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

Subject: -

APPEAL NO. 249 OF 2020 **Om Parkash S/o Kishori Lal & Ors.** **VERSUS** **PUDA, Jalandhar**	**APPEAL NO. 250 OF 2020** **Sandeep Katyal S/o Sh. Ram Bhaj Katyal and anr.** **VERSUS** **PUDA, Jalandhar**
APPEAL NO. 251 OF 2020 **Sohan Lal S/o Kishori Lal & anr.** **VERSUS** **PUDA, Jalandhar**	**APPLICATION NO. 2 OF 2021** **AND APPEAL NO. 02 OF 2021** **PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA),** **VERSUS** **OM PARKASH AND ORS.**
APPLICATION NO. 3 OF 2021 **AND APPEAL NO. 03 OF 2021** **PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA),** **VERSUS** **Sandeep Katyal and ors**	**APPLICATION NO.04 OF 2021** **AND APPEAL NO. 04 OF 2021** **PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA),** **VERSUS** **Sohan Lal and Ors.**

Memo No. R.E.A.T./2022/ 433

To,

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

Whereas appeals 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 appeals 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 02nd **day of September, 2022.**

REAL ESTATE APPELLATE TRIBUNAL PUNJAB * CHANDIGARH *

2-9-2022

REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal no 209/2020

MEMO OF PARTIES

1. Om Parkash S/o Kishori Lal
2. Pawan Kumar S/o Om Parkash
3. Seema W/o Om Parkash
4. Dimple D/o Om Parkash

All residents of New Prakash Avenue, Kapurthala.

...Appellants

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan,Sector -62, SAS Nagar, Mohali - 160062.

....Respondent

Place: Chandigarh
Date:12.10.2020

(MANJU GOYAL)
ADVOCATE
COUNSEL FOR THE APPELLANTS

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal no 250/2020

MEMO OF PARTIES

1. Sandeep Katyal
2. Amit Katyal

Both sons of Sh. Ram Bhaj Katyal R/o House No. 223, JP Nagar, Near Telephone Exchange, Jalandar, 144001.

...Appellants

Versus

Punjab Urban Planning ~~and~~ Develpment Authority (PUDA), PUDA Bhawan, Sector -62, SAS Nagar, Mohali.

....Respondent

Place: Chandigarh
Date:14.10.2020

(MANJU GOYAL)
ADVOCATE
COUNSEL FOR THE APPELLANTS

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal no. 251/2020

MEMO OF PARTIES

1. Sohan Lal S/o Kishori Lal

2. Tania W/o Sohan Lal

Both residents of House No. 187/8, Krishna Nagar, Jalandar, Punjab, 144001.

...Appellants

Versus

Punjab Urban ~~Planning~~ and Development authority (PUDA), PUDA Bhawan, Sector -62, SAS Nagar, Mohali - 160062

....Respondent

Place: Chandigarh
Date:14.10.2020

(MANJU GOYAL)
ADVOCATE
COUNSEL FOR THE APPELLANTS

BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, SAS NAGAR PUNJAB-160062

Appeal No. 02 of 2021

MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) -160062 ...Appellant

Versus

1. Om Parkash, New Parkash Avenue, Kapurthala Punjab.
2. Pawan Kumar, New Parkash Avenue, Kapurthala Punjab.
3. Seema, New Parkash Avenue, Kapurthala Punjab.
4. Dimple, New Parkash Avenue, Kapurthala Punjab.
5. Real Estate Regulatory Authority, Punjab, First Floor, Plot No.3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018. ...Respondents

Place: SAS Nagar
Date: 29.01.2021

(Balwinder Singh)
Advocate
Counsel for the Appellant

BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, SAS NAGAR PUNJAB-160062

Appeal No. 03 of 2020

MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) -160062

...Appellant

Versus

1. Sandeep Katyal and

2. Amit Katyal, both residents of 223, J.P. Nagar, Near Telephone Exchange, Jalandhar, Punjab-144001.

3. Real Estate Regulatory Authority, Punjab First Floor, Plot No.3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018

...Respondents

Place: SAS Nagar
Date: 29.01.2021

(Bhupinder Singh)
Advocate
Counsel for the Appellant

BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, SAS NAGAR PUNJAB-160062

Appeal No. 04 of 2020

MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) -160062 ...Appellant

Versus

1. Sohan Lal and

2. Smt. Tania, both residents of # 187/8, Krishna Nagar, Jalandhar, Punjab-144001.

3. Real Estate Regulatory Authority, Punjab First Floor, Plot No.3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018. ...Respondents

Place: SAS Nagar
Date: 29.01.2021

(Bhupinder Singh)
Advocate
Counsel for the Appellant

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

AT CHANDIGARH

APPEAL NO. 249 OF 2020 Om Parkash S/o Kishori Lal & Ors. VERSUS PUDA, Jalandhar	APPEAL NO. 250 OF 2020 Sandeep Katyal S/o Sh. Ram Bhaj Katyal and anr. VERSUS PUDA, Jalandhar
APPEAL NO. 251 OF 2020 Sohan Lal S/o Kishori Lal & anr. VERSUS PUDA, Jalandhar	APPLICATION NO. 2 OF 2021 AND APPEAL NO. 02 OF 2021 PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA), VERSUS OM PARKASH AND ORS.
APPLICATION NO. 3 OF 2021 AND APPEAL NO. 03 OF 2021 PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA), VERSUS Sandeep Katyal and ors	APPLICATION NO.04 OF 2021 AND APPEAL NO. 04 OF 2021 PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA), VERSUS Sohan Lal and Ors.

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Present: Mr. Balwinder Singh, Advocate for the PUDA/promoter.

Ms. Manju Goyal, Advocate for the complainant/allottee.

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)

1. By this order we will dispose Appeal No.249 of 2020, Appeal No. 250 of 2020, Appeal No.251 of 2020, preferred by the complainant(s) and Appeal No.02 of 2021, Appeal

No.03 of 2021 and Appeal No.04 of 2021 preferred by the PUDA/Promoter against the same impugned order of the Authority dated 28.07.2020.

2. In view of the primary controversy raised before us in these cases, the facts of which though peculiar to each of them, yet the difference would not hold much significance as we have already settled these issue in **Appeal No.230 of 2020 titled as Inderjeet Mohan Kaur Versus The Chief Administrator, GMADA**.

3. The common thread that runs through all the appeals is the time schedule for depositing instalments as reflected in the individual allotment letters. The time schedule mentioned in Appeal No.249 of 2020 is extracted below:-

Instalment	Due Date	Principal	Interest	Total amount payable
1	2	3	4	5
1st	18.05.2017	1515875.00	727620.00	2243495.00
2nd	18.11.2017	1515875.00	636668.00	2152543.00
3rd	18.05.2018	1515875.00	545715.00	2061590.00
4th	18.11.2018	1515875.00	454763.00	1970638.00
5th	18.05.2019	1515875.00	363810.00	1879685.00
6th	18.11.2019	1515875.00	272858.00	1788733.00
7th	18.05.2020	1515875.00	181905.00	1697780.00
8th	18.11.2020	1515875.00	90953.00	1606828.00
	Total	12127000.00	3274292.00	15401298.00

4. It is pertinent to mention here that the amount to be deposited by each individual was dependant upon the total price of the unit applied for and therefore is different

in the case of each allottee. In any case, it does not impact the commonality of issues. The payments which was made by each of the allottees whose cases are been discussed are given against the facts of each individual case. It is also necessary to state here that the allotment letter in each case gave out the date of possession as "within 90 days of the issue of allotment letter". For the purpose of reference, the same is extracted below:-

> *"Possession of the plot shall be handed over to the allottee within 90 days of issue of allotment letter. If possession is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the due date."*

5. It is evident that such a Clause of deemed possession was unilateral in character.

6. The facts are as below:-

APPEAL NO.249 OF 2020

7. The appellant applied for commercial site measuring 147 sq. yards vide auction held on 18.11.2016 and was allotted SCO 19 at the rate of Rs.1,10,000/- per sq. meter. The total price came to Rs.1,61,70,000/- + 2% Cancer Cess out of which a payment of Rs.40,42,500/- was made before the allotment letter was issued by way of 25% of the price of the plot as per requirement.

Besides that 2% of the prices has also been paid as Cancer Cess.

8. On 22.03.2017, an allotment letter was issued with an assurance that possession would be handed over within 90 days thereof. Clause 3 of this letter contemplated rebate of 10% in case lump-sum payment is made. Although this date of possession within 90 days i.e. by 20.06.2017 was given out in the allotment letter, it apparently was in contravention to the terms and conditions of the brochure. Possession was offered on 26.08.2019 after a delay of almost two years, which is not disputed. So far as the remaining 75% of the sale consideration is concerned the same was required to be paid by the allottees as per the table below:-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	**Principal**	**Interest**	**Total**	**Due Date**	**Date**	**Amount**
1st	15,15,875	7,27,620	22,43,495	18.05.2017	16.05.2017	15,16,000
2nd	15,15,875	6,36,668	21,52,543	18.11.2017	17.11.2017	15,16,000
3rd	15,15,875	5,45,715	20,61,590	18.05.2018	16.05.2018	15,16,000
4th	15,15,875	4,54,763	19,70,638	18.11.2018	15.11.2018	15,16,000
5th	15,15,875	3,63,810	18,79,685	18.05.2019	17.05.2019	54,79,000
6th	15,15,875	2,72,858	17,88,733	18.11.2019		
7th	15,15,875	1,81,905	16,97,780	18.05.2020		
8th	15,15,875	90,953	16,06,828	18.11.2020		
Total	**1,21,27,000**	**32,74,292**	**1,54,01,292**			**1,15,43,000**

9. The complaint was filed in Form-M resulting in the impugned order.

APPEAL NO. 250 OF 2020

10. The commercial site applied for by the appellant in this case was of 147 sq. yards @ Rs.1,18,250/- per sq. meter totaling Rs.1,73,82,750/- + 2% Cancer cess out of which Rs.43,45,688/- + 2% Cancer cess was paid as 25% of the price of the lot. Allotment letter was issued on 22.03.2017, assuring possession within 90 days and 10% rebate if lump sum payment was made. Although the applicant was Smt. Asha Katyal, she sought transfer of the plot in name of her sons Sandeep Katyal and Amit Katyal.

11. The possession was offered belatedly on 26.08.2019, even though the appellants had made substantial payment as seen from the letter dated 17.05.2018. The respondents demanded interest from the appellants resulting in the complaint, fructifying into the impugned order. However, as per the case of the cross appellant (PUDA) the allottees have made the payment of remaining 75% of the amount as per the following table :-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1st	16,29,633	7,82,224	24,11,857	18.05.2017	17.05.2017	24,11,857
2nd	16,29,633	6,84,446	23,14,079	18.11.2017	24.05.2017	8,50,000
3rd	16,29,633	5,86,668	22,16,301	18.05.2018	17.11.2017	14,64,079
4th	16,29,633	4,88,890	21,18,523	18.11.2018	17.05.2018	1,65,679
5th	16,29,633	3,91,112	20,20,745	18.05.2019	18.05.2018	73,30,630
6th	16,29,633	2,93,334	19,22,967	18.11.2019		
7th	16,29,632	1,95,556	18,25,188	18.05.2020		
8th	16,29,632	97,778	17,27,410	18.11.2020		
Total	1,30,37,062	35,20,008	1,65,57,070			1,22,22,245

APPEAL NO. 251 OF 2020

12. The appellants applied for a commercial site measuring 147 sq. yards in auction held on 18.11.2016 and were allotted site No.19 at the rate Rs.1,08,200/- per sq. meter totaling Rs.1,59,05,400/- out of which Rs.39,76,351/- was paid at the time of issuance of allotment letter being 25% of the sale price. Allotment letter was issued on 22.03.2017 assuring possession within 90 days, which was, however, offered on 26.08.2019, even though the appellants had made substantial payment amounting to Rs.1,57,02,990/-. The respondents continued to demand interest resulting in the complaint and subsequently the impugned order. The details of payment made by the appellant (Sohan Lal) is as under:

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1st	14,91,131	7,15,744	22,06,875	18.05.2017	17.05.2017	14,91,135
2nd	14,91,131	6,26,275	21,17,406	18.11.2017	19.05.2017	74,000
3rd	14,91,131	5,36,808	20,27,939	18.05.2018	17.11.2017	14,91,132
4th	14,91,131	4,47,340	19,38,471	18.11.2018	16.05.2018	14,91,132
5th	14,91,131	3,57,872	18,49,003	18.05.2019	16.11.2018	14,91,132
6th	14,91,131	2,68,404	17,59,535	18.11.2019	16.05.2019	53,70,000
7th	14,91,131	1,78,936	16,70,067	18.05.2020		
8th	14,91,132	89,468	15,80,600	18.11.2020		
Total	**1,19,29,048**	**32,20,847**	**1,51,49,896**			**1,14,08,531**

13. The respondents have filed the cross appeals challenging the impugned order.

14. The Authority after consideration of the complainants' and the stand of the respondents directed as follows:-

i. *The respondent shall hand over possession of the plot within 30 days of this order without any demand for payment of interest from the allottee subject to the condition that the principal amount, claimed to have been paid by the complainant(s) (after 10% discount of balance amount) actually tallies with the principal amount of Rs.1,61,70,000/- as per the allotment letter.*

ii. *No interest shall be payable by the complainant(s) in respect of instalments of the plot as per revised policy of PUDA dated 31.12.2015 and terms and conditions mentioned at point No.7 under the heading price and mode of payment of the brochure.*

iii. *Interest paid by the complainant(s), if any, shall be refunded to them.*

iv. *The respondent shall pay interest as provided in Section 18(1) proviso two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 w.e.f. 17.05.2019 i.e. the date on which complete payment of principal amount was made till 26.08.2019 i.e. the date by which offer of possession was made.*

v. *the complainant(s) shall take over possession within 15 days of issuance of NDC by the respondent based on this order.*

vi. *The period of 3 years for construction shall be calculated from 26.08.2019 i.e. the date by which offer of possession was made to the complainant(s).*

vii. *No other relief is awarded."*

15. The grievance of the appellant is directed against the aforesaid directions of the Authority. It has been averred that the statutory interest ought to be available to the appellants for the entire period for more than three years for delayed possession.

16. The respondents in turn plead that they are entitled to interest since no installments were paid till 17.05.2019 when concededly substantial amount was paid but from the date of issuance of allotment letter till date the final payment was made, the appellants were required to adhere to the payment schedule and deposit the instalments along with interest.

17. To this argument, the learned counsel for the appellant has referred to the Policy of the State Government dated 31.12.2015, envisaging that no interest shall be paid by the allottee in case of delayed payment.

18. We have heard the learned counsel for the parties and are of the opinion that the controversy is squarely covered by the ratio of the judgment rendered by us in **Appeal No.230 of 2020** titled as **Inderjeet Mohan Kaur Versus The Chief Administrator, GMADA**, wherein we have held as below:-

14. The policy dated 02.01.2017 contained in the letter of the Government dated 15.02.2017 has ostensibly

been framed pursuant to the directions of the Hon'ble Punjab and Haryana High Court in CWP No. 4108 of 2016.

15. *We are at pains to remind ourselves that the appellant had approached the Authority under the Real Estate (Regulation and Development) Act, 2016 for his primary grievance of a delayed possession and consequently levy of interest and penalty by the respondents upon his failure to adhere to the schedule.*

16. *The grievance if analyzed is not complex. The allottee, who has made a substantial payment expects an adherence by the respondents to abide by the promised schedule of possession and upon failure to do so, questions the very justification of the developer to demand payments from him as also the interest on such delayed payments and imposition of penalty.*

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

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

19. *The Authority in turn would have no jurisdiction to enforce the policy of a Government as it is bound to deal with the matters before it strictly in terms of the powers that flow from the statute i.e. RERA Act. It is purely in the domain of the Government to apply or not to apply a policy which shall be independent of the reliefs available to an aggrieved person under the Act. It matters not that the policy, the benefit of which an allottee claims, somewhat encapsulates the spirit of the Act in protecting an allottee from an unjust action of the developer or promoter, which in this case happens to be a public body.*

20. *Likewise, we as an Appellate Authority would have no such power to issue mandates to enforce a policy of the Government but nothing precludes the Authority or for that purpose the Appellate Tribunal to take into consideration a fact of a benefit granted*

under any policy of the Government and deal with it appropriately while deciding the issues brought before it.

19. Therefore, any plea by the appellants (allottees) that respondent (PUDA) was bound to make the payments regarding interest in terms of the policy would be unsustainable.

20. From the tables referred above it is evident that the appellants (allottees) neither paid the full amount towards principal nor paid any payment towards interest, which they were bound to pay as no relief qua the interest has been given to them in the allotment letter.

21. After the enforcement of the Real Estate Regulation and Development Act, 2016, its provisions bind both the promoter and the allottee alike. Section 18 of the Act defines the acts and rights of the allottee, in case of any default by the promoter. The provisions of the Act are adequately supported by Rule 8(1) of the Rules mandating an agreement as referred to in the language of Section 13(2) of the Act. Thus we have observed in the

said judgment of **Inderjeet Mohan Kaur** (supra) as below:-

18. *Section 18(1) of the Act, defines the rights and remedies available to an allottee in the event of a default by the promoter and since it is one that is like frequently or likely to be invoked we deem it appropriate to extract hereinbelow:-*

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,–

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid,

by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

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

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

extended to the extent of period of delay in paying the defaulted amount.

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

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

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

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

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

(i) *stop making further payments to the Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction milestones and only thereafter, the Allottee will be required to make the next payment without any penal interest; or*

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

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

29. *Evidently non-execution of an agreement to sell in terms of Section 13 (1) has seriously imperilled the rights of an allottee. This is an issue that we have*

repeatedly been confronted with i.e. where the public body such as PUDA and GMADA, to name a few have been offering plots/flats while executing development projects without executing agreement to sell upon receiving 10% of the amount or even 25% of the total price. It is apparent that these public authorities are in violation of the provisions of RERA Act. We therefore direct the Authority under the Act to take appropriate steps including initiating action contemplated under Section 7 against such promoters, who are in default in complying with the provisions of the Act. Section 7 (1) (a), (b), are extracted hereinbelow:-

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

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

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

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

21. We are sanguine that steps would have been taken by the Authority to ensure that the public bodies have taken

note of our observation and taken steps to execute the agreement in terms of Section 13(1) of the Act.

22. A perusal of the tables given in para No. 08, 11 and 12 would show that the appellant of appeal No. 249, appeal No. 250 and appeal No. 251 respectively have not paid the entire principal amount. Neither they have paid any amount towards the interest so they are liable to make the payment due towards the principal as well as interest to the respondents as per the terms of the allotment letter. Whereas they certainly are entitled to the benefit of Section 18 for the delayed possession.

23. Consequently the appeals are disposed of with the followings directions:-

(i) The appellants shall be entitled to interest as provided in Section 18(1) proviso II of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 from the

date when 25% amount was deposited till the date of actual possession.

(ii) The allottees would be entitled to the benefit of interest as above, but would have to pay interest for the delayed payment, in accordance with allotment letter. However, we make it clear that three years period shall be reckoned from the date when the appellant was given the possession by the PUDA.

24. The appeals of the allottees are allowed as above.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

Please see my view in the subsequent pages in M.A. No. 1A to 8A

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

August 22
July 14, 2022
AN

REAL ESTATE APPELLATE TRIBUNAL PUNJAB * CHANDIGARH *

Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
02/09/2022

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 249 OF 2020

1. Om Prakash S/o Kishori Lal
2. Pawan Kumar S/o Om Prakash
3. Seema W/o Om Prakash
4. Dimple D/o Om Prakash

All residents of New Prakash Avenue, Kapurthala.

.....Appellants

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar, Mohali - 160062.

....Respondent

APPEAL NO. 250 OF 2020

1. Sandeep Katyal
2. Amit Katyal

Both sons of Sh. Ram Bhaj Katyal R/o House No. 223, JP Nagar, Near Telephone Exchange, Jalandhar, 144001.

.....Appellants

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector -62, SAS Nagar, Mohali.

....Respondent

APPEAL NO. 251 OF 2020

1. Sohan Lal S/o Kishori Lal
2. Tania W/o Sohan Lal

Both residents of House No. 187/8, Krishna Nagar, Jalandhar, Punjab, 144001.

.....Appellants

Versus

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector -62, SAS Nagar, Mohali - 160062.

....Respondent

APPEAL NO. 13 OF 2021

1. Bhupinder Paul Juneja son of Nand Lal Juneja
2. Anshul Juneja S/o Sh. V.P. Juneja *(as corrected in terms of order dated 13.10.2020 of the Real Estate Regulatory Authority, Punjab)*

Both residents of House No. 128, Shakti Nagar, Jalandhar.

.....Appellants

Versus

PUDA, Jalandhar, the Chief Administrator, PUDA, PUDA Bhawan, Sector -62, SAS Nagar, Mohali

....Respondent

APPEAL NO. 2 OF 2021

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) - 160062

.....Appellant

Versus

1. Om Prakash, New Prakash Avenue, Kapurthala, Punjab.
2. Pawan Kumar, New Prakash Avenue, Kapurthala, Punjab.
3. Seema, New Prakash Avenue, Kapurthala, Punjab.
4. Dimple, New Prakash Avenue, Kapurthala, Punjab.
5. Real Estate Regulatory Authority, Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18/A, Chandigarh -160018.

....Respondents

APPEAL NO. 3 OF 2021

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) -160062

.....Appellant

Versus

1. Sandeep Katyal and
2. Amit Katyal both residents of 223, J.P Nagar, Near Telephone Exchange, Jalandhar, Punjab-144001.
3. Real Estate Regulatory Authority, Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018.

....Respondents

APPEAL NO. 4 OF 2021

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) -160062

.....Appellant

Versus

1. Sohan Lal and
2. Smt. Tania, both residents of # 187/8, Krishna Nagar, Jalandhar, Punjab-144001.
3. Real Estate Regulatory Authority, Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018.

....Respondents

APPEAL NO. 5 OF 2021

Punjab Urban Planning and Development Authority (PUDA), PUDA Bhawan, Sector-62, SAS Nagar (Mohali) -160062

.....Appellant

Versus

1. Bhupinder Paul Juneja, # 128, Shakti Nagar, Jalandhar, Punjab-144001

2. Anshul Juneja, # 128, Shakti Nagar, Jalandhar, Punjab-144001 *(as corrected in terms of order dated 13.10.2020 of the Real Estate Regulatory Authority, Punjab)*
3. Real Estate Regulatory Authority, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018.

....Respondents

Present: Ms. Manju Goyal, Advocate for the appellant.
Mr. Balwinder Singh, Advocate for the respondent

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

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

1. By this common order, I shall dispose off above mentioned eight appeals, out of which four, bearing Appeal No. 249 of 2020 (**Om Parkah and others versus Punjab Urban Planning and Development Authority**), Appeal No. 250 of 2020 (**Sandeep Katyal and another versus Punjab Urban Planning and Development Authority**), Appeal No. 251 of 2020 (**Sohan Lal and another versus Punjab Urban Planning and Development Authority**) and Appeal No. 13 of 2021 (**Bhupinder Pal Juneja and another versus Punjab Urban Planning and Development Authority**), have been filed by the allottee(s) and the remaining four, bearing Appeal No. 2 of 2021 (**Punjab Urban Planning and Development Authority versus Om Parkah and others**), Appeal No. 3 of 2021 (**Punjab Urban Planning and Development Authority versus Sandeep Katyal and others**), Appeal No. 4 of 2021 (**Punjab Urban Planning and Development Authority**

versus Sohan Lal and others) and Appeal No. 5 of 2021 (**Punjab Urban Planning and Development Authority versus Bhupinder Pal Juneja and others**), have been filed by the promoters against four orders dated 28.07.2020, 28.07.2020, 28.07.2020 and 06.10.2020/13.10.2020 passed by Sh. Sanjeev Gupta, Member of the Real Estate Regulatory Authority Punjab *(hereinafter referred to as the Authority)* in four complaints bearing GC No. 1508 of 2019, 1466 of 2019, 1507 of 2019 and 1474 of 2019 filed on 24.12.2019/06.01.2020, 12.12.2019, 24.12.2019 and 21.12.2019/18.06.2020 respectively.

2. All these eight appeals arise from the complaints pertaining to same project namely 'Old Jail Site, Jalandhar', similar allotment letters all dated 22.03.2017 for allotment of SCO sites/plots each measuring 147 square meters pursuant to their bids in the auction held on 18.11.2016, same brochure etc. Therefore, common judgment is hereby being given in these eight appeals.

FIRST CASE (APPEALS NO. 249 OF 2020 & 2 OF 2021):

3. The facts in respect of Appeal No. 249 of 2020 (**Om Parkah and others versus Punjab Urban Planning and Development Authority**) and its cross appeal bearing Appeal No. 2 of 2021 (**Punjab Urban Planning and Development Authority versus Om Parkah and others**) have been discussed in detail in this case, out of which the common ones shall not be repeated while discussing other three cases hereinafter.

4. The allottees-complainants filed their complaint bearing GC No. 1508 of 2019 on 24.12.2019/06.01.2020 against PUDA *(hereinafter referred to as the promoter)* in Form 'M' before the Authority under Section 31 of the Real Estate Regulation and

Development Act, 2016 *(hereinafter referred to as the Act)* and Rule 36(1) of the Punjab State Real Estate Regulation and Development Rules, 2017 *(hereinafter referred to as the Rules)*, wherein they have inter alia alleged (i) that possesion of the plot allotted to allottees was to be handed over by the promoter to the allottees within 90 days of issue of allotment letter dated 22.03.2017, but did not do so timely; (ii) that 10% rebate, stipulated under clause 3(iii) of the allotment letter dated 22.03.2017, has not been given by the promoter to allottees; (iii) that as per its policies, the promoter should not charge interest till possession of plot is given to the allottee(s) and that no possession is to be given to the allottee(s) until and unless all the basic amenities are provided.

5. The allottees-complainants, vide their above mentioned complaint, have prayed the Authority for directing the promoter (i) to hand over possession to their satisfaction; (ii) to provide a fresh time frame of three years for construction work from the date of possession; (iii) to give claim of TCS; (iv) to refund the interest charged prior to providing basic amenities with an interest of 18%; (v) to pay interest for every month of delay till the handing over of possession; and (vi) to impose penalty on the promoter for non-compliance of the provisions of the Act.

6. After considering the reply dated 27.05.2020 of the promoter to the complaint bearing GC No. 1508 of 2019 and the arguments of the parties before it, the Authority passed order dated 28.07.2020, the concluding and operative parts of which read as under:-

"Based on the above, the following can be concluded:-

1. *The brochure before the auction clearly stated that no interest shall be charged from the allottees till the offer of possession/deemed possession.*
2. *Possession was proposed to be offered within 1 year, as per the brochure.*
3. *Possession was to be given 25% against the payment.*
4. *The revised policy in regards to "auction of undeveloped sites-exemption from payment of interest till possession" clearly stipulated that no interest shall be charged from the allottee till the site is ready for possession.*
5. *The respondent unilaterally reduced the period for possession of plot from 1 year to 90 days without taking into consideration the actual progress of the development works at the site.*
6. *The respondent made an offer of possession on 26.08.2019 i.e. almost 2 years and 9 months after the date of auction and approximately 2 year 5 months after the date of issuance of allotment letter with specified possession to be handed over within 90 days. The respondent has been issuing notices for payment of balance amount based on calculation of interest of all the instalments as mentioned in the allotment letter although the complainant(s) claims that they had made the entire payment (after claiming 10% rebate on the balance amount) by 17.05.2019.*

Based on the merits of the case and the facts as discussed above, the following is ordered:-

i. *The respondent shall hand over possession of the plot within 30 days of this order without any demand for payment of interest from the allottee subject to the condition that the principal amount, claimed to have been paid by the complaint(s) (after 10% discount of balance amount) actually tallies with the principal amount of Rs.1,61,70,000/- as per the allotment letter.*

ii. *No interest shall be payable by the complainant(s) in respect of instalments of the plot as per the revised policy of PUDA dated 31.12.2015 and terms and conditions mentioned at point no. 7 under the heading price and mode of payment of the brouchure.*

iii. *Interest paid by the complainant(s), if any, shall be refunded to them.*
iv. *The respondent shall pay interest as provided in section 18(1) proviso two of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 w.e.f. 17.05.2019 i.e. the date on which complete payment of principal amount was made till 26.08.2019 i.e. the date by which offer of possession was made.*
v. *The complainant(s) shall take over possession within 15 days of issuance of NDC by the respondent based on this order.*
vi. *The period of 3 years for construction shall be calculated from 26.08.2019 i.e. the date by which offer of possession was made to the complainant(s).*
vii. *No other relief is awarded."*

7. Aggrieved by the aforementioned order dated 28.07.2020 of the Authority, both the parties filed their respective appeals before this Tribunal. The complainants-allottees filed their appeal dated 12.10.2020 bearing Appeal No. 249 of 2020 (**Om Parkah and others versus Punjab Urban Planning and Development Authority**) and the promoter filed its appeal dated 29.01.2021 bearing Appeal No. 2 of 2021 (**Punjab Urban Planning and Development Authority versus Om Parkah and others**).

8. The main relief sought by learned counsel for the complainants-allottees in their appeal and during his arguments at length before us, whereby she ultimately cited judgment dated 31.12.2021 passed by this Tribunal in Appeal No. 230 of 2020 and Appeal No. 231 of 2020 (both titled as **Inderjeet Mohan Kaur versus The Chief Administrator, GMADA**), is that the promoter-respondent be directed to pay interest for every month of delay till the handing over of the possesion from 22.06.2017 (i.e. from the due date of

possesion as promised under clause 4(I) of the allotment letter dated 22.03.2017) instead of *"w.e.f. 17.05.2019 i.e. the date on which complete payment of principal amount was made"* as allowed by the Authority as the relief (iv) in its aforementioned order dated 28.07.2020.

9. On the other hand, the learned counsel for the promoter, in its appeal and during his arguments before us, prayed to set aside and quash the impugned order dated 28.07.2020, inter alia on the basis the following grounds:-

(i) that as per the payment schedule given in the allotment letter dated 22.03.2017, if allottees opt for payment in installments, then they would have to pay interest @ 12% per annum and failure to pay the instalment timely would entail payment of penal interest for the period of delay in payment;

(ii) that the Authority, despite noticing that possession of the plot in question had already been offered to the allottees vide the promoter's letter dated 26.08.2019 and is deemed to be handed over, has unnecessarily directed the promoter to again hand over the possession of the plot within 30 days of the order;

(iii) that the direction of the Authority to the promoter, not to demand payment of any interest from the allottees while handing over possesion within 30 days of the order, is also wrong because as per terms and conditions mentioned in the allotment letter, the allottees have been provided option in the allotment letter to make balance 75% payment either in lumpsum with a rebate of 10% thereof within 60 days from the date of allotment without interest or pay interest @ 12%

per annum if the allottees choose to pay such balance 75% amount in installments;

(iv) that the policy dated 31.12.2015 relied upon by the allottees had been issued by the promoter itself (being an authority constitited by the Government of Punjab under Section 29 of the Punjab Regional and Town Planning and Development Act, 1995) who had also framed the scheme of allotment of plots in question in the year 2016 and had issued allotment letter in the year 2017; and therefore, the promoter is entitled to charge interest on installments and penal interest for delay in payment thereof, because the scheme framed/allotment letter are later in point of time and therefore, would prevail upon the policy framed prior in point of time;

(v) that the Authority has failed to distinguish the interest payable on the delayed payment viz-a-viz interest to be paid @ 12% if the balance 75% payment is made in installments instead paying the same in lumpsum within 60 days without interest;

(vi) that the issuance of NDC by the promoter has got no direct link with the handing over of possession; and

(vii) that non-payment of due instalments as per the schedule given in the allotment letter creates impediments in the development of the site and also results in delay in delivery of possession; and that the Act and Rules also provide that if there is delay on the part of the allottee(s) to make payment as per the schedule, then the possession shall be extended to the extent of period of delay in payment.

10. As per the brochure of the scheme, the SCO sites No. 13 to 20 each measuring 147.00 square meters, out of which four have been

allotted to the allottees concerned of the present appeals, along with other commercial sites and residential plots have been offered to the perspective buyers through auction held on 18.11.2016 at Jalandhar inter-alia on following terms and conditions:-

(i) The bidders were required to deposit participation fee (Rs. 3,00,000 for SCO site) before commencement of auction and the successful bidders were to pay 10% of the total bid amount (after adjusting the participation fee) at the fall of hammer or within one additional working day, along with Cancer Cess @ 2% of the bid price.

(ii) Another 15% of the bid amount was to be paid within 30 days of the auction.

(iii) Clauses 6 to 9 and 12 under the title "PRICE AND MODE OF PAYMENT" and clause 3 under the title "USAGE AND PERIOD FOR CONSTRUCTION" in the brochure read as under:-

"6. The period of 30 days can be extended in case of extreme hardship up to a maximum of 90 days (i.e. 30/60 days more) subject to receipt of a written request from the applicant to the Estate Officer within a period of 30 days from the date of auction, explaining the hardship duly supported by the requisite documents, and on a payment of 1.5% surcharge on the due amount and 18% penal interest for the delayed period. Allotment letter will be issued only after the receipt of the 25% amount of the Bid.";

"7. a) No interest will be charged from the allottees till the offer of possession/deemed possession.

b) Possesion is likely to be offered within one year of the auction.

In case the allottee fails to take possesion of the plot/site within the stipulated period, it shall be deemed to have been handed over on the due date.";

> *"8. The balance 75% amount can be paid either in lump sum with 5% rebate on residential plots and 10% rebate on commercial sites on the balance 75% amount within 60 days of issue of allotment or in 7 half yearly equated installments for residential plots and 8 half yearly installments for commercial sites with interest @ 12% per annum interest. First instalment will fall due at six months from the date of auction.";*
>
> *"9. In case any instalment of part thereof is not paid by due date, then without prejudice to any action under section 45 of the Punjab Regional and Town planning and Development Act, 1995, 18% penal interest will be levied for the period of delay upto 18 months, beyond which delay shall not be condoned under any circumstances and the plot/site shall be resumed.";*
>
> *"12.The allottee shall have no right to transfer by way of sale, gift, or otherwise, the plot/site or any other rights, title or interest in the said plot/site before execution of conveyance deed without prior permission of the Estate Officer, PUDA, Jalandhar and on payment of transfer fee as applicable. Mortgage of the plot/site will also be permitted with the prior permission of officer authorized by the Authority.";* and
>
> *"3. The allottee will have to construct a dwelling unit within three years from the date of possesion. The period can be extended by the Estate Officer in the manner and on payment of such fee as fixed by the authority."*

11. Its evident from clause 8 given in the brochure under the title "PRICE AND MODE OF PAYMENT", which is reproduced above, that right from the beginning of the auction process, it was made clear that the balance 75% amount can be paid either in lump sum with 5% rebate on residential plots and 10% rebate on commercial sites on the balance 75% amount within 60 days of issue of allotment or in 7 half yearly equated installments for residential plots and 8 half yearly installments for commercial sites with interest @ 12% per annum interest; and that first instalment will fall due at six months from the date of auction. Thus, right

from beginning of the auction process, the allottees were made well aware through the brochure of the scheme of the auction held on 18.11.2016 that in case they opt for payment of the balance 75% amount in installments, they were liable to pay the first installment of one eighth of the such 75% amount along with interest @ 12% per annum on said 75% amount on 18.05.2017.

12. As per clause 7(b) of the brochure under the title "PRICE AND MODE OF PAYMENT", which is reproduced above, possesion was likely to be offered within one year of the auction i.e. by 18.11.2017 and if the allottee fails to take the possession within the stipulated period, it would have been deemed to be handed over on the due date. Thus, as per the brochure of the scheme, before the due date of handing over and taking over the possession, the payment of second installment also would have fallen due on 18.11.2017.

13. The complainants-allottees participated in the auction held on 18.11.2016 and their bid @ Rs.1,10,000/- per square meter for SCO No. 19 measuring 147 square meters at Old Jail Site, Jalandhar was accepted and an allotment letter dated 22.03.2017 was issued by the promoter to the allottees for a total price of Rs.1,61,70,000/-.

14. Clause 3 titled "PAYMENT SCHEDULE AND FINANCIAL CONDITIONS" of the allotment letter reads as under:-

"***3. PAYMENT SCHEDULE AND FINANCIAL CONDITIONS:***

*i) Payment of **Rs. 40,42,500/- (in words Rupees. Forty Lac Forty Two Thousand Five Hundred Only)** made by you has already been adjusted towards initial 25% of the price of the Plot. Besides 2% of the allotment price has also been received as cancer cess.*

ii) *The balance amount of* ***Rs. 1,21,27,500/-****, allottee has deposited Rs. 500/- in advance out of 75% amount. Now the balance 75% amount payable comes to* ***Rs.1,21,27,000/- (Rs. One Crore Twenty One Lac Twenty Seven Thousand Only)*** *being 75% of the price of plot can either be paid in lump sum without any interest within 60 days from the issue of allotment letter (excluding date of issue) or in 8 half yearly equated instalments (with first instalment falling due after six month from the date of auction) along with an interest @ 12% per annum as indicated in the schedule given in below:*

Installment	Due Date	Principal	Interest	Total amount payable
1	2	3	4	5
1st	18.05.2017	1515875.00	727620.00	2243495.00
2nd	18.11.2017	1515875.00	636668.00	2152543.00
3rd	18.05.2018	1515875.00	545715.00	2061590.00
4th	18.11.2018	1515875.00	454763.00	1970638.00
5th	18.05.2019	1515875.00	363810.00	1879685.00
6th	18.11.2019	1515875.00	272858.00	1788733.00
7th	18.05.2020	1515875.00	181905.00	1697780.00
8th	18.11.2020	1515875.00	90953.00	1606828.00
	Total	**12127000.00**	**3274292.00**	**15401292.00**

iii) *In case balance 75% payment is made in lump sum within 60 days from the date of issue of allotment letter (excluding date of issue), a rebate of 10% shall be admissible on this amount. However, in case payment of amount due is made in lump sum subsequently at any stage, a rebate of 10% on the balance principle amount shall also be admissible.*

iv) to x) *-------XXXXXXXXXXXXXXXXXXXXXXXXXX-------*

xi) ***In case any installment or part thereof is not paid by the due date, then without prejudice to any action under section 45 of the Punjab Regional and Town Planning and Development Act, 1995, 18% penal interest will be levied for the period for the period of delay upto 18 months, beyond which delay shall not be condoned under any circumstances and the site shall be resumed.***

xii) *---------XXXXXXXXXXXXXXXXXXXXXXXX---------*

xiii) *The amount deposited by the allottee shall be adjusted in the manner that penal interest, if any, shall be deducted firstly and then the interest amount and the remaining amount as principal.*

xiv) *----------XXXXXXXXXXXXXXXXXXXXXXXX---------*

xv) *In case of any advance payment which is not less than the next due installment, then the remaining installments shall be rescheduled.*

xvi) to xviii) *--------XXXXXXXXXXXXXXXXXXXXX--------*"

15. Sub clause i) of clause 4, titled "POSSESSION AND OWNERSHIP", of the allotment letter reads as under:-

> *"Possession of the plot shall be handed over to the allottee within 90 days of issue of allotment letter. If possession is not taken by the allottee within the stipulated period, it shall be deemed to have been handed over on the due date."*

16. Sub clause iii) of clause 6, titled "USAGE AND PERIOD FOR CONSTRUCTION" reads as under:-

> *"The allottee will have to construct the building within 3 years from the date of possession. The period can be extended by the Estate Officer, PUDA, Jalandhar in the manner and on payment of such fee as fixed by the Govt."*

17. As mentioned in the order dated 28.07.2020 of the Authority in the complaint bearing GC No. 1508 of 2019, as per summary of the account statement submitted before the Authority, an amount of Rs. 1,59,09,400.00 has been paid by the allottees on various dates mentioned therein. Out of said amount of Rs. 1,59,09,400.00, an amount of Rs.19,40,400.00 paid on 18.11.2016 accounts for the 10% payable at the fall of hammer along with 2% cancer cess; and Rs. 24,26,000.00 paid on 14.12.2016 accounts for another 15% (Rs.24,25,500.00 + Rs. 500.00 in excess which stands accounted for in the allotment letter under its clause 3(ii)) payable within 30 days of the auction. The remaining amount of Rs. 1,15,43,000.00 paid in five tranches from 16.05.2017 to 17.05.2019 is hereby being tabulated, along with instalments of balance 75% payable due from time to time as per clause 3(ii) allotment letter, as under:

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	**Principal**	**Interest**	**Total**	**Due Date**	**Date**	**Amount**
1st	15,15,875	7,27,620	22,43,495	18.05.2017	16.05.2017	15,16,000
2nd	15,15,875	6,36,668	21,52,543	18.11.2017	17.11.2017	15,16,000
3rd	15,15,875	5,45,715	20,61,590	18.05.2018	16.05.2018	15,16,000
4th	15,15,875	4,54,763	19,70,638	18.11.2018	15.11.2018	15,16,000
5th	15,15,875	3,63,810	18,79,685	18.05.2019	17.05.2019	54,79,000
6th	15,15,875	2,72,858	17,88,733	18.11.2019		
7th	15,15,875	1,81,905	16,97,780	18.05.2020		
8th	15,15,875	90,953	16,06,828	18.11.2020		
Total	**1,21,27,000**	**32,74,292**	**1,54,01,292**			**1,15,43,000**

18. As per sub clause i) of clause 4, titled "POSSESSION AND OWNERSHIP", of the allotment letter dated 22.03.2017, the promoter was required to hand over possession of the plot to the allottees within 90 days of the issue of the allotment letter i.e. by 20.06.2017. It is pertinent to reiterate here that as per related clause of the brochure, the due date of possession was 18.11.2017.

19. On the other hand, the first installment amounting to Rs. 22,43,495/- (Rs. 15,15,875/- as principal and Rs. 7,27,620/- as the interest) was payable by allottees on 18.05.2017 i.e. before the due date of handing over the possession of the plot i.e. 20.06.2017, but the allottees paid only Rs. 15,16,000/- on 16.05.2017, out of which, in view of clause 3(xiii) of the allotment letter dated 22.03.2017, Rs. 7,27,620/- are adjustable towards interest and remaining Rs. 7,88,380/- towards the principal amount of Rs. 15,15,875/- due by 18.05.2017, thereby leaving an outstanding principal amount of Rs. 7,27,495/- out of the first intallment. Accordingly, a notice dated 11.08.2017 was issued by the promoter to the allottees. Thus, it is the allottees who defaulted first in making the timely payment of installments of the balance 75% amount.

20. As per clause 3(xi) of the allotment letter, the aforementioned outstanding amount of Rs.7,27,495/- attracts penal interest amounting to Rs. 65,654/- @ 18% per annum for the period from 18.05.2017 (the due date of payment of the first installment) to 17.11.2017 (the date of next payment of Rs. 15,16,000/- made by the allottees). However, in view provisions of Section 19(7) of the Act read with Rule 16 of the Rules, the promoter is entitled to penal interest at SBI highest MCLR plus two percent, which was 8.15% + 2% for the period from 18.05.2017 to 31.10.2017 and was 8.10% + 2% for the period from 01.11.2017 to 17.11.2017.

Therefore, the amount of penal interest as per the Act for this delay works out to be only Rs. 37,005/-. Accordingly, the promoter issued another notice dated 27.02.2018 for default in payment of even second installment. The response of the allottees (R-3) to aforesaid notice has no locus standi in view of the terms and conditions of the allotment letter dated 22.03.2017 and the provisions of the Act and the Rules.

21. In this way, the allottee continuously defaulted in making payment of installments during the period from 18.05.2017 (the due date of payment of the first installment) to 17.05.2019 (the date of the last payment by the allottees of an amount of Rs. 54,79,000/-); and even thereafter, because though after adjusting the penal interest at SBI highest MCLR as prevailing from time to time plus two percent, interest @ 12% per annum applicable for payment of the balance 75% amount of the price of the plot in installments and the principal amount of installments, out of the payments made by allottees in five tranches from time to time till 17.05.2019, there was a surplus of an amount of about Rs.8.86 lakh only with effect from 17.05.2019 for a half-year, whereas the last three installments (sixth to eighth) were due on 18.11.2019, 18.05.2020 and 18.11.2020 and the principal amount alone of these three installment due was Rs. 15,15,875/- each, besides the interest @ 12% per annum and the penal interest and no further payment towards these three pending installments has been made by the allottees.

22. Clause 7.3 of the Form 'Q' (i.e. the 'agreement for sale' prescribed, in terms of Section 13(2) of the Act, under Rule 8(1) of the Rules) appended to the Rules inter alia provides that on failure of allottee to pay the installment as per schedule given in allotment letter,

apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.

23. There is no dispute that possession of the allotted plot was offered by the promoter to the allottees vide letter dated 26.08.2019, whereby the allottees were directed to take possession within a period of 7 days of its issue, but due to failure on the part of the allottees to take possession, it stood deemed to be handed over on 02.09.2019 in terms of clause 4(i) of the allotment letter.

24. The promoter-authority's memo dated 31.12.2015 addressed inter alia to its other/subsidiary development authorities (namely GMADA, GLADA, PDA, BDA, ADA & JDA) on the subject "Auction of undeveloped sites – Exemption from payment of interest till possession" has been relied upon by the allottees in their complainant and by the Authority while deciding the complaints.

25. Perusal of the above said policy dated 31.12.2015 reveals that many conditions (like number of installments, the period after which first installment is payable, etc) of the said policy do not match with the scheme of auction in question. Moreover, the benefit of not charging interest appears to be for the first installment only. Moreover, the promoter has contended that the promoter is entitled to charge interest on installments and penal interest for delay in payment thereof, because the scheme framed/allotment letter are later in point of time and would prevail upon the policy framed prior in point of time

26. Moreover, this Tribunal, in its judgment dated 31.12.2021 in Appeal No. 230 of 2020 and Appeal No.231 of 2020 (**supra**), has held as under:-

> *"17. Since the appellant has availed of a statutory remedy, the reliefs that the Authority under the Act can grant would necessarily have to be restricted to the ones available under the statute. The waiver of interest or grant thereof in terms of the policy by the State Government would not ipso facto bind the Authority to disentitle any relief available to any allottee under the Act. However, it does not prevent the Authority from taking a holistic view and moulding the relief to an allottee to avoid an unjust enrichment or an unexpected windfall to him.*
>
> *18. A perusal of the judgment of the Hon'ble Punjab and Haryana High Court referred to in the policy framed by the Government reveals that there are certain directions given to the State to deal with situations where the public bodies do not stand advantaged for their own defaults at the expense of the allottee. Since the Government framed the policy ostensibly, as a measure of compliance of the directions given by the Hon'ble High Court it would purely be in their domain to apply it while granting a benefit to an allottee. This however, does not preclude or restrict the allottee's right to approach the Authority under the Act for redressal of his grievance, since it is a statutory remedy.*
>
> *19. The Authority in turn would have no jurisdiction to enforce the policy of a Government as it is bound to deal with the matters before it strictly in terms of the powers that flow from the statute i.e. RERA Act. It is purely in the domain of the Government to apply or not to apply a policy which shall be independent of the reliefs available to an aggrieved person under the Act. It matters not that the policy, the benefit of which an allottee claims, somewhat encapsulates the spirit of the Act in protecting an allottee from an unjust action of the developer or promoter, which in this case happens to be a public body.*
>
> *20. Likewise, we as an Appellate Authority would have no such power to issue mandates to enforce a policy of*

> *the Government but nothing precludes the Authority or for that purpose the Appellate Tribunal to take into consideration a fact of a benefit granted under any policy of the Government and deal with it appropriately while deciding the issues brought before it."*

27. The contention of the promoter, that the issuance of NDC by the promoter has got no direct link with the handing over of possession, certainly carries weight because as per terms and conditions of the allotment letter, possession was scheduled to be handed over by 20.06.2017, whereas the payment in installments is scheduled up to 18.11.2020; and NDC can't be issued before receipt of entire consideration for the site/plot along with interest, penalty and other charges, if any.

28. Therefore, it is the allottees who are squarely at fault in this case. Hence, the order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1508 of 2019 is liable to be set aside. However, at the same time, the promoter needs to be directed to charge interest for delay in payment of installments at SBI highest MCLR as prevailing from time to time instead of charging penal interest of 18% per annum in terms of clause 3(xi) of the allotment letter dated 22.03.2017.

SECOND CASE (APPEALS NO. 250 OF 2020 AND 3 OF 2021):

29. This second case is in respect of Appeal No. 250 of 2020 (**Sandeep Katyal and another versus Punjab Urban Planning and Development Authority**) and its cross appeal bearing Appeal No. 3 of 2021 (**Punjab Urban Planning and Development Authority versus Sandeep Katyal and others**) arising out of order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1466 of 2019.

30. The conclusions and operative part of the order of the Authority in this case are identical to the ones made in first case discussed above except that (i) the date by which the entire payment has been claimed to be made is 18.05.2018; (ii) the principal amount as per allotment letter is Rs. 1,73,82,750/-; and (iii) it has additionally been concluded in this case that *"Original allottee was Smt. Asha Katyal but her sons namely Sh. Sandeep Katyal & Amit Katyal who are complainant(s), stepped into her shoes by way of re-allotment letter issued in their names on 29.01.2019 by the respondent. The present complainant(s) are legally in a position to file the complaint."*.

31. In this case, persuant to the bid @ Rs.1,18,250/- per square meter of one Ms. Asha Katyal for SCO site/plot No. 16 measuring 147 square meter, allotment letter dated 22.03.2017 was issued to her, the terms and conditions of which are similar to those of the one of even date issued in the first case, for a price of Rs. 1,73,82,750/- and 2% cancer cess thereon.

32. As mentioned in the order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1466 of 2019, as per summary of the account statement submitted before the Authority, an amount of Rs. 1,69,15,588.00 has been paid by the allottees on various dates. Out of it, Rs. 20,85,930.00 have been paid on 18.11.2016 on account of the 10% payable at the fall of hammer along with 2% cancer cess; Rs. 26,07,413.00 paid on 17.12.2016 on account of another 15% payable within 30 days of the auction. The remaining amount of Rs. 1,22,22,245.00, paid in five tranches from 17.05.2017 to 17.05.2018, is hereby being tabulated, along with instalments of balance 75% payable due from time to time as per clause 3(ii) allotment letter, as under:-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1st	16,29,633	7,82,224	24,11,857	18.05.2017	17.05.2017	24,11,857
2nd	16,29,633	6,84,446	23,14,079	18.11.2017	24.05.2017	8,50,000
3rd	16,29,633	5,86,668	22,16,301	18.05.2018	17.11.2017	14,64,079
4th	16,29,633	4,88,890	21,18,523	18.11.2018	17.05.2018	1,65,679
5th	16,29,633	3,91,112	20,20,745	18.05.2019	18.05.2018	73,30,630
6th	16,29,633	2,93,334	19,22,967	18.11.2019		
7th	16,29,632	1,95,556	18,25,188	18.05.2020		
8th	16,29,632	97,778	17,27,410	18.11.2020		
Total	**1,30,37,062**	**35,20,008**	**1,65,57,070**			**1,22,22,245**

However, as per the details of the payments made by the allottees to the promoter, that have been placed on record before this Tribunal by learned counsel for the allottees on 14.07.2022, total payment amounting to Rs. 1,67,49,909/- has been claimed to be made by the allottees wherein they have not claimed the payment of an amount of Rs. 1,65,679/- which finds mention in the order of the Authority as aforesaid, to be the amount of TDS deposited on 17.05.2018.

33. As per admitted notice dated 27.02.2018 of the promoter to the original allottee, an amount of Rs. 8,50,000/- was due, which indicates that the amount of Rs. 8,50,000/-, which has been claimed by the allottees to have been paid on 24.05.2017 as *"Amt of adv. Installment for rescheduling"*, is ostensibly wrong and might have been paid after 27.02.2018.

34. Further, as per the original allottee's alleged letter dated 17.05.2017 addressed to the promoter (Annexure P-4), which neither bears the signatures of the said allottee nor any thing is appended on it towards its receipt by the promoter, the original allottee has claimed to have paid an amount of Rs. 73,30,630/- vide 14 pay orders for Rs. 5,00,000/- each and another one for Rs. 3,30,630/- towards only the principal amount of the last six installments after deducting (i) an amount of Rs. 8,14,816/- as 10% of the aggregate of the principal amounts of the last five installments; (ii) an amount

of Rs. 14,66,670/- as the interest already paid with first and second installments (Rs. 7,82,224/- and Rs. 6,84,446/- respectively); and (iii) an amount of Rs. 1,65,680/- as TCS, which has been worked out therein @ 1% of net amount arrived at after deducting aforesaid amount of Rs. 8,14,816/- from the price of the plot (without 2% cancer cess) i.e. from Rs. 1,73,82,750/-.

35. As per opening condition of the additional terms and conditions of the re-allotment letter dated 29.01.2019, the new allottees are to pay the balance installments as per schedule given below:-

Installment	*Due Date*	*Principal*	*Interest*	*Total amount payable*
1st	*18.05.2017*	*PAID*		
2nd	*18.11.2017*			
3rd	*18.05.2018*			
4th	*18.11.2018*			
5th	*18.05.2019*			
6th	*18.11.2019*	654572.00	293334.00	947906.00
7th	*18.05.2020*	1629632.00	195556.00	1825188.00
8th	*18.11.2020*	1629632.00	97778.00	1727410.00
	Total	*3913838.00*	*586668.00*	*4500504.00*

36. This vital piece of paper i.e. the first page of terms and conditions of the re-allotment letter dated 29.01.2019, containing aforementioned condition, has been placed on record before this Tribunal by the promoter. However, the allottees ostensibly concealed it by placing only remainig two pages of the additional terms and conditions of the re-allotment letter. It had been metioned in the complaint dated 12.12.2019 that there was an outstanding shown in the re-allotment letter whereas the complainants had made 100% to the promoter. However, such contention has not been raised by the allottees in their appeal dated 14.10.2020 bearing Appeal No. 250 of 2020.

37. The promoter has inter alia contended that one of the new allottees, Mr. Sandeep Katyal, has submitted details of amounts paid towards

the price of the site in question vide his letters dated 22.03.2019 and 25.03.2019 received in the office of the promoter on 26.03.2019, wherein he also requested to reschedule the installments and accordingly the same were rescheduled vide letter dated 08.01.2020 of the promoter as under:-

Due Date	*Installment*	*Principle*	*Interest*	*Amount*
18.11.2018	*4th*	*573631.00*	*174447.00*	*748078.00*
18.05.2019	*5th*	*573631.00*	*137671.00*	*711302.00*
18.11.2019	*6th*	*573631.00*	*103254.00*	*676885.00*
18.05.2020	*7th*	*573631.00*	*68836.00*	*642467.00*
18.11.2020	*8th*	*573631.00*	*34418.00*	*608049.00*
		2868155.00	*518626.00*	*3386781.00*

38. This vital aspect too has been concealed by the allottees in their Appeal No. 250 of 2019.

39. The appeal of the allottees bearing Appeal No. 250 of 2021 could be dismissed alone on account of concealment and placing on record wrong information.

40. After the payment of Rs. 73,30,630/- by the original allottee on 18.05.2018, the transferees-complainants have not made any payment to the promoter towards the price of the plot, either in terms of the schedule given in the re-allotment letter dated 29.01.2019 or in terms of the aforementioned rescheduling of installments dated 08.01.2020.

41. In this case, as the original allottee paid the first installment along with interest on 17.05.2017 i.e. within time as per the payment schedule stipulated under clause 3(ii) of the original allotment letter, but the promoter failed to hand over the possession of the plot by the due date i.e. 20.06.2017. However, the promoter offered possession of the plot only on 26.08.2019. Hence, the provisions under clause 9.1 of the Form 'Q' (i.e. the 'agreement for

sale' prescribed, in terms of Section 13(2) of the Act, under Rule 8(1) of the Rules) read with its clause 9.2(i) are invokable. The said provisions provide that if the promoter fails to provide possession of the apartment/plot to the allottee within the time period specified, then the allottee is entitled to stop making further payments to the promoter as demanded by the promoter and that if the allottee stops making payments, the promoter shall correct the situation by completing the construction milestones and only thereafter, the allottee will be required to make the next payment without any penal interest.

42. The original allottee made payments in three more tranches till 18.05.2018 amounting to Rs. 96,44,709/- as already described under paragraph 32 above (except the payment of Rs. 1,65,679/- shown in the impugned order as paid on 17.05.2018 towards TDS but not claimed in the detail of payments placed on record on 14.07.2022).

43. A perusal of the payment schedule, the payments made by the original allottee (see the table under paragraph 32 above) and the balance installments payable by the tranferees-complainants as per the re-allotment dated 29.01.2019 (see the table under paragraph 35 above) lead to the conclusion that aforementioned amount of Rs. 96,44,709/- was accounted for against second, third, fourth, fifth and part of sixth installments.

44. The transferees-complainants have not made any payment at all, though schedule of payment of the balance payments is given in the re-allotment letter dated 29.01.2019 or despite the promoter's letter dated 08.01.2020 vide which the payments were rescheduled

on the written request of one of the transferees (see paragraph 37 above).

45. The complainants can be enforced to pay pending rescheduled installments (principal amount plus interest), only after 03.09.2019 (the deemed date of possession as per offer of possession made vide letter 26.08.2019) to them by the promoter, along with interest at the rate prescribed under Rule 16 of the Rules only from the date of valid offer of possession till the date(s) of payment thereof.

46. In view of the judgment dated 24.08.2020 passed by Hon'ble Supreme Court of India in Civil Appeal No. 6239 of 2019 titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others versus DLF Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.)**, the transferee's entitlement to the interest under Section 18(1) of the Act for delay in handing over the possession has to be restricted to period commencing from 29.01.2019 (the date of transfer of the plot) till 03.09.2019 (the deemed date of possession offered vide letter dated 26.08.2019), as has been held by this Tribunal in Appeal No. 37 of 2021 (**Leela Gupta versus Bathinda Development Authority**) decided on 12.05.2022.

47. The reallotment letter dated 29.01.2019 inter alia stipulates that *"The period of construction is valid up to 3 years from the date of original allotment letter i.e. 22.03.2017 and you shall pay the ext. fee as per PUDA policy."*, whereas clause 6(iii) of the allotment letter dated 22.03.2017 stipulates that *"The allottee will have to construct the building within 3 years from the date of possession. The period can be extended by the Estate Officer, PUDA, Jalandhar in the manner and on payment of such fee as fixed by the Govt."*. This condition of the reallotment letter has, without any

apparent logic, significantly curtailed the right of transferee to complete the construction within 3 years, particularly when the offer of possession has been made by the promoter only on 26.08.2019.

48. Therefore, besides the promoter being at fault for the period from 21.06.2017 to 03.09.2019 for delay in possession, the allottees-complainants too defaulted in making timely payment of rescheduled installments even after the promoter made them offer of possession.

49. In view of above discussion, the order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1466 of 2019 is liable to be amended appropriately

THIRD CASE (APPEALS NO. 251 OF 2020 AND 4 OF 2021):

50. This third case is in respect of Appeal No. 251 of 2020 (**Sohan Lal and another versus Punjab Urban Planning and Development Authority**) and its cross appeal bearing Appeal No. 4 of 2021 (**Punjab Urban Planning and Development Authority versus Sohan Lal and others**) arising out of order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1507 of 2019.

51. The conclusions and operative part of the order of the Authority in this case are identical to the ones made in first case discussed above except that (i) the date by which the entire payment has been claimed to be made is 16.05.2019; (ii) the principal amount as per allotment letter is Rs. 1,59,05,400/-; and (iii) it has additionally been concluded that "*The complainant(s), stepped shoes as owners by way of a re-allotment letter issued in their names on 14.06.2017*

by the respondent. The present complainant(s) are legally in a position to file the complaint.".

52. In this case, persuant to the bid @ Rs.1,08,200/- per square meter for SCO site/plot No. 18 measuring 147 square meter, allotment letter dated 22.03.2017 was issued to Sarvshri/Smt Mohan Lal, Jyoty, Gagan, Sohan & Tania, the terms and conditions of which are similar to those of the ones of even date issued in two cases discussed above, for a price of Rs. 1,59,05,400/- and 2% cancer cess thereon.

53. As mentioned in the order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1507 of 2019, as per summary of the account statement submitted before the Authority, an amount of Rs. 1,57,02,990.00 has been paid by the allottees tranferees on various dates. Out of it, an amount of Rs. 19,08,648.00 paid on 19.11.2016 accounts for the 10% payable at the fall of hammer along with 2% cancer cess; an amount of Rs. 23,85,811.00 paid on 16.12.2016 accounts for another 15% payable within 30 days of the auction. The remaining amount of Rs. 1,14,08,531.00 paid in six tranches from 17.05.2017 to 17.05.2019 is hereby being tabulated, along with instalments of balance 75% payable from time to time as per clause 3(ii) allotment letter, as under:-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1st	14,91,131	7,15,744	22,06,875	18.05.2017	17.05.2017	14,91,135
2nd	14,91,131	6,26,275	21,17,406	18.11.2017	19.05.2017	74,000
3rd	14,91,131	5,36,808	20,27,939	18.05.2018	17.11.2017	14,91,132
4th	14,91,131	4,47,340	19,38,471	18.11.2018	16.05.2018	14,91,132
5th	14,91,131	3,57,872	18,49,003	18.05.2019	16.11.2018	14,91,132
6th	14,91,131	2,68,404	17,59,535	18.11.2019	16.05.2019	53,70,000
7th	14,91,131	1,78,936	16,70,067	18.05.2020		
8th	14,91,132	89,468	15,80,600	18.11.2020		
Total	**1,19,29,048**	**32,20,847**	**1,51,49,896**			**1,14,08,531**

However, as per the details of the payments made by the allottees to the promoter, that have been placed on record before this Tribunal by learned counsel for the allottees on 14.07.2022, total payment amounting to Rs. 1,56,28,990/- has been claimed to be made by the allottees wherein they have not claimed the payment of an amount of Rs. 74,000/- which finds mention in the order of the Authority as aforesaid to be the amount deposited on 19.05.2017.

54. As admitted in the complaint, the promoter issued notices dated 07.11.2017 and 27.02.2018 for outstanding payments of Rs. 7,15,740/- and Rs. 13,42,014/- respectively, which were replied by the allottees vide letters dated 09.11.2017 and 12.03.2018 & 13.04.2018 and as per promoter's reply to the complaint, a notice dated 05.04.2018 was issued by the promoter to the complainants, whereby they were inter alia called for hearing on 05.04.2018.

55. The reallotment letter dated 14.06.2017 inter alia stipulates that *"The period of construction is valid up to 3 years from the date of original allotment letter i.e. 22.03.2017 and you shall pay the ext. fee as per PUDA policy."*, whereas clause 6(iii) of the allotment letter dated 22.03.2017 stipulates that *"The allottee will have to construct the building within 3 years from the date of possession. The period can be extended by the Estate Officer, PUDA, Jalandhar in the manner and on payment of such fee as fixed by the Govt."*. This condition of the reallotment letter has, without any apparent logic, significantly curtailed the right of transferee to complete the construction within 3 years, particularly when the offer of possession has been made by the promoter only on 26.08.2019.

56. This case, except for the re-allotment, is thus similar to the first one and the allottees in this case too are squarely at fault and attracts similar action. However, the period of three years for construction should be counted from 03.09.2019 i.e. after the date of the deemed possession.

FOURTH CASE (APPEALS NO. 5 of 2021 AND 13 OF 2021):

57. This fourth case is in respect of Appeal No. 13 of 2021 (**Bhupinder Pal Juneja and another versus Punjab Urban Planning and Development Authority**) and its cross appeal bearing Appeal No. 5 of 2021 (**Punjab Urban Planning and Development Authority versus Bhupinder Pal Juneja and others**) arising out of order dated 06.10.2020/13.10.2020 passed by the Authority in the complaint bearing GC No. 1474 of 2019.

58. The conclusions and operative part of the order dated 06.10.2020 of the Authority in this case are identical to the ones made in first case discussed above except that (i) the date by which the entire payment has been claimed to be made is 13.05.2019; and (ii) the principal amount as per allotment letter is mentioned as Rs. 1,57,43,000/-.

59. In this case, persuant to the bid @ Rs.1,07,100/- per square meter for SCO site/plot No. 20 measuring 147 square meter, allotment letter dated 22.03.2017 was issued to Sarvshri Bhupinder Paul Juneja and Anshul Juneja, the terms and conditions of which are similar to those of the ones of even date issued in the three cases discussed above, for a price of Rs. 1,57,43,700/- and 2% cancer cess thereon.

60. Unlike the orders dated 28.07.2020 passed by the Authority in three cases discussed Above, the detail of summary of the account

statement submitted before the Authority has not been given in the order dated 06.10.2020 of the Authority. However, it has been mentioned therein that *"The counsel for the complainant(s) further referred to the summary of the account statement submitted. She argued that the complainant(s) have made all payments within stipulated period, as per the payment plan specified in the allotment letter and have not made payment of interest as per conditions mentioned in the brochure & the policy of 2015."*.

61. The allottees in their appeal have claimed that they have made 100% payment amounting to Rs. 1,57,43,606/- as per letter dated 13.05.2019 attached as Annexure P-4 but as per index of the appeal, no such letter has been filed and at Annexure P-4 is the complaint dated 18.06.2020, wherein it has inter alia been mentioned (i) that the complainants participated in the auction held on 18.11.2016 by depositing Rs. 18,89,244/-; (ii) that the allotment letter dated 22.03.2017 confirmed the reciept of the payment of Rs. 39,35,925/- towards initial 25% of the price of the plot besides receipt of 2% as cancer cess; (iii) that further payments were made for the principal amounts due, as per half yearly equated installments up to 18.11.2018, without interest and balance 3 half yearly payments were made in advance in lump sum on 13.05.2019 to 15.05.2019 by availing rebate of 10%; (iv) that thus the complainants made 100% payment against the allotted unit amounting to Rs. 1,57,43,606/-.

62. However, as per the details of the payments made by the allottees to the promoter, that have been placed on record before this Tribunal by learned counsel for the allottees on 14.07.2022, total payment amounting to Rs. 1,48,65,147/- (i.e. the correct total of the amounts mentioned against Sr No. I to XXXV of such details,

instead of Rs. 1,57,43,700/-, which also happens to be the price of the plot without 2% cancer cess thereon) has been claimed to be made by the allottees during 18.11.2016 to 15.05.2019.

63. Out of aforementioned amount of Rs. 1,48,65,147/-, an amount of Rs. 18,89,244/- paid on 18.11.2016, accounts for the 10% payable at the fall of hammer along with 2% cancer cess; Rs. 23,60,930/- paid on 09.12.2016 and Rs. 1,000/- paid on 03.01.2017 account for another 15% amount of Rs. 23,61,555/- payable within 30 days of the auction, Rs. 359/- as advance towards balance 75% price of the plot and remaining Rs. 86/- ostensibly towards surcharge & penal interest in terms of clause 6 of the brochure due to late payment of Rs. 625/- out of 15% of the price of the plot. The remaining amount of Rs. 1,06,13,973/-, paid in 32 tranches from 14.05.2017 to 15.05.2019, is hereby being tabulated, along with instalments of balance 75% payable due from time to time as per clause 3(ii) allotment letter, as under:-

Installments due as per clause 3(ii) of the allotment letter					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1st	14,75,927	7,08,445	21,84,372	18.05.2017	14 to 16.05.2017	14,75,927
2nd	14,75,927	6,19,889	20,95,816	18.11.2017	13 to 28.11.2017	14,76,192
3rd	14,75,927	5,31,334	20,07,261	18.05.2018	14 to 17.05.2018	14,76,000
4th	14,75,927	4,42,778	19,18,705	18.11.2018	15 to 19.11.18	14,75,854
5th	14,75,927	3,54,222	18,30,149	18.05.2019	13 to 15.05.2019	47,10,000
6th	14,75,927	2,65,667	17,41,594	18.11.2019		
7th	14,75,927	1,77,111	16,53,038	18.05.2020		
8th	14,75,927	88,556	15,64,483	18.11.2020		
Total	1,18,07,416	31,88,002	1,49,95,418			1,06,13,973

64. As admitted in the complaint itself, the promoter issued notices dated 27.02.2018 and 28.01.2019 for outstanding payments of Rs.13,82,456/- and Rs. 37,00,000/- respectively.

65. Thus, this case too is similar to the first one and therefore the allottees in this case too are squarely at fault and attracts similar action.

MY DECISION IN THE PRESENT EIGHT APPEALS:

66. In view of above discussions, I deem it appropriate to order as follows:

(i) The order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1508 of 2019, out of which Appeal No. 249 of 2020 and Appeal No. 2 of 2021 have arisen, is hereby set aside and.

(ii) The order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1466 of 2019, out of which Appeal No. 250 of 2020 and Appeal No. 3 of 2021 have arisen, is hereby entirely amended as under:-

(a) The promoter is directed, in terms of the provisions of Section 18(1) of the Act and Rule 16 of the Rules, to pay to the transferees-complainants interest for the period commencing from 29.01.2019 on the payments made on or before 29.01.2019 and commencing from the date of payment on the payments made after 29.01.2019, till 03.09.2019 at SBI highest MCLR as prevailing from time to time plus 2%.

(b) The amount of the interest worked out as mentioned under sub-paragraph (a) above, shall be adjusted towards the pending rescheduled installments.

(c) The complainants-transferees shall pay, within 60 days from the date of this order, the remaining pending amount of the rescheduled installments (principal amount plus interest as per the promoter's letter dated 08.01.2020) to the promoter along with penal interest

from 03.09.2019 till the date of payment at SBI highest MCLR as prevailing from time to time plus 2%.

(d) The period of three years for construction should be counted from 03.09.2019 i.e. after the date of the deemed possession.

(iii) The order dated 28.07.2020 passed by the Authority in the complaint bearing GC No. 1507 of 2019, out of which Appeal No. 251 of 2020 and Appeal No. 4 of 2021 have arisen, is hereby set aside, except that the period of three years for construction should be counted from 03.09.2019 i.e. after the date of the deemed possession.

(iv) The order dated 06.10.2020 passed by the Authority in the complaint bearing GC No. 1474 of 2019, out of which Appeal No. 13 of 2021 and Appeal No. 5 of 2021 have arisen, is hereby set aside.

(v) In above mentioned all the four cases relating to four complaints and eight appeals, the promoter is directed to charge interest for delay in payments of installments at SBI highest MCLR as prevailing from time to time instead of charging penal interest of 18% per annum in terms of clause 3(xi) of the allotment letters all dated 22.03.2017.

67. A copy each of this order be placed in each of the files of aforementioned eight appeals and also be sent to the parties as well as the Authority and thereafter, the files be consigned to the record room.

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

August 22, 2022