IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.**RERA-APPL-47-2022 (O&M)**

Mandeep Kumar

....Appellant

Versus

PDA , Patiala, through Chief Administrator

..Respondent

2..**RERA-APPL-41-2022 (O&M)**

Estate Officer, Punjab Urban Planning & Development Authority, Patiala

....Appellant

Versus

Mandeep Kumar and others

..Respondents

Date of decision: 13.04.2023
Reserved on 23.11.2022

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Karan Nehra and
Mr. Amaninder Preet, Advocates for the
appellant in RERA-APPL-47-2022
and for respondent in RERA-APPL-41-2022

Ms. Anu Chatrath, Sr. Advocate with
Mr. Nishant Maini, Advocate
for the appellant in RERA-APPL-41-2022
and for the respondent in RERA-APPL-47-2022

ANIL KSHETARPAL, J

1. The above noted two connected cross appeals have come up for final disposal.

2. As per Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '2016 Act'), appeal to

the High Court is maintainable only on a question of law as specified in Section 100 of the Code of Civil Procedure, 1908. In the considered opinion of the Court, the following questions require adjudication:-

(i) If the brochure inviting applications for allotment of residential plots, states that the plots will be allotted on "as is where is" basis, does this absolve the promoter of their responsibility to deliver possession of the plots without any obstruction or hindrance during the completion of construction? Alternatively, should such a clause be considered unconscionable and unacceptable being against the public policy?

(ii) If the answer to the first question is in the affirmative, then whether the promoter is liable to pay the amount of interest to the allottee on the deposited amount from the stipulated date of delivery of possession.

3. Before addressing the aforementioned questions, it is pertinent to consider and take note of the following relevant facts:-

4. The Punjab Urban Planning and Development Authority, Patiala (hereinafter referred to as PUDA/ the Patiala Development Authority), is a wholly owned Government body, constituted under the Punjab Regional and Town Planning and Development Act, 1995. PUDA issued a brochure inviting the applications for allotment of 309 residential plots at Nabha Road, Patiala. The said scheme opened on 12.10.2015 whereas it closed on 20.11.2015. A note appended in the brochure reads as under:-

"Note: The plots shall be allotted on "as is where is" basis. No person shall have any claim to an alternative plot due to any reason."

5. The relevant clauses of the brochure read as under:-

"The possession of the said plot shall be handed over to the allottee after completion of development works at site or 18 months from the date of issuance of allotment letter, whichever is earlier. If possession is not taken by the allottee within the stipulated period, it shall be deemd to have been handed over on the expiry of said date.

Construction on plot shall be completed within a period of 3 years from the date of possession after getting the building plans duly sanctioned from the Estate Officer, PUDA, Patiala.

Construction shall be carried out as per sanctioned building plans and as per the provisions of PUDA (Building) Rules, 2013, as amended from time to time.

Subject to the provisions of the Act all the disputes and/or differences which arise in any manner touching or concerning this allotment shall be referred to the Sole Chief Arbitrator, Administrator, Punjab Urban Planning and Development Authority (PUDA) of any person appointed/nominated by him in this behalf. The award of such Arbitrator shall be final and binding on the parties. Arbitration shall be governed by the Arbitration and Conciliation Act, 1996, as amended from time to time."

"**PAYMENT SCHEDULE:-**
For initial 25%:

i) 10% price of plot is to be deposited along with application.
ii) 15% price of the plot is to be paid within 30 days of issue of the Letter of Intent to complete 25% of plot. 2% cancer cess is also payable at the time of depositing 15% amuont.
Iii) In case of failure to make the 15% payment within stipulated period, allotment is liable to be cancelled. However, this period can be extended up to 180 days on making a written request within 30

days from the date of issue of Letter of Intent. Surcharge and penal interest for the delayed period will be charged.

iv) Surcharge shall be @ 1.5% for 30 days, 2% for 60 days, 2.5% for 90 days and 3% for 180 days of delayed payment in addition, penal intereset shall also be charged 18% for the delayed period.

For balance payment of 75%:-

i) The balance 75% of the tentative price of plot can either be paid in lump sum without any interest within 60 days from issue of allotment letter or in 6 equated half yearly instalments along with an interest @ 12% per annum. First Instalment shall become due after one year from the date of issue of allotment letter.

ii) In case balance 75% payment is made in Lump-sum within 60 days from the date of issue of allotment letter, a rebate 5% on this amount shall be admissible. However, in case payment of amount due is made in lump sum subsequently at any stage, a rebate of 5% on the balance principal amount shall be admissible.

Iii) IN case of any advance payment, which is not less than the next clue installment, remaining installments shall be rescheduled.

iv) In case of non-payment of installments by due date, allottee shall be liable to pay penalty on the amount due at the following rates for the delayed period.

Period of Delay	***Rate of Penalty***
1. Up to one year	*Normal rate of interest+ 3% PA for the delayed period.*
2. If the delay is up to 2 years	*Normal rate of interest+ 4% PA for the delayed period.*
3. If the delay is up to 3 years or more	*Normal rate of interest+ 5% PA for the delayed period."*

6. The allottee submitted an application alongwith the required 10% of the total amount. In the draw of lots held on 22.01.2016, the allottee was declared successful for the allotment of plot no.348 (300 sq. yards) for Rs.78 lakhs (tentative). Pursuant thereto, a letter of intent was issued by PUDA on 03.03.2016. In the aforesaid letter, the allottee was called upon to pay 15% of the total amount plus 2% cancer cess, within a

period of 30 days of the issuance of the letter of intent, to complete the payment of 25% of the total amount required for the plot, which the petitioner deposited on 04.04.2016. Thereafter, the allotment letter was issued on 26.12.2016 acknowledging the payment of Rs.18,75,000/- while giving two options to the allottee to either pay the balance amount of Rs.56,25,000/- in lump sum without paying any interest, within a period of 60 days from the issuance of the allotment letter or in 6 equal half yearly instalments as per the schedule specified therein. The allottee paid the full amount in a lump sum on 07.02.2016. On 06.12.2016, the Estate Officer offered to hand over the possession of the above plot within a period of 30 days from its issuance. The allottee sent a request for delivery of possession on 02.01.2018. After follow up, the allottee was informed that the possession will be delivered on 10.05.2018. The allottee visited the site to take possession of the plot in question in the presence of the officials. However, he was shocked to discover that an overhead 11 KV high voltage electricity line was passing directly through the plot. Addtionally, there were mature pipal and bohar trees which were more than 50 years old standing on the adjoining wall of the Irrigation Department to the plot. The roots and branches of these trees had encroached upon the plot in question. Even the outer boundary wall was not constructed by the PUDA. Hence, the possession could not be delivered to the petitioner and he submitted a representation on 14.05.2018 requesting the promoter to offer the possession afresh, after removing the aforesaid obstructions. Since no action was taken by PUDA for nearly three months, on 02.08.2018 once again a request was submitted by the petitioner. It is evident that as of 08.01.2019, some development work had been completed on 21.10.2018 to provide basic amenities such as roads, water and electricity services. However, certain areas such as the development of green belts and parks, a portion of road that could not be constructed due to the temple, as well as the development of plots reserved for the economically weaker section and commercial pockets were still pending. On 15.10.2018, the Estate Officer informed the allottee that 11 KV feeder line has been shifted from the plot. However, there was no intimation with regard to removal of the branches of tree which were encroaching the plot in question. On 19.08.2019, the Estate Officer informed the allottee that the high tension electricity line passing over the plot in question has been removed during June, 2018 to December, 2018 to the extent of 75% and the remaining work shall be done thereafter. As regards removal of branches of the mature trees standing on the adjoining wall, it was informed as under:-

> "*Apart from this as per report of building branch, the trees are standing in the area of BML Department along the wall adjoining to the plot, only branches of which are falling in the plot. Horticultural Wing of PUDA had already written to BML for taking action in this regard.*"

7. Since the grievance of the allottee was not redressed by the PUDA, hence he filed a complaint before the Real Estate Regulatory Authority constituted under 2016 Act on 04.11.2019, which was allowed on 18.02.2020, with the following directions to PUDA:-

> "*6. The complaint is accordingly accepted and it is directed that the time limit of 3 years for construction of building should be reckoned with effect from*

today i.e 18.02.2020. A revised possession letter should be issued, upon which the complainant would be obliged to accept possession. Also since the complainant had deposited the entire amount as lump sum, interest as prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 should also to be paid to the complainant with effect from 25.06.2018 i.e 18 months after the allotment, till the above date of 18.02.2020."

8. Two separate appeals; one filed by the allottee and second filed by the Estate Officer, PUDA, Patiala were decided by the two separate judgments. In the majority opinion, it was held as under:-

> *"9. To our minds, the equities would be well-settled if the date of possession is taken as the one on which the possession was offered to the appellant-complainant on 06.12.2017, and interest be calculated from this date instead of the June, 2018 keeping in view the fact that even in 2019, the plot was not completely free of the hindrances. Possession of a unit or a plot has to be real, not illusionary or platitudinal. It should be in a form ready for usage and not merely be an emplty formality. We fail to understand, that if in the year 2019 the entire work of removing hindrances of HT lines and trees had not been completed then of what use would be a plot be to an allottee. We cannot afford to leave an allottee at such mercies of the developer more so when it is state burdened with a greater responsibility of fairness in dealings. The complainant would thus be entitled to interest from 06.12.2017. Rest of the directions given in the impugned order would remain unchanged."*

9. Whereas the Technical/Administrative Member of the Appellate Authority concluded as under in the said judgment:-

> *"11. Therefore, in view of my above discussion, the order dated 18.02.2020 of the Authority, which has been impugned by both the parties in their respective appeals, be modified to the extent that interest as*

prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017, should be paid to the complainant with effect from 25.06.2018 I.e 18 months after the allotment, till 15.12.2018 I.e two months after the memo dated 15.10.2018 of the Punjab Urban Planning & Development Authority vide which the complainant had been intimated in response to the complainant's letter dated 02/16.08.2018 that 11 kv Feeder lines passing through the complainant's plot had been shifted."

10. Apart from the oral submissions, the learned counsel representing the parties have also filed a written note of their arguments. The arguments of the learned senior counsel representing the PUDA are as under:-

"1. It is matter of record that the Respondent No. I had not submitted layout plan (Building Plan) for construction of his house which would illustrate the fact that respondent no. 1 in order to evade the non construction fee (penalty), filed frivolous complaint before the Ld. Authority without submitting any proof that such high tension lines were passing through plot allotted to him and therefore could not construct on the said plot. It is further most humbly submitted that for constructing a house, the first step is submitting lay-out/Naksha/Building Plan before the respective Authority which shall scrutinize and pass. However, in the present case, the respondent no. 1 did not do the same.

II. The Ld. Appellate Authority failed to consider the fact that the complaint filed by the respondent no. I is without any substance and as per reports obtained from the field staff i.e. Divisional Engineer (Civil), (Public Health) and (Electrical), the development works relating to Civil, Public Health and Electrical in the colony are complete. Copies of the same are already annexed with the reply filed by the appellant.

III. The Ld. Appellate Authority failed to consider the fact that road network connecting to the plot of the complainant has been got marked on the lay-out plan. A bare perusal of this copy of lay-out plant would reveal that *plots in the entire colony and the plot in question is surrounded by roads. In fact most of the allottes had taken over the possession of plots and buildings on approximately 43 plots are under construction. Copies of the photographs showing the same are already annexed with the reply filed by the appellant.*

IV. The Ld. Appellate Authority has not appreciated the fact that the appellant had removed HT lines during June, 2018 to December, 2018 from the plot in question of the respondent no. 1. The appellant in its reply had placed on record communication dated 19.08.2019 wherein a report was submitted from the Divisional Engineer (Electricity) which mentioned that "The HT Lines passing through the site at PUDA Enclave-1, Nabha Road, Patiala have been got shifted during June 2018 to December 2018. During this period 75% of shifting work of these lines was completed and remaining work was done after that"

The said fact would reveal that the plot in question was free from HT lines and it was further mentioned that the 75% of shifting work of the HT lines were completed. It is clarified that the said 75% work as mentioned herein above relates to entire project and not of the plot in question

Concluding the same, the plot in question was absolutely free from all the hindrances and could have been constructed as a number of allottees similarly situated had started their construction. For the kind reference the other allottee namely Harjit Singh (similarly situated/neighbour) has even constructed his plot ie. Plot No. 345, PUDA Enclave-1, Nabha Road, Patiala. Sh. Harjit Singh had constructed his plot in the year 2019 (Early 2019) and accordingly, the Roof Roof level was even inspected by the Field Staff of the PUDA, wherein, a certificate dated 26.08.2019 was issued to the effect that the Roof of the said plot is as per layout plan. Further, the said allottee also applied for occupation certificate which was even granted to him vide letter dated 04.08.2020. Copy of the letter dated 26.08.2019 A-3 (Pg. 239), copy of proposed plan of 2nd floor is annexed as A-4 (pg. 240) and copy of certificate dated 04.08.2020 A-5 (pg. 241).

V. The Ld. Appellate Authority failed to appreciate the fact that the respondent, had accepted the terms and conditions of the allotment while submitting the application dated 20.11.2015 and accepting the letter of intent dated 03.03.2016 vide his letter dated 05.04.2016, and also accepted the allotment letter dated 26.12.2016.

VI The Ld. Appellate Authority also failed to appreciate the fact that as per the terms and conditions mentioned in the Allotment. Letter, the possession of the plot was to be handed over within 18 months or completion of development works, whichever was earlier, and the possession of the plot was offered to the respondent vide letter dated 06.12.2017. However, the respondent disputed the possession with the plea that H.T. lines are passing through his plot which was got rectified during June, 2018 i.e. within stipulated period for possession in the allotment letter and intimation of the same was given to the respondent vide letter dated 15.10.2018, copy of which was already annexed as Annexure R/5 in reply (A-2) of the Appeal (page 134 & 242),

VII The Ld. Appellate Authority has wrongly directed the respondent to pay interest on the amount deposited by him qua the allotment of plot in question with effect from 06.12.2017 ignoring the fact that the plot was feasible and ready for possession and H.T. Wires were removed from the plot allotted to him. As per the letter dated 10.06.2019 (Part of Annexure R2 with the reply) issued by the Assistant Engineer North (Technical), H.T. Lines passing through the site were shifted during the period from 6/2018 to 12/2018 and 75% work had been completed. Further as per report of Divisional Engineer, PDA, Patiala dated 25.02.2019 the work relating to Electrical in the site in question had been completed (Annexure R/3 with the reply of appellant).

VIII The time period stipulated in the allotment letter for construction of building on the plot allotted to the respondent had also been extended by the Ld. Appellate Authority with effect from 18.02.2020 the date of passing the impugned order without any substance. Whereas as per agreed terms conditions of allotment, construction of *building on the plot is to be completed within three years from the date of offer of possession.*

IX The Ld. Appellate Authority failed to appreciate the fact that the Complaint was filed by the respondent claiming compensation and interest in form 'M', whereas as per order passed by Hon'ble Tribunal, such complaints are to be filed in Firm 'N'.

X. The Ld. Appellate Authority further failed to appreciate the fact that the loss and gain of the Public Authority is loss and gain of the General Public and an individual cannot be benefitted at the cost of the Public Exchequer.

XI The impugned order which has been passed by the Ld. Chairman of the Authority while sitting as a Single Member and not by the Ld. Authority.

XII The first Appellate Authority has taken an erroneous view while taking into consideration the Report from Petitioner's Department dated 19.08.2019. It has mistakenly attributed to the petitioner that the possession of the plot to the Respondent is illusionary for the reasons of tree standing on the plot. But the fact of the situation and as put forth by the said report specifically clarifies that there were mere branches, not trees, standing on the adjoining plot and not of Respondent's.

XIII. That on the other side the allottee Sh. Mandeep Singh (Applicant) challenged the order dated 18.02.2020 filed RERA Appeal No. 47/2022. Sh. Mandeep challenged the said order, first, on the ground that the interest should be paid from 06.12.2017, the date on which the possession was offered on false premises that the development work is complete till the issuance of revised possession letter and not from 25.06.2018 till 18.02.2020 and secondly, that the time limit of 3 years for construction should also be reckoned from the date of issuance of revised possession letter and not from the date of order dated 18.02.2020."

11. Whereas the learned counsel representing the allottee has contended as under:-

"1. Offer of Possession dated 6.12.2017 for the plot in question has rightly been held to be invalid by the RERA vide order dated 18.02.2020 as well as Appellate Tribunal vide Order dated 01.02.2022 on account of deficiencies of incompletion of development works. Therefore it was necessary that a valid/ revised offer of possession ought to be have been issued to the Appellant but the same has not been done till date. Thus there has been no valid offer of possession by the Respondent to the Appellant till date.

2. Building Plan can be submitted only after the issuance of revised possession letter along-with measurement of the plot to be provided by the respondents in view of their Terms and Conditions, which till date (Measurement) has not been provided.

3. The Appellant is entitled to grant of interest from the date of deposit of amount till date of issuance of revised possession letter.

4. The appellant is also entitled that the time limit of construction of 3 years shall be reckoned from the date of issuance of revised possession letter.

5. Regarding letter dated 15.10.2018 (page 134) Annexed by Respondent in RERA-Appeal No.41 of 2022, the said letter was not part of the pleadings before the RERA Authority Punjab as is evident from the perusal of the Reply filed by PUDA in which there is no reference of the letter dated 15.10.2018. Thus, the same letter is beyond pleadings. Further neither any application nor any permission was sought by the PUDA to place on record or to treat it as additional ground or evidence. Furthermore, no service report of the letter is a part of the record and infact, the categorical stand of the Appellant is that the letter dated 15.10.2018 was never issued to the appellant. Further there is not even a single reference of the aforesaid letter dated 15.10.2018 in the

> *letter dated 19.08.2019 issued by PUDA to the Appellant. Further from the perusal of the communications dated 23.07.2019 and 10.06.2019 (Annexure R-2 at page 101-102) it is evident that the PUDA was not even aware of the status of the project and the letter dated 15.10.2018 is merely a capricious effort to fill in the lacuna after the passing of the order dated 18.02.2020 by RERA to save the skin of erring employees and contractors who had neither completed the work nor issued a revised offer of possession to the Appellant."*

12. As provided in the brochure issued by PUDA, the construction on the plot is required to be completed within a period of three years, from the date of delivery of possession of the plot. On the one hand, PUDA claims that the allottee has failed to construct on the plot, hence, he is liable to pay the non-construction charges, whereas on the other hand, it is the case of the allottee that till date, the promoter has failed to deliver possession to him, which is free from obstructions/hindrances for completing the work of construction of the house.

13. As is evident from the procedure prescribed in the brochure, the allottee is entitled to take possession after it is offered to him by the allotting agency. The possession was offered on 06.12.2017, calling upon the allottee to submit an application, which the allottee subsequently did on 02.01.2018. However, actual delivery of physical possession was offered on 10.05.2018 i.e after a period of 5 months. Such period of 5 months is unreasonable because the allottee had already

paid the entire amount. The officials of the PUDA should examine the matter. However, this question does not arise in the present case.

14. It is evident from the facts that on 10.05.2018 when the allottee visited to take possession of the plot, he discovered overhead 11 KV high tension wire passing directly through the plot and branches and roots of mature pipal and bohar trees encroached upon the plot in question, resulting in obstruction in completing the construction of the house. Thus, the petitioner's request to remove the obstructions cannot be deemed unreasonable. Subsequently, vide the communication dated 15.10.2018, he was informed that 11 KV feeder line has been shifted, however, on 19.08.2019, the Estate Officer himself wrote that between the period from June, 2018 to December, 2018, 75% work relating to shifting of KV line was completed and the remaining work was done thereafter. There is no clarity about the date on which the overhead lines were completely shifted. Hence, the letter dated 19.08.2019 is taken as the date on which the high tension wire was completely shifted. However, the Estate Officer himself noticed that the branches of the trees standing in the area of BML Department alongwith the wall and adjoining to the plot were not removed till 19.08.2019. There is no material available on the record to prove the date on which the branches of the trees which were hanging over the plot in question were removed. In such circumstances, the question that arises for adjudication is regarding the date of delivery of possession so as to reckon the period of three years, which is required to be given to the allottee to complete the construction in the prescribed time period. Either in the written

statement filed before the RERA or in the grounds of appeal, it is not the case of the PUDA that the branches of the trees that are hanging over the plot in question, stand removed. In the absence thereof, the allottee is not expected to commence the construction after getting the building plan sanctioned so as to delay its completion in the absence of removal of the branches of the trees. The total size of the plot is 300 sq. yards. The covered area i.e. the constructed area would constitute a major part of the plot. In such circumstances, the allottee is not expected to start the construction unless he is assured of the fact that the he will be able to complete the construction of the residential plot till its permissible heights.

15. In these circumstances, the first argument of the learned counsel representing PUDA is devoid of merit. Similarly, there is no substance in the second argument of the learned counsel as the report submitted by the field staff to the effect that the development work relating to civic, pubic health in the colony are complete has no significance, particularly with respect to the plot no.348 allotted to the allotteein the present case. Unless the allottee is in a position to complete the construction of the house, the completion of the remaining development work of the colony shall have no affect on the rights of the allottee. Same is the position with regard to argument no.(iii) put forth by the learned counsel representing the PUDA.

16. As regards argument no.(iv), it may be noted that there is no material to prove the fact that branches of the trees were removed from

the plot. Hence, this argument also loses its sheen. The same is the position of the argument no.(v).

17. With respect to the argument no. (vi), it may be noted that the completion of the development work in the context of the plot of the allottee would be the date on which he is delivered possession of a plot free from any further obstruction or hindrance to enable him to complete the construction work on the plot in question.

18. Argument no.(vii) and (viii) shall be dealt with in the subsequent part of the judgment.

19. As regards argument no.(ix) put forth by the learned counsel representing the PUDA, it may be noted that such arguments being technical will not detain/obstruct the Court from deciding the case substantively on its merits. As regards argument no.(x), it may be noted that there is no distinction between the public authority or a private colonizer under the Real Estate (Regulation and Development) Act, 2016. Hence, the appellant-PUDA/PDA falls within the definition of the word 'Promoter' as defined in Section 2(zk) of the Act. Regarding argument no.(xi), it may be noted that there are three members of the appellate authority. A single member i.e the administrative/technical member has given a dissenting opinion whereas a separate judgment has been written by the majority of two members. Hence, there is no substance in the argument no.(xi). With respect to argument no.(xii), it may be noted that in the absence of the removal of branches of the trees, the allottee cannot be expected to complete the construction. Hence, the offer to deliver the possession of the plot is illusory. In relation to

argument no.(xiii), the same shall be dealt with in the subsequent paragraphs of the judgment.

20. As regards the argument of the learned counsel of the allottee with regard to the entitlement of interest from the date of deposit, it may be noted that the aforesaid argument fails to persuade as in the brochure it was stipulated that the possession of the allotted plot was required to be handed over after the completion of development work at site or 18 months from the date of issuance of the allotment letter, whichever is earlier. Hence, the maximum period for the delivery of possession is 18 months as per the brochure, from the date of issuance of the allotment letter. Hence, for a period of those 18 months, the allottee cannot claim entitlement to the interest.

21. As per Section 18 of the 2016 Act, the allottee, who does not intend to withdraw from the project, is entitled to interest for every month of delay after the initial 18 months have passed from the issuance of the allotment letter till handing over the possession, at such rate, as may be prescribed. The State of Punjab has notified the Punjab State Real Estate (Regulation and Development) Rules, 2016. In Rule 16 of the said rules, the promoter as well as the allottee has to pay interest at the rates specified at the State Bank of India with the Highest marginal cost of landing rate plus 2%, which is extracted as under:-

> "***16. Interest payable by the promoter and the allottee***.- *The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent: Provided that in case the State Bank of*

India Marginal Cost of Lending Rate is not in use, it would replaced by such bench mark lending rates which the State Bank of India may fix from time to time for lending to the general public ."

22. After careful consideration of the evidence and arguments presented by both the parties, the Court turns its attention to the crucial question, that arise for adjudication. To recapitulate the facts, it is evident that the allotment letter was issued by the Estate Officer on 26.12.2016. Hence, the period of 18 months for delivery of possession is required to be calculated from 26.12.2016. Therefore, it takes us to June, 2018. In other words, the allottee is entitled to interest as per proviso to Section 18 of the 2016 Act from 01.07.2018 as the rates have already been notified in the Rules, there is no reason to make any deviation from the statutory provision. Although it may involve repetition, it is evident that in the absence of clarity with regard to the date or period of removal of the branches of the trees hanging over the plot in question, this Court is unable to specify the time or period till which the interest is payable to the allottee. Keeping in view the aforesaid facts and discussion, the appeals are disposed of while directing the PUDA to offer possession to the allottee after removing the branches of the trees, if they are not already removed from the plot in question. The interest shall be payable till the date the allottee is physically delivered possession by the PUDA. The period of three years for completing the construction shall commence from the date of actual delivery of possession, after removal of all the remaining obstructions and hindrances in the completion of the construction of the house. If the allottee submits a building plan for

sanction, the same shall be processed without loss of further time but not later than one month, from the date the building plan, complete in all respects, is submitted to PUDA.

23. With these observations, appeal no.41 of 2022 filed by the PUDA is dismissed whereas the appeal no. 47 of 2022 filed by the allottee is hereby allowed.

24. Now the Court will proceed to answer the aforementioned questions. It is evident that the clause forcing the allottee to accept the possession of plot on "as is where is" basis is unreasonable and hence, hit by Section 23 of the Indian Contract Act, 1872. There is no justification in forcing the allottee to take possession of the plot unless the same could be utilized for the purpose of construction of the residential house upto the maximum permissible unit. In a developed colony, a purchaser of a residential house has a reasonable expectation that he will be able to complete construction of his dream house without encountering further issues such as the removal of hanging overhead high tension electricity wire or removal of encroaching branches of trees standing in the adjoining plot. The provision in the brochure that requires the allottee to accept the possession of the plot 'as is where is' is not only contrary to the public policy but also void under Section 23 of the Indian Contract Act, 1872. If there is a significant disparity in the bargaining power and position between the two contracting parties, the Indian Courts may deem such a special clause to be against public policy, human rights and prohibited by law as unfair and unreasonable. Hence, the Court has no reservations in declaring such a provision to be

unconscionable and unenforceable. Therefore, issue no. 1 is answered in affirmative.

25. As regard question no.(ii), it is evident from the provisions of the Section 18 of the 2016 Act that on account of delay in delivery of possession, the allottee is entitled to interest for every month of delay till the handing over of the possession of the plot. Hence, issue no. (ii) is also answered in the affirmative.

26. Keeping in view the facts of the case, PUDA is hereby burdened with costs of Rs.1,00,000/- towards the harassment caused to the allottee including the litigation expenses.

27. All the pending miscellaneous applications, if any, are also disposed of.

13.04.2023 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No