailing the Order dated 05.11.2020 passed by the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the 'State Commission') in complaint No. 213 of 2020 whereby the complaint was allowed.
2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'development authority') and learned counsel for the respondent (hereinafter referred to as the 'complainant') and have gone through the material available on record.
3. There is a delay of 60 days in filing the present appeal.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. The facts, in brief, are that on 31.10.2012, the complainant applied for a plot measuring 400 sq. yds. under the "general" category and paid a sum of Rs.2,40,000/- as earnest money. On 15.01.2013, a draw of lots was held and the complainant was declared successful. Subsequently, on 26.02.2013, a Letter of Intent (LoI) was issued and pursuant to the terms of the LoI, the complainant deposited Rs.3,60,000/-, being 15% of the total plot price. In the letter of Intent, it was mentioned that the possession of the plot was to be delivered upon completion of development works at the site or within 18 months from the date of the allotment letter, whichever is earlier. However, till the date of filing the complaint, the development authority had not undertaken any development work at the site. The complainant received an allotment letter on 14.09.2016 allotting plot No. 125, measuring 400 sq. yds. located at a corner with a park facing view. The allotment letter clearly mentions that the amount of Rs.6,00,000/- was adjusted towards initial 25% of the price of the plot and balance of 25% amount i.e. Rs. 90,000/- (Rs. 6,90,000/- minus Rs.6,00,000/- = Rs.90,000/-) was to be paid within 30 days of issue of allotment letter. Additionally, a demand for balance 75% of tentative price of plot (i.e. Rs. 20,70,000/-) was issued by the development authority. It is alleged that the complainant had already paid the entire amount before receiving the allotment letter, including an excess amount beyond what the development authority had demanded. The complainant requested for a refund of the excess payment made and to give 5% rebate on the principal amount, in accordance with Clause-3 (iii) of the allotment letter. The development authority did not respond to the complainant's representation dated 15.10.2016 and subsequent reminders dated 03.01.2017 and 06.02.2017. On 07.03.2017, the complainant received a letter from the development authority requesting detailed receipts of payments made for further action. Despite providing all payment details through a letter dated 20.03.2017, the complainant only received a demand draft of Rs.2,48,175/- from the development authority on 26.07.2017. The complainant continued to pursue for interest on the excess amount paid, as the development authority failed to issue the allotment letter for over 3.5 years and retained the surplus funds. In response to the complainant's representation dated 08.08.2017, the development authority summoned her to appear in person before the Authority on 22.09. 2017. Due to logistical challenges, the complainant could not appear and subsequently sent a reminder on 28.09.2017. The development authority replied on 17.10.2017, citing clause-3 sub clause 15 of the allotment letter to deny interest on the advance amount deposited by the complainant. It is further alleged that despite receiving the full sale price, the development authority failed to develop the project site, causing the complainant to wait indefinitely for possession. On 05.02.2018, the complainant was informed of a re-allotment to plot No. 996-CPF in place of her initially allotted plot, which she contested as unlawful and in violation of the LoI and allotment terms. In a letter dated 03.09.2019, the development authority admitted delays and incomplete work at the site, with no boundary wall or basic amenities provided. It is further alleged that till the date of filing the complaint, the development authority had failed to complete site development or deliver possession of the allotted plot within the agreed timeframe, which constitutes deficiency in service and unfair trade practice on the part of the development authority.

5. Being aggrieved, the Complainant filed a complaint before the State Commission with the following prayer:-

- (a) Direct Opposite Parties to refund the amount deposited by the complainant of Rs.26,56,500/- along with interest of 12%per annum;*
- (b) Award compensation of Rs.3,00,000/- on account of causing financial risk, hardship, mental agony, harassment, emotional disturbance caused to the complainant due to the actions/omissions;*
- (c) Opposite parties may be directed to pay Rs.50,000/- as litigation expenses;*
- (d) Orders to dispense with filing of the certified copies/true typed/fair copies of Annexures;*
- (e) Grant any other relief which this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case.*

6. The development authority contested by complaint by filing reply raising the preliminary objection that the complainant is not a consumer within the meaning of section 2(1)(d) of the Act and that the State Commission did not have the jurisdiction to adjudicate the complaint. It is further stated that the complainant is not entitled to any interest on the excess amount and the complaint involves intricate question of fact, which cannot be decided in summary procedure. There is no deficiency on the part of the development authority and the complaint is liable to be dismissed.

7. After appreciation of the facts of the case, the State Commission allowed and directed the development authority to refund the amount of Rs.26,56,500/- along with interest at the rate of 12% per annum from the respective dates of deposit till realization and Rs. 20,000/- as compensation towards mental agony and harassment suffered by the complainant.

8. Feeling aggrieved by the said order, the development authority has filed the present appeal before this Commission seeking setting aside of the order dated 05.11.2020.

9. Before this Commission, the counsel for the development authority strongly argued that the complainant was not a 'consumer' in terms of Section 2(d) of the Consumer Protection Act, 1986 and therefore, the foras do not have jurisdiction to entertain the consumer complaint. Thus, any judgment passed by a Tribunal without jurisdiction is a nullity in the eyes of law. In support of this contention, he placed reliance on the judgments rendered in the cases of **UT Chandigarh Admn. Vs. Amarjeet Singh** (2009) 4 SCC 660, **Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines**, 2000(1) SCC 66 and **PUDA &Anr. Vs. Raghunath Gupta & Ors.** 2012 (8) SCC 197.

10. Further, it was argued that clause 6(ii) of the allotment letter dated 14.09.2016 issued to the complainant clearly mentions that the plot allotted to her is on an 'as is where is basis'. Further, the State Commission also failed to consider that the bonafides of the development authority that after due consideration, an amount of Rs.2,48,175/- was given to the complainant by way of letter dated 26.07.2017.

11. Further, it is argued that the development authority clearly stated in their written statement that the complainant was informed by way of letter dated 05.02.2018 that the development works at the project site were complete and thus possession was offered to her

in February, 2018 but the complainant, who has the onus to prove allegations levelled against the development authority in view of the **Magma Fincorp Ltd. vs. Rajesh Kumar Tiwari 2020 910) SCC 399**, has failed to prove the allegations levelled by them against the development authority. Thus, in the absence of any contrary evidence by the complainant showing that the development was not complete, the State Commission has arrived at an incorrect conclusion.

12. The counsel for the complainant countered the development authority's claims and argued that as per the clause 12 of the Letter of Intent dated 26.02.2012 the possession of the plot shall be handed over to the allottee after completion of the development works at site or within 18 months from the date of issuance of allotment Letter, whichever is earlier and the allotment letter was issued on 14.09.2016 by the development authority after expiry of 3.5 years and the development work of the scheme was still incomplete. In fact, the same is still ongoing and the Completion Certificate has not been obtained. He further argued that the complainant cannot be made to wait for indefinite period for the issuance of allotment letter in his favour and for getting the possession of the plot, hence, she becomes entitled to the refund of the amount which was deposited by her.

13. It is further argued that the complainant had already made the complete payment before issuance of the allotment letter and moreover the complainant had paid extra amount to what the development authority demanded in the allotment letter. Further, the development authority vide its letter dated 04.12.2019 had admitted that there is a delay and work is not completed on site and they had decided not to charge the interest on the instalment till the possession is offered and secondly that if any allottees who demanded for refund, that can be without any deduction and interest.

14. It was further argued that the development authority had failed to provide even the basic amenities such as water and sewerage connections, no gate at the main entrance, no boundary wall got constructed, hence, the development authority is putting the life and safety of the complainant along with other residents at stake, moreover neither drinking water is available nor any connection for the water supply is there. Further they failed to provide even the basic amenities like parks, foot paths Garbage Collection Centre/Bins and other civil amenities at site. Moreover, the development authority has also failed to produce the completion certificate.

15. Lastly, the counsel for the complainant argued that the complainant cannot be made to wait for indefinite period for getting the possession of the plot and in the instant case, issuance of the allotment letter after expiry of 3.5 years from the date of LOI which is against the terms and condition as mentioned in the brochure and Letter of Intent and the act of development authority to retain the amounts deposited by the complainants, is not only an act of deficiency in service but also unfair trade practice. In support of his contention, he placed reliance on the following decisions:

- a. ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudar & Ors. (2019) 2 RCR (Civil) 696***
- b. ***Ram Vilas Sharma and Ors. Vs. M/S Gold Souk Infrastructures Pvt. Ltd. And Anr. Consumer Case No. 421 of 2018 (NC)***
- c. ***Dipika Panda Vs. Puravankara Ltd. Consumer Case No. 1866 of 2018 (NC)***

d. *Ram Kishan and Anr. Vs. State of Haryana and Ors. Civil Writ Petition No 4108 of 2016 decided by Punjab & Haryana High Court,*

16. The question which falls for our consideration is as to whether there is deficiency in service on the part of the development authority.

17. It is seen that the development authority relied on a catena of judgments regarding purchase of plot on 'as-is-where -is-basis', where the property was purchased in an auction for commercial purpose. Based on the facts and circumstances of the present case and perusal of evidences on record, it is evident that the complainant applied with the development authority for allotment of a plot for residential purpose for a total consideration of Rs.29,04,675/- as per terms and conditions of Letter of Intent (LOI) dated 26.02.2013. Allotment letter was issued in favour of the complainant on 14.09.2016 vide which plot No. 125-CPF, measuring 400 sq.yds. was allotted to her and the said plot was to be delivered after completion of development works at the site or 18 months from the date of the allotment letter, whichever was earlier. Thus, she became a 'consumer' of the development authority within the Section 2 (1)(d) of Consumer Protection Act, 1986 and the consumer fora is well within jurisdiction to entertain this case. Therefore, the contention of the development authority that complainant is not a 'consumer' is rejected as there was no auction done with regard to the property as cited in cases referred to by the development authority. The development authority has failed to prove that the plot was purchased in an auction for commercial purpose.

Reliance is placed on ***Sanjay Rastogi v. BPTP Limited & Anr in CC No. 3580 of 2017*** decided on 18.06.2020 which was upheld by Hon'ble Supreme Court. It has observed as under:

“13....One, the Complainant has clarified in the very first para of his plaint that he is not buying the unit for any commercial purpose. It is for the OP to prove otherwise. Two, commercial purpose requires that the Complainant be shown to be in the business of buying and selling flats. No attempt has been made to prove this.”

Similar observation has been taken in the order of this Commission in ***Sai Everest Developers v. Harbans Singh Kohli, 2015 SCC OnLine NCDRC 1895*** decided on 21.07.2015, in which it was held that:

“the Opposite Party should establish by way of documentary evidence that the Complainants were dealing in real estate or in the purchase and sale of the subject property for the purpose of making profits.”

18. Further, it is seen that the development authority changed the location and number of the plot earlier allotted to the complainant and allotted new plot No.996-CPF on the same terms and conditions of the earlier due to technical reasons and for betterment and draw of lots was again held on 17.01.2018. However, no notice has been proved to be given to the complainant before conducting the said draw and thus re-allotment has been done in the absence of consent of the complainant. Also, the development authority never came up with any specific explanation regarding the technical reasons for change of the plot. Therefore, the contention of the development authority that they informed the complainant regarding the

change in plot is rejected and there is no intimation or notice on record in support of their contention.

19. It is seen that the as per clause 4 (I) of the allotment letter, the possession of the plot was to be delivered after completion of the development works at the site or 18 months from the date of the allotment letter, whichever was earlier. But in the present case, it is evident that the development authority failed to complete the development works at the site and failed to deliver possession of the plot along with promised facilities within the stipulated period. Also the development authority failed to provide any Completion/ Occupation Certificate with regard to the said plot. It is a settled proposition that without completion/ occupation certificate one cannot take valid possession and it proves that the development authority failed to complete the work within the stipulated time frame, which is clearly a deficiency on the part of development authority and offering of possession of incomplete construction/unit/plot without obtaining completion certificate amounts to unfair trade practice. Reliance is placed on the following decisions:

a. Vision India Realtors Pvt. Ltd. & Anr. Vs. Sanjeev Malhotra FA No. 855 of 2018 decided on 13.06.2018 (NC).

b. Suman Kumar Jha & Anr. Vs. Mantri Technology Constellations Pvt. Ltd. CC No. 54/2018 decided on 29.10.2021 (NC).

20. Further, it is undisputed that the extra amount of Rs.2,48,175/- has been refunded by the development authority to the complainant vide letter dated 26.07.2017. It is seen from the facts of the case that this amount was not demanded by the development authority. The said amount along with other amounts has been deposited by the complainant in advance only for availing the rebate of 5% on the balance principal amount, as per clause 3(iii) of Payment Schedule and Financial Conditions of the allotment letter. The terms and conditions of the allotment letter are binding on the parties and clause 3(XV) of it provides that 'no interest will be paid on any amount deposited in advance with the authority'. Hence, the complainant is not entitled to any interest on this amount.

21. In the present case, the stipulated period for delivery of possession expired on 15.03.2018 and the development authority has failed to deliver the possession of the plot within the stipulated period, which is clearly a deficiency in service on the part of the development authority. Therefore, the complainant is entitled to the refund of amount deposited by her along with compensation. Reliance is placed on ***Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, II (2019) CPJ 29 SC***, in which the Hon'ble Apex Court has observed as hereunder:

".....It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period. A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the

reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by SCDRC and by the NCDRC for refund of moneys were justified.”

22. With regard to the rate of interest, in the case of ***Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor, in Civil Appeal No.6044 of 2019*** decided on 7.4.2022, the Hon’ble Supreme Court has held as under :-

“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 Dhanda 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 and we find no reason to interfere in the appeal filed by the consumer for enhancement of interest.”

23. In the result, the order of the State Commission is modified to the extent that the development authority shall refund the deposited amount alongwith compensation in the form of interest at the rate of 9% p.a. on deposited amount of Rs.26,56,500/- from the respective dates of deposit till realization, within a period of six weeks from today, failing which, the rate of interest shall be enhanced to 12% per annum.

24. The appeal stands disposed of in above terms. All pending applications, if any, stand disposed of.

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**SUBHASH CHANDRA
 PRESIDING MEMBER**

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**DR. SADHNA SHANKER
 MEMBER**