

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**  
SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

**Appeal No. 230 of 2020**

Inderjeet Mohan Kaur .....Appellant

Versus

The Chief Administrator, GMADA .....Respondent

**Appeal No. 231 of 2020**

Inderjeet Mohan Kaur & Anr. ....Appellant

Versus

The Chief Administrator, GMADA .....Respondent

Memo No. R.E.A.T./2021/ 411

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup> FLOOR,  
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,  
CHANDIGARH-160018.**

Whereas appeal titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeal is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this 21<sup>st</sup>  
day of December, 2021.



*Thaneet Kaur*

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

PUNJAB

Appeal No. 230 of 2020

**MEMO OF PARTIES**

INDERJEET MOHAN KAUR w/o Jagjit Singh Bajaj, Resident of  
House No. 1716, Sector 61, Phase 7, SAS Nagar, Mohali, Punjab-  
160062.

.....Appellant

Versus

The Chief Administrator, GMADA, PUDA Bhawan, Sector 62, SAS  
Nagar, Mohali, Punjab, 160062.

....Respondent

*Inderjeet Mohan Kaur*  
Appellant

Through Counsel

*Vipin*      *Md*  
(VIPIN KUMAR & MANDEEP SINGH)

Advocates

CHANDIGARH

DATED: 17.06.2020



PUNJAB

Appeal No. 231 of 2020

MEMO OF PARTIES

1. INDERJEET MOHAN KAUR w/o Jagjit Singh Bajaj, Resident of House No. 1716, Sector 61, Phase 7, SAS Nagar, Mohali, Punjab-160062.
2. JAGJIT SINGH BAJAJ S/o Harbans Singh, Resident of House No. 1716, Sector 61, Phase 7, SAS Nagar, Mohali, Punjab-160062.

.....Appellants

Versus

The Chief Administrator, GMADA, PUDA Bhawan, Sector 62, SAS Nagar, Mohali, Punjab, 160062.

....Respondent

*Inderjeet Mohan Kaur*  
Appellant

Through Counsel

*Vipin* *Mandeep*  
(VIPIN KUMAR & MANDEEP SINGH)

Advocates

CHANDIGARH





REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, AT CHANDIGARH

**Appeal No. 230 of 2020**

Inderjeet Mohan Kaur .....Appellant

Versus

The Chief Administrator, GMADA .....Respondent

**Appeal No. 231 of 2020**

Inderjeet Mohan Kaur & Anr. ....Appellant

Versus

The Chief Administrator, GMADA .....Respondent

Present:- Mr. Vipin Kumar, Advocate for the appellants  
Mr. Bhupinder Singh with Mr. Ishneet Bhatia, Advocates for  
the respondent.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),  
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),  
MEMBER (ADMINISTRATIVE/TECHNICAL)**

**JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN))**

1. By this order, we propose to dispose of two appeals bearing Appeal No. 230 of 2020 (**Inderjeet Mohan Kaur versus The Chief Administrator, GMADA**) and Appeal No. 231 of 2020 (**Inderjeet Mohan Kaur and Anr. versus The Chief Administrator, GMADA**) arising from a common order dated 03.03.2020 passed by the Chairperson, Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority under the Act*) deciding complaints of the appellant filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*).



2. Since both the appeals involve commonality of facts, the reasons for disposal of appeals by us would essentially prevail upon both the appeals. The facts, we extract from Appeal No. 230 of 2020 titled as "*Inderjeet Mohan Kaur Versus The Chief Administrator, GMADA*" and briefly adverting to them, we notice that the GMADA (hereinafter referred to as respondent) floated a scheme for allotment of 750 residential plots in IT City, SAS Nagar, Mohali, terms and conditions for which were given in the brochure issued by the respondent. As per the payment schedule given therein, 10% of the price indicated was to be deposited along with application and 20% (along with 2% cancer cess) within 30 days of the issuance of Letter of Intent (LOI).
3. Failure to deposit 20% of the amount within the stipulated period entailed a surcharge @ 1.5 to 3% for 30 to 180 days of delayed payment and penal interest @ 18% per annum. The balance 70% of the tentative price of the plot could be either paid in lump sum without any interest with a rebate of 5% within 60 days from the issuance of LOI or in 6 half-yearly installments along with an interest @ 12% per annum with the first installment becoming due after six months from the date of issuance of LoI. The penal interest prescribed for failure of the allottee to abide by the payment schedule was 18% per annum for the delayed period. Physical possession of the plot was assured within one year from the date of issuance of LOI i.e. upto 10.11.2017.





4. One Sh. Rajesh Kumar who applied for a plot of 256.66 sq. yards was successful in the draw of lots held on 21.09.2016 for which he was issued LOI on 11.11.2016 in the 'A' category at a tentative price of Rs.20,000/- per sq. yard. The present appellant is a transferee under the said Rajesh Kumar, the transfer having been affected on 06.11.2017.

5. The letter of intent issued, in its clauses 5 and 15 reiterated the terms set out in the brochure while floating the scheme. The physical possession of the plot was to be delivered by 10.11.2017 with the allottee requiring to pay Rs.10,26,640/- (excluding Rs.5,13,320/- deposited as earnest money) along with 2% cancer cess amounting to Rs.1,02,664/- by 10.12.2016 (along with surcharge & penalty for delay, if and as applicable). The balance 70% of Rs.35,93,240/- was to be paid either in lump sum that would carry a rebate of 5% on this amount by 10.01.2017 or in 6 installments along with interest @12% per annum. The payment schedule binding the allottee extracted is set down below:-

Installment Date	Principal Amount	Interest	Total Amount
10-May-2017	5,98,873.00	2,15,594.00	8,14,467.00
10-Nov-2017	5,98,873.00	1,79,662.00	7,78,535.00
10-May-2018	5,98,873.00	1,43,730.00	7,42,603.00
10-Nov-2018	5,98,873.00	1,07,797.00	7,06,670.00
10-May-2019	5,98,873.00	71,865.00	6,70,738.00
10-Nov-2019	5,98,873.00	35,932.00	6,34,805.00
<b>TOTAL</b>	<b>35,93,238.00</b>	<b>7,54,580.00</b>	<b>43,47,818.00</b>



6. The complainant approached the Authority under the Act with a complaint that despite having paid Rs. 34,47,438/-, the respondent

failed to handover the possession within the promised time-frame despite representation dated 31.01.2019 followed by a legal notice dated 26.07.2019. The complainant-appellant thus made the following prayers before the Authority under the Act:-

*(i) develop the project and hand over possession;*

*(ii) to pay interest for delay in possession;*

*(iii) not to claim interest on balance payment till physical possession is handed over; and*

*(iv) to condone the due installments for 24 months without delay interest.*

7. The respondent filed its reply dated 04.11.2019 before the Authority alleging that the complainant-appellant failed to make payment as per the schedule and thus violated clause 5 of the LOI. An amount of Rs. 24,97,626/-,(Rs. 21,20,011 on account of installments and Rs. 3,77,615 as penal interest and surcharge) was required to be paid by 30.10.2019, which were not done by the allottee. It was however, conceded that there was some delay in handing over the physical possession of the plot.

8. The Authority disposed of the complaint vide its order dated 03.03.2020, that is impugned before us. The crux of the order can be briefly be sum-up as below:-

*(i) the complainants have failed to pay the due installments in time, while the respondent failed to honour its*





*promise of delivering possession within the agreed time frame;*

*(ii) that in view of the fact that the complainants did cause delay in payment of money to the respondent, and keeping in view the nature of the respondent's functioning, a grace period of 1 year was allowed to the respondent;*

*(iii) that the complainant's claim that since there was a delay in handing over of possession, she was not liable to pay the installments at the agreed dates, was not held to be tenable; and it was directed that the complainants would have to pay interest at the rate prescribed in the LOI on due installments, and also the penal interest in case of delayed payments.*

9. While impugning the order dated 03.03.2020 of the Authority under the Act, the appellant before us has contended that an amount of Rs.7,44,858 has been paid to the respondent, which is reflected in the property ledger dated 28.05.2020, the relevant of which has been appended with her appeal. This amount has been adjusted towards the instalments. It was argued that the Authority failed to notice that the appellant had made the requisite payments as required till 10.11.2017 but stopped thereafter as the promise of possession did not materialize. Besides the Government itself has issued instructions contained in the letter dated 15.02.2017, referring to the policy dated





02.01.2017 framed by them pursuant to the directions of the Hon'ble High Court of Punjab & Haryana in CWP No. 4108 of 2016.

10. Paragraphs 3(ii) & 3(iv) of the policy ought to have been applied to the case of the appellant as it contemplates relief in terms of payment and interest to all the allottees under the PUDA or GMADA as the case may be, across the board. Emphasis was provided on the fact that the plot is still not ready for possession and in this eventuality the Authority could not have granted any relief to the respondent as it has done in the impugned order, particularly when the complainant was the aggrieved person and the respondent neither pleaded nor prayed for grant of any relief.

11. The learned counsel for the appellant further prayed that appropriate directions be given to the respondents to develop the project and handover the possession immediately and for its failure not to do so it should be restrained from claiming any interest from the appellant on the balance payment till the possession is handed over. He further prayed that he would be satisfied if the policy decision dated 02.01.2017 and contained in the letter of the Government dated 15.02.2017 be applied to him in toto. It was further prayed that interest be granted to the appellant from the agreed date till the actual handing over of possession and to condone the imposition of penal interest on the delayed instalments.



12. As against the above the learned counsel for the respondent while conceding delay in handing over possession on account of lack of

development of the area has argued that grant of interest under Section 18 (1) of the Act for delayed possession while exempting the appellant from payment of interest @ 12% per annum in terms of the schedule would amount to awarding dual benefit for the same grievance and cause of action i.e. delay in handing over of possession and the policy dated 02.01.2017 affords a benefit of exemption on delayed payment by taking into consideration such a contingency as the one the appellant is placed in and thus even if the impugned order is assumed to be justified, as it grants a relief under Section 18(1) of the Act, the appellant would in this eventuality be disentitled to the benefit of the policy dated 02.01.2017.

13. We have heard learned counsel for the appellant and have perused the material on record.
14. The policy dated 02.01.2017 contained in the letter of the Government dated 15.02.2017 has ostensibly been framed pursuant to the directions of the Hon'ble Punjab and Haryana High Court in CWP No. 4108 of 2016.
15. We are at pains to remind ourselves that the appellant had approached the Authority under the Real Estate (Regulation and Development) Act, 2016 for his primary grievance of a delayed possession and consequently levy of interest and penalty by the respondents upon his failure to adhere to the schedule.
16. The grievance if analyzed is not complex. The allottee, who has made a substantial payment expects an adherence by the respondents





to abide by the promised schedule of possession and upon failure to do so, questions the very justification of the developer to demand payments from him as also the interest on such delayed payments and imposition of penalty.

17. Since the appellant has availed of a statutory remedy, the reliefs that the Authority under the Act can grant would necessarily have to be restricted to the ones available under the statute. The waiver of interest or grant thereof in terms of the policy by the State Government would not ipso facto bind the Authority to disentitle any relief available to any allottee under the Act. However, it does not prevent the Authority from taking a holistic view and moulding the relief to an allottee to avoid an unjust enrichment or an unexpected windfall to him.

18. A perusal of the judgment of the Hon'ble Punjab and Haryana High Court referred to in the policy framed by the Government reveals that there are certain directions given to the State to deal with situations where the public bodies do not stand advantaged for their own defaults at the expense of the allottee. Since the Government framed the policy ostensibly, as a measure of compliance of the directions given by the Hon'ble High Court it would purely be in their domain to apply it while granting a benefit to an allottee. This however, does not preclude or restrict the allottee's right to approach the Authority under the Act for redressal of his grievance, since it is a statutory remedy.





19. The Authority in turn would have no jurisdiction to enforce the policy of a Government as it is bound to deal with the matters before it strictly in terms of the powers that flow from the statute i.e. RERA Act. It is purely in the domain of the Government to apply or not to apply a policy which shall be independent of the reliefs available to an aggrieved person under the Act. It matters not that the policy, the benefit of which an allottee claims, somewhat encapsulates the spirit of the Act in protecting an allottee from an unjust action of the developer or promoter, which in this case happens to be a public body.
20. Likewise, we as an Appellate Authority would have no such power to issue mandates to enforce a policy of the Government but nothing precludes the Authority or for that purpose the Appellate Tribunal to take into consideration a fact of a benefit granted under any policy of the Government and deal with it appropriately while deciding the issues brought before it.
21. Coming to the facts of the present case, we may note a few provisions of the Act, which are relevant to appreciate the controversy at hand.
22. As per section 2(zk)(iii) of the Act, “**promoter**” means, inter alia, any **development authority or any other public body** in respect of allottees of (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by



such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots.

Therefore, with effect from 01.05.2017, the date of enforcement of the provisions of the Act including Sections 11 to 18 apply to all such development authorities and the other public bodies being covered under the definition of a '**Promoter**'.

23. Section 13(1) of the Act, provides that a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale as required by law for the time being in force;

24. Section 13(2) of the Act, provides that agreement for sale, so executed shall be in such form as may be prescribed specifying the particulars of development of the project including the construction of building and apartments, along with specifications and internal and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over.

It shall also contain the rates of interest payable by the promoter to the allottee and vice versa in case of default, besides containing any such particulars that may be relevant. In short it is a way of





concretizing the terms of the contract between the parties that would essentially govern them.

25. Section 14(1) of the Act, obligates the promoter/developer to abide by the sanctioned plans, layout plans, hence adhere to the specifications as approved by the competent authorities.
26. Section 18(1) of the Act, defines the rights and remedies available to an allottee in the event of a default by the promoter and since it is one that is like frequently or likely to be invoked we deem it appropriate to extract hereinbelow:-

(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.*

27. The Act is ably supported by Rules and Rule 8(1), provides that the agreement referred to in Section 13(2) of the Act, shall be in Form 'Q' and Clause 7.3 of which provides that on failure of allottee to pay the installment as per schedule given in allotment letter, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount. Clause 7.3 is extracted hereinbelow: -

**7.3 Failure of Allottee to take Possession of Apartment/Plot.-** Upon receiving a written intimation from the Promoter as per clause 7.2, the Allottee shall take possession of the Apartment/Plot from the Promoter by executing necessary indemnities, undertakings and such other documentation as prescribed in this Agreement, and the Promoter shall give possession of the Apartment/Plot to the allottee. In case the Allottee fails to take possession within the time provided in clause 7.2, such Allottee shall continue to be liable to pay maintenance charges as applicable. On failure of allottee to pay the installment as per schedule given in allotment letter, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.



28. Clause 9.1 of the Form 'Q' read with its clause 9.2(i) provides that if the promoter fails to provide ready to move in possession ("ready to

*move in possession” means that the apartment shall be in a habitable condition which is complete in all respects and as per the completion/occupancy certificate issued by the competent authority) of the apartment/plot to the allottee within the time period specified, then the allottee is entitled to stop making further payments to the promoter as demanded by the promoter; and that if the allottee stops making payments, the promoter shall correct the situation by completing the construction milestones and only thereafter, the allottee will be required to make the next payment without any penal interest. Clause 9.1 and 9.2 is extracted hereinbelow: -*

*9.1 Subject to the Force Majeure clause, the Promoter shall be considered under a condition of default, in the following events:-*

*(i) promoter fails to provide ready to move in possession of the Apartment/ Plot to the Allottee within the time period specified. For the purpose of this clause, 'ready to move in possession' shall mean that the apartment shall be in a habitable condition which is complete in all respects and as per the completion /occupancy certificate issued by the competent authority; or*

*(ii) discontinuance of the Promoter's business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.*

*9.2 In case of default by Promoter under the conditions listed above, the Allottee is entitled to the following:-*

*(i) stop making further payments to the Promoter as demanded by the Promoter. If the Allottee stops making*





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payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter, the Allottee will be required to make the next payment without any penal interest; or

- (ii) the Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment/plot, along with interest at the rate specified in the Rules within ninety days of receiving the termination notice:

Provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he shall be paid, by the promoter, interest at the rate specified in the Rules, for every month of delay till the handing over of the possession of the Apartment/ Plot

29. Evidently non-execution of an agreement to sell in terms of Section 13 (1) has seriously imperilled the rights of an allottee. This is an issue that we have repeatedly been confronted with i.e. where the public body such as PUDA and GMADA, to name a few have been offering plots/flats while executing development projects without executing agreement to sell upon receiving 10% of the amount or even 25% of the total price. It is apparent that these public authorities are in violation of the provisions of RERA Act. We therefore direct the Authority under the Act to take appropriate steps including initiating action contemplated under Section 7 against such





promoters, who are in default in complying with the provisions of the Act. Section 7 (1) (a), (b), are extracted hereinbelow:-

(1) *The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that-*

(a) *the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;*

(b) *the promoter violates any of the terms or conditions of the approval given by the competent authority;*

(c) *the promoter is involved in any kind of unfair practice or irregularities.*

30. The Authority under the Act shall ensure that all public bodies executing development projects execute agreements to sell in terms of Section 13(1) and fall in line with all the compliances as mandated by the Act.

31. Reverting to the facts of the case, the brochure and the letter of intent issued stipulated that the successful allottee would be required to deposit 10% of the sale price at the threshold before the draw of lots, it means that any allottee desirous of participating in the draw of lots would have to deposit 10% and upon being successful would be required to pay 25% of the price, where upon letter of intent/allotment letter will be issued to him.



32. This condition in itself is in conflict with the provisions of Section 13(1) of the Act which provides that *“a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force”*. Evidently the relevance of the enforcement of the RERA Act has been completely lost and public bodies such as PUDA and GMADA, continue with their archaic provisions, in vogue since long.
33. In the impugned order the Authority has observed that the default was on both sides as the appellant failed to deposit the instalment in time while respondent too failed to deliver possession within the agreed time. It went on to observe that for the situation of the kind at hand, the respondent was required to pay interest for the period of delay in handing over possession and since the complainant also caused delay in payment, she would be liable to pay interest at the rate prescribed in the letter of intent/allotment letter, while making the payment of balance instalments as also the penal interest while the respondent would be liable to pay interest as prescribed under the Act. It also granted a grace period of one year to the respondent while prescribing the date for commencement of the payment of interest on account of respondent's functioning.





34. Before we advert to the justification of the order with regard to the payment of interest etc., we are constrained to comment that the grace period of one year allowed to the respondent for its functioning is completely unwarranted and sans any justification. The Authority has tried to justify the grant of this grace period but to our minds this would tantamount to putting a premium on default. We cannot possibly lend any stamp of approval to any such concession when there are hardly any reasons to justify its grant. We therefore set aside this direction of the Authority.
35. The appellant did not deposit the instalments in time. The Authority has noticed this and held that the appellant was bound to the payment schedule in terms of the mandate of Section 19(6) of the Act, which cast a duty upon an allottee to pay instalments on the agreed time. It is imperative for an allottee to make the payments for this as the amount which has to go into the development of a project. If the blame is to be apportioned then the developer/promoter has to share the major part of it for the simple reason that it is he who conceives the project by taking into consideration all the variables thereby prescribing time-frame for possession.
36. In the instant case the possession has yet not been handed over and there is nothing on record to show any justification for such an inordinate delay. Even now before us it was merely stated that efforts are being made to deliver the possession. The impugned order cannot therefore be faulted with for granting the prayer of the appellant for



interest as is envisaged under sub-Section 1 of Section 18 of the Act. This interest shall be available to the appellant from the date of default i.e. 10.11.2017 till the time the physical possession is handed over to the appellant. The appellant in turn shall be bound to the schedule of payment, which envisages the levy of interest. No penal interest however, shall be attracted since the respondent has failed to deliver possession.

37. Similar benefits shall flow to the appellant in Appeal No.231 of 2020.
38. With the aforesaid observations, the appeal stands disposed of and the order of the Authority under the Act modified accordingly.
39. The appeals are accordingly disposed off. Files be consigned to record room and a copy of this order be filed in the files of Appeal No. 230 of 2020 and Appeal No. 231 of 2020 and also be communicated to the parties.

*Sdl*  
**JUSTICE MAHESH GROVER (RETD.),**  
**CHAIRMAN**

*Sdl*  
**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),**  
**MEMBER (JUDICIAL)**

*Sdl*  
**ER. ASHOK KUMAR GARG, C.E. (RETD.),**  
**MEMBER (ADMINISTRATIVE/TECHNICAL)**

December 21, 2021



**Certified To Be True Copy**

*Manoj Kumar V.*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

21-12-2021