

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

Subject: -

**APPEAL NO. 185 OF 2022**

Estate Officer, BDA Bathinda, PUDA Complex, Bhagu Road,  
Bathinda, Punjab-151001.

...Appellant

Versus

1 Jaswinder Kaur W/o Bhola Singh R/o VPO Jhaloor, Tehsil  
Barnala, District Barnala, Punjab-148024.

....Respondent

2 Bathinda Development Authority, through its chief  
Administrator, PUDA Complex, Bhagu Road, Bathinda,  
District Bathinda, Punjab-151001.

3 Baljinder Singh S/o Hakam Singh R/o Baba Deep Singh  
Nagar, Gali No.1, Handiaya Road, Barnala, District Barnala,  
Punjab-148101.

4 Gurpreet Singh S/o Bikkar Singh R/o Village Karamgarh,  
District Barnala, Punjab-148109.

5 Sewa Singh S/o Jangir Singh R/o Village Jhaloor, C/o  
Baljinder Singh Dhaliwal Advocate, Chamber No.126, District  
Courts Complex, District Barnala, Punjab-148024.

....Performa Respondents



Memo No. R.E.A.T./2023/ 175

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 19th day of April, 2023.

*Manoj Kumar*

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



6

**BEFORE THE REAL ESTATE APPELLATE, TRIBUNAL,  
PUNJAB, SECTOR 17, CHANDIGARH-160017.**

Appeal No. 185 of 2022

**MEMO OF PARTIES**

Estate Officer, BDA Bathinda, PUDA Complex, Bhagu Road,  
Bathinda, Punjab -151001. ...Appellant


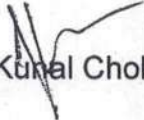
Versus

1. Jaswinder Kaur, w/o Bhola Singh, r/o VPO Jhaloor, Tehsil Barnala, District Barnala, Punjab-148024. ...Respondent
2. Bathinda Development Authority, through its Chief Administrator, PUDA Complex, Bhagu Road, Bathinda, District Bathinda, Punjab-151001.
3. Baljinder Singh s/o Hakam Singh, r/o Baba Deep Singh Nagar, Gali No. 1, Handiaya Road, Barnala, District Barnala, Punjab-148101.
4. Gurpreet Singh, s/o Bikkar Singh, r/o village Karamgarh, District Barnala, Punjab-148109.
5. Sewa Singh, s/o Jangir Singh, r/o village Jhaloor, c/o Baljinder Singh Dhaliwal Advocate, Chamber No. 126, District Courts Complex, District Barnala, Punjab-148024

...Performa Respondents



Place: Chandigarh (Bhupinder Singh, Balwinder Singh & Kunal Choksi)  
Date: 1<sup>st</sup> .09.2022

  
  
Advocates  
Counsel for the Appellant

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

---

**APPEAL NO. 185 OF 2022**

Estate Officer, BDA Bathinda, PUDA Complex, Bhagu Road,  
Bathinda, Punjab-151001.

...Appellant

Versus

1 Jaswinder Kaur W/o Bhola Singh R/o VPO Jhaloor, Tehsil  
Barnala, District Barnala, Punjab-148024.

....Respondent

2 Bathinda Development Authority, through its chief  
Administrator, PUDA Complex, Bhagu Road, Bathinda,  
District Bathinda, Punjab-151001.

3 Baljinder Singh S/o Hakam Singh R/o Baba Deep Singh  
Nagar, Gali No.1, Handiaya Road, Barnala, District Barnala,  
Punjab-148101.

4 Gurpreet Singh S/o Bikkar Singh R/o Village Karamgarh,  
District Barnala, Punjab-148109.

5 Sewa Singh S/o Jangir Singh R/o Village Jhaloor, C/o  
Baljinder Singh Dhaliwal Advocate, Chamber No.126, District  
Courts Complex, District Barnala, Punjab-148024.

....Performa Respondents

\*\*\*

Present: Mr. Balwinder Singh, Advocate for the appellant.  
Mr. Vipul Monga, Advocate for the respondents.

**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)**  
**(ORAL)**

1. This appeal is directed against the order dated 05.05.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) while answering the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act and the Regulations).
2. Initially, the complaint filed by the complainant (respondent) was filed before the Adjudicating Officer but eventually transferred to the Authority for consideration.
3. According to the complainant, she had booked a plot of 500 sq. yards in BDA Enclave, Bathinda by depositing a sum of Rs.5,50,000/- being 10% of the sale price on 01.11.2010. She was successful in the draw of lots and a letter of intent dated 03.06.2011 was executed in her favour, pursuant to which she deposited another sum of Rs.8,25,000/- being 15% of the total price along with penal interest of Rs.45,900/- as was the requirement of letter of intent. The possession of the plot was to be delivered after completion of development works within 1 ½ years from the date of issuance of letter of intent i.e. 02.12.2012. Although, the case set up by the





## Appeal No. 185 of 2022

3

complainant is that on account of the lack of development in the area by the appellant she sold the plot to respondent nos. 3 and 4 through her General Power of Attorney Sewa Singh and deposited a processing fee for transfer with the appellant on 21.09.2011. This was however refused since the complainant had failed to deposit the installments. She has further averred in her complaint that she returned the money to the prospective vendees i.e. respondent nos. 3 and 4 but learnt later on that the appellant had extended the project by launching another scheme without the consent of the complainant and that there was no 500 sq. yards plot in the scheme. A prayer for refund along with interest was thus made in the year 2019. However, the appellant merely refunded an amount of Rs.2,76,424/- and forfeited the remaining amount.

4. The appellant contested the complaint although the vendees under the respondent arrayed as respondent nos. 3 and 4 did not respond to the notices of the Authority leading to ex parte proceedings against them. The primary objection of the appellant to the complaint was that after paying 25% of the sale consideration the complainant was allotted plot no. 56 in BDA Enclave, Bathinda but the request for transfer made in September 2011 in favour of respondent nos. 3 and 4 was declined





## Appeal No. 185 of 2022

4

as the balance sale consideration beyond 25% as envisaged in the letter of allotment had not been made.

5. It would be necessary to state that the complainant approached the District Consumer Dispute Redressal Forum for a similar relief which was declined as was also the appeal under the said Act.
6. The appellant then raised a demand of Rs.82,48,649/- vide notice dated 20.04.2017 upon which the complainant applied for surrender of the plot on 28.02.2019 and an amount of Rs.2,76,424/- was refunded after deduction of 10% of the total sale consideration money amounting to Rs.11,44,476/-.
7. The complainant also pleads that the project is not fully developed although this fact is denied by the appellant. She also pleaded that the transfer fee of Rs.1,38,500/- is also refundable.

The authority after looking into the rival contentions concluded as below:-

- 10.** *In view of above discussion, the respondents no. 1 and 2 are directed to refund the amount of Rs.15,59,400/- (minus Rs.2,76,424/-) 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*





Appeal No. 185 of 2022

5

*respective dates of payments till refund and this amount shall be paid within ninety days from the date of his order.*

The grievance of the appellant is that no liability could be fastened upon them in view of the clear default of the complainant in not depositing the amount. The forfeiture of amount was pleaded to be justified in view of the conditions of the letter of intent and the letter of allotment issued subsequently in the year 2014. It is next argued that the impugned order directing refund of the entire amount of Rs.15,59,400/- is unsustainable.

9. The learned counsel for the respondent on the other hand submits that the impugned order is totally justifiable given the fact that the appellant was in clear default in not completing the development works in time and handing over the possession as envisaged in the letter of intent. Besides the conditions imposed in the letter of allotment were oppressive and one-sided which could not have been done in view of the law laid down by the Hon'ble Supreme Court in **Wg. Cdr Arifur Rahman Khan and Aleya Sultana and others Vs. DLF Southern Homes Pvt. Ltd. And others and Pioneer Urban land and Infrastructure Limited Vs. Govindan Raghvan (2019) 5 SCC 725.**





10. We have heard learned counsel for the parties at some length.
11. During the course of proceedings we had also directed the appellant to place on record the allotment letter which was indeed done.
12. The Authority has noticed that clause 27 of the allotment letter is one-sided and oppressive to the cause of the respondent. We would like to extract the condition here below:-

**27.** *In case of breach of any condition (s) of Letter of intent/allotment or regulations or non-payment of any amount due together with the penalty, the plot or building as the case may be, shall be liable to be resumed and in that case an amount not exceeding 10% of the total amount of consideration money, interest and other fees payable in respect of plot shall be forfeited as per the provision of Section 45(3) of the Punjab Regional and Town Planning & Development Act, 1995.*



Simultaneously, we would invite a closer look at the letter of intent since, both need to be read in conjunction with each other and as these documents visit the consequences and liabilities upon both the parties in the event of default committed by either of them.

13. There is no dispute that the complainant deposited 25% of the amount as per the requirement of the advertisement in the letter of intent, however, no further



## Appeal No. 185 of 2022

7

amount was deposited even though the letter of intent envisaged a clear schedule of installments along with interest to be deposited. The schedule is set out herebelow:-

#	No of Installment	Date of payment of Installment	Principal Amount	Interest	Total Amount
1.	1	04-Dec-2011	550000	232266	782266
2.	2	04-Jun-2012	550000	198000	748000
3.	3	04-Dec-2012	550000	165000	715000
4.	4	04-June-2013	550000	132000	682000
5.	5	04-Dec-2013	550000	99000	649000
6.	6	04-Jun-2014	550000	66000	616000
7.	7	04-Dec-2014	550000	33000	583000
<b>TOTAL</b>			<b>3850000</b>	<b>925266</b>	<b>4775266</b>

Likewise, clause 15 and 16 bind the appellant to delivery of possession within a period of 1.5 years from the date of issuance of letter of intent. This clause also confers a right upon an applicant desirous of a plot, to withdraw from the scheme by moving an application in that regard to the Estate Officer in which case the entire amount deposited by the applicant along with 10% simple interest was liable to be refunded, but in case the Development Authority was unable to give possession of the plot due to any reason the allocation of the plot was liable to be cancelled and entire amount refunded along





## Appeal No. 185 of 2022

8

with simple interest @ of 10%. Clause 15 & 16 are reproduced herebelow:-

*“15. The possession of the said plot shall be handed over to the allottee after completion of development works at sight within a period of 1.5 years from the date of issuance of this letter of intent. In case for any reason, B.D.A is unable to deliver the possession of plot within this stipulated period, you will have a right to withdraw from the scheme by moving an application to the Estate Officer and in such case B.D.A shall refund the entire amount deposited by the applicant along with 10% simple interest. Apart from the this, there shall be no other liability of the Authority.*

*16. In case B.D.A is unable to give the possession of the plot due to any reason, the allocation of the plot shall be cancelled and B.D.A shall refund the entire amount deposited by you along with simple interest @ 10 p.a. Apart from this, there shall be no other liability of the Authority”.*

14. It is clear that the appellant binds itself to the aforesaid conditions and the only obligation cast upon the prospective allottee is of abiding by the payment schedule.

15. The allotment letter on the other hand, issued in the year 2014 envisages that in case of any breach of any condition of letter of intent or regulations or non-payment of any amount due together with the penalty, the plot or the building as the case may be was liable to be resumed in which case an amount not exceeding than





Appeal No. 185 of 2022

9

10% of the total amount of the consideration money and interest or other fee payable was liable to be forfeited.

16. In the given set of facts, we do not see any contradictions in any of these two conditions and nor we find it to be oppressive particularly, when the complainant after initial deposit of 25% failed to abide by the payment schedule altogether. The letter of intent was issued on 03.06.2011 and the first installment according to the schedule fell on 04.12.2011 but even before that time elapsed the complainant had sold the plot to respondent nos. 3 and 4 and applied for transfer of the same by depositing the requisite fee in September 2011 itself. Therefore, it does not lie in the mouth of the complainant to raise the plea of default by the appellant particularly, when she herself defaulted in the payment schedule and sold the plot.



17. Even though it has been brought to our notice that the application for allotment had been made in the reserved category of Army and Paramilitary Forces which would ordinarily mean that the plot could not be sold within a particular time frame. Since, this clause has not been brought to our notice we would desist from making any reference or raising our conclusion with regard to it, but,



suffice it to say that even before the first installment fell due the plot was sought to be alienated.

18. If the development work was incomplete as is the case pleaded by the complainant she certainly had a right to withdraw from the scheme by moving an appropriate application to the Estate Officer and clause 15 and 16 of the letter of intent would have obligated the Authority to refund the amount along with interest to the complainant. Having not done so, the course adopted by the appellant in first alienating the plot and then not depositing the amount and laying the blame squarely on the door of the appellant would not be appropriate. The impugned order proceeds on the assumption that the clause in the allotment letter is oppressive. We are unable to agree to such a conclusion because every allotment made by a developer, be it a State or private developer would dictate a payment schedule. The allottee cannot wish away such payments altogether.



19. Although, such a person may be well within his rights to establish whether corresponding development or construction promised has taken place or not, but if an allottee like the complainant was conscious of the fact of lack of development, then she was within her rights to withdraw from the project. Be that as it may she herself

alienated the plot in the September, 2011 itself and the prayer for refund was made for the first time in the year 2019. Therefore, we do not find any justification in the stand of the respondent.

20. Another argument has been raised by the learned counsel for the complainant repeatedly that scheme in which plot has been offered was not the same against which application had been made. It has been argued time and again that the project was altered and there was no 500 sq. yards plot in the scheme at all. We are unable to accept this argument as well particularly when such a plea has been raised in the complaint and now before us, but never with the developer. Besides the record suggest to the contrary. Since, the complainant did not raise this issue with the development authority i.e., appellant at the earliest point of time, we would not appreciate raising of such a plea either in the complaint or before us. It is for the first time that the refund was sought in the year 2019 after a lapse of 8 years and after the complainant had taken recourse to the proceedings under the Consumers Protect Act and exhausting an appellate remedy under the said Act.

21. These pleas are therefore held to be an afterthought. The appeal is therefore accepted and the impugned order is





Appeal No. 185 of 2022

12

set aside however, we deem it appropriate to direct that the respondent would be entitled to a sum of Rs.1,38,500/- which was deposited by way of transfer of plot in favour of respondent nos. 3 and 4, but the same was not allowed, hence the appellant cannot justifiably retain this amount.

22. The appeal is disposed of as above.

File be consigned to the record room.



*Sdr*  
**JUSTICE MAHESH GROVER (RETD.)**  
**CHAIRMAN**

*Sdr*  
**S.K. GARG, D & S. JUDGE (RETD.)**  
**MEMBER (JUDICIAL)**

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

*2023 Sdr*  
**April 13, 2022**  
**DS**

Certified To Be True Copy

*Chandigarh*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chd

19/04/2023