

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

Subject: -

APPEAL NO. 197 OF 2022

1. Bathinda Development Authority through Estate Officer, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab (151001).
2. Estate Officer, Punjab Urban Planning and Development Authority, Now Bathinda Development Authority, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab (151001).

...Appellants

Versus

1. Mithu Ram Arora S/o Banarsi Das, R/o Backside Raman Cinema, College Road, Mansa, Tehsil and District Mansa, Punjab, Pin code 151505.
2. Real Estate Regulatory Authority, Punjab, 1st Floor, Plot No. 03, Block B, Madhya Marg, Sector-18 A, Chandigarh (160018)

....Respondents

Memo No. R.E.A.T./2022/ **605**

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
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 07th day of December, 2022.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



**IN THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB
AT CHANDIGARH**

APPEAL No. 197 OF 2022

MEMO OF PARTIES

1. Bathinda Development Authority through Estate Officer, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab - 151001
2. Estate Officer, Punjab Urban Planning and Development Authority, now Bathinda Development Authority, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab - 151001


.....Appellants

V E R S U S

1. Mithu Ram Arora son of Banarsi Das resident of Backside Raman Cinema College Road, Mansa, Tehsil and District Mansa, Punjab, Pin Code 151505.
2. Real Estate Regulatory Authority, Punjab, First Floor, Plot No.3, Block-B, Madhya Marg, Sector 18-A, Chandigarh - 160018.

.....Respondents

CHANDIGARH
DATED: 1.10.2022


(ASHISH GROVER)
ADVOCATE FOR THE APPELLANTS
ENRL. No.P/671/1991

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
AT CHANDIGARH**

APPEAL NO. 197 OF 2022

1. Bathinda Development Authority through Estate Officer, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab (151001).
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2. Real Estate Regulatory Authority, Punjab, 1st Floor, Plot No. 03, Block B, Madhya Marg, Sector-18 A, Chandigarh (160018)

....Respondents



Present: Mr. Ashish Grover, Advocate for the appellants.

CORAM: **JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.), MEMBER (JUDICIAL)
ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./ TECH.)

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

APPEAL NO. 197 OF 2022

2

1. This appeal by the developer is against the impugned order 31.05.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. Complaint was preferred by the present respondent hereinafter referred to as the complaint, under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act) read with Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules), claiming refund of Rs.5,34,400/- which he had paid to the appellant at the time of booking of a 300 Sq. yards plot in the project namely 'PUDA Enclave, Mansa'. He was successful in the draw of lots and deposited 10% of the total sale consideration, upon which a letter of intent was issued to him on 21.03.2014, according to which 15% of the balance amount amounting to Rs.3,15,000/- was to be paid against allotment of plot no. 60 on 08.07.2016. As per the terms of the allotment letter the possession was to be delivered within 18 months after completion of development works at the site i.e. 07.01.2018.
3. The grievance of the complainant was that despite a lapse of 27 months from the promised date the project



APPEAL NO. 197 OF 2022

3

was still not complete and consequently by initiating the complaint he invoked the provisions of Section 18(1) of the Act claiming a refund of Rs.5,34,400/- along with interest and compensation.

4. During the pendency of the complaint the appellant proceeded against the complainant under Section 45(1) of the Punjab Regional and Town Planning and Development and Development Act 1995 (hereinafter known as the Act of 1995) leading to the passing of an order under Section 45(3) of the 1995 Act. The complainant also placed these documents on record during the course of hearing of his complaint.
5. The appellant contested the complaint and pleaded that by virtue of Section 174 of the Act of 1995 the orders of the competent authority under Section 45(3) were final and this would deprive the Authority of its jurisdiction to deal with the complaint in view of the orders passed by the competent authority under the 1995 Act. Besides the complainant had a remedy of invoking the arbitration clause. It was further pleaded that as per condition 3(II) of the allotment letter the complainant defaulted in payment of the installments. He was obligated to pay 6 equated half yearly installments but he defaulted in paying 2 installments prior to the offer of possession on



APPEAL NO. 197 OF 2022

4

07.01.2018. Being a defaulter he was proceeded against under Section 45(1) of the 1995 Act.

6. It was asserted by the respondents that possession was offered within stipulated period of 18 months i.e. on 27.12.2017 and the plea of the complainant in not obtaining the possession on the premise that the development works were incomplete was baseless in view of Annexures R2 to R4 which are certificates issued by the competent authority indicating completion of works.
7. The Authority ruled in favour of the complainant and while disposing of the complaint granted following reliefs as contained in Para 9 of the impugned order extracted herebelow:-

"9. Keeping in view the ratio of the above decision of the Apex Court, the complainant would be entitled to a full refund of the amount deposited by him, alongwith interest as per rule 16. Hence, the respondents are directed to refund the amount of Rs.5,34,400/- (less the amount of refund, if already disbursed) to the complainant, along with interest as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2% in view of the provisions of Section 18(1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017 with effect from the respective dates of payments, till refund and



this amount shall be paid within ninety days from the date of this order."

8. Aggrieved thereof the appellant has preferred the present appeal and has contended likewise as he had pleaded before the Authority. Similar grounds were pressed in support of the plea i.e. of the complainant being at fault in not depositing the installments and the appellant being within his rights to proceed against him on account of default in payments. It was argued that in view of the orders passed under the 1995 Act by the authority competent to do so under it, the present complaint would not be maintainable and the orders passed by the Real Estate Regulatory Authority are without any jurisdiction. Reliance was also placed on the completion certificates R2 and R3 to question the claim of the complainant with regard to lack of completion of development works.
9. We have heard the learned counsel for the appellant and have perused the impugned order as also the record. Much emphasis has been laid by the appellant on the plea that proceedings under Section 45(1) initiated under the 1995 Act now stood completed with the passing of orders of refund of amount to the complainant after forfeiture of 10% of the amount.
10. We have considered this aspect of the matter and are of the opinion that the Authority was right in appreciating



the fact that all these proceedings including notice under Section 45(1) were initiated after the complainant had filed a complaint under the RERA Act. It may be relevant to point out that the instant complaint was filed by the complainant on 23.03.2020 and the notice under Section 45(1) of the 1995 Act was issued on 10.07.2020 leading to an order under Section 45(3) of the 1995 Act directing a refund of Rs.2,15,371/- after deducting 10% of the amount due vide separate order dated 14.12.2020. Therefore the entire proceedings under 1995 Act were initiated and culminated against the complainant subsequent to the filing of the complaint seeking a refund under Section 18(1) of the Act. The Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Others** has held a right of an allottee under Section 18(1) to be an unqualified right available with him without prejudice to any other remedy available to him. All the proceedings under the 1995 Act were initiated subsequent to the filing of the complaint despite the fact that the appellant was on notice with regard to the proceedings under the RERA Act and was in contest. This was thus clearly an attempt to defeat the rights of the complainant under the Act. One is but naturally tempted into such a conclusion, if we see the default regarding the payment of installments by the



APPEAL NO. 197 OF 2022

7

complainant which were prior to the offer of possession statedly on 27.12.2017. For a period of more than 3 years no proceedings were initiated under the 1995 Act. If we see the provisions of Section 45 (1), (2), (3) and (4) as extracted herebelow, it contemplate an action in this regard with some promptitude:-

"(1) Where any transferee makes default in the payment of any consideration money, or any installment, on account of the transfer of any land or building, or both, under section 43, the Estate Officer may, by notice in writing, call upon the transferee to show cause, within a period of thirty days, why a penalty as may be determined by the Authority be not imposed upon him:

Provided that the penalty so imposed shall not exceed the amount due from the transferee.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order imposing the penalty and direct that the amount of money due alongwith the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2) or commits a breach or any other condition of transfer, the Estate Officer may, by notice in writing call upon the



transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the transfer of the land or building or both, should not be made.

(4) After considering the cause if any, shown by the transferee in pursuance of a notice under sub-section (3), and any evidence that he may produce in respect of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded, in writing, make an order resuming the land or building or both, as the case may be, and direct the forfeiture as provided in subsection (3) of the whole or any part of the money paid in respect of such transfer."

It envisages initiation of proceedings against a defaulting allottee after initially putting him on notice regarding the default requiring him to become compliant within a particular period and failure to do so would entail the imposition of penalty and further failure to deposit the installments along with penalty would invite consequences under Section 45(3) and (4) of the Act. But the appellant has not even followed the dictates of the provisions of Section 45 of the 1995 Act before ordering a refund of Rs.2,15,371/-. Be that as it may such



APPEAL NO. 197 OF 2022

9

proceedings initiated belatedly and maliciously only to subvert and frustrate the rights of the allottee under the RERA Act cannot be justified or take away the legitimacy of the validly initiated proceedings under the Act.

11. ^{9m} ~~It~~ fact arguments were not even raised regarding any of these aspects. We therefore do not deem it appropriate to delve any further upon such a question but suffice it to say that the facts of the case suggest that proceedings under the 1995 Act were invoked only to defeat the valuable right of the allottee under the RERA Act. Once the proceedings under the RERA Act had been initiated the benefits thereof if earned by an allottee on the facts of the case cannot be denied to him, considering that this Act is intended to protect the interest of the allottees at the hands of the developers. That apart we have also considered the fact that possession offered in the year 2017 was meaningless since most of the development works were not complete. We have already commended upon this aspect regarding this very project of the developer in our orders in related appeals i.e. **Appeal No. 107 of 2022** and many others, disposed of vide order dated 06.10.2022. The same certificates relied upon by the appellant were discarded by us in the said appeals. When confronted with these facts the learned counsel for the appellant rather fairly stated that in so far as the



APPEAL NO. 197 OF 2022

10

development works are concerned, this Court has not accepted the plea of the appellant and the certificates relied upon were specifically discarded. He thus conceded that there was similarity insofar as the present appeal is concerned with the aforementioned appeals which already stand decided since they pertain to the same project and the case of all the allottees are identical.

12. For the forestated reasons, we are of the opinion that the relief granted to the allottee vide the impugned order has to be maintained more particularly when the offer of possession made in the year 2017 was an empty formality in the absence of completion of development works.

13. Appeal is accordingly dismissed.

File be consigned to the record room.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

my view is appended on subsequent page
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL) *Sd/-*

November 21, 2022
DS

Certified To Be True Copy
T. Anand
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
07/12/2022

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB AT CHANDIGARH**

Appeal No. 197 of 2022

1. **Bathinda Development Authority** through Estate Officer, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab - 151001
 2. Estate Officer, Punjab Urban Planning and Development Authority, now Bathinda Development Authority, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab - 151001
-Appellants

Versus

1. **Mithu Ram Arora** son of Banarsi Das resident of Backside Raman Cinema College Road, Mansa, Tehsil and District Mansa, Punjab, Pin Code 151505.
 2. Real Estate Regulatory Authority, Punjab, First Floor, Plot No.3, Block-B, Madhya Marg, Sector 18-A, Chandigarh -160018.
-Respondents

Present: Mr. Ashish Grover, Advocate for the appellants

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.)**

**JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.) - HIS VIEW)**

1. By this order, I will dispose of above mentioned appeal dated 04.10.2022 (Diary No. 761 dated 17.10.2022) bearing Appeal No. 197 of 2022 (**Bathinda Development Authority and another versus Mithu Ram Arora and another**) filed by the appellant against the order dated 31.05.2022 passed by Sh. Ajay Pal Singh, Member, Real Estate Regulatory Authority Punjab (*hereinafter*

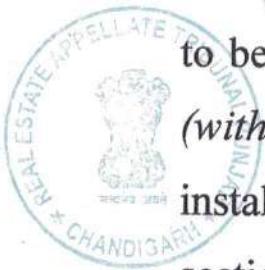


- referred to as the Authority*) in the complaint bearing AdC No. 16112020 instituted on 23.03.2020/11.06.2020.
2. Mithu Ram Arora (*the respondent No. 1 in the present appeal, hereinafter may also be referred to as the complainant or the allottee or the buyer*) has filed a complaint on 23.03.2020/11.06.2020 against the appellants (*hereinafter also referred to as the promoters or the developers*) in Form 'N' before the Adjudicating Officer of the Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) read with its section 71 and rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).
3. It has been claimed/alleged in the complaint that (i) in a scheme opened on 18.11.2013 to 17.12.2013 by the appellants for allotment of plots @ Rs. 7,000/- per square yard at PUDA Enclave, Mansa, the complainant applied for a plot of 300 square yards on 17.12.2013 by depositing Rs. 2,10,000/- (10% of the plot price of Rs. 21,00,000/-); (ii) that the appellants issued letter of intent (LOI) dated 21.03.2014 demanding Rs. 3,15,000/- (15% of the plot price) within 30 days; (iii) that the complainant deposited Rs. 3,20,000/- on 20.05.2014; (iv) that the appellants, vide letter dated 27.06.2014, demanded deficient amount of Rs. 4,400/- due to delay of 30 days in payment of 15% of the plot price, which was deposited by the appellants on 07.07.2015; (v) that allotment letter dated 08.07.2016 was issued by the appellants, thereby allotting plot No. 60 to the complainant; (vi) that the appellants promised in the prospectus of the scheme, the LOI and the allotment letter to hand over the possession of the plot within 18 months from the date of the allotment letter or at the completion of the development



works at the site whichever earlier i.e. by 07.01.2018; (vii) that the project was incomplete even at the time of the complaint and the appellants failed to provide even basic amenities like water, electricity and sewage and handed over the possession of the plot vide letter dated 27.12.2017 in the incomplete project; (viii) that the complainant was no more interested in the project.

4. The complainant has prayed in his complaint for refund of his amount of Rs. 5,34,400/- deposited by the complainant with interest and compensation of Rs. 1,00,000/- on account of litigation expenses, transportation charges, harassment and loss of time and money etc.
5. The appellants, in their reply dated 17.09.2020 to the complaint, have inter alia submitted that (i) the complainant failed to pay even a single penny towards the balance 75% price of the plot within the stipulated period as per the schedule given in the allotment letter, due to which, the plot allotted to him was liable to be resumed under section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*); (ii) that there is a remedy of appeal and revision under section 45 of the PRTPD Act; (iii) that two installments were due to be paid by the promised date of possession and Rs. 19,93,900/- (*without leviable interest for delay in payments*) were due towards installments to be paid till 08.01.2020, for which notice under section 45(1) of the PRTPD Act had been issued to the complainant on 10.07.2020; (iv) that possession of the plot was offered to the complainant vide letter dated 27.12.2017 but the complainant neither took possession of the plot nor cited any reason for not taking over the possession; (v) that the development of works of the site in question had been completed as per report



dated 22.11.2017 by the appellants' Divisional Engineer and as per proceedings of meeting held on 21.12.2017 under the chairmanship of the appellants' Chief Administrator; (vi) that being a local authority as well as a statutory body, the provisions of the Punjab Apartments and Property Regulation Act, 1995 (*hereinafter referred to as the PAPER Act*), including the provisions of its section 14 regarding responsibility of the promoter to obtain a completion certificate from the competent authority, are not applicable to the appellants; (vii) that the Act and the Rules also provide that the allottee should make payments as per agreed schedule and if there is delay on the part of the allottee to make payment as per the schedule then the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.

6. The Authority, after considering the written and oral submissions of the parties, passed order dated 31.05.2022, wherein it is inter alia mentioned that (i) the show cause notice dated 10.07.2020, issued by the appellants under section 45(1) of the PRTPD Act, was replied by the complainant on 10.08.2020 (Annexure A11, not placed on record before this Tribunal) stating therein that installments were not being paid as the project had not been completed as per norms; (ii) that after the said reply, the appellants issued another show cause notice to the complainant (Annexure A12, not placed on record before this Tribunal), asking for objections to the refund of Rs. 2,15,371/-, out of Rs. 5,34,400/-, after deducting an amount of Rs. 3,19,029/- i.e. 10% of the total sale price of Rs. 31,90,288/-, including BSP, interest, penal interest and surcharge; (iii) that the appellants have then, vide order dated 14.12.2020 (Annexure A13, not placed on record before this



Tribunal), resumed the plot and ordered refund of an amount of Rs. 2,15,371/- under the provisions of section 45 of the PRTPD Act and also keeping in view clause 7(X) of the allotment letter and relying upon the order passed by this Tribunal in appeal No. 112 of 2021 titled **Vinod Kumar and another versus Bathinda Development Authority and another** pertaining to a different project, namely PUDA Enclave Sugar Mill site, at Budhlada; (iv) the complainant has relied upon the order dated 26.10.2018 passed by this Tribunal in cross appeals bearing Appeal No. 24 of 2018 and Appeal No. 26 of 2018 titled **Estate Officer PUDA versus Real Estate Regulatory Authority and another** and **Gursimran Kaur versus Estate Officer PUDA** respectively in respect of the same project wherein it was held that the offer of possession in December, 2017 was not a valid one and also on the order passed by the Authority in complaint No. 1601 of 2020 titled **Harpreet Kaur versus Bathinda Development Authority and other** pertaining to the same project wherein the Authority has held that at the time of offer of possession, the project was incomplete in as much as there was no completion certificate issued by the competent authority as per circular dated 02.09.2014 of the Government of Punjab; (v) that the Authority has held that the appellants have not delivered lawful possession within the stipulated period and in the circumstances, any default in making timely payments cannot take away the right of the complainant to seek relief under section 18(1) of the Act and has relied upon paragraphs 77 and 78 of the judgment dated 11.11.2021 passed by Hon'ble Supreme Court in Civil Appeal No.(s) 6745-6749 of 2021 (**M/s Newtech Promoters and Developers Pvt Ltd versus State of UP and others and connected matters**).



7. The operative part of the order dated 31.05.2022 of the Authority reads as under:-

"9. Keeping in view the ratio of the decision of the Apex Court, the complainant would be entitled to a full refund of the amount deposited by him, along with interest as per Rule 16. Hence, the respondents are directed to refund the amount of Rs.5,34,400/- (less the amount of refund, if already disbursed) to the complainant, along with interest as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2% in view of the provisions of Section 18(1) of the Act, read with Rule 16 of Punjab State (Regulation and Development) Rules 2017, with effect from the respective dates of payments, till refund and this amount shall be paid within ninety days from the date of this order."

8. Aggrieved by the above said order dated 31.05.2022 of the Authority, the appellant has filed present appeal before this Tribunal and prayed to set aside the impugned order dated 31.05.2022 and also to dismiss the complaint.

9. The appellant has also filed, along with his aforesaid appeal, an application bearing Application No. 289 of 2022 for condoning a delay of 31 days in filing the said appeal claimed to be caused due to long chain/procedure as detailed by the appellant under paragraphs 2 to 5 of the said application. I deem it appropriate to condone the said delay, especially in view of judgment dated 27.10.2022 passed by Hon'ble High Court of Punjab and Haryana in RERA-APPL-32-2020 (O&M) (Punjab Urban Development Authority (PUDA) versus Jasneet Kaur Chahal and another) and connected matters.

10. The appellant, in his appeal before this Tribunal, has also disclosed that pursuant to refund order for Rs. 2,15,371/-, passed by the appellants after considering the complainant's request/reply dated



10.08.2020 and after deducting Rs. 3,19,029/-, cheque dated 30.03.2021 for Rs. 2,15,371/- was issued to the complainant and later on revised cheque dated 12.08.2021 of the said amount of Rs. 2,15,371/- was issued to the complainant on his request. However, this payment has not been considered by the appellants in the calculation sheet filed along with the appeal for computing the amount of pre-deposit in terms of proviso to sub-section (5) of section 43 of the Act.

11. The appellant, besides its written/oral submissions before the Authority, has not taken any other new grounds for filing the present appeal.

MY FINDINGS:

12. As per brochure/prospects of the scheme and the LOI 21.03.2014, an amount of Rs. 3,15,000/- was payable towards 15% of the price of the plot within 30 days from the date of issue of the LOI. However, the allottee defaulted in paying the same timely and paid Rs.3,20,000/- after a delay of 30 days on 20.05.2014 instead of paying it by due date i.e. 20.04.2014, which includes part of amount of applicable surcharge @ 1.5% for 30 days and penal interest @ 18% for the delayed period as stipulated in the brochure and the LOI; and the remaining part of such surcharge and penal interest amounting to Rs. 4,400/- was paid by the allottee on 07.07.2015.

13. As per said brochure and LOI as well as per allotment letter dated 08.07.2016, the balance 75% of the price of the plot could be paid either in lump sum without interest (but with a rebate @ 5% thereon) in 60 days from the issuance of the allotment letter or in six equated half-yearly installments along with interest @ 12% per



annum, with the first installment becoming due after one year from the date of issue of allotment letter; and possession of the plot was to be handed over to the allottee after completion of development works at site or 18 months from the date of issuance of the allotment letter whichever happened to be earlier.

14. Thus, the payment of first installment amounting to Rs. 4,50,065/- had fallen due on 08.07.2017 whereas possession was to be handed over by 08.01.2018. It is also worth mentioning here payment of second installment amounting to Rs. 3,40,167/- had also fallen due on 08.01.2018, besides penalty for delay (rather non-payment) of the first installment as per provisions in the brochure, the LOI and the allotment letter.
15. Thus, the allottee has again defaulted even before the due/promised date of possession in making the timely payment towards the balance 75% of the price of the plot as per agreed terms. Since the allottee has never paid even a single penny towards the balance 75% of the price of the plot and applicable penalty/interest for delay in payments, the default on the part of the allottee is continuing since 08.07.2017 i.e. since the time before the due/promised date of possession viz 08.01.2018.
16. Thus, it is the allottee who has squarely defaulted first since 08.07.2017 i.e. even before the promised date of possession and has thus violated the provisions of section 19(6) of the Act.
17. The appellants, vide their letter dated 27.12.2017, offered possession plot; invited the allottee to take possession of the plot on 08.01.2018 to 10.01.2018; and it was informed therein that if the possession is not taken over on these dates, then the possession shall be deemed to be handed over with effect from 10.01.2018.



18. Even clause 4(I) of the allotment letter dated 08.07.2016 inter alia stipulates that if possession is not taken by the allottee within stipulated period, it shall be deemed to have been handed over on expiry of the said period.
19. In response to above mentioned offer of possession dated 27.12.2017, the allottee neither came forward to take possession nor made any representation showing any cause of not taking possession of the plot, till filing of the complaint on 23.03.2020/11.06.2020 i.e. for a period of more than two years after the said deemed date of possession viz 10.01.2018.
20. As per clause 7.3 of the Form 'Q' (i.e. the 'agreement for sale' prescribed in terms of section 13(2) of the Act read with Rule 8(1) of the Rules) appended to the Rules, 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.
21. As the allottee was continuously under default since 08.07.2017 for non-payment of installments and penalty/interest for delayed payment thereof, possession of the plot continued to be extended in terms of the aforementioned provisions of clause 7.3 of the aforesaid Form 'Q' to the extent of period of delay in paying the defaulted amount.
22. As per clause 7.5 of the aforesaid Form 'Q', the allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act, provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter is entitled to forfeit ten percent of the total



amount of the consideration money, interest and other dues payable for the allotment.

23. Despite being fully aware of at least the provisions of the brochure, the LOI dated 21.03.2014 and the allotment letter dated 08.07.2016 to the effect of resumption of the plot and forfeiture of an amount not exceeding 10% of the total amount of the consideration money, interest and other fees payable in respect of the plot in case of non-payment of any amount due together with the penalty, the allottee continued with his default ever since 08.07.2017 in non-payment of any amount towards the balance 75% price of the plot and penalty/interest for the delayed payment, and the said default is continuing since the time before the due/promised date of possession.
24. Even the sixth installment (the last one) has fall due on 08.01.2020 i.e. before the complaint filed on 23.03.2020/11.06.2020. However, the allottee still did not pay a single penny towards the balance 75% price of the plot.
25. In view of above, in my opinion, the allottee is not entitled to refund of any additional amount than what has been ordered by the competent statutory authority of the appellants vide its resumption order (Annexure A-13 mentioned in the impugned order).
26. Hence, I deem it appropriate to set aside the impugned order dated 31.05.2022 passed by the Authority in the complaint bearing AdC No. 16112020 and to dismiss the complaint.
27. Ordered accordingly.



28. File be consigned to record room after filing a copy of this order in the file of this appeal and after sending a copy to each of the parties as well as to the Authority



Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

November 21st, 2022

Certified To Be True Copy

Shamendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

07/12/2022