

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

APPEAL NO. 69 OF 2022

Rajni Aggarwal aged about 60 years W/o Dr. Viveka Nand
Aggarwal R/o House No. 956, Sector-7, Urban Estate, Ambala
City, Haryana-134003

...Appellant

Versus

Janta Land Promoters Limited, SCO No. 39-42, Sector-82, SAS
Nagar, Mohali, Punjab-140306.

....Respondent

Present: - Mr. Pawan Mutneja (Sr. Adv) with Mr. Shubham
Aggarwal and Mrs. Suksham Aggarwal, Advocates for
the appellant.

Mr. Ranjit Singh Kalra, Advocate for the respondent.

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)
(Differing)



I have read the order written by Sh. Ashok Kumar Garg,
esteemed Member on the Bench and I respectfully beg to
differ.

2. Though the facts and pleadings have been set out
therein, more than elaborately, yet for the sake for brevity
as also for my divergent opinion I propose to write my
own order which is as below.

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3. The pleadings need not be set out again as they have been extracted in the order of Sh. Ashok Kumar Garg and be read into this order as well.

4. Some of the facts which come out unscathed from the controversy can be summed up as below:-

i. That a plot of 200 sq. yards was booked in the year 2005, even when the project had yet to be formalized. The factum of booking of this plot is conceded as is also the rate of the plot i.e Rs.11,500/- per sq. yard. Concededly, nothing took place for as many as 7 years till the year 2012 when an allotment letter was issued qua plot No. 144 measuring 250 sq. yards instead of 200 sq. yards the allottee had aspired for and carried an enhanced rate with regard to the additional area of 50 sq. yards.

ii. This price of additional area was fixed at Rs.27,000/- per sq. yard thereby inflating the total price of the plot considerably.

iii. The installment schedule was prescribed as 05.09.2013, 28.10.2013 and the remaining at the time of possession.

iv. Delayed interest for not paying the installments by the allottee in time was at the rate of 12% for the



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first month of delay and 15% for the second month thereafter at the rate of 18% till cancellation.

- v. Possession was to be given within one year of the allotment letter failing which interest was payable by the developer at the rate of 10% per annum on the deposit made by the allottee.
- vi. The allottee protested against the additional area and the price assigned to it.
- vii. On 18.09.2020 the respondent agreed to reduce the price of additional 50 sq. yards area to Rs.11,500/- per sq. yard instead of Rs.27,000/- demanded earlier, thereby applying a uniform rate for the entire plot. According to this letter and after rescheduling the price the total sale consideration came to Rs.28,75,000/- out of which Rs.6,20,000/- already stood paid and the balance of Rs.22,55,000/- was payable in installments. No amount was paid by the appellant thereafter towards the sale price in terms of the allotment. The complaint was filed with a grievance of delayed possession and during its pendency the cancellation order was passed by the respondent.



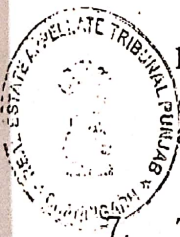
5. Now to proceed analytically and answer the controversy

we would have to revert back to the initial fact of the

respondent making an offer of a plot of 200 sq. yards in the year 2005 when the project had not even been conceptualized or launched. There was no agreement to sell executed between the parties.

6. Hence even if one is to ignore this crucial aspect, the fact of accepting money by the developer from a prospective allottee without there being a concretized launch of a project, would be in clear violation of the provisions of the PAPRA Act and the respondent, being in breach of the provisions of the law ought to be proceeded against. Be that as it may, an agreement was entered into on 30.05.2012, when the respondent offered a 250 sq. yards plot instead of 200 sq. yards plot for which the appellant had aspired. The additional 50 sq. yards was never sought for by the appellant and thus to give this additional area to an unwilling buyer and demand a higher price for this extra 50 sq. yards was highly arbitrary.

The appellant therefore cannot be faulted with to deny any further payment to the respondent in this regard prior to 18.09.2020 because eventually, through a letter dated 18.09.2020 the respondent agreed to apply a uniform rate of Rs.11,500/- per sq. yard for the entire 250 sq. yards plot acceding to the grievance of the appellant.



8. In fact the dispute inter se between the parties can be narrowed down to this date which can be considered as a starting point to determine the rights of the parties. It has to be kept in mind that this is a case demanding settlement of equities because of the peculiar facts. For more than 7 years the respondent retained an amount of Rs.6,20,000/- without offering any tangible benefits to the appellant and then offered a plot of higher dimension with an additional cost.

9. To my mind the respondent cannot hold the appellant responsible for not making the payments demanded by him in the year 2013 as the appellant was justified in contesting the price of the additional 50 sq. yards area. It is only after 18.09.2020, that such a default by the allottee can be considered. On the other hand the allottee stood deprived of both i.e. his money and a plot since 2005. To make matters worse when the complaint was filed, the respondent first cancelled the allotment of the appellant on this ground and then alienated it in favour of some other person thus, adding insult to injury.

10. An argument has been raised repeatedly during the course of hearing that the appellant has not questioned cancellation and hence the appeal be dismissed.

11. It is to be kept in mind that the parties were at 'lis' when the cancellation took place and nothing precludes the

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Court from taking cognizance of developments which take place during the pendency of a 'lis' before it and restore the parties to a status quo ante. It is evident that the respondent resorted to these tactics in order to frustrate the rights of the appellant and there is no hesitation to state that such an action needs to be deprecated. The cancellation necessarily has to be set aside and the parties restored to the status existing on the date when the complaint was filed.

12. Having said so, the question of relief now has to be answered which can be very simplistically put as below:-

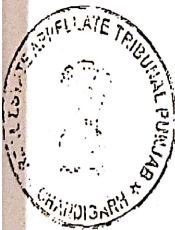
(a) The respondent enjoyed the advantage of Rs.6,20,000/- since the year 2005 till date and therefore is accountable and liable to compensate the appellant by adjusting this amount along with the interest towards the price of the plot of 250 sq. yards offered by the respondent for which the starting point is 18.09.2020.

(b) The respondent shall immediately offer a 250 sq. yards plot in its Mega Residential Project Sector 94, Mohali within a period of three months from the date of this order in lieu of plot No.144 which though allotted to the appellant now stands sold to a third party. The appellant in turn shall take the possession of the plot after making the payment



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calculated at the rate of Rs.11,500/- per sq. yard along with the interest at the rate prescribed under the Act read with Rule 16 of the Rules commencing from 18.09.2020 when the respondent agreed to curtail the price of additional 50 sq. yards. The respondent is liable to pay interest on Rs.6,20,000/- for retaining the amount from 2005 till 2020 which shall carry an interest at the rate of 7.5% since we cannot bind the respondent to a statutory interest prescribed under the RERA Act which came into existence in the year 2016, besides 2020 has been taken by me as a starting point when the respondent applied a uniform rate of Rs.11,500/- per sq. yard to the plot in question. Prior to the year 2020 the appellant cannot be faulted with for not paying the installments despite the offer made to him, since there was no plot offered till 2013 and then when the offer was made it was with an unacceptable baggage of 50 sq. yards at the rate of Rs.27,000/- per sq. yard. The respondent could not justifiably foist this upon the appellant. The respondent is also liable to pay statutory rate of interest for the delayed possession w.e.f. 18.09.2020 till the time the possession is handed over.



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These two amounts so determined shall be mutually adjusted and the possession handed over to the appellant after these adjustments have been effected.

The plea of the appellant having paid an amount of Rs.9,00,000/- remains unsubstantiated and hence no interference is warranted on this account.

13. Appeal stands disposed of as above.



File be consigned to the record room.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

06-03-2023
DS, 2023

Certified To Be True Copy
Shamshad Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

07/03/2023

Application No. 24
Date of receipt of application 25-1-6-3-23
Number of pages 29 + 8 + 1/MOP
Amount of Court fees levied on the application Rs. 50/-
Amount of Court fees paid Rs. 50/-
Prepared on 9-3-2023
Delivered on 14-3-2023
Shamshad Kaur
REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
CHANDIGARH