**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date Reserved: 23.08.2023

Date of Pronouncement: 22.11.2023

RERA-APPL-No.6 of 2023

1. Bathinda Development Authority ……..…Appellant

Versus

Leela Gupta …......Respondent

RERA-APPL-No.12 of 2023

2. Bathinda Development Authority ……..…Appellant

Versus

Leela Gupta …......Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Balwinder Singh, Advocate, for the appellant(s).
Mr. Akhilesh Vyas, Advocate, for the respondent.

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HARKESH MANUJA, J.

1. This order of mine shall dispose of abovementioned two appeals as the facts and controversy involved in both the appeals are identical. For convenience, facts are mainly taken from RERA-APPL-6 of 2023.

2. By way of present appeal, challenge has been made to the order dated 12.05.2022 passed by Real Estate Appellate Tribunal, Punjab (hereinafter referred to as “Appellate Tribunal”) , whereby, appeal filed at the instance of respondent, against order dated 12.05.2021, passed by Real Estate Regulatory Authority, Punjab (hereinafter referred to as “the Authority) has been allowed and the respondent has been held entitled for interest towards the delayed possession of sites under

Section 18 of The Real Estate (Regulation And Development) Act, 2016 (hereinafter referred as RERA Act).

3. Facts in the present case require detailed examination. Respondent purchased S.C.O site No. 1 at Civil Lines, Power House Road, Bathinda through an open auction on 05.08.2015 held by the appellant. Allotment letter was issued in her favour on 01.12.2015 after the deposit of 20% of principal amount plus 2% cancer cess. As per the allotment letter issued by the appellant, the possession of the auctioned plots was to be given within 90 days from the date of its issue. So far as S.C.O site No. 2 is concerned, respondent was not the original allottee as she got this site transferred in her name from the original allottees Sh. Jee Ram Goyal and Smt. Rekha Singla on 04.08.2017. It was the grievance of the respondent that despite depositing the entire sale amount plus cancer cess as per the schedule, the possession of the plots was not handed over in time and, therefore, construction could not be carried out in the given time frame.

4. The respondent made representation before the Estate Officer, Bathinda to the effect that the period for which the sites in question were not ready for possession, interest should not be charged, in accordance with the policy issued by Estate Officer (Policy), PUDA vide letter No.A-5/2015/19654-59 dated 02.09.2015. However, on her representation being rejected, respondent filed CWP No. 24881 of 2018, *inter-alia*, praying therein to direct the appellant not to charge interest or penalty on the balance sale price; to provide possession; to extend the period of construction; to refund the interest paid; to pay interest @ 12% on the excess charged interest and to comply with the policy of the

Government etc. The above writ petition was disposed of by this Court vide order dated 27.09.2018. The operative part thereof is reproduced hereunder:-

> "It appears that the factual issues raised by the petitioners require dispassionate and objective consideration by PUDA authorities. The writ petition is accordingly disposed of at this stage with liberty to the petitioners to submit an appeal-cum-representation against the communication of the Estate Officer, PUDA, Bathinda, to the Chief Administrator, PUDA, who in turn, is directed to consider and decide the same by way of a speaking order and after obtaining fact-finding report from the Estate officer, PUDA, Bathinda within a period of three month from the date of filing the appeal."

5. Consequently, the respondent filed representation-cum-appeal dated 15.10.2018 to the Chief Administrator, PUDA, who after taking into consideration the rival contentions of both the parties, passed a speaking order dated 27.05.2019 vide which respondent was not held entitled for waiver of interest on the amount of installments of both these SCO sites and hence, her claim in this regard was rejected. Simultaneously, moratorium period of construction available to the respondent in respect of these sites was extended from 16.06.2017 to 15.06.2020 as development works over the commercial pocket where these SCO sites were situated, completed on 16.06.2017.

6. Consequently, respondent filed complaints before the Authority vide which following reliefs were claimed:-

> *"(i) Refund of interest on installments paid for the plots up to 19.10.2017.*
>
> *(ii) To extend the non-construction period for 3 years from 19.10.2017 to 18.10.2020.*

> *(iii) Payment of interest under Section 18 of the RERA Act."*

7. Complaints filed by the respondent were dismissed by the Authority vide order dated 12.05.2021. Challenging the same, respondent filed Appeal Nos. 28 & 37 of 2021 before the Appellate Tribunal, however, respondent restricted her claim to prayer (iii) only and the prayers made at (i) and (ii) above were relinquished. Vide order dated 12.05.2022, both the appeals filed on behalf of respondent were allowed. In Appeal No. 28 pertaining to SCO Site No.1, respondent was held entitled to interest for delayed possession from 01.03.2016 to 19.10.2017, whereas in Appeal No.37 relating to SCO Site No.2, she was held entitled to interest w.e.f. 04.08.2017 to 19.10.2017 on the amount deposited till 19.10.2017 in terms of the provisions of Rule 16 of Punjab State Real Estate (Regulation and Development) Rules, 2017.

8. Assailing the aforesaid order, learned counsel for the appellant submits that since the speaking order dated 27.05.2019 was passed by the Chief Administrator, PUDA, while exercising the powers of the Appellate Authority under Section 45 of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred as PRTPD Act), the respondent, if felt aggrieved by this order, was required to file Revision Petition before the State Government as per Section 45(8) of the PRTPD Act. He further submits that the respondent knowing well that the allotment was made under the provisions of the PRTPD Act, instead of availing the alternate remedy, filed a complaint before the authority under the RERA Act and therefore, the complaint as well as the appeal was liable to be dismissed on this ground alone.

9. Impugning the order on merits, learned counsel for appellant draws attention of the Court towards the following conditions of the allotment letter dated 01.12.2015, issued to the respondent:-

> *“**USAGE AND PERIOD FOR CONSTRUCTION**:*
>
> ***
>
> *The plot is offered on "as is where is" basis and the authority will not be responsible for leveling the sits (sic sites) or removing structures, if any, thereon.”*
>
> *And*
>
> *“**POSSESSION AND OWNERSHIP***
>
> *Possession of the plot will be given within 90(Ninety) days from the date of issue of allotment letter. In case possession is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the due date.”*

Placing reliance on these two conditions of allotment letter, learned counsel contends that plot was offered on “as is where is basis” and after 90 days, obligation was on the respondent to take possession and once this was done, possession was deemed to be handed over to the respondent and therefore, she could not have claimed any benefit on the basis that development work continued at the site till 19.10.2017.

9 (i). Learned counsel also contends that another site, to which RERA Appeal No. 12 of 2023 belonged, was purchased by respondent subsequently on 04.08.2017 from another auction purchaser and at that time she was very well aware about the status of the development work and thus, she was not entitled for any relief qua interest. He further submits that speaking order passed by the Chief Administrator, PUDA dated 27.05.2019 was still in force as neither it was ever challenged by the respondent in any proceedings nor set aside till date. Additionally, he

submits that many similarly situated allottees took possession of the sites and got approvals of their building plans in the year 2016 itself, but the respondent delayed the matter herself and submitted building plans only on 09.01.2019.

10. On the other hand, learned counsel for the respondent submits that delay in completing the development work at the sites and consequent delay in delivery of possession to the respondent was admitted by the department itself and in such circumstance, respondent was duly entitled for the interest as per the provisions of RERA Act. He further submits that in accordance with the order passed by Appellate Tribunal, while in one case respondent was entitled for interest for 2 years; in another appeal, she was to receive interest only for 2 months.

11. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of appellant.

Arguments on Maintainability

12. Firstly, contention of the appellant regarding maintainability of the compliant by the respondent before the Authority is required to be considered. Respondent, before the Authority as well as the Appellate Tribunal, restricted her claim to prayer (iii) only which reads as under:-

> *"(iii) Payment of interest under Section 18 of the Act."*

13. Section 18 of the RERA Act which has bearing on the adjudication of the present appeal reads as under:-

> *"**Section 18. Return of amount and compensation.***
>
> *(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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

14. In the given factual scenario, when the respondent left aside the residual claims and restricted her prayers in consonance with the provisions of the RERA Act only, specifically under Section 18 thereof, then it could be said that filing of revision petition before the Government under Section 45 of the PRTPD Act was the only appropriate alternative remedy. Relief as prayed for by the respondent was based on statutory remedy under the RERA Act, subject to other essential conditions to be satisfied and thus she was fully entitled to invoke the remedy under the same. No challenge to the order dated 27.05.2019 passed by the Chief Administrator, PUDA was made as projected by the appellant. There is another aspect to this as well, such objection was neither taken by the appellant before the Authority nor before the Appellate Tribunal and was raised for the first time at this belated stage only, which in the humble opinion of this Court does not hold any substance and therefore, challenge on this ground cannot be sustained.

Arguments on Merit

15. Now, contentions of the appellant on merits are required to be considered. In view of Section 18 of the RERA Act, respondent who entitled for the relief was required to show that there was delay on the part of appellant, in its capacity as promoter, in delivering the possession as per the terms of the agreement. "Promoter" has been defined in Section 2(zk) of the RERA Act, sub-section (iii) of which is as below:-

> *"(zk) "promoter" means,—*
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> ******
>
> *(iii) 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; or

*(iv) ******************”*

16. Definition of promoter explicitly covers “Development Authority”, therefore, there remains no doubt that appellant was very well covered within the ambit of promoter as stipulated under the RERA Act. The fact regarding date of completion of development work was also not in dispute and rather it was an admitted fact that development work was going on at the demised site till 19.10.2017. In RTI reply dated 14.03.2018 provided by the Appellate Authority, details at serial number 3 and 6 require specific mention which are as under:-

Sr. No. 3	*The development works have been completed on the above sites on the following dates:* *1. Civil and Public Health works: 16-06-2017* *2. Electric works: 28-04-2017*
Sr. No. 6	*Transformers were installed on the sites on dated 01-03-2017 and supply has been made available from 19-10-2017*

17. This fact was even admitted by the Chief Administrator, PUDA in its order dated 27.05.2019 as well, however, he considered that development work was completed on 16.06.2017 as probably he did not consider supply of electricity as the basic amenity. Appellant has extensively relied on the clauses of the allotment letter that site was

allotted on "as is where is" basis and also though possession was required to be delivered by the appellant within 3 months, yet on completion of 3 months, deemed possession was supposed to be handed over to the respondent. However, this contention of the appellant is also required to be examined in appropriate context.

If the site was required to be delivered on "as is where is" basis, then there was no need for the appellant to carry out any development work. If on account of presence of this clause in the allotment letter, appellant could be absolved of any liability, then there was no need for it to invest its resources and time in this work. It has not been denied by the appellant, rather from the record it can be ascertained that "development work" was the responsibility of the appellant. Mere physical possession without any basic amenities would serve no purpose as to carry out construction work and commercial activity over the site in question, the respondent required all necessary basic amenities.

18. On the other hand, there is a dichotomy as well in the argument raised by the appellant, to examine which, it is required to peruse the relevant part of the order dated 27.05.2019 passed by the Chief Administrator, PUDA:-

> *"Since the development works over the commercial pocket where this SCO Site no. 1 situated, were completed on 16.06.2017, when this site became ready for possession, hence three years moratorium period of construction available to the petitioners in respect of this site would be from 16.06.2017 to 15.06.2020 and extension fees can be charged from the*

> *allottees only after 15.06.2020 if they fail to raise the construction of building during this period."*

If, as argued by learned counsel for the appellant, there was no delay on the part of appellant as per the terms of allotment letter then there was no need for extending the "moratorium period of construction", which was an indirect admission through act and conduct that delay was caused by it.

19. Additionally, when respondent is supposed to pay penalty charges for not completing the construction within the stipulated period then it would be an anomaly, if for appellant, there are no consequences for providing delayed possession, that too when there is statutory mandate of Section 18 of RERA Act to this effect. At this stage, it would also be appropriate to discuss the date when development work was complete. Chief Administrator, PUDA in its order dated 27.05.2019 held that development work was completed on 16.06.2017 as it did not consider supply of electricity as the basic requirement and installing of transformer on the site was considered to be sufficient enough, which in my considered opinion was incorrect. To start the construction work at a site, many machineries require supply of electricity which was a basic amenity, therefore, Appellate Tribunal rightly held that the sites were ready for possession on 19.10.2017 only.

20. Further, It cannot be denied that terms of a contract are generally skewed in favour of the promoter being a dominant entity. Reliance in this regard can be placed on the judgment of Hon'ble Apex Court in **"Wg. Cdr. Arifur Rahman Khan and Aleya Sultana v. DLF Southern Homes Pvt. Ltd."** reported as 2020(16) SCC 512, wherein, it

was held that agreement between a developer and purchaser do not maintain a level platform as the stringency of the terms which bind the purchaser are not mirrored by the obligations for meeting time lines by the developer. Though, it has been argued by the appellant that respondent participated in the auction with "eyes wide open", it cannot be assumed that respondent could anticipate that possession would be delayed by the appellant. Just because the allotment of site was on the basis of open auction, it does not vest any right in the appellant to delay the development work and if it is delayed for a particular period, statutory consequences have to follow. Judicial system need not come into picture only when there is a delay of decades, but has to provide commensurate justice for the duration for which appellant has been lacking on its part. No concession can be claimed by the appellant/Development Authority being State in comparison to a private promoter, as obligation is more on the State being a law enforcement agency, specially taking into consideration the fact that it has maximized its revenue through open auction.

21. Another contention made by learned counsel for the appellant that the speaking order dated 27.05.2019 passed by the Chief Administrator, PUDA has not been challenged by the respondent in any proceedings and is still in force, has no bearing on the merits of present case. Vide that order, prayer of the respondent that no interest on installments should be charged during the development period was declined, while the present case relates to the grant of interest on account of delayed possession by the appellant as stipulated under section 18 of the RERA Act.

22. One another contention raised by learned counsel for the appellant that other allottees took possession much earlier also holds no substance. Though, no material has been brought on record before this Court to substantiate the same, but even if this factual possession is admitted, the same cannot bind the rights of respondent vested on account of statutory provision.

23. In view of the discussion made hereinabove, I am unable to find any reason or justification to interfere with the order passed by the Appellate Tribunal; there being no merit in both the appeals, thus, the same are dismissed.

24. Pending application(s), if any, shall stand(s) disposed of.

(HARKESH MANUJA)
JUDGE

22 .11.2023
sanjay

Whether speaking/reasoned : Yes
Whether reportable : Yes