

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

Subject: -

APPEAL NO. 41 OF 2022

Navjit Singh Sandhu S/o Sh. Gurbhajan Singh R/o House No. B1,
301, World One Society, Sector 115, Kharar-Landran Road..

...Appellant

Versus

M/s Ansal Properties & Infrastructure Limited, 115 Ansal Bhawan,
16 KG Marg, New Delhi, Central Delhi, Delhi Pin code No.-110001.

....Respondent

Memo No. R.E.A.T./2023/ 214

To,

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



Whereas appeal 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 appeal 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 May, 2023.

Shamshul Kaur
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 41 of 2022

MEMO OF PARTIES

Navjit Singh Sandhu son of Sh. Gurbhajan Singh, Resident of House No. B1, 301, World One Society, Sector-115, Kharar-Landran Road, Mohali

...Appellant


Versus

M/s Ansal Properties & Infrastructure Limited, 115 Ansal Bhawan, 16 KG Marg, New Delhi, Central Delhi, Delhi Pin Code No. 110001

...Respondent



Place: Chandigarh.
Dated: 28.02.2022


(MUNISH GUPTA)
P-515/2005
ADVOCATE
COUNSEL FOR APPELLANT

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

APPEAL NO. 41 OF 2022

Navjit Singh Sandhu S/o Sh. Gurbhajan Singh R/o House No. B1,
301, World One Society, Sector 115, Kharar-Landran Road..

...Appellant

Versus

M/s Ansal Properties & Infrastructure Limited, 115 Ansal Bhawan,
16 KG Marg, New Delhi, Central Delhi, Delhi Pin code No.-110001.

....Respondent

Present: Mr. Munish Gupta, Advocate for the appellant.
None 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)

1. This appeal is directed against the order dated 12.11.2021 passed by Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority). Although, complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 36 of the Punjab State Real Estate (Regulation and



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Development) Rules, 2017 (hereinafter known as the Rules) was filed with a grievance that there was a delay in delivery of possession of plot no.A-18 with all the amenities, despite the payment of 80% of the sale price, and the prayer for grant of statutory interest was made on account thereof, yet the controversy largely centers around the grievance now raised by the appellant with regard to the valuation of the plot taken into consideration by the Authority while determining the grant of statutory interest. Also in question is the validity of the alleged offer of possession by the respondent in September 2015 when there was no completion certificate of the project with no amenities existing.

2. The Authority concluded that such an offer dated 08.09.2015 was illusory and then went on to grant the relief to the appellant but for the purposes of determining the valuation of the plot segregated it in two parts thereby committing an error according to the appellant.
3. We may notice facts in brief. One Mr. Gian Parkash contributed one acre of land for the development of the project by respondent in exchange of 1200 sq. yards of residential plotted area vide development agreement dated 25.11.2005. The present appellant executed a settlement deed dated 09.04.2009 with the present respondent and thus stepped into the shoes of Mr. Gian



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Parkash thereby entitling the appellant to 1200 sq. yards of residential plotted area.

4. Instead of one plot measuring 1200 sq. yards 3 plots totaling 1200 sq. yards were allotted to the appellant. A buyer's agreement dated 24.02.2012 was executed wherein while determining the cost of 225 sq. yards plot the appellant was charged for 75 sq. yards at the rate of Rs.24,900/- totaling Rs.18,67,500/-. Value of 150 sq. yards was not computed and was shown as land pooled vide the settlement agreement dated 09.04.2009.
5. The Authority in para 7 of the impugned order concluded that 150 sq. yards of land should be assessed at the circle rate prevalent at the time settlement between developer i.e. respondent and Mr. Gian Parkash in 2005 that is Rs.600 per sq. yard. While for the remaining 75 sq. yards the purchase sale consideration would be Rs.18,67,500/- In this manner, it went on to hold that the value of 225 sq. yards would come to Rs.19,57,500/- (18,67,500 + 90,000). It then observed that for the purposes of computing interest Rs.90,000/- would stand included in the amount of Rs.18,04,500/- i.e. total of Rs.18,94,500/- would be the base value for determining the interest.
6. Learned counsel for the appellant contends that having stepped into shoes of Mr. Gian Parkash through a



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properly executed settlement deed dated 09.04.2009, he would be entitled to the valuation at the rate of Rs.24,900/- for the entire 225 sq. yards plot and the reasoning adopted by the Authority is completely erroneous. It was argued that while executing the buyer's agreement the price of Rs.24,900/- was taken by the respondent itself and as such the Authority could not have created a different set of valuation for the similar kind of land and particularly qua one plot of 225 sq. yards.

7. The appellant had filed an affidavit of service which initially did not have the proof of report of delivery appended to it which was subsequently done but the Court was not satisfied and fresh notice was issued on 01.09.2022. Thereafter, Sh. Rajiv K Bhatia put in appearance on behalf of respondent on 10.10.2022. On the next date of hearing i.e. 07.11.2022 none appeared for the parties but on 15.12.2022 one Sh. Mahesh Ram, office clerk of the developer appeared. We recorded our displeasure since, the learned counsel for the respondent had not come present. Thereafter, the proceedings continued on 12.01.2023, 27.02.2023 and 17.04.2023 and on all these dates of hearing, no one appeared for respondent.



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8. Consequently, we reserved our orders on the said date i.e. 17.04.2023.
9. Immediately thereafter an application was moved by the respondent seeking recall of our orders dated 17.04.2023 and requesting for a hearing.
10. The application was listed on 08.05.2023 but no one put in appearance on behalf of the applicant/respondent to prosecute it. As a consequence, we dismissed the application for non-appearance of the applicant/respondent. In this manner the order dated 17.04.2023 has continued to subsist and since we had reserved the orders, we have gone through the entire matter to determine the grievance of the appellant without the assistance of the respondent.
11. After hearing the learned counsel for the appellant, we are of the opinion that the Authority has gone wrong in adopting the reasoning as reflected in para 7 and noticed above. Admittedly, the appellant was entitled to 1200 sq. yards of plot for which the respondent agreed and 3 plots total measuring 1200 sq. yards were given. While determining the cost of 225 sq. yards plot, the appellant was charged of Rs.24,900/- for an area of 75 sq. yards. The valuation of remaining 150 sq. yards was pegged down to the price of 2005 i.e. Rs.600/- per sq. yards by holding that it was a part of the land pooling.



12. We cannot persuade ourselves to accept this reasoning. The appellant had stepped into the shoes of Mr. Gian Parkash by an agreement dated settlement agreement dated 09.04.2009. We have perused this agreement as well and it notices in extenso the entitlement of the appellant to 1200 sq. yards of Residential Plotted Area as an undisputed legal owner. It also obligates the appellant to make payment of external development charges, infrastructure development charges, preferential location charges and transfer charges etc. For the purposes of reference the relevant clauses of the agreement are extracted herebelow:-

- “1. That the first party had entered into a Development agreement dated 25th November 2005 with Mr. Gyan Prakash for contribution of 1(One) acre of land in the township project to be developed by the First Party in Kharar-Landran Road where the land may fall in one of the village opposite Swaraj Mazda Factory in Mohali, Punjab, under which Mr. Gyan Prakash is entitled to an area of 1200 sq. yds. of residential plotted area.
2. That the said Mr. Gyan Prakash has transferred his rights, title and interests in the development agreement dated 25th November 2005 to the Second Party vide sale agreement dated 10 Feb 2009. The Second Party has accordingly become the undisputed and legal owner of the 1200 sq. yards of residential plotted area.
3. That the first Party has agreed to transfer and endorse the rights of allotment of said 1200 sa. yds. residential area in favour of the Second Party in Mohali, Punjab. Accordingly the Second Party is now entitled to an area of 1200 sq. yds of residential plotted area to be allotted in favour of the Second



Party by the First Party in township project to be developed in Kharar-Landran Road, Mohali, Punjab.

4. *That, no claims shall arise from the said Development Agreement dated 25th November 2005 as mentioned in this agreement earlier, after the execution of this Settlement Deed from Mr. Gyan Prakash.*
5. *That the Second Party or its nominee / assignee shall make payment of External Development Charges (EDC), Infrastructure Development Charges (IDC), Preferential Local Charges (PLC) (if applicable) & transfer charges (in case of sell/transfer/conveyance the property/area) against the residential plotted area to be allotted in residential township coming up on Kharar-Landran Road, Mohali, Punjab as per the demand of the concerned authorities."*

Having acknowledged the right of the appellant as the legal owner and his entitlement to 1200 sq. yards of plot the area of 150 sq. yards excluded by the Authority while determining the valuation of 225 sq. yards of plot was erroneous. This was an artificial classification resorted to by the Authority and is thus unsustainable in the eyes of law. If the respondent was itself putting the valuation of 75 sq. yards plot at the rate of Rs.24,900/- per sq. yard in the year 2009, then it is not conceivable why the remaining area of 150 sq. yards has not been included in such a valuation on the same parity. In fact for the entire 225 sq. yards the same yardstick ought to have been applied when executing the buyer's agreement. There is nothing to show in the agreement of 2009, through which the appellant entered the picture, that the respondent

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could have justifiably resorted to a separate consideration for evaluation of the plot.

13. Therefore as a sequel to the above discussion, we modify the impugned order to the extent that for the grant of statutory interest on account of delayed possession of the area of 225 sq. yards plot would be subject to the valuation at the same price i.e. Rs.24,900/- per sq. yard and by applying that rate the total cost of the plot comes to Rs.56,02,500/-. So the appellant is held entitled to interest on this amount i.e. Rs.56,02,500/- under Section 18(1) of the Act.

14. No order as to costs.

15. Accordingly this appeal stands partly allowed.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

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

May 29, 2023
DS

Certified To Be True Copy
T. Hanumanth Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

30/05/2023

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

APPEAL NO. 41 OF 2022

Navjit Singh Sandhu son of Sh. Gurbhajan Singh, Resident of House
No. B1, 301, World One Society, Sector-115, Kharar-Landran Road,
Mohali

.....Appellant

Versus

M/s Aansal Properties & Infrastructure Limited, 115 Ansal Bhawan,
16 KG Marg, New Delhi, Central Delhi, Delhi Pin Code No. 110001

..... Respondent

Present: Mr. Munish Gupta, Advocate for the appellant
None 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: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.), HIS VIEW)

By this order, I will dispose of above mentioned appeal dated
28.02.2022 (Diary dated 03/07.03.2022) bearing Appeals No. 41 of
2022 (**M/s Navjit Singh Sandhu versus Ansal Properties &
Infrastructure Limited**) filed against the order dated 12.11.2021
passed by the Real Estate Regulatory Authority, Punjab
(*hereinafter referred to as the Authority*) in the complaint bearing
GC No. 17332020 instituted on 21.08.2020.

2. The appeal is accompanied by an application, bearing Application
No. 58 of 2022, for condonation of 15 days' delay in filing the



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appeal, in view of order dated 10.01.2022 passed by Hon'ble Apex Court in SMW (C) No. 3 of 2020.

3. The complaint has been filed by the appellant (*hereinafter may also be referred to as the complainant or the allottee or the buyer*) against the respondent (*hereinafter may also be referred to as the promoter or the developer or the seller*) before the Authority in form 'M' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) read and Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).
4. The complainant, in his complaint dated 21.08.2020, has inter alia claimed/alleged that (i) the promoter has not given physical possession of the plots allotted to him after obtaining completion certificate; (ii) that more than 80% payment stands made by the allottee for plot No. A-18; (iii) that the last installment is to be given on the completion of road and sewerage connectivity etc; (iv) that the green area or park area is not as per the GMADA guidelines for planning of mega residential township as given under (E) parks, open spaces and play grounds in the norms; (v) that most of the parks are less than 15 meters and major parks are under high tension line; (vi) that there are issues with recharge well and rain water harvesting; (vii) that water works premises have no security and no boundary and it is built in the park or green area; (viii) that the F road network or major inner loop and inner loop roads are also less as per GMADA guidelines and external and internal roads are not 100% complete and the ones complete are not properly maintained; (ix) that STP is not functional and is built in park area; (x) that dispensary is also not functional; (xi) that school also not been built; (xi) that the religious building has not



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been provided; (xii) that the area mentioned as not in scheme in approved map of Golf Links II, Sector 116, no explanation was given by the promoter; (xiii) that the parks are not properly maintained; (xiv) that street lighting claimed to be 100% but nothing like that has been provided; (xv) that other amenities shown by the promoter on its website are not provided till date.

5. The complainants have prayed in their said complaint for directing the promoter (i) to give complete possession of plot in all respect; (ii) to pay monthly interest of Rs.30,000/- for delay in possession period; (iii) to provide all the amenities and facilities as promised; (iv) to pay Rs. 5,00,000/- for such deficiencies or delay, Rs. 20,000/- per month as opportunity cost, Rs. 10,000/- per month for mental harassment, Rs. 12,000/- per month for physical harassment, Rs. 20,000/- per month for delay in providing the amenities or services promised and Rs. 2,50,000/- as costs of litigation.

6. The respondent, in its reply dated 24.02.2021 to the complaint, has denied various allegations of the complainant and has inter alia contended before the authority that (i) the Act is not applicable on the projects where the possession has already been offered to the allottees much prior to commencement of the Act; (ii) that basic amenities/basic infrastructure work such as internal roads connecting the plot to the public road, sewer, water & electricity lines and storm water drain in the area/block, where the plot of the complainant is situated, had already been completed as per approved layout plan and guidelines issued by the department concerned; (iii) that the complainant has concealed the factum that the possession of the plot in question has already been offered to the complainant vide letter dated 08.09.2015 posted through



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registered post on 09.09.2015 and same has been accepted by the complainant; (iv) that the complainant is not paying the maintenance charges in time to the maintenance agency deputed by the respondent; (v) that the complainant received compensation from the respondent in civil suit No. CS/23/2020 regarding location of STP (which caused delay in its installation) and it was mutually settled not to install the STP within 500 meters of the complainant's plot; (vi) that the complainant also filed civil suit No. CS/1064/2020 against the respondent with regard to the same cause and on similar facts, with a motive to harass the respondent and to cause hinderance in the progress of the project; (vii) that the complainant has already accepted the possession after inspecting each and every corner; (viii) that the project, being a mega project, is exempted from the provisions of the PAPRA Act; (ix) that till date the complainant never objected against the said offer of possession and continued to pay maintenance charges of the said plot to the maintenance agency.

7. The appellant has not placed on record before this Tribunal the rejoinder and the written arguments of the parties which were filed before the Authority as mentioned in his appeal.

8. After going through the pleadings of the parties, the Authority passed aforesaid order dated 12.11.2021, the concluding and operative part of which reads as under:-

"4. We have gone through the pleadings of the parties and facts of the matter. At the very outset, it needs to be pointed out that the plaint in Civil Suit No.1064 of 2020 stands rejected. Hence, there is no matter pending on this issue in any civil Court. It was pointed out by Sh. Gurfateh Singh Sandhu, appearing on behalf of the complainant that the



respondent was not having any completion certificate or occupation certificate at the time of alleged offer of possession dated 08.09.2015 and as such the offer was not valid. He further pointed out that there is inordinate delay in delivery of possession despite the fact that 80% payment out of sale consideration has been made by the complainant and as such, the complainant is entitled to lawful physical possession and interest for delay in delivery of possession.

5. On the other hand, Sh. Rajiv K. Bhatia, appearing on behalf of the respondent submitted that the offer of possession dated 08.09.2015 was validly made as the respondent was developing a Mega Project, which had been exempted from the provisions of the Punjab Apartment and Property Regulation Act 1995 under the agreement signed with the State Government and as such there was no requirement for obtaining completion certificate. He further pointed out that the complainant himself did not come forward to take possession and to fulfill the obligations on his part and as such, he himself was at fault and thus was not entitled to any relief sought by him.
6. The main point of issue in this matter is the validity of offer of possession allegedly made by the respondent in September, 2015. Admittedly, there was no Completion Certificate available for the project at that time. The contention of the respondent that it was not required to obtain a Completion Certificate has been examined and we hold that any exemption granted under the mega project agreement ceased to operate after the issue of notification No.4966-CTP (Pb.)/SP-458 dated 02.09.2014. This notification makes it clear that mega projects are also required to obtain a Completion Certificate. Therefore, it has to be held that the offer of possession dated 08.09.2015 was not a valid one since the respondent had not obtained a Completion Certificate till that date. Once, that is so, there is no escape from a conclusion that there is delay in delivery of possession to the complainant. The complainant



has relied upon allotment letter dated 20.12.2011 and plot buyer agreement dated 22.02.2012. However, he has not placed on record the complete copy of the agreement. The perusal of copy of said agreement shows that as per clause 5.1, the development of the project was to be completed within 36 months with an extended period of 06 months from the date of execution of said plot buyer agreement. As such, the completion time and delivery of possession of the plot has to be taken after 42 months from the date of execution of agreement which comes to 22.08.2015. Thus, it is proved that there is delay in delivery of possession of the plot to the complainant and as such the respondent is liable to pay interest w.e.f. 22.08.2015 till a valid offer of possession is made.

7. The only other issue which needs to be decided is with regard to the value of purchase consideration paid on which interest under Section 18(1) is to be computed. The facts of the matter are that the complainant vide settlement deed dated 09.04.2009 with the respondent had stepped into the shoes of one Mr. Gian Parkash, who had contributed one acre of land to the impugned project in exchange of 1200 square yards of residential plotted area vide development agreement dated 25.11.2005. Shri Gian Parkash's rights in the project, vide the above stated settlement, had been given to the complainant and accordingly, three plots totaling 1200 square yards were allotted to the complainant. As per the plot buyer's agreement dated 24.02.2012, the cost of the impugned 225 square yard plot has been charged for only 75 square yards, at the rate of Rs.24,900/- per square yard, totaling Rs. 18,67,500/-. The cost of 150 square yards has not been computed; and shown as land pooled vide agreement dated 09.04.2009. However, for the purposes of section 18(1), we are of the view that the total consideration of 150 square yards of land should be taken at the circle rate prevalent at the time of settlement between the respondents



and Sh. Gian Parkash in 2005; i.e. Rs.600/- per square yard i.e. Rs.90,000/-. For the balance 75 square yards, the purchase sale consideration would be Rs.18,67,500/-. Hence, the value of 225 square yards would come to Rs.19,57,500/- (i.e. Rs 18,67,500/- + Rs.90,000/-). Out of this amount the complainant has paid Rs 18,04,500/-, in cash and Rs 90,000/- by land pooling. Hence, for purposes of computing interest under Section 18(1) of the Act, the amount would 18,94,500/-. Keeping in view the above facts the following relief is granted:-

- i. As provided in Section 18 (1) of the Act, read with Rule 16 of the Punjab State (Regulation and Development) Rules 2017, the respondent shall pay interest as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2% w.e.f. 22nd day of August, 2015 till the date of this order and payment of this amount shall be made within two months from the date of this order.
- ii. That the respondents shall also pay interest as per State Bank of India's highest marginal cost of lending rate (as of today) plus 2% w.e.f. the date of this order till the date on which a valid offer of possession is made.
- iii. The complainant would be bound to pay any outstanding amounts, as per the agreement, before taking possession of the unit and he shall be liable pay interest as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2% on the delayed payment.
- iv. The other reliefs were not pressed, and hence not allowed."

9. Aggrieved by the order of the Authority, the appellant has filed its present appeal before this Tribunal and in view of the facts mentioned by the appellant therein, he has prayed to modify the said order dated 12.11.2021 passed by the Authority, 'as prayed' (sic, but nothing has specifically been prayed as such).



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10. As per list of enclosures given in the complaint dated 21.08.2020 (**Annexure A-7 of the appeal**), the complainant placed on record before the Authority 10 pages of the Buyer Seller Agreement. The Authority has noticed in the aforesaid order dated 12.11.2021 passed by it that the complainant has not placed on record the complete copy of the agreement. Even then the appellant has placed on record before this Tribunal, as **Annexure A-6 of the appeal**, only 7 pages of the said agreement dated 22.02.2012 (a copy of its first page, two different copies of its page 2 one of which is scored out and a copy of its pages 4, 15, 19 and 20). However, on 17.04.2023, has placed before this Tribunal a copy of 20-page agreement dated 22.02.2012. Further, the appellant has inter alia contended in his appeal that in the impugned order, the date of agreement has been erroneously mentioned as 22.02.2012 and that the agreement was executed on 22.02.2011 has not been denied by the respondent in its written statement. However, at the same time, the appellant in his appeal has mentioned that as per clause 5.1 of the said agreement, the development was to be completed within 36 months, with extended period of 6 months, from the date of execution of the said agreement i.e. possession was to be handed over on or before 22.08.2015.



11. Perusal of the copy of the agreement placed before this Tribunal on 17.04.2023 reveals that (i) the space for date of execution of the agreement is left blank; (ii) that signature dated 22.02.2012 are appended on the seal of "Ansal API" on its first page (the said signature appear to be similar to the undated one appended on the receipt dated 02.01.2012, **Annexure A-5 of the appeal**); (iii) that seal dated 22.02.2011 of the office of the treasury officer is appended on the stamp on its first page; (iv) that the plot No. A-18

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is stated to be provisionally allotted, whereas no plot number is mentioned in the alleged allotment letter dated 20.12.2011 (**Annexure A-4 of the appeal at page 36 of the paper-book**) vide which the appellant was invited to apply for the allotment of the plot; (v) that plot number A-18 is mentioned in the call notice dated 20.12.2011 (**Annexure A-4 of the appeal at page 37 of the paper-book**). Thus, in my opinion too, the date of the plot buyer agreement is 22.02.2012.

12. The appellant has challenged aforesaid order dated 12.11.2021, passed by the Authority, on two counts; firstly the manner of valuation of the plot as assessed by the Authority and secondly, in respect of the date from which the interest has been allowed by the Authority.
13. In the grounds of its appeal, the appellant has inter alia contended that (i) once the respondent had put the valuation as Rs. 24,900/- per square yards for additional 75 square yards area of the plot No. A-18 admeasuring 225 square yards at time of allotment in the year 2011, the valuation of the (entire) plot has to be taken at the same rate instead of the one assessed by the Authority i.e. at the circle rate of Rs. 600/- per square yard, prevalent at the time of settlement between the respondent and Sh. Gyan Prakash in 2005, for 150 square yards shown as land pooled vide agreement/settlement deed dated 09.04.2009 vide which the appellant has stepped into the shoes of Sh. Gyan Prakash (as his rights in the project had been given to the complaint), who had contribute one acre of land to the project in exchange of 1200 square yards of residential plotted area vide development agreement dated 25.11.2005; (ii) that the valuation of the plot is to be seen, in terms of the allotment letter and the agreement and



especially, at the same rate, at which the respondent has valued the additional 75 square yards area, while issuing allotment letter; (iii) that as per the development agreement, in the year 2005, the respondent had agreed to complete the development works within 3 years; (iv) that after purchase of rights of Gyan Prakash, entered into a settlement deed dated 09.04.2009, and thus, stepped into the shoes of the original allottee; (v) that the respondent intentionally delayed the issuance of allotment letter and execution of the agreement and therein mentioned the period of development as 36 months plus 6 months; (vi) that the development period ought to have been taken from the development agreement of 2005 or at the best, from the settlement deed dated 09.04.2009; (vii) that the National Consumer Disputes Redressal Commission, in **Suman Kumar Jha versus Mantri Technology Constellations Pvt Ltd.**, decided on 29.10.2019 has held that a builder cannot force a home buyer to take possession of a flat which is not fully constructed and for which completion certificate has not been issued by the local authority and doing so amounts to unfair trade practice; (viii) that possession was forced on the appellant; (ix) till date, the respondent has not been able to get completion certificate.

MY FINDINGS:

14. The development agreement dated 25.11.2005 (**Annexure A-1 of the appeal**) between Ansal Township & Projects Ltd. (the First Party, includes its heirs, assigns, successors etc) and Mr. Gyan Prakash (the Second Party, includes its heirs, successors, representatives and assigns) inter alia stipulates that (i) the Second Party shall bear the entire cost for purchase of the one acre land (*in the possession of the Second Party in the capacity of owner/lessee/otherwise which it offered to the First Party to take*



over to develop it to form a part of the project proposed to be developed by the First Party on its own behalf and on behalf its certain associate companies and in association with other companies, which may eventually result in joint venture company to lead the project) including the registration charges; (ii) that the cost pertaining to obtaining license, sanctioning of the layout, cost of development, or any other expenditure to be incurred for plotting/development and liaison with authorities shall be borne by the First Party; (iii) that the Second Party shall be entitled to 1,200 square yards of developed residential plotted area for every acre of 4840 square yards contributed by him for the development of the project; (iv) that the First Party shall inform Second Party about the receipt of the required license and the approvals of the lay out plan; (v) that **the development work shall be undertaken by the First party on receipt of the required license & permissions and shall be completed within a period of 3 to 4 years from the date of grant of the license** subject to force majeure circumstances; (vi) that **external development charges shall be borne directly by the prospective plot buyers** to be paid through the First Party; (vii) that **the Second Party shall, at its discretion, be free to sell the plot on its own efforts where the Second Party would ensure that the selling price would be same or higher than the selling price offered by the First Party for the general market.**



15. The sale agreement dated 10.02.2009 (**Annexure A-2 of the appeal**), executed between the Mr. Gyan Prakash (the First Party in this agreement) and the appellant, inter alia stipulates that (i) the First Party agreed to grant, convey and transfer all his right, title and interest along with all other rights as specified therein in respect of said residential plotted area of 1200 square yards; (ii)

that the consideration for the sale of the said residential plotted area has been agreed -----(*some vital text of this clause 2 of this agreement ostensibly appears to be missing at this juncture in the copy placed on record by the appellant, may be due to error while getting xeroxed; and a zigzag line is there in this copy*)-----

- First Party vide cheque No. 510817 dated 12.12.2008, the First Party thereby acknowledged the receipt of the said entire consideration. The relevant clause 2 of the said copy of the sale agreement reads as "*That the consideration for the sale of the said residential plotted area has been agreed '~' First Party vide cheque no. 510817 dated 12/12/2008 drawn on State Bank of Patiala The First Party do hereby acknowledge the receipt of the said entire consideration.*".

16. The settlement deed dated 09.04.2009 (**Annexure A-3 of the appeal**) executed between the respondent and the appellant inter alia stipulates that (i) the respondent has agreed to transfer and endorse the rights of allotment of said 1200 square yards residential area in favour of the appellant; (ii) that no claim shall arise from the development agreement dated 25.11.2005 after execution of this settlement deed; (iii) that the appellant shall make payment of external development charges (EDC), infrastructure development charges (IDC), preferential location charges (PLC), if applicable and transfer charges (in case of transfer etc).
17. The respondent, vide alleged allotment letter dated 20.12.2011 (**Annexure A-4 of the appeal**), inter alia informed the appellant about the approval of land use and grant of license by the competent authority for the township and invited him to apply for the allotment of the plot as well as asked him to deposit the due EDC/PLC amount as per account statement attached therewith. A



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call notice dated 20.12.2011 has also been placed on record, in which total EDC applicable @ Rs. 1,795/- per square yard is shown to be Rs. 4,03,875/- for the plot No. A-18 of entire 225 square yards area of the plot, besides basic price @ Rs. 24,900/- per square yard amounting to Rs. 18,67,500/- only for additional 75 square yards portion of the plot.

18. In terms of the stipulations in the development agreement dated 25.11.2005, (i) Mr. Gyan Prakash was entitled to 1,200 square yards of developed residential plotted area for every acre of 4840 square yards contributed by him for the development of the project; (ii) that external development charges are to be borne directly by the plot buyers to be paid through the respondent; (iii) Mr. Gyan Prakash, at his discretion, was free to sell the plot on its own efforts after ensuring that the selling price would be same or higher than the selling price offered by the respondent for the general market.

19. In terms of the stipulations in the sale agreement dated 10.02.2009 between Mr. Gyan Prakash and the appellant, (i) Mr. Gyan Prakash sold all of his rights in respect of his entitled residential plotted area of 1200 square yards in lieu of one acre (4840 square yards) to the appellant for a consideration vaguely stated in the clause 2 of the said sale agreement dated 10.02.2009 in the copy placed on record by the appellant before this Tribunal, reading of which suggests that some vital text of the said clause therein ostensibly appears to be missing. The said consideration appears from the said clause to have been paid probably vide cheque No. 510817 dated 12.12.2008, the amount of which has not been disclosed anywhere in the appeal filed before this Tribunal.



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20. As per aforementioned call notice dated 20.12.2011 as well as payment plan for EDC/IDC annexed to the plot buyer agreement dated 22.02.2012, total EDC applicable @ Rs. 1,795/- per square yard is Rs. 4,03,875/- for the plot No. A-18 of 225 square yards, which is besides the sale consideration of Rs. 18,67,500/- only for 75 square yard additional area @ Rs. 24,900/- per square yard, in terms of clause 3.1 of the Plot Buyer Agreement dated 22.02.2012, clause 10 of the development agreement dated 25.11.2005 and clause 5 of the settlement deed dated 09.04.2009.
21. In view of above, I am of the view that the Authority has erred in assessing the purchase consideration paid by the appellant as Rs. 90,000/- for 150 square yards portion of the plot against land pooled at the circle rate of Rs. 600/- per square yard prevalent at the time of settlement between the respondent and Mr. Gyan Prakash in 2005. In my opinion, it should have been taken at the rate computed in terms of the stipulations under clause 2 of the sale agreement dated 10.02.2009 plus applicable EDC @ Rs. 1,795/- per square yard. However, if this clause is vague even in the original copy of the said document, then it should have been determined at least by multiplying the circle rate prevalent at the time of sale agreement dated 10.02.2009 by a factor of slightly more than four (precisely = $4,840/1200$) in order to take care of entitlement of only 1,200 square yards of developed residential plotted area for every acre of 4,840 square yards contributed as pooled land, plus applicable EDC @ Rs. 1,795/- per square yard.
22. In terms of the stipulations in the development agreement dated 25.11.2005, (i) the respondent informed the appellant vide alleged allotment letter dated 20.12.2011 that land use has been approved and license has been granted by the competent authority for 'Golf



Links-II' Sec-116; (ii) therefore the development work was required to be undertaken by the respondent on receipt of the required license & permissions and was required to be completed within a period of 3 to 4 years from the date of grant of the license. Therefore, as per material placed on record before this Tribunal, in terms of the stipulation in the development agreement, the respondent would not have been held to be under default before 20.12.2015 in handing over the possession of the plot. Moreover, the stipulations of the development agreement are applicable to only 150 square yards area and not for the entire plot of size 225 square yards.

23. Hence, there is no merit in the contention of the appellant challenging the date from which interest for delay in possession has been allowed by the Authority.
24. Besides the contentions raised by the appellant (which have already been considered as above), while going through the case file, it has also been noticed by me that the respondent, vide its letter dated 08.09.2015 sent to the appellant vide registered post on 09.09.2015 (part of **Annexure A-9 of the appeal**), inter alia informed him that development works like laying of internal roads, sewer lines, water lines, underground electrification, park, construction of overhead water tank & other infrastructure development works have been completed, with the facilities of (i) gated township with 24x7 multi-tier security; (ii) schools, healthcare centre, shopping arcade for daily needs etc; (iii) wide tree lined road network with stone paved sidewalks; (iv) large belts of landscape green area; (v) energy saving street lights; (vi) well laid out high pressure water supply lines from the overhead water tanks; and (vii) underground sewage and storm water drainage



system with eco-friendly sewage treatment plant. Vide aforesaid letter dated 08.09.2015, the appellant has further been informed that his plot is ready for possession and has been requested to take its possession within one month by clearing all the dues as per final statement of account by 25.09.2015 attached therewith.

25. The two court cases instituted by the appellant (CS-23-2020 and CS-1064-2020) have ostensibly been instituted in the year 2020 and the complaint before the Authority has been instituted on 21.08.2020. The appellant has not placed any material on record to show that he ever confronted aforesaid offer of possession dated 08.09.2015 before filing the complaint dated 21.08.2020. The appellant has not made any mention of the said offer dated 08.09.2015 in his complaint and has rather inter alia stated therein that (i) as per the Act, promoter has not provided him with the physical possession as the promoter has not received the completion certificate or occupation certificate from the appropriate authority; (ii) that the last installment is to be given on the complete completion of road and sewerage connectivity etc.

26. On the other hand, the respondent in its reply dated 24.02.2021 to the complaint has inter alia stated that (i) the Act is not applicable on the projects where the possession has already been offered to the allottees much prior to the commencement of the Act; (ii) that the possession of plot has been offered to the complainant vide letter dated 08.09.2015 posted through registered post on 09.09.2015 and the same was accepted by the complainant; (iii) the complainant is not paying the maintenance charges in time to the maintenance agency; (iv) that the complainant has already accepted the possession after inspecting each and every corner; (v) that the complainant never objected the offer of possession dated



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08.09.2015 and continued to pay the maintenance charges of the plot to the maintenance agency.

27. As mentioned in the order dated 12.11.2021 passed by the Authority, the appellant has paid an amount of Rs. 18,04,500/- in cash. However, as per payment plans stipulated in the plot buyer agreement dated 22.02.2012, Rs. 18,67,500/- are payable towards the basic sale price besides an amount of Rs. 4,03,875/- towards EDC/IDC @ Rs. 1,795/- per square yard for the entire area of the plot i.e. for 225 square yards, which was payable within 270 days from the date of allotment.
28. Under these circumstance, especially when the possession was admittedly offered by the respondent vide letter dated 08.09.2015 (before the commencement of the Act), which has been accepted by the complainant and there is no material on record to show that the appellant raised the issue of the completion certificate thereafter for almost five years till filing his complaint on 21.08.2020, I am of the opinion that the Authority has erred in holding in the order dated 12.11.2021 passed by it that the offer of possession was not valid one because the exemption to obtain a completion certificate, granted under the mega project agreement ceased to operate after issue of notification dated 02.09.2014, thus holding that the respondent is liable to pay interest w.e.f. 22.08.2015 till a valid offer is made.
29. Another complaint bearing AdC No. 16812020, filed on 20.08.2020 by the appellant herein pertaining to another plot relating to the same develop agreement, sale agreement and settlement deed, was dismissed by the Authority vide its order dated 12.11.2021, just because in that case possession was offered



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on 15/27.08.2013 i.e. before the issuance of aforementioned notification 02.09.2014 as per which even mega projects have to obtain completion certificate and because of regular payment of the maintenance charges; and Appeal No. 42 of 2022 filed by the appellants in that matter was also dismissed by this Tribunal on 14.03.2022.

30. Hence, I deem it appropriate to set aside the order dated 12.11.2021 passed by the Authority in the complaint bearing GC No. 17332020 and to dismiss the complaint.
31. Ordered accordingly.
32. File be consigned to record room after filing a copy of this order in the file of this appeal and after sending a copy to each of the parties as well as to the Authority.

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



May 29th, 2023

Certified To Be True Copy
Shamshad Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
& 30/05/2023