

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,  
SAS NAGAR (MOHALI)**

**Appeal No. 71 of 2019**

Janta Land Promoters Pvt. Ltd., SCO No. 39-42, Sector-82, SAS Nagar.

....Appellant

**Versus**

1. Abhimanyu Singh Vinayak S/o Sh. Gulshan Vinayak, R/o House No. 44-45, Shivaji Park, Model Town, Yamuna Nagar- 135001 (Haryana.)
2. Real Estate Regulatory Authority, Punjab, Sector-18, Madhya Marg, Chandigarh.

....Respondents

**WITH**

**APPEAL NO. 16 OF 2018, APPEAL NO. 17 OF 2018,**  
**APPEAL NO. 43 OF 2018, APPEAL NO. 60 OF 2019**  
**AND APPEAL NO. 72 OF 2019.**

**Present:** Mr. Abhinav Gupta, Advocate for the appellant (Janta Land Promoters Pvt. Ltd.)  
Mr. Abhimanyu Singh Vinayak, Advocate \ respondent No.1 in Appeal No. 71 of 2019.  
Mr. Mohammad Sartaj, Assistant Legal Adviser, Real Estate Regulatory Authority Punjab.



**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**

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**JUDGMENT: (Mahesh Grover (J)) (Retd):**

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By this order, I will dispose of the following appeals, as they involve a common question.

## APPEALS NO. 16, 17 &amp; 43 OF 2018

## APPEALS NO. 60, 71 &amp; 72 OF 2019

1.	Appeal No. 71 of 2019	Janta Land Promoters Pvt. Ltd. Versus Abhimanyu Singh Vinayak & anr.
2.	Appeal No. 72 of 2019	Janta Land Promoters Pvt. Ltd. Versus Raznee Dewan & anr.
3.	Appeal No. 16 of 2018	Janta Land Promoters Pvt. Ltd. Versus Suman Maan & anr.
4.	Appeal No. 17 of 2019	Janta Land Promoters Pvt. Ltd. Versus Nikhil Kawatra & anr.
5.	Appeal No. 43 of 2019	Janta Land Promoters Pvt. Ltd. Versus Anveeksha Varma
6.	Appeal No. 60 of 2019	Janta Land Promoters Pvt. Ltd. Versus Gagandeep Singh Walia

The facts are being extracted from Appeal No. 71 of 2019 titled as " *M/s Janta Land Promoters Pvt. Ltd. Versus Abhimanyu Singh Vinayak and anr.* "

In other appeals the facts may be at variance but do not affect main issue raised before this Tribunal.

The allotment of a residential unit was made to the respondent on 13.08.2016 with an assurance of possession within 12 months i.e. upto 12.08.2017. With the coming into force of Real Estate Regulation Act, 2016, the project was registered and a declaration to



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complete the project and give possession upto 31.12.2018 was made to the RERA.

It is pertinent to mention here that the possession has still not been delivered till the time hearing of the appeal, even though an assurance has been held out of the same till 25.12.2019.

The respondent, deprived of possession within the assured time approached the Real Estate Regulatory Authority, Punjab which disposed of the matter with the following directions: -

1. As provided in Section 18(1) para two and Section 2za(ii) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 the respondent shall pay interest w.e.f. 13.08.2017 as per State Bank of India highest marginal cost of lending rate + 2% till the date of this order. This amount shall be paid within 45 days of this order.
2. In the second part, as provided in Section 18(1) para two and Section 2za(ii) of the Real Estate (Regulation and Development), Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, the respondent shall pay interest to the complainant from the date after the date of this order, till the date of offer of possession of the flat to the



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*complainant. The same shall be adjusted towards the final demand notice at the time of offer of possession.*

3. *The complainant will pay 4% balance payment before taking possession of the flat and the complainant shall be liable to pay GST, as applicable, on the outstanding amount payable by him at the time of offer of possession of his flat by the respondent.*
4. *The amount of compensation already paid shall be adjusted against the interest payable.*
5. *The complainant is not entitled to any separate compensation as provided in Section 18(1) since he does not intend to withdraw from the project.*

The grievance is primarily directed against the date from which interest has been granted i.e. 13.08.2017.

The argument raised is that once the Real Estate Regulatory Authority, Punjab had granted extension of time upto 31.12.2018, the interest should accrue from this date by construing it as a date of default. Besides it is argued that once the RERA had granted extension of time the previous offer of possession would fade into insignificance and even if it is to be accepted, the parties would be bound by the terms of the letter of allotment and as a consequence



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the claimant would be entitled to the relief in terms of this letter and not by the statutory rate of interest as granted by the RERA at least till the date of registration with RERA.

The respondent in turn opposes the prayer and contends that he had paid the entire amount upfront on the strength of the assurance of possession upto 12.08.2017 and therefore the relief granted by the RERA is perfectly in accordance with the provisions of law. (This fact of the amount of being paid upfront is not common to all the appeals.)

I have heard the arguments at some length.

The first and the foremost issue raised by the appellant is that respondent would be bound by the terms of the letter of allotment to entitle him to the relief in terms of its default clause a plea if accepted would be laying down an erroneous proposition. It has already been held in Appeal No. 49 of 2018 titled as " *M/s Silver City Construction Ltd. Versus State of Punjab and others*", that the provisions of the Real Estate (Regulation and Development) Act, 2016 would apply across the board to all the projects which are ongoing, whether registered or not after the coming into force of the Act. This leaves little room for any other interpretation to be



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accepted much less than the one offered by the appellant. Concededly the project has not been completed and the possession as promised not delivered. Consequently the statutory impact which the default of the appellant offers cannot be diluted. Resultantly grant of interest has to be statutory and from the date of default i.e. 12.08.2017.

The next argument raised by the learned counsel for the appellant regarding the default date cannot be taken as 12.08.2017 and rather it should be 31.12.2018 is also misplaced. The appellant cannot justifiably treat his own declaration to the RERA for completion of the project as the extended date. The RERA upon an application and declaration made by the appellant merely accepts the date offered by the applicant for completion of a project and it cannot be construed to be an extension so as to alter the terms of allotment between the developer and the allottee.

In terms of Section 4(2)(l)(c) it is merely an application made by the Developer for registration of the Real Estate Projects, wherein he lay downs the time period to complete the project or the phase thereof by making a declaration supported by an affidavit.



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The allottee is nowhere in the picture. Evidently the appellant while furnishing a declaration to the RERA in respect of his plea of registration cannot unilaterally lay down the fresh terms to bind the allottee and in any case once the project has been registered and a default committed even as per the time schedule given by RERA to the appellant, there can be no escape from the consequences of the Act.

There does not seem to be any merit in the arguments advanced by the appellant. Moreover the appellant cannot seek relief even in equitable terms with the respondent having paid the entire amount upfront on the strength of the assurance of a possession upto 12.08.2017 and the possession has still not been given at the time of hearing of the appeal.

Reliance was placed on a decision rendered by the Hon'ble Supreme Court of India in " Civil Appeal Nos. 4910-4941 of 2019 (@ SLP (C) Nos. 3623-3654 of 2019) with a specific reference to para 16, which is extracted here below: -

"16. The District Forum under the Consumer Protection Act, 1986 is empowered inter-alia to order the opposite party to pay such amount as may be awarded as compensation to the consumer



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*for any loss or injury suffered by the consumer due to the negligence of the opposite party including to grant punitive damages. But the forums under the Act cannot award interest and/or compensation by applying rule of thumb. The order to grant interest at the maximum of rate of interest charged by nationalised bank for advancing home loan is arbitrary and no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is entitled to the consequences agreed at the time of 1986 Act executing buyer's agreement. There cannot be multiple heads to grant of damages and interest when the parties have agreed for payment of damages at the rate of Rs.10/- per sq. ft. per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there has to be exceptional and strong reasons for the SCDRC/NCDRC to award compensation at more than the agreed rate."*



This judgment is of no avail to the appellant as the observations made were in a totally different context, particularly as the issue emanated from proceedings under the Consumer Protection Act, where the Forum had the liberty to impose damages,

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grant interest unregulated by any statutory provisions, whereas the Real Estate (Regulation and Development) Act, provides for a complete mechanism, rate of interest, compensation etc. in situation of default which has been duly adhered to by the Authority.

Lastly it was argued with a reference to judgment passed by the Hon'ble Bombay High Court in "Neelkamal Realtors Suburban Pvt. Ltd. and anr. Versus Union of India and ors." The reference to the judgment in particular para No. 195 where it is observed as follows: -

"195. In the affidavit dated 4.10.2017 filed on behalf of Union of India, it is clearly stated that in respect of on-going projects the promoter os-wp-2737-17 & ors-RERA-JT.doc can prescribe fresh time period independent of the time period stipulated in the agreements for sale entered into between the promoter and the allottees at the time of registration of the project as per Section 4(2)(l)(C). Thus the promoter is given opportunity for completing the project or phase, as the case may be by prescribing fresh time period so that he is not visited with the penal consequences laid down under RERA. If the promoter has all the permissions specified in Section 4(2) in place and is permitted to prescribe new time period, I do not find that first proviso to Section 3(1) is unreasonable. That apart, in terms of first proviso to Section 6, the Authority has discretion, in reasonable circumstances,



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*without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, to extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year."*

This judgment, I am afraid is also of no avail to the appellant. Indeed the provisions of Section 4(2) of the Act as extracted above confers a right upon the Developer to prescribe a fresh timeline to complete the project or phase as the case may be while seeking registration of the project so as to avoid penal consequences laid down under the Real Estate (Regulation and Development) Act, 2016.

The penal consequences intended to be visited upon the Developer are contained in Section 60 of the Act, which is extracted here below: -

*If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.*



A perusal of the above indicates that the promoter has to file a declaration supported by an affidavit that he will complete the

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project by such and such date, which means that he does not wish to provide any false information or contravene any provision of Section 4 of the Act, which broadly entails providing information and details of the project under various heads. Under no circumstance can it be construed to be an acknowledgment of a fresh timeline so as to bind the allottee to a fresh date of allotment and deprive him of statutory relief in the event of default by the Promoter regarding offer of possession made at the time of initial allotment.

The present appeals are therefore held to be without any merit and accordingly dismissed, since no other point has been urged.

Since the issue that is germane to all the appeals has been decided, let the remaining appeals be put up for final orders.

The respondent shall be at liberty to withdraw the amount deposited by the appellant.

A photostat copy of this order be placed on the record of each appeal.



Sd/-  
JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

January 20, 2020  
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Certified To Be True Copy  
Registrar  
Real Estate Appellate Tribunal Punjab  
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