

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,
MADHYA MARG, CHANDIGARH.**

I)

Complaint No.ADC 1528 of 2020
Dated of Decision: 27.04.2021

Harkaran Singh Nehal, House No.3008, Phase-II, Urban Estate, Patiala, District Patiala, Punjab.

.....Complainant

Versus

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala.

.....Respondent

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II)

Complaint No.ADC 1529 of 2020
Dated of Decision: 27.04.2021

Maninder Kaur, House No.3008, Phase-II, Urban Estate, Patiala, District Patiala, Punjab.

.....Complainant

Versus

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala.

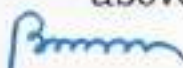
.....Respondent

Complaints under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri J.P. Singla, Advocate, representative for the complainants
Shri Bhupinder Singh, Advocate, representative for respondent.

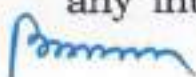
ORDER

1. Through this common order, I intend to dispose of the above mentioned complaints as these are based on



substantially similar facts, cause of action and against same promoter in the same project.

2. The Complainants Harkaran Singh and Maninder Kaur filed the above mentioned complaints against respondent Estate Officer, Patiala Urban Planning and Development Authority seeking interest on the already refunded amount for the period the respondent retained the same. The brief facts as enumerated in the complaints are that the respondent launched a commercial scheme known as PWD (Public Health) Fountain Chowk site scheme and through open auction SCO No.14 was auctioned to complainant Harkaran Singh Nehal for a sum of Rs.2,42,40,000/- and SCO No.13 was auctioned to complainant Maninder Kaur for a sum of Rs.2,37,00,000/-. Complainant Harkaran Singh Nehal deposited a sum of Rs.65,44,800/- and Maninder Kaur deposited a sum of Rs.63,99,000/- being 25% of the respective prices of the SCOs. Thereafter on 12.07.2017 the respondent informed the complainants that they were unable to give possession of the site due to some reason and a proposal in respect of issuance of some other site was under consideration. Then in November, 2018, the respondent informed the complainants that the site in question was declared as protected monument and the amount paid by them would be returned to them, which was refunded in December, 2018 without any interest. The complainants requested a number of



times to the respondents to pay interest on the amount mentioned above which they retained for more than two years and even legal notices were served upon the respondent with request to pay interest to the complainants, but, to no effect. Hence, the complainants had to file the instant complaints.

3. Upon notice, the respondent filed replies to the complaints raising the plea that the Real Estate (Regulation and Development) Act 2016 (for short the Act) was applicable prospectively and not retrospectively and further the instant project had not been registered with the RERA Authority and therefore, the complaints were not maintainable; that there was no agreement, letter of intent or allotment letter in these cases and there was only an offer of allotment which could not materialize and as such there was no question of violating terms and conditions of any agreement; that the refund of the amount deposited by the complainants was made as per decision of the Government; that the State Govt. with a view to utilize its resources for over all development of the State, framed a scheme known as Optimum Utilization of Vacant Govt. land and under this scheme, the Government transferred 8.49 acres of land belonging to PWD (Public Health) for development and the Town and Country Planning Department of the Government of Punjab prepared a master plan of the area in question in the year 2012 after inviting

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objections and suggestions from the General Public and other interested parties and use of this site had been described as public and semi-public use; that PUDA Patiala, offered commercial sites at the site in question by way of auction held on 27.04.2016 and the complainants being the highest bidders for SCOs No.14 and 13 deposited 25% of the bid amount and that the issuance of allotment letters was under consideration, when CWP No.7956 of 2016 titled as Subhash Kapoor and others Vs. State of Punjab and Others was filed before the Hon'ble Punjab and Haryana High Court for quashing the transfer of the land and building situated at Fountain Chowk Patiala and on 12.05.2016 status quo was ordered to be maintained with regard to Kothi No.11-A situated in the Erstwhile Chief Engineer Public Health Office near Fountain Chowk, Mall Road, Patiala; that the department of Cultural Affairs Archaeology and Museums, Punjab, vide its order dated 04.05.2017 asked the office of the respondent not to carry out any type of development activity i.e. demolition, construction, reconstruction, alteration, re-alteration and cutting of trees in the Old PWD (Public Health) all buildings near fountain chowk Patiala and the land apparent and surrounded there as the same was under consideration of protection under the Act 1964; that the Government of Punjab Department of Tourism and Cultural affairs vide notification dated 23.08.2018 declared the site of old

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public health building to be a protected monument under the Act of 1964 and consequently the Hon'ble Punjab and Haryana High Court had disposed of CWP No.7956 of 02.16 on 01.10.2018; that the entire issue was considered by the Empowered Committee of the State of Punjab in its 48th meeting held on 19.06.2018 vide agenda item No.48.12 and in the meeting of Additional Chief Secretary (HUD) on 24.09.2018, it was decided that the amount paid by the bidders alongwith cancer cess be refunded and the amount was accordingly refunded to the complainants on 04.12.2018 on the basis of order dated 01.11.2018; that the respondent acted as per the above decision of the Government and as such the proceedings regarding agreement to sell and allotment letter could not materialize and it was beyond the control of the respondent; that as per Section 174 of the Punjab Regional and Town Planning and Development Act 1995, the order passed by the State Government or the Competent Authority was final and could not be questioned in any suit or other legal proceedings. Rest of the averments of the complaints were denied.

4. Complainants filed rejoinders, wherein the averments of the written replies were denied and those of the complaints were reiterated.
5. The violations and contraventions as contained in the complaint were put to the representative for the

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respondent to which he denied and did not plead guilty and then the complaint was to be proceeded for further inquiry.

6. I have heard both the representatives for parties and have gone through the record of the case.
7. The admitted facts between the parties in these cases are that the respondent launched a commercial scheme known as PWD (Public Health) Fountain Chowk Site scheme. The complainants took part in the open auction held by the respondent and SCO No.14 and 13 were allotted to the complainants Harkaran Singh Nehal and Maninder Kaur and they deposited Rs.65,44,800/- and Rs.63,99,000/- respectively. It is also a fact that the said scheme could not materialize, as the site in question was declared a protected monument by the Government of Punjab exercising its powers under Section 4(3) of the Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1964 (for short the Act 1964) vide notification dated 23rd day of August, 2018 Annexure R3. It is also a fact that the amounts paid by the complainants were ordered to be refunded to them vide office order dated 01.11.2018/03.12.2018 Annexure R5.
8. The main emphasis of the arguments on behalf of the respondent was that it was a case of *force majeure* and that the circumstances for not starting the project of the case in hand were beyond the control of the respondent



and had to be shelved and consequently the amounts paid by both the complainants were refunded vide officer order dated 01.11.2018 Annexure R/5. Therefore, the complainant was not entitled to any compensation in the shape of penal interest.

9. On the other hand, the argument on behalf of the complainant was that it was the sole responsibility of the respondent for obtaining all types of permission from the competent authorities before conducting the auction of the commercial site of the project of the case in hand and in support of the arguments, reliance was placed on a case titled **Juliet V. Quadros vs. Malti Kumar and others**, decided by the National Consumer Disputes Redressal Commission on 07.12.2004. The learned representative then contended that the amount in the shape of 25% of the total sale consideration had been received by the respondent and the same had been unjustifiably withheld by the respondent for a period of two years and was refunded on 11.12.2018 and therefore, the respondent was to be squarely blamed and the complainants therefore, were entitled to receive penal interest for withholding the amount of the complainants and they were also entitled to compensation for causing the mental harassment and litigation expenses.


10. There is no dispute regarding the proposition of law laid down in **Juliet V. Quadros's case (supra)**, however, the said authority is distinguishable from the facts of the

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case in hand. Admittedly, in the case in hand, State Government with a view to utilize its resources for overall development of the State framed a scheme known as Optimum Utilization of Vacant Govt. land and under this scheme, the Government transferred 8.49 acres of land belonging to PWD (Public Health) for development and the Town and Country Planning Department of the Government of Punjab prepared a master plan of the area in question in the year 2012, after inviting objections and suggestions from the General Public and other interested parties and use of this site had been described as public and semi-public use. PUDA Patiala, offered commercial sites at the site in question by way of auction held on 27.04.2016 and the complainants being the highest bidders for SCOs No.14 and 13 deposited 25% of the bid amount. However, there was a subsequent development in the shape of filing of CWP No.7956 of 2016 titled as Subhash Kapoor and others Vs. State of Punjab and Others before the Hon'ble Punjab and Haryana High Court for quashing the transfer of the land and building situated at Fountain Chowk Patiala and on 12.05.2016 status quo was ordered to be maintained with regard to Kothi No.11-A situated in the Erstwhile Chief Engineer Public Health Office near Fountain Chowk, Mall Road, Patiala. There was then another development that the department of Cultural Affairs Archaeology and Museums, Punjab, vide

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its order dated 04.05.2017 Annexure R2 asked the office of the respondent not to carry out any type of development activity i.e. demolition, construction, reconstruction, alteration, re-alteration and cutting of trees in the Old PWD (Public Health) all buildings near fountain chowk Patiala and the land apparent and surrounded there as the same was under consideration of protection under the Act 1964. Further, the Government of Punjab Department of Tourism and Cultural affairs vide notification dated 23.08.2018 Annexure R3 declared the site of old public health building to be a protected monument under the Act of 1964 and on the basis of said developments, the Hon'ble High Court of Punjab and Haryana disposed of the above CWP vide order dated 01.10.2018 Annexure R4. A close scrutiny of the aforesaid documents leaves no manner of doubt that the subsequent developments of the case in hand, after auctioning of the commercial site in the name of the complainant had taken place from the side of the Government Authorities and the directions were also issued by the Hon'ble High Court. The respondent authority cannot be expected to visualize the said future development before hand and, therefore, cannot be blamed for non-completing the project and rather the competent authorities of the Government preserved the heritage monument status of the existing structure and its surroundings because of which the project of the case



in hand was to be shelved and said action of the Government had seal of the Hon'ble High Court vide order dated 01.10.2018 Annexure R4. Therefore, another letter dated 12.07.2017 Annexure P2 was issued by the respondent to the complainants intimating the inability of the respondent for delivering the possession of the proposed commercial site and also that the case of the complainant was under consideration of the allotment of alternative commercial site. It may be that no alternative site was ultimately allotted to the complainant and finally order dated 01.11.2018 Annexure R5 was passed for refunding the entire amount of the complainants.

11. In view of the above discussion, it can be safely concluded that no mala-fide could be attributed on the part of the respondent in not completing the project of the case in hand, but, it was the subsequent development in which the competent authority declared the site of the project of the case a heritage monument and protected site.

12. Be that as it may, the fact remains that the amount of the complainants deposited on 27.04.2016 (10%) and on 30.11.2016 (15%) on the basis of successful bid in the auction for commercial site remained deposited in the account of the respondent, which were ultimately refunded on 11.12.2018. The respondent must have earned normal interest on the deposits till repayment.

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Therefore, though, the complainants were not entitled to any penal interest or normal interest as per the provisions of Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules 2017, but, the complainants are certainly entitled to interest on the deposited amount at the rate of 6% per annum from the date of deposit till payment i.e. 11.12.2018.

13. As far as the grant of compensation to the complainants is concerned, it has already been noticed that there was no mala-fide or default on the part of the respondent in shelving the project and rather the same was beyond their control in view of above consequent developments in declaring the site in question as a protected heritage monument. However, as the complainants have to seek the relief of interest by way of filing the instant complaints for which they have to engage representative and have also to pursue the matter since December, 2018 when the amount was refunded to them by the respondent. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can also be gauged in view of the fact that



the complainants have been pursuing the matter since December, 2018 with the respondent and ultimately knocked the door of this Bench and as such, I am of the considered view that the complainants are held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc to the tune of Rs.25,000/-.

14. In view of above discussions and observations, the complaints stand partly accepted thereby directing the respondent to pay interest at the rate of 6% per annum on the amounts i.e. Rs.65,44,800/- in complaint titled as Harkaran Singh Nehal Vs. PUDA and Rs.63,99,000/- in complaint titled as Maninder Kaur Vs PUDA from the respective dates of deposit till refund which has already been made to them within sixty days from the date of this order. The respondent is further directed to pay the arrears of interest alongwith Rs.25,000/- as compensation within above said period. Copy of the order be supplied to both the parties free of costs under rules and a copy of this order be placed on the file of connected complaint titled as Maninder Kaur Vs. PUDA. File be consigned to record room after due compliance of notifying the parties of this order well in time.

Dated: 27.04.2021

(Balbir Singh)
Adjudicating Officer
Real Estate Regulatory Authority