

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 704 OF 2020**

(Against the Order dated 15/07/2020 in Complaint No. 184/2020 of the State Commission  
Punjab)

1. BIKRAM SINGH

S/O JATINDER SINGH R/O 5777-B, SECTOR 38 WEST,  
CHANDIGARH THROUGH HIS FATHER AND GENERAL  
POWER OF ATTORNEY HOLDER SH. JATINDER SINGH  
S/O SH. BAKDHSISH SINGH R/O 5777-B, SECTOR 38  
WEST, CHANDIGARH-160014

.....Appellant(s)

Versus

1. PUNJAB URBAN PLANNING & DEVELOPMENT  
AUTHORITY & 2 ORS.

THROUGH ITS CHIEF ADMINISTRATOR, PUDA  
BHAWAN, SECTOR 62, S.A.S. NAGAR, MOHALI

2. GREATER MOHALI AREA DEVELOPMENT AUTHORITY,  
THROUGH ITS CHIEF ADMINISTRATOR, PUDA BHAWAN,  
SECTOR 62, S.A.S. NAGAR, MOHALI.

3. ESTATE OFFICER AREA DEVELOPMENT AUTHORITY,  
PUDA BHAWAN, SECTOR 62, S.A.S. NAGAR, MOHALI.

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT : MR. ANKUR BANSAL, ADVOCATE WITH  
MR. SADRE ALAM, ADVOCATE

FOR THE RESPONDENT : MS. ZEHRA KHAN, ADVOCATE

**Dated : 05 April 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") against the Order dated 15.07.2020 passed by the State Consumer Disputes Redressal Commission, Punjab (hereinafter to be referred to as "State Commission") in complaint No. 184 of 2020 whereby the complaint was dismissed.

2. Heard the learned counsel for the appellant (hereinafter referred to as the 'complainant') and the learned counsel for the respondents (hereinafter referred to as the 'development authority') and perused the record including the State Commission's impugned Order dated 15.07.2020 and the memorandum of appeal.

**3.** The brief facts of the case, as narrated in the complaint, are that the complainant being influenced by the advertisement issued by the development authority applied for allotment of plot measuring 331 sq. yds. in 'Gateway City', Sector 118-119, S.A.S. Nagar, Mohali and deposited the required earnest money of Rs. 6,95,100/-, being 10% of the tentative price. The complainant was declared successful in the draw of lots and was allotted plot No. 634. The complainant paid a total amount of Rs.18,76,770/- with the development authority. The complainant has alleged that the site at which the scheme was launched was totally inhabitable and the layout plan and the location plan were totally misleading and did not show that the plots are located in the bed of "Patiala Ki Rao". The complainant informed this issue to the development authority. Additionally, the layout plan didn't indicate the presence of 220 KW high voltage wires over a significant portion of the area. Upon visiting the site, the complainant found the plot located in the river bed area, inaccessible due to undulated terrain. Notably, no allotment letter for plot No. 634 was issued. The complainant notified the development authority, requesting an alternative habitable plot or a full refund. Subsequently, the complainant filed a consumer complaint No.95 of 2018 seeking either an alternative plot in a habitable area or a refund with interest.

The complainant highlighted that GMADA was the developer, not the landowner and M/s EMMAR Land Limited is the owner of the land. Despite being offered an alternative plot i.e. no. 673, the complainant refused it and requested a full refund. The development authority, acknowledging their role as developers, refunded Rs.11,05,420/- after deducting 10% of the total consideration money, interest, and other dues. The complainant alleging unfair and restrictive trade practices on the part of the development authority, stated that the development authority concealed their status as developers and allocated plots in non-habitable areas, such as, the river bed.

**4.** Being aggrieved by the action of the development authority, the complainant filed a complaint before the State Commission, Punjab and sought the direction to development authority to refund the balance amount of Rs.7,71,350/- (10% of the total consideration money, interest and other dues) along with 18% interest p.a.; interest @18% compounded annually on total deposit amount (Rs. 18,76,770/- from the date deposit); Rs.10,00,000/- towards damages for mental agony, and Rs.55,000/- towards the cost of this litigation.

**5.** The development authority contested the complaint, asserting no deficiency in service or unfair trade practice. It is stated that the complainant does not come within the definition of 'consumer' under the Act as the plot was allegedly bought for speculative purposes. They acknowledged the complainant's application for 331 sq. yds. plot under the general category, emphasizing the architectural suitability and healthy atmosphere of the project. Regarding plot No.634, the deposit of 25% amount along with cancer cess of 2% was admitted, denying any land encroachment. They argued that the project's plot location was accurately depicted in the brochure, and the complainant's plea stemmed from a failure to make further instalments. The complainant was offered an alternative plot measuring 300 sq. yds. in lieu of the initial 331 sq. yds. plot. Seventeen plots, including the complainant's, were affected by "Patiala Ki Rao," leading to a draw of lots for alternative plot allocation. They alleged the complainant violated terms by not depositing due instalments and provided details of communications regarding plot surrender and refund initiation. Despite emails from the complainant, they emphasized non-compliance with document submission for refund proceedings.

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6. The development authority controverted the other averments of the complaints and prayed for dismissal of the complaint.

7. The State Commission, vide its Order dated 15.07.2020, has dismissed the complaint on the ground of default in payment of due installments on the part of the complainant.

8. The complainant's main contention against the impugned order of the State Commission is that any of the issue raised by the complainant in his complaint like complainant have attached survey at Indian Map showing "Patiala ki Rao" passing through the area has not been discussed in the impugned order. The learned counsel for the complainant further contended that had the letter of intent been issued against the complainant towards plot no. 673 admeasuring 300 Sq. yds., the complainant would have refused to accept the plot. The learned counsel for the complainant also contended that the impugned order deals with the contentions raised in some other case i.e. case no. 167 of 2018 and not in this case i.e. case no. 195 of 2020. Also, the complainant written to GMADA that the allotment is not acceptable and refund the amount within 12 days from letter of intent and therefore, there is no reason for deducting of 10% amount from total deposited amount.

9. From a perusal of the documents on record, it is apparent that the development authority failed in conducting essential due diligence before launching the scheme and inviting applications from the public for allotment. The development authority being responsible for such procedures, should have diligently investigated the allotted land to ensure its freedom from encumbrances or encroachments. The initial allotment of a plot situated on a river bed rendered it unsuitable for constructing a residence, which was the primary intent of the complainant's application in the scheme. The act of launching plot allotment schemes without verifying the feasibility of each plot highlights a lackadaisical approach adopted by the development authority which constitutes deficiency in service on their part. Therefore, we are of the view that the development authority cannot deduct any amount from any of the buyers, because the Project itself had not been proper since the beginning, i.e. lacking a clear title of the land it was supposed to build on. Further, the development authority cannot make profit off the deposited amounts which it was not entitled to receive at all. The buyer is hence entitled to refund of the balance amount Rs.7,71,350/-(earnest money) that was deducted by the development company along with interest. Reliance is placed on the judgment of Hon'ble Supreme Court in ***Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor***, Civil Appeal No.6044 of 2019 decided on 07.04.2022 that compensation by way of interest should be restitutionary and compensatory and has held that a rate of interest of 9% p.a. is considered to be fair and just.

10. The Hon'ble Supreme Court in the case of ***DLF Homes Panchkula Pvt. Ltd. vs. D.S. Dhanda***, in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for singular deficiency is not justifiable.

11. In view of the discussion above, the present appeal is allowed and the order of the State Commission is set aside. The development authority is directed to refund an amount of Rs. 7,71,350/- to the complainant along with interest @9% p.a. from the date of deposit till the date of realization within two months from the date of this Order, failing which, it shall

carry interest at the rate of 12% per annum. The development authority is also directed to pay interest at the rate of 9% per annum on the amount of Rs.11,05,420/- from the date of deposit till the date of refund i.e. 25.06.2020. The development authority is also directed to pay Rs. 20,000/- as cost of litigation.

**12.** The appeal is disposed of. Pending application(s), if any, stand disposed of.

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**SUBHASH CHANDRA**  
**PRESIDING MEMBER**

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**DR. SADHNA SHANKER**  
**MEMBER**