

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

Subject: -

APPEAL NO.11 OF 2022

1. Mohan Lal S/o Shri Kishori Lal
2. Smt. Jyoti W/o Shri Mohan Lal
3. Gagan Grover S/o Sh. Mohan Lal

...Appellants

Versus

The Chief Administrator, Punjab Urban Planning and
Development Authority, PUDA, PUDA Bhawan, SAS Nagar,
Mohali, Punjab, 160062.

...Respondent

Memo No. R.E.A.T./2022/ 427

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 30th
day of August, 2022.



T. Hanumanth Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Mohan Lal & Others

....Appellant

Versus

PUDA, Jalandhar

....Respondent

MEMO OF PARTIES

1. Mohan Lal S/o Shri Kishori Lal
2. Smt. Jyoti W/o Shri Mohan Lal
3. Gagan Gorver s/o Sh. Mohan Lal

Both residents of 187/8, Krishna Nagar, Jalandhar, Punjab 144001

...Appellant

Versus

The Chief Administrator, Punjab Urban Planning and Development Authority, PUDA Bhawan, SAS Nagar, Mohali Punjab, 160062

...Respondent



PLACE : *Chd*
DATED : *31/12/2021*

Manju Goyal
(MANJU GOYAL)
ADVOCATE

✓

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
AT CHANDIGARH

APPEAL NO.11 OF 2022

1. Mohan Lal S/o Shri Kishori Lal
2. Smt. Jyoti W/o Shri Mohan Lal
3. Gagan Grover S/o Sh. Mohan Lal

...Appellants

Versus

The Chief Administrator, Punjab Urban Planning and Development Authority, PUDA, PUDA Bhawan, SAS Nagar, Mohali, Punjab, 160062.

...Respondents

Present: Ms. Manju Goyal, Advocate for the complainant/allottee.
Mr. Bhupinder Singh with Mr. Balwinder Singh, Advocate for the PUDA/promoter.

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.11 of 2022 preferred by the complainant against the impugned order dated 06.08.2021 passed by the Real Estate Regulatory Authority, Punjab.

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2. We have through separate orders disposed of number of appeals (Appeal No.249 of 2020 along with connected appeals) regarding the same project. 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 time schedule for depositing instalments as reflected in the individual allotment letters is extracted below as per the letter issued to individual allottee:-

Instalment	Due Date	Principal	Interest	Total amount payable
1	2	3	4	5
1 st	12.04.2018	15,40,055.00	739226.00	2279281.00
2 nd	12.10.2018	15,40,055.00	646823.00	2186878.00
3 rd	12.04.2019	15,40,055.00	554420.00	2094475.00
4 th	12.10.2019	15,40,055.00	462016.00	2002071.00
5 th	12.04.2020	15,40,055.00	369613.00	1909668.00
6 th	12.10.2020	15,40,055.00	277210.00	1817264.00
7 th	12.04.2021	15,40,055.00	184806.00	1724860.00
8 th	12.10.2021	15,40,055.00	92403.00	1632457.00
	Total	12320437.00	3326517.00	15646954

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. 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 of the case are that one Sh. Rajiv Malhotra applied for commercial site measuring 147 sq. yards vide and was allotted SCO 26 at the rate of Rs.1,11,750/- per sq. meter. The total price came to Rs.1,64,27,250/- out of which a payment of Rs.44,35,358/- was made before the allotment letter was issued by way of 25% of the price of the plot as per requirement in the year 2017.
7. Date of possession was within 90 days of the issuance of the allotment letter and it was handed over on 03.09.2019. The plot was sold by the original allottee to the present appellants on 25.10.2019.
8. The complaint was filed with a grievance that delayed possession would entitle the appellant to the statutory benefits under the Act.



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9. The prayer was opposed by the respondents, who pleaded that the development works were complete before the allotment letter was issued and in any case, the appellant would have no cause, since the plot was reallocated in their name in October, 2019, when the development works stood completed in September 2019. The Authority on the basis of the judgment of the Hon'ble Supreme Court of India in "**Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Versus DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.)**" agreed with the contention of the respondent and declined interference.
10. The Authority further held that policy of 31.12.2015 is clearly not applicable in this case.
11. We have heard learned counsel for the parties in the present case and are of the opinion that the appeal is without any merit. Dehors the issue of the benefit of the policy, which in any case, we have held cannot be invoked in proceeding under the RERA, Act (**Inderjeet Mohan Kaur Versus The Chief Administrator, GMADA**), the appellant shall be disentitled to any benefit considering that he came into the picture in October, 2019, when the development works stood completed and he purchased a plot with open eyes. He has not suffered



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the agony of the delayed possession or uncertainty of investment in the project.

12. The observations made by the Hon'ble Supreme Court in "Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Versus DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) are therefore clearly attracted to the facts of the present case.

of the policy.

13. Dismissed.

Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

Please see my view appended on subsequent page sdr

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

August 22
~~July 15~~, 2022
AN



Certified To Be True Copy
Shanesh fur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

30/08/2022

Appeal No. 11 of 2022

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

Appeal No. 11 of 2022

1. Mohan Lal S/o Shri Kishori Lal
2. Smt. Jyoti W/o Shri Mohan Lal
3. Gagan Grover s/o Sh. Mohan Lal

Both residents of 187/8, Krishna Nagar, Jalandhar, Punjab 144001

.....Appellant

Versus

The Chief Administrator, Punjab Urban Planning and Development
Authority, PUDA Bhawan, SAS Nagar, Mohali Punjab, 160062

.....Respondent

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 order, I shall dispose off above mentioned appeal bearing
Appeal No. 11 of 2022 (**Mohan Lal and others versus The Chief
Adminitrator, Punjab Urban Planning and Development
Authority**) filed by the complainants-tranferees against order dated
06.08.2021 passed by the full Bench of the Real Estate Regulatory
Authority Punjab (*hereinafter referred to as the Authority*) in the



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appellants' complaint bearing GC No. 1812 of 2020 filed on 06.10.2020.

- 2.** The appellants-complainants filed their complaint bearing GC No. 1812 of 2020 on 06.10.2020 against the respondent (*hereinafter also referred to as PUDA or 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 possession of SCO No. 26, allotted vide draw held on 12.10.2017 to the original allottee Sh. Rajeev Malhotra and transferred to the complainants, was to be handed over in 1 year as per brochure and as per allotment letter dated 03.09.2019, it was to be handed over within 90 days of issue of allotment letter dated 03.09.2019, but possession was not handed over to them till date; (ii) that as per clause 3(iii) of the allotment letter, 10% rebate shall be admissible if payment is made in lump sum at any stage; (iii) that charging of interest with first three installments is contrary to the respondent-promoter's policy, as per which 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 transferee(s) until and unless all the basic amenities are provided.

- 3.** The transferees-complainants, vide their above mentioned complaint, have prayed the Authority to direct 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 refund, along with interest, an amount of Rs. 25,56,791/- charged as interest by the promoter; (iv) to pay interest on the payment (Rs. 44,35,358/-) made in 2017; (v) to provide 10% rebate on the



lumpsum payment made by the original allottee; (vi) to pay interest for every month of delay till the handing over of possession; and (vii) to impose penalty on the promoter for non-compliance of the provisions of the Act.

4. After considering the reply dated 19/24.02.2021 of the promoter to the complaint and the arguments of the parties before it, the Authority passed order dated 06.08.2021, the concluding and operative parts of which read as under:-

“6. We have considered the rival contentions carefully. Having done so, we do not find any merit in the contentions raised on behalf of the complainants. The complainants had given an affidavit on 25.09.2019 that they would be bound by the terms of the allotment made in favour of the original allottee, but it is not clear why possession was not taken over by them in December 2019. It is also not known what action they took in this regard before the filing of the present complaint in October 2020, wherein the contention has been raised that development works at the site were not complete. However, there is no evidence whatsoever to corroborate this contention. The complainants have also not been able to establish why interest on the balance 75% of the price, which was to be paid in installments, was not leviable, or why the respondent should pay interest on 25% amount deposited by the original allottee. The policy of 31.12.2015 is clearly not applicable in this case. We do not agree with Shri Bhupinder Singh that the ruling of the Supreme Court is applicable in this case. Here the complainants became allottees on 25.09.2019. whereas the due date of possession was 03.12.2019 i.e. after the subsequent transferees had already become owners. However, in view of our findings on the issues raised in the complaint, this particular issue is rendered immaterial. 7. As a result of the above discussion this complaint is held to be without merit and is dismissed.”



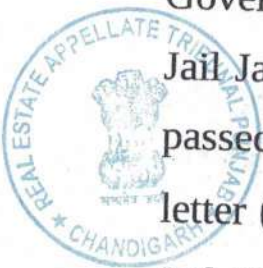
5. Aggrieved by the aforementioned order dated 06.08.2021 of the Authority, the complainants-appellants-transferees have filed present appeal before this Tribunal.
6. The appellants-transferees have inter alia contended as under in the grounds of the appeal and during their arguments whereby their learned counsel ultimately cited common judgment dated 31.12.2021 of 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**):-
- (i) that the appellant even after acquiring the subsequent interest falls within the ambit of allottee;
 - (ii) that the allotment letter dated 03.09.2019 was issued after a delay of two years, as per which payment schedule starts from 12.04.2018 and first three installments have been recieved from the original allottee along with interest in the year 2018 itself;
 - (iii) that as per clause 4(i) of the allotment letter, the possession of the plot was to be handed over to the allottee within 90 days of issue of allotment letter and the same is not handed over till date, whereas the respondent has issued possession letters to other allottees of this project;
 - (iv) that the Authority has wrongly interpreted the judgment of Hon'ble Apex Court in "**Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and others verssus DLF Southern Homes Private Limited (Now known as BEGUR OMR Homes Pvt.) and others**" (Civil Appeal No. 6239 of 2019);
 - (v) that prime objective of the policy dated 31.12.2015 was not to charge interest on the undeveloped site.



7. In their appeal, the appellants have sought following reliefs: (i) to pay interest for every month of delay till handing over of possession from the date of allotment letter; (ii) to give possession with all basic amenities; and (iii) to refund interest charged in the year 2017.

MY FINDINGS:

8. As mentioned in under paragraph 3 of the impugned order dated 06.08.2021, the respondent, in its reply to the complaint has inter alia contended (i) that allotment letter itself mentions that possession be taken by 03.12.2019 failing which it shall be deemed to have been handed over on that date; (ii) that the complainants had however not come forward to take possession; (iii) that the brochure relied upon by the complainants is for sites that had been allotted through public auction but the unit was allotted to the original allottee as an 'oustee' following the decision of Hon'ble Punjab and Haryana High Court in CWP No. 26206 of 2014; (iv) that the offer of possession was made to the original allottee on 08.03.2017.
9. Perusal of the respondent's reply dated 19/24.02.2021 further makes it clear (i) that land of the original allottee was acquired by the State Government for widening Rasta from Footwall Chowk to Central Jail Jalandhar; (ii) that in compliance of the order dated 03.02.2016 passed by Hon'ble High Court, the respondent-promoter, vide its letter (of intent) dated 08.03.2017, offered allotment of SCO at Old Jail Site Jalandhar to the original allottee on terms and conditions mentioned therein.
10. As per the copy of the brochure placed on record by the appellant before this Tribunal as Annexure P-2, the SCO sites No. 13 to 20 each measuring 147.00 square meters, along with other commercial sites and residential plots have been offered to the perspective buyers through auction held on 18.11.2016 at Jalandhar but it does



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not cover SCO site/plot No. 26 allotted to the appellants on the basis of the draw held on 12.10.2017.

11. On the basis of the draw held on 12.10.2017 for allotment of a commercial plot, allotted SCO site/plot No. 26 measuring 147 square meters in Old Jail Site (Sports Complex), Jalandhar for a price of Rs. 1,64,27,500/- @ Rs.1,11,750/- per square meter besides 2% cancer cess thereon to the respondent, vide allotment letter dated 03.09.2019.

12. 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. 41,06,813/- (in words Rupees Forty One Lac Six Thousand Eight Hundred Thirteen 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 75% amount of Commercial Plot is Rs. 1,23,20,437/-. The schedule of installments has been framed from the date of draw as per terms of Letter of Intent dated 08.03.2017. Due amount of First Three Installments is Rs. 65,60,634/- can be paid without penal within 30 days from the issue of allotment letter. The Fourth installment shall be paid as per schedule given below. The Balance amount of Fifth to Eight installment can either be paid in lump sum without any interest within 60 days from the issue of allotment letter or in 4 half yearly equated instalments along with an interest @ 12% per annum as indicated in the schedule given below:*

Installment	Due Date	Principal	Interest	Total amount payable
1	2	3	4	5
1 st	12.04.2018	15,40,055.00	7,39,226.00	22,79,281.00
2 nd	12.10.2018	15,40,055.00	6,46,823.00	21,86,878.00
3 rd	12.04.2019	15,40,055.00	5,54,420.00	20,94,475.00
4 th	12.10.2019	15,40,055.00	4,62,016.00	20,02,071.00
5 th	12.04.2020	15,40,055.00	3,69,613.00	19,09,668.00
6 th	12.10.2020	15,40,054.00	2,77,210.00	18,17,264.00
7 th	12.04.2021	15,40,054.00	1,84,806.00	17,24,860.00
8 th	12.10.2021	15,40,054.00	92,403.00	16,32,457.00
	Total	1,23,20,437.00	33,26,517.00	1,56,46,954.00



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- iii) In case balance Fifth to Eight 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) -----XXXXXXXXXXXXXXXXXXXXXXXXXXXXX-----
- 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) -----XXXXXXXXXXXXXXXXXXXXXXXXXXXXX-----
- 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) to xviii) -----XXXXXXXXXXXXXXXXXXXXXXXXXXXXX-----”

13. As per opening condition of the additional terms and conditions of the re-allotment letter dated 25.10.2019 (Annexure P-III), the tranferees i.e. the appellants have to pay the balance installments as per schedule given below:-

Installment	Due Date	Principal	Interest	Total amount payable
1 st	12.04.2018			
2 nd	12.10.2018			
3 rd	12.04.2019			
4 th	12.10.2019			
5 th	12.04.2020	1540055.00	369613.00	1909668.00
6 th	12.10.2020	1540054.00	277210.00	1817264.00
7 th	12.04.2021	1540054.00	184806.00	1724860.00
8 th	12.10.2021	1540054.00	92403.00	1632457.00
	Total	6160217.00	924032.00	7084249.00

14. It has inter alia been mentioned by the complainants in their complaint filed on 06.10.2020 that (i) the original allottee made a total payment of Rs. 44,35,358/- before allotment letter was issued in the year 2017 towards 10% of the total **bid** amount plus 2% cancer cess (Rs. 19,71,270/-) and 15% of the **bid** amount (Rs. 24,64,088/-); (ii) an amount of Rs. 4,96,215/- was paid by the complainants towards the processing fee for transfer of the plot; (iii)

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the complainants made a total payment of Rs. 1,88,86,578/-; (iv) the complainants further made a payment of Rs. 53,60,000/- (illegible or it may be Rs. 53,80,000/-) vide DD No. 001330 and Rs. 12,000/- vide DD No. 503830 and along with their letter dated 31.10.2019.

- 15.** The respondent, in its reply dated 19/24.02.2021, has inter alia submitted (i) that an amount of Rs. 24,64,088/- was paid by the original allottee on 02.11.2017 towards 15% of the plot price (i.e. well within a period of 30 days from the draw held on 12.10.2017, in view of provision in this regard in the offer letter dated 08.03.2017); (ii) that as per offer letter dated 08.03.2017, first installment is to be recovered within 6 months from the date of draw and the balance installments shall be taken with 12% interest on the due amount; (iii) that the respondent's Finance and Accounts Committee inter alia decided on 28.06.2019 that since the case remained under consideration of the respondent, penal interest on delay amount shall not be charged; (iv) that as per documents dated 08.05.2019 (Annexure R-5 colly), all development works of the site were complete on 30.06.2019.

16. As per sub clause i) of clause 4, titled "POSSESSION AND OWNERSHIP", of the allotment letter dated 03.09.2019, possession of the plot was to be handed over within 90 days of the issue of the allotment letter i.e. by 02.12.2019.

17. Thus, the development at site was complete before the due date of handing over the possession.

18. Like eight other appeals relating to this project (but allotment was made in those cases on the basis of auction held on 18.11.2016), 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 complainants in their complaint in this case also and said policy has been referred to by the Authority while deciding their complaint in this case.

- 19.** The respondent-promoter, on the other hand, has contended that the promoter is entitled to charge 12% scheme 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.
- 20.** This Tribunal, in its common 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.”

21. It is amply evident from material placed on record by the complainants before this Tribunal, specifically from the contents of the complaint, that the appellant, for the obvious reasons, has mislead this Tribunal as well as the Authority in his futile attempt to falsely create parity of his case with some other cases involving allotment of SCOs of same size in the same project by way of auction held on 18.11.2016.

MY DECISION IN PRESENT APPEAL:

22. In view of above discussions, I deem it appropriate to order dismissal of the appeal.

23. A copy of this order be placed in the file of the appeal and also be sent to the parties as well as to the Authority and the file be consigned to the record room.

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

August 22, 2022