

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

Subject: -

APPEAL NO.108 OF 2022

Punjab Urban Planning and Development Authority (PUDA), PUDA Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

1. Shimla Devi
2. Rakesh Kumar
3. Ravi Kumar

All three R/o House No. 119, Ward No. 02, Near Railway Station, Tohana, District: Fatehabad, Haryana-125120

....Respondents

APPEAL NO.109 OF 2022

Punjab Urban Planning and Development Authority (PUDA), PUDA Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

Rakesh Kumar S/o Sh. Ram Kumar R/o Bakshi Dharmashala, Railway Road, Tohana, District: Fatehabad, Hayana-125120. (Incorrect name and Incomplete address mentioned as Ramesh Kumar R/o Bakshi Dharamshala, Railway Road, Fatehabad, Haryana-125120)

....Respondent

APPEAL NO.110 OF 2022

Punjab Urban Planning and Development Authority (PUDA), PUDA Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

Subash Jinda R/o Krishna Jewellers, Main Bazaar Jind, District Jind, Haryana-125120.

....Respondent



APPEAL NO.119 OF 2022

Punjab Urban Planning and Development Authority (PUDA), PUDA
Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

Mukesh Kumar R/o Near Moti Ram Jaghadhar Marg, Old Anaj Mandi,
Jind, Haryana-126120.

....Respondent

Memo No. R.E.A.T./2023/ 56

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 were 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 24th
day of January, 2023.

Shanoo Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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

House No. 119 Appeal No. 108 of 2022

MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA), PUDA
Complex, Bhagu Road, Bathinda, Punjab-151001 ...Appellant

Versus

1. Shimla Devi
2. Rakesh Kumar
3. Ravi Kumar

All three residents of House No. 119, Ward No. 2, Near Railway
Station, Tohana, District: Fatehabad, Haryana-125120.

...Respondents

Place: Chandigarh
Date: 18.05.2022

(Bhupinder Singh, Balwinder Singh & Kunal Choksi)
Advocates
Counsel for the Appellant



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

Appeal No. 109 of 2022

MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA),
PUDA Complex, Bhagu Road, Bathinda, Punjab-151001

...Appellant

Versus

1. Rakesh Kumar, son of Sh. Ram Kumar, R/o Bakshi
Dharamshala, Railway Road, Tohana, District: Fatehabad,
Haryana-125120. (Incorrect name and Incomplete address
mentioned as Ramesh Kumar, R/o Bakshi Dharamshala,
Railway Road, Fatehabad, Haryana-125120.)

...Respondent



Place: Chandigarh
Choksi
Date: 28.06.2022

(Bhupinder Singh, Balwinder Singh & Kunal

Advocates
Counsel for the Appellant

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

Appeal No. 110 of 2022


MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA), PUDA
Complex, Bhagu Road, Bathinda, Punjab-151001 ...Appellant

Versus

1. Subash Jindal, R/o Krishna Jewellers, Main Bazaar Jind, District
Jind, Haryana-125120. ...Respondents

Place: Chandigarh
Date: 12.05.2022


(Bhupinder Singh, Balwinder Singh & Kunal Choksi)
Advocates
Counsel for the Appellant



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

Appeal No. 119 of 2022

MEMO OF PARTIES

Punjab Urban Planning and Development Authority (PUDA), PUDA
Complex, Bhagu Road, Bathinda, Punjab-151001 ...Appellant

Versus

1. Mukesh Kumar, resident of Near Moti Ram Jaghadhar Marg, Old
Anaj Mandi, Jind, Haryana-126102. ...Respondent

Place: Chandigarh
Date: 28.05.2022

(Bhupinder Singh, Balwinder Singh & Kunal Choksi)
Advocates
Counsel for the Appellant



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

APPEAL NO.108 OF 2022

Punjab Urban Planning and Development Authority (PUDA),
PUDA Complex, Bhagu Road, bathinda, Punjab-151001

APPEAL NO.108 OF 2022 ...Appellant

Versus

1. Shimla Devi
2. Rakesh Kumar
3. Ravi Kumar

All three R/o House No. 119, Ward No. 02, Near Railway
Station, Tohana, District: Fatehabad, Haryana-125120

....Respondents

APPEAL NO.109 OF 2022

Punjab Urban Planning and Development Authority (PUDA),
PUDA Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

Rakesh Kumar S/o Sh. Ram Kumar R/o Bakshi
Dharmashala, Railway Road, Tohana, District: Fatehabad,
Hayana-125120. (Incorrect name and Incomplete address
mentioned as Ramesh Kumar R/o Bakshi Dharamshala,
Railway Road, Fatehabad, Haryana-125120)

....Respondent



APPEAL NO.110 OF 2022

Punjab Urban Planning and Development Authority (PUDA),
PUDA Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

Subash Jindal R/o Krishna Jewellers, Main Bazaar Jind,
District Jind, Haryana-125120.

....Respondent

APPEAL NO.119 OF 2022

Punjab Urban Planning and Development Authority (PUDA),
PUDA Complex, Bhagu Road, bathinda, Punjab-151001

...Appellant

Versus

Mukesh Kumar R/o Near Moti Ram Jaghadhar Marg, Old Anaj
Mandi, Jind, Haryana-126120.

....Respondent



Present: Mr. Balwinder Singh and Mr. Bhupinder Singh,
Advocates for the appellant.

Ms. Manju Goyal, Advocate for the respondents.

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

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

**Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022**

3

1. By this common order we will dispose of the following appeals i.e. Appeal No. 108 of 2022 (PUPDA, Bathinda Vs. Shimla Devi & Another); Appeal No. 109 of 2022 (PUPDA, Bathinda Vs. Rakesh Kumar); Appeal No. 110 of 2022 (PUPDA, Bathinda Vs. Subhash Jindal); Appeal No. 119 of 2022 (PUPDA, Bathinda Vs. Mukesh Kumar) as they raise common question, involving similar controversy and the impugned order passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) has identical reasoning. All the appeals have been preferred by the PUPDA, Bathinda (hereinafter known as the developer) while the respondents were the complainants and would hereinafter be referred to as the allottees. The impugned order has been passed by the Authority, under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act) and Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter known as the Rules).



2. The facts are being taken from the case of Shimla Devi (Appeal No. 108 of 2022). All the allottees herein before us aspired for a residential plot in the development scheme floated by the developer. Allotment letters were issued to them, detailing the payment schedule

Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022

4

contained in clause 3 while clause 4 envisaged possession after completion of development works at the site in a period of one year from the date of issuance of allotment letter. Allottees had the option to withdraw from the scheme in the event of delay in which case the developer retained to itself right of deduction of 10% of amount while refunding the remaining 90%. The date of possession in terms of the allotment letter was 24.08.2012.

3. It is pertinent to mention here that the present allottees in this Appeal No. 108 of 2022 i.e. Shimla Devi and another were not the original allottees. They came into the picture in July 2013 after a valid transfer was permitted by the developer upon an application made by the original allottee in favour of the present allottee i.e. Shimla Devi and another.

5. It was alleged that substantial amount had been paid which would vary from allottee to allottee but in the case of Shimla Devi approximately 70% has been paid.

6. The possession however did not materialize while the developer kept on sending notices to the allottees under Section 45(2) demanding installments.
7. The developer then issued a public notice in newspapers on 14.04.2016 asking all the allottees who had applied



Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022

5

under the scheme to take possession to which the present allottees (respondents) responded that they were willing to pay the balance installments but without interest on account of the delay in possession and for the reason that the basic amenities were still not available.

8. Finally, the complaint was filed before the Authority where the developer took up the plea that since the allottee had failed to deposit the installments the plots were liable to be resumed in terms of Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter known as the 1995 Act). It was stated that the allottees had the option to withdraw from the scheme and since they did not do so, all those who had applied for the plots were asked to take possession through a publication in newspapers on 14.04.2016. It was denied that the development works were not complete and the reference was made to the certain reports by the Sub-Divisional Engineers. It was also pleaded that the allottees could not claim any benefit from the developer as they themselves were at fault and the maximum period of 3 years for paying the installments with penalty also stood extinguished.



Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022

6

9. The Authority then looked into the rival contentions to conclude in favour of the allottees and granted the relief in the following terms:-

- "i. The respondent shall refund, the entire amount, paid by the complainants (including the amount paid by the original allottee), along with the interest @9.30% per annum (today's highest MCLR rate of 7.30% plus 2%), from the dates the amounts were received. This amount shall be refunded within 90 days in terms of Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. The amount paid by the original allottee, by way of transfer fee, shall not be refundable."*

Aggrieved thereof the appeals have been preferred by the developer who contends that there was no occasion to order refund for the reason that the development works were complete and the allottees themselves were at fault in firstly, not paying the installments in time and secondly by not taking possession despite a public notice dated 14.04.2016, urging them to take possession of the plots. Strenuous efforts were made by the learned counsel for the developer on the issue of completion of development works while making a reference to Annexure R3 (colly). It was thus prayed that the impugned order of the Authority did not consider these documents in the



Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022

7

right spirit consequently since it suffered from a fallacy of reasoning, it deserves to be set aside.

10. The allottees on the other hand supported the reasoning of the Authority in the impugned order.
11. On due consideration we are of the opinion that the Authority did not fall in error on any count. The conceded facts are that the allottees did deposit a substantial amount but the possession which was assured up to 24.08.2012 did not materialize at all. Even if the offer of possession is construed then it was through publication on 14.04.2016 much beyond assured date. The developer did not make any attempt to resume or cancel the allotment if there was default in payment by the allottees. They were certainly within their rights to do so as the 1995 Act empowered them in this regard. Reliance placed on Annexure R3 does not in any way alter the situation to the benefit of the developer considering that these are merely certificates issued by the Sub-Divisional Engineers in 2021. There is nothing on record to show that at the time of offering of possession in the year 2016 also, the development works were complete. Although these certificates do mention that water connection etc. were released somewhere in 2014 or prior to 2016 but they are indeed contradictory as one of the annexures



Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022

8

bearing reference No.2894 dated 27.06.2021 notes that the development works of 2 parks, plantation on roadside has been completed on 27.09.2020. There is thus nothing on record to show that a proper completion certificate was obtained by the developer to show that development works were indeed complete on the date when the possession was offered. The 1995 Act as also all other Acts including RERA Act in question envisage a completion certificate by the competent authority. The developer being an arm of the Government cannot be expected to be ignorant of such provision of law. Thus in the absence of any completion certificate we cannot rely upon the documents which are ambiguous to say that the least.

12. However, there is merit in the plea of the developer that since the allottees in Shimla Devi's case (Appeal No. 108 of 2022) were not the original allottees and stepped into the shoes upon a transfer being made in their favour only in July 2013, the benefit of statutory interest ought to flow to them from 2013 and not prior thereto.



13. Since we find this to be a correct position as a fact we would accept the argument and modify the impugned order in appeal No. 108 of 2022 (PUPDA, Bathinda Vs Shimla Devi and Another) only to the limited extent that

**Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022**

9

the statutory interest granted by the Authority to the allottees shall be w.e.f. 2013 (date of transfer) and not from any prior date.

14. With the aforesaid modification, the appeal stands disposed of.

Appeal No. 109 of 2022:-

15. The reasons as given in Appeal No. 108 of 2022 (PUPDA, Bathinda Vs Shimla Devi and Another) shall prevail in the case of the present allottee i.e. Rakesh Kumar (Appeal No. 109 of 2022) as well and the benefit of interest shall flow from the date of transfer and not from other date.

Appeal No. 110 of 2022:-

16. Although the impugned order has been passed on a different date i.e. 25.02.2022, but the reasons are identical to the one given in Shimla Devi's case (Appeal No. 108 of 2022) and consequently our reasons in the said case shall prevail in the present appeal as well but there is one solitary difference in the present case from the ones referred above, as this case pertains to the original allottee and therefore the benefit granted by the Authority shall apply ipso facto to the allottee in this appeal i.e. Appeal No. 110 of 2022. The appeal of the



Appeal No. 108 of 2022, Appeal No. 109 of 2022, Appeal No. 110
of 2022 and Appeal No. 119 of 2022

10

developer stands dismissed with no modification in this
case.

Appeal No. 119 of 2022:-

17. The reasons as given in Appeal No. 108 of 2022 (PUPDA,
Bathinda Vs Shimla Devi and Another) shall prevail in
the case of the present allottee i.e. Mukesh Kumar
(Appeal No. 119 of 2022) as well and the benefit of
interest shall flow from the date of transfer and not from
any other date.

Files be consigned to the record room



Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

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

December 23, 2022

DS

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Chandigarh
24/01/2023