

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

Subject: -

Appeal No. 236 of 2020

Sumit Kumar

...Appellant

Versus

M/s Manohar Infrastructure & Constructions Pvt. Ltd.

....Respondent

Appeal No. 237 of 2020

J.N. SINGH

...Appellant

Versus

M/s Manohar Infrastructure & Constructions Pvt. Ltd.

....Respondent

Appeal No. 238 of 2020

J.N. SINGH

...Appellant

Versus

M/s Manohar Infrastructure & Constructions Pvt. Ltd.

....Respondent

Memo No. R.E.A.T./2021/

350

22-11-2021

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
22nd day of November, 2021.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
AT CHANDIGARH

Appeal No. 236 of 2020

Sumit Kumar

...Appellant

Versus

M/s Manohar Infrastructure & Constructions Pvt. Ltd.

....Respondent

Appeal No. 237 of 2020

J.N. SINGH

...Appellant

Versus

M/s Manohar Infrastructure & Constructions Pvt. Ltd.

....Respondent

Appeal No. 238 of 2020

J.N. SINGH

...Appellant

Versus

M/s Manohar Infrastructure & Constructions Pvt. Ltd.

....Respondent

Present: - Mr. Saurabh Garg, Advocate for the appellant.
Mr. Dinesh Madra, Advocate for the respondent.
Mr. J.N. Singh appellant in person.

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K GARG DISTRICT AND SESSIONS JUDGE (RETD.)
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER
(ADMINISTRATIVE/TECHNICAL)

-*-

JUDGMENT: (Justice Mahesh Grover (Retd.))
(Majority view)



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1. By this order we will dispose of three appeals bearing No. Appeal No. 236 of 2020 (Sumit Kumar Versus M/s Manohar Infrastructure & Constructions Pvt. Ltd.), Appeal No. 237 of 2020 (J.N. Singh Versus M/s Manohar Infrastructure & Constructions Pvt. Ltd.) and Appeal No. 238 of 2020 (J.N. Singh Versus M/s Manohar Infrastructure & Constructions Pvt. Ltd.)
2. The facts are being extracted from Appeal No. 236 of 2020 titled as "*Sumit Kumar Versus M/s Manohar Infrastructure & Constructions Pvt. Ltd.*"
3. Mr. Sumit Kumar-appellant herein is the son-in-law of Shri J.N. Singh the appellant in the other appeals i.e. Appeal No. 237 of 2020 and Appeal No. 238 of 2020. Shri J.N. Singh is also the authorized representative of the complainant-appellant Sumit Kumar and prosecuted the matter before the Real Estate Regulatory Authority, Punjab on his behalf.
4. In effect, therefore the complainant comes across as one entity for our purpose of describing him as the complainant before the Authority and appellant before us.



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5. The facts in brief are that the complainant-appellant submitted an expression of interest regarding the plot measuring 250 square yards in a project floated by the respondent by the name of "the Palm (Palm Springs/Palm Eco/Palm Garden/Villas" on 09.04.2012. The basic price of the plot was Rs.46,25,000/- with the EDC and PLC Charges being separate. The complainant deposited a sum of Rs.13,87,500/- on 05.04.2012 through online transaction and submitted signed expression of interest along with it. In lieu thereof a customer ledger account was maintained by the respondents indicating price of the plot, its rate, EDC charges and as also the details of payment received. A copy of the ledger account along with the details of the payment including the latest one amounting to Rs.15,50,000/- was duly entered therein and is not in dispute. It is a conceded case of the parties that a total amount of Rs.29,37,500/- has been received by the respondent. Infact in all, between Sh. J.N. Singh and Sh. Sumit Kumar three plots of 250 sq. yards were booked.
6. The complainant-appellant submitted a letter dated 15.02.2018 captioned "Preference Request" stipulating various conditions



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- i.e. PLC Charges @ 10% per square yard for PGH-44 selected by the complainant-appellant (authorized representative for Sumit Kumar) as well as EDC charges @ Rs.4,000/- per square yards. This letter was duly signed by both the parties.
7. The complainant-appellant filed the complaint on 05.12.2018 alleging that he has paid an amount of Rs.29,37,500/-, which is approximately 70% of the total amount involved and made a grievance of the delayed possession which though promised in the month of March 2015 had not been delivered to him.
8. Before the Authority, several reliefs were sought for by the complainant and lest an omission prejudice the case of the complainant, we deem it appropriate to extract the reliefs prayed for by the complainant.
- i. *To give necessary directions to the respondents for delivery of possession of plot along with interest for delay in delivery of possession till realization as per the provisions of Section 18 and Section 19(3) of the RERA Act read with Rule 16 of PSRE(R&D) Rules, 2017.*
 - ii. *To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for willful default committed by them.*



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- iii. *To impose penalty upon the respondents as per the provisions of Section 61 of RERA Act for contravention of Section 12, Section 14 and Section 16 of RERA Act.*
- iv. *To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of RERA Act, 2016 to be read with Punjab RERA, Rules 2017.*
- v. *To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 and 409 of the Indian Penal code.*
- vi. *To issue direction to pay the cost of litigation.*
- vii. *To issue direction to pay the compensation to complainant for compensation for his mental agony, pain and harassment.*
- viii. *Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint."*



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9. The respondent appeared and submitted his reply on 28.02.2019. During the course of proceedings before the Authority the complainant made a statement on 22.03.2019 that he did not wish to press for the relief of compensation for which he would seek a separate remedy by filing a complaint at a later stage in Form-N.
10. The Authority has been generous enough to record the proceedings and what transpired on each and every date of the hearing. It also reflects that at some stage of the proceedings the respondent showed his willingness to settle the matter with the complainant-appellant. It may not however, be necessary to go into the details of what transpired on each and every date of hearing but suffice, it to say that after deliberations before the Authority some of the issues were mutually resolved, which need to be extracted hereinbelow:-

- "1. The respondent offered to waived off EDC @ Rs.1500/- per sq. yards as against Rs.4000/- per sq. yards demanded from the complainant, which the representative for the complainant accepted.*
- 2. By 10th July, 2020 the respondent shall make an offer of possessionable plot by intimating him the specific plots number on his email id and shall hand over a copy of the*



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agreement to sell in respect of the same, if acceptable to him, on the next date of hearing.

3. *The respondent made the conditional offer for plot subject to payment of the entire balance amount, by the complainant, within 15 days of the offer, to which the complainant consented.*
 4. *The counsel for the respondent further submitted that in case they are unable make a definite offer by 10th July or next date of hearing, they shall reschedule the payment plan and gave an undertaking that the offer of possession shall definitely be made on or before 31st March, 2021 and a new payment plan shall be submitted on the next date of hearing, keeping in view the extended period sought by them. The representative for the complainant agreed to the offer."*
11. Evidently, the dispute seemed to be have been narrowed down before the arguments were heard. Interestingly, Shri J.N Singh, who was appearing for himself and as the authorized representative for Mr. Sumit Kumar, as well, disowned the decisions taken during the course of hearings and stated that he was forced to agree with the decisions under coercion.
12. Eventually by taking into consideration the entire perspective, the Authority passed the impugned order.



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13. Dissatisfied with the above, all the three appeals have been preferred and after oral submissions were made at length the complainant-appellant submitted his written arguments as well. Likewise the respondent.
14. It was argued before us that the authority has wrongfully observed that in response to the letter dated 17.02.2014, the appellant did not make the payment. The Authority failed to notice the payment plan which mentioned that the second instalment would be payable on the issuance of registration number. No registration number or allotment was made in favour of the appellant, till after 4 years in February 2018. There was thus no compulsion upon the appellant to make the payment. It was argued that the respondent's contention that registration number was allotted to the appellant in April, 2012 (PGH-45) is false, as the letter dated 06.06.2014 indicates registration of the year 2014. The demand raised vide letter dated 06.06.2014 was in clear violation of the provisions of Punjab Apartment and Property Regulation Act 1995, as no allotment was made to the appellant, which was done only in the year 2018. The appellant has made the payment of



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Rs.29,37,500, which is approximately 70% of the demanded amount. The Authority has gone wrong in observing that payments made in the year 2018 were pursuant to the demand notice dated 17.02.2014. Rather payments were made on the assurances held out by the respondent that possession of the plot will be delivered soon.

15. The complainant denied that any letter dated 02.02.2018 seeking a request for preferential plot was ever made by him. The letter was alleged to be forged. It was denied that the appellant ever agreed to higher charges than what was stipulated in the original payment plan. It was argued that the appellant cannot be fastened with any wrong doing for failing to sign the Buyers Agreement before the Authority. The observation of the Authority regarding the parties failing to establish date by which the possession was agreed upon was also faulted with by the appellant, and a perusal of Annexures C-2 and C-3 support the plea of the appellant that possession was to be delivered in the year 2015. It was argued by the learned counsel for the appellant that the Authority has wrongly drawn an assumption that respondents were offering



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possession of plot No.1402 as an alternative to the original one when no document on record is there to substantiate this plea. The appellant disowned his own statement recorded in proceedings dated 01.04.2020, willing to take possession of the plot in case Buyers Agreement is handed over to him and no consent was ever given to take possession of Plot No.1402. The fact of the matter is that till date the respondent has not issued any letter of possession regarding the original Plot No.1069.

16. The payment of EDC Charges as upheld by the Authority was argued to be arbitrary particularly when the document dated 15.02.2018 is denied.
17. It was also argued that denial of interest for the delayed possession from the period 2015 was uncalled for. It was vehemently argued that the project is not complete nor has any development taken place and the Authority has miserably failed to taken into consideration this aspect. Both the Plots No.1069 and 1402 are not ready for possession or in a position to be possessed when no construction had taken place. No basic amenities like lawn, parks, roads, school, post office, shopping complex, securities etc. are existing in the locality. It



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was thus argued that the order of the Authority needs to be set aside.

18. As against this the respondent argued that complainant has not come to the Court with clean hands and attempted to mislead the Court at every step. The admitted documents on record particularly the one dated 06.08.2018 and 15.02.2018 have been alleged by the complainant to be forged whereas no such material was ever brought before the Authority, in support of such a plea. The letter dated 15.02.2018 is signed by both the parties and therefore the onus fell upon the complainant-appellant to prove that this letter was a fabrication. There was a clear commitment made by the complainant in Para 4 to 8 which was not adhered to by the appellant. For the purpose of reference the relevant conditions agreed to by the appellant are as below:-

- "4. I have decided to have a plot with PLC @10% per Sq. yards and I ready to pay for the same as and when demanded by the company"
5. I am ready to pay for the development charges (EDC+IDC) @ Rs.4,000/- per sq. yards.
6. I am also ready to pay for the plot charges on the pro rata basis for the size of the plot.



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7. *I understand that you will hold this plot for 7 days, for completing the formalities and deposit the required payment (PLC Charges if any) after that you are free to release it to other clients.*
8. *This preference of plot by me shall be applicable only if the above terms are met by me. "*

19. Even though the plot offered to the appellant was to be put on hold for seven days yet even today the respondent is willing to give it to him. It was argued that it was common knowledge that every plot is non-possessionable till the time External Development Charges and Internal Development Charges are paid. Since the appellant failed to make this payment despite his commitment expressed in the letter dated 15.02.2018 the plot could not be made possessionable. Admittedly an amount of Rs.29,37,500/- has been made where the total cost of the plot registered as PGH-44 to which the appellant had agreed is Rs.64,53,375/-. It was contended by the learned counsel for the respondent that repeated attempts were made to resolve the issue but the fair offers made by the respondent were not accepted by the appellant. Rather attempts have been made to mislead the Court. It was wrong to argue that the respondent



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has not made any registration whereas the complainant-appellant has himself mentioned the registration number while communicating with the respondent. False allegations have been made against all including the Authority. The factual aspect has not been brought out clearly.

20. It was pointed out that the complainant-appellant- Shri J.N. Singh had asked for two plots but due to paucity of funds selected one possessionable plot with the commitment to pay entire balance amount since he had sufficient money only for one plot. Accordingly he, for himself and his son-in-law- Sumit Kumar selected one possessionable plot and two non-possessionable plots which were to be developed later on on the payment of balance charges including EDC and vide IDE but the same did not materialize. Consequently, the non-possessionable plots could not be made possessionable in the absence of EDC and IDC. The respondent suffered loss as these plots were dragged into litigation and thus could not be sold in open market. It was thus prayed that the order of the Authority being totally just deserved to be upheld and the appeals be dismissed.



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21. We have heard the learned counsel for the parties at some length and having gone through the written submission, we are of the opinion that appeals deserve to be dismissed.
22. The Authority has rightly noticed that the expression of interest dated 09.04.2012 was duly signed by the complainant-appellant. He while making the payment of Rs.13,87,500/- agreed to the condition contained in the expression of interest which is reproduced below:-

"NOTE:

XXX

4. *Preferential Location, if available, will attract Preferential Location Charges (PLC)*
5. *External Development Charges will be extra."*

23. The complainant made a payment of Rs.15,50,000/- on 30.01.2018, and the ledger account dated 29.01.2018 raising demand upon the appellant, seems to have been accepted by him considering that the amount of Rs.15,50,000/- was paid under three different transactions dated 30.01.2018, 31.01.2018 and 08.02.2018 i.e. after the demand was raised on 29.01.2018. This is a clear sign of acquiescence, more so as it was followed by a letter dated 15.02.2018, duly signed by the complainant



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and in case of Sumit Kumar by authorized representative-Shri J.N. Singh. It was accepted that payment of Development Charges @ Rs.4000/- per square yards would be paid and likewise payment of PLC for North facing plot @ 10% square yards. These conditions contained in the letter dated 15.02.2018 have already been extracted above. The initial payment was made in the year 2012 and thereafter for six years no further payment was made till the time this demand was raised on 29.01.2018. Thereafter the respondent made a conditional offer of Plot No.704E possession of which was to be given by 31.10.2020, subject to the condition that the complainant/appellant signs the Buyers Agreement and makes 95% payment within 15 days of the offer with the balance 5% at the time of actual possession. This offer was made during the course of proceeding before the Authority and what is more an offer was made by way of an exception to reduce the demand of EDC from Rs.4000/- per sq. yards by Rs.1500/- per square yards implying that the appellant would pay Rs.2500/- as EDC. This offer was made even though Rs.4000/- being charged from other allottees and only with the view to settle



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the dispute. The appellant refused these offers for reasons best known to him.

24. In fact during the course of hearing before us, we asked learned counsel for the respondent as to whether he is willing to keep this offer alive even today and in view of his affirmation, we put it to the learned counsel for the complainant-appellant as also complainant who was present in Court, whether he is willing to accept this offer. He agreed to this, albeit reluctantly. The appellant has been blowing hot and cold as he disowned the letter dated 15.02.2018 as false and a forgery without even offering any significant material or explanation to support such a plea particularly when his signatures were appended to it. Merely to say that it was result of coercion would be an unacceptable plea.
25. He has also unnecessarily tried to create confusion by alleging motives to the respondent and even to the Authority which recorded that the complainant made a request in the year 2018 that he was unable to make payments for all the three plots due to financial constraints and requested the respondent to adjust Rs.10,00,000/- from Plot PEC14 booked in his personal



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name to PGH 45 (Plot no.702) also in his personal name. He had also made a request to the respondents that he wanted to wait for the remaining two plots while desiring for possession of Plot No.702. He disowned the consensual decisions taken on one of the dates of hearing and denied offers made by the respondents, which we choose to extract here below:-

- "a. The offer of a new possessionable Plot No.1402 made by the respondent by way of an offer letter submitted before the Court today was not acceptable to him.*
- b. The offer of discount of Rs.1500/- per sq. yard. from the demand of EDC @ Rs.4000/- per sq. yards as per the copy of customer ledger dated 29.01.2018 cited as annexure C-6 and letter for preference request dated 15.02.2018 signed by the complainant was not acceptable.*
- c. The offer of the respondent offering the possession of the plot by 31.10.2020 was acceptable to him.*
- d. The condition of the respondent while making the offer of possessionable plot that the complainant signs the plot buyers agreement and make 95% of the total payment within 15 days of the signing of the same was not acceptable to him.*
- e. The respondent gave an undertaking that the proposed plot buyer agreement is as per the*



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agreement to sell provided as Annexure A of the Punjab State Real Estate (Regulation & Development) Rules, 2017 as provided under sub Rule (1) of Rule 8. The authorized representative for the complainant insisted that he will not sign the printed plot buyers agreement proposed by the respondent but will only sign copy of the agreement to sell as per Annexure A of the Rules on a copy which he had himself downloaded.

- f. *The authorized representative for the complainant refused to make 95% payment till he is paid interest for the delay in offering him possession and also reducing the demand for EDC as per calculations submitted by him based on a notification of the department of Housing and Urban Development dated 22.06.2010 vide which the complainant calculated the EDC liability to be Rs.578.60 per sq. yards only as against a calculation of a higher amount by the respondent based on a demand notice dated 18.06.2015 for deposit of dues of Mega residential project "The Palm" of the respondent.*
- g. *The authorized representative for the complainant refused to agree to adjustment of all pending dues at the time of taking over possession and argued for prior payment of interest etc. and a revised demand letter only after which he was willing to give his consent to the offer of possession.*



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- h. *The authorized representative for the complainant argued that he had signed the consent letter of 15.02.2018 (annexure C-5) only under coercion and he does not stand by the same.*
- i. *He alleged that the expression of interest signed and submitted by him on 09.04.2012 was signed under coercion.*

26. We are of the opinion that no matter what, even while distancing ourselves from any opinions to be expressed on the conduct of the complainant-appellant, he cannot wriggle out of the letter dated 15.02.2018 by describing it as having been obtained under coercion. The respondent in order to resolve the issue and relying strongly on the consent given by the appellant made an offer of possession of Plot No.1402 by 31.10.2020 subject to the condition that 95% of the payment is made within 15 days, an offer of possession and signing of Buyers Agreement, which eventually led to stalemate.
27. Taking into consideration all the eventualities, the Authority concluded as below:-

- i. *The complainant is directed to give his consent or written refusal, within 30 days, to the offer of possessionable plot No.1402 for which the*



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respondent has given an undertaking that the possession shall be handed over by 31.10.2020.

- ii. *Since the authorized for the complainant has refused to accept the offer of reduction in the EDC Charges from Rs.4000/- to Rs.2500/-, he shall be liable to make the balance payment of BSP along with payment of EDC & PLC as per agreed terms and conditions, as mentioned in the initial expression of interest and letter of preference signed on 15.02.2018.*
- iii. *Since the complainant made a total payment of Rs.29,37,500/- by 08.02.2018 including a sum of Rs.13,87,500/- paid at the time of signing of "expression of interest" on 09.04.2012, the respondent is liable to pay interest for the delay in offering possession to the complainant as provided under Section 18(1) proviso 2 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. 09.02.2018, as*



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per State Bank of India highest marginal cost of land rate + 2% as prevailing from time to time, till the date of this order i.e. 07.08.2020. This amount shall be paid within 15 days of the consent, if given, by the complainant.

- iv. In the second part, as provided in Section 18(1) proviso 2 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, as per State Bank of India highest marginal cost of landing rate + 2% as prevailing from time to time, to the complainant from the date after the date of this order i.e. w.e.f. 08.08.2020 till the handing over of possession, in case the complainant gives consent within 30 days of this order.*
- v. The principal of 'estoppel' shall apply, in regards to prayer for reduction in the amount of EDC & PLC charges, against the complainant, as he has repeatedly given undertakings to make payments*



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based on expression of interest signed by him in 2012 and preference request letter of Feb, 2018 and now he cannot seek fresh set of conditions to be imposed.

- vi. In case the complainant is not willing to take possession of the plot then he may seek refund of the amount paid by him, by filing a fresh complaint, as provided under the Act and the Rules & Regulations made thereunder.*
- vii. No case for penalty U/s. 60 of the Real Estate (Regulation & Development) Act, 2016 for contravention of Sections 12, 14 & 16 is made out as the complainant could not prove the same.*
- ix. No case is made out in regards to taking action against various functionaries of the respondent company as per Section 69 of the Act as the complainant failed to prove the same.*
- x. As regards the relief of the criminal action against the respondent, the complainant may approach the competent authority in this regards.*
- xi. No other relief is made out. "*



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28. A perusal of the above reveals that each and every concern has been addressed and the interest of the appellant adequately safeguarded. We do not thus understand what the grievance of the appellant is, particularly when it is based largely on the consent given by the appellant himself before the Authority. The appellant has repeatedly argued that letter dated 15.02.2018 was obtained through coercion. It is a settled proposition of law that a person who alleges so, would be required to establish such a fact. Neither any particulars of the manner of coercion has been given nor material brought on record to explain the nature of coercion. The document or the signatures thereupon are not denied, therefore it cannot be wished away merely on the bald assertion that it was obtained through coercion.

Besides the Authority has in all fairness, kept the option of seeking refund by the complainant open, in an eventuality, where he does not wish to take possession. He has been granted the liberty to file a fresh complaint as provided under the Act. We simply deem it appropriate to make it clear that in case such an option is exercised by the appellant then the



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Authority would be bound to dispose it of, in accordance with provisions of the Act, unfettered or impacted by the previous litigation.

The appellant conceded that the judgment rendered in this appeal would govern the other two appeals as well. No other point was urged.

29. We therefore while finding no merit in the appeal direct as follows: -

- (i) It is totally upto to the appellant to accept offer of Plot No.1402 for which the respondent has given an undertaking to hand over possession by 31.10.2020. Since that date has already expired, and in case it is acceptable to the appellant and he chooses to avail of this offer, we direct the respondent to communicate afresh the same offer within 15 days of the receipt of consent from the appellant, who shall then take possession within 30 days of such an offer on the same terms and conditions that were offered by the respondent before the Authority. The appellant shall communicate his consent to the respondent within one week of the order.



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- (ii). The offer of reduction of EDC Charges from Rs.4000/- to Rs.2500/- shall sustain.
- (iii). Rest of the reliefs agreed by the Authority as contained from Clause 2(10) shall also sustain. With the aforesaid modification only, the appeal stands dismissed.
30. That it is pertinent to mention here that the impugned order of the Authority was passed by a Single Member regarding which the controversy is pending before the Hon'ble Supreme Court and in its order dated 25.11.2020 passed in SLP No. 13005/2020 titled as M/s. Sana Realtors Pvt. Ltd. Versus Union of India & Ors. and other connected matters except 10396 of 2020, held that in case both the parties agree the matter can be heard and decided. Accordingly since, both the parties had agreed to argue the matter, we have proceeded to hear the appeal and have disposed it of.

sd/-

JUSTICE MAHESH GROVER (RETD.)
 CHAIRMAN

sd/-

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

x x x

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

November 22, 2021

AN

Certified To Be True Copy

Shamsher Kaur
 Registrar
 Real Estate Appellate Tribunal Punjab
 Chandigarh 22/11/2021



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, AT CHANDIGARH

Appeal No. 236 of 2020

Sumit KumarAppellant

Versus

Manohar Infrastructure & Constructions Pvt. Ltd.Respondent

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J.N. SinghAppellant

Versus

Manohar Infrastructure & Constructions Pvt. Ltd.Respondent

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J.N. SinghAppellant

Versus

Manohar Infrastructure & Constructions Pvt. Ltd.Respondent

Present:-

Mr. Subhash Garg, Advocate for the appellants
Mr. Dinesh Madra, Advocate for the respondent
Mr. J.N. Singh appellant in person

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)**

JUDGMENT/DISSENT: (ER. ASHOK KUMAR GARG, C.E. (RETD.))

I have carefully gone through the record produced before this Tribunal and have considered the rival contentions; and have observed as under (the common facts are being extracted from Appeal No. 236 of 2020 titled as "*Sumit Kumar* *Versus* *M/s Manohar Infrastructure & Constructions Pvt. Ltd.*"):-



1. The appellant-complainant in respect of Appeal No. 236 of 2020 has challenged the order dated 07.08.2020 passed by a single Member Bench of the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in the complaint GC No. 11122018. The reliefs prayed for by the appellant in his complaint and the orders passed by the single Member Bench of the Authority are as under:-

Reliefs sought by the appellant-complainant:

- i. *To give necessary directions to the respondents for delivery of possession of plot along with interest for delay in delivery of possession till realization as per the provisions of Sec. 18 and Sec.19(3) of the RERA Act read with Rule 16 of PSRE(R&D) Rules 2017.*
- ii. *To impose penalty upon the respondents as per provisions of Section 60 of RERA Act for willful default committed by them.*
- iii. *To impose penalty upon the respondents as per provisions of Section 61 of RERA Act for contravention of Sec.12, Sec. 14, and Sec. 16 of RERA Act.*
- iv. *To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act, 2016 to be read with Punjab RERA Rules, 2017.*
- v. *To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.*
- vi. *To issue direction to pay the cost of litigation.*
- vii. *To issue direction to pay the compensation to complainant for compensation for his mental agony, pain and harassment.*
- viii. *Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.*

Orders passed by the single Member Bench of the Authority:

- i. *The complainant is directed to give his written consent or written refusal, within 30 days, to the offer of possessionable plot No. 1402 for which the respondent has given an undertaking that the possession shall be handed over by 31.10.2020.*
- ii. *Since the authorized representative for the complainant has refused to accept the offer of reduction in the EDC Charges from Rs.4000/- to*



Rs.2500/-, he shall be liable to make the balance payment of BSP alongwith payment of EDC & PLC as per agreed terms and conditions, as mentioned in the initial expression of interest and letter of preference signed on 15.02.2018.

- iii. Since the complainant made a total payment of Rs.29,37,500/- by 08.02.2018 including a sum of Rs.13,87,500/- paid at the time of signing of "expression of interest" on 09.04.2012, the respondent is liable to pay interest for the delay in offering possession to the complainant as provided under section 18 (1) proviso 2 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The respondent shall pay interest w.e.f. 09.02.2018, as per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time, till the date of this order i.e. 07.08.2020. This amount shall be paid within 15 days of the consent, if given, by the complainant.
- iv. In the second part, as provided in section 18 (1) proviso 2 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest, as per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time, to the complainant from the date after the date of this order i.e. 08.08.2020 till the handing over of possession, in case, the complainant gives consent within 30 days of this order.
- v. The principal of 'estoppel' shall apply, in regard to prayer for reduction in the amount of EDC & PLC charges, against the complainant, as he has repeatedly given undertaking to make payments based on expression of interest signed by him in 2012 and preference request letter of Feb, 2018 and now cannot seek fresh set of conditions to be imposed.
- vi. In case the complainant is not willing to take possession of the plot then he may seek refund of the amount paid by him, by filing a fresh complaint, as provided under the Act and the Rules & Regulations made thereunder.
- vii. No case for penalty U/s. 60 of the Real Estate (Regulation & Development) Act, 2016 is made out as the complainant could not prove the same.
- viii. No case for imposition of penalty U/s. 61 of the Real Estate (Regulation & Development) Act, 2016 for contravention of Sections 12, 14 & 16 is made out as the complainant could not prove the same.
- ix. No case is made out in regards to taking action against various functionaries of the respondent company as per section 69 of the Act as the complainant failed to prove the same.
- x. As regards the relief of the criminal action against the respondent, the complainant may approach the competent authority in this regard.
- xi. No other relief is made out.



2. Through the present appeal No. 236 of 2020, the appellant-complainant seeks to set aside the impugned order dated 07.08.2020, to accept the complaint as prayed for and to order the respondent to pay interest for delayed possession @ 24% (compounded) per annum.

3. The complainant had paid the following amounts to the respondent:-

- (i) Rs. 13,87,500 by RTGS on 05.04.2012 (Annexure C-1 of the complaint);
- (ii) Rs. 8,00,000 by RTGS on 18.01.2018 (receipt No. 3728 dated 29.01.2018, Annexure C-4 of the complaint); &
- (iii) Rs. 7,50,000 (receipt No. 3729 dated 29.01.2018 out of which Rs. 3,00,000 by Cheque/Draft dated 29.01.2018, whereas the detail of remaining amount of Rs. 4,50,000 are not available in the copy of the said receipt brought on record by the respondent with his written arguments dated 07.10.2021 as Annexure C-4 of the complaint, may be because lower portion of the receipt might have got truncated due to its over enlargement).

4. The appellant has inter alia stated in his present appeal dated 31.08.2020 that on receiving the payment of Rs. 13,87,500 at the time of booking on 09.04.2012), the respondent issued a Letter for Expression of Interest dated 09.04.2012 and also supplied a copy of the Payment Plan; and has attached a copy of the "PAYMENT PLAN" as Annexure A-2 with his appeal.

5. The appellant has not brought on record a copy of aforesaid Letter for Expression of Interest dated 09.04.2012 before this Tribunal. However, a copy of an Expression of Interest (*hereinafter referred to as the EOI*) dated 26.03.2012 for a property in Palm Garden, but relating to Appeal No. 238 of 2020 (albeit erroneously marked by the respondent to be for the Appeal No. 237 of 2020), has been brought on record by the respondent with his written arguments dated 07.10.2021 as Annexure C-1 of the complaint bearing GC No. 10872018 (It is hereby worth bringing on record that while submitting their written arguments in



Appeal No. 237 of 2020 and in Appeal No. 238 of 2020 before this Tribunal, the appellant as well as the respondent have erroneously marked on those written arguments the Appeal No. 238 of 2020 in place of Appeal No. 237 of 2020 and vice versa). It is expected that the contents of the EOI relating to Appeal No. 236 of 2020 & complainant GC No. 11122018 would be similar. Perusal of aforesaid EOI relating to appeal No. 237 of 2020 reveals that a prospective allottee, while expressing his interest in a residential plot of certain size in the respondent's project, remits certain amount (booking amount) and agrees to inter alia state as under in the format devised by the promoter:-

"I/We agree and understand that this application does not constitute any offer or registration of expression of interest (EOI) or definitive allotment or any agreement to sell and I/we do not become entitled to the provisional and/or final allotment of a Unit.

I/we understand that this form merely expresses my intent to Manohar Infrastructure & Constructions Pvt. Ltd. Chandigarh for allotting the Unit to me/us and in no way may be construed as an allotment. I/We agree that the EOI in the upcoming project "Palm Garden" shall become definitive only after the due acceptance of the same by Manohar Infrastructure & Constructions Pvt. Ltd. Chandigarh in writing and shall be subject to the terms and conditions stipulated by Manohar Infrastructure & Constructions Pvt. Ltd. Chandigarh at the time of such acceptance.

*In the event of Manohar Infrastructure & Constructions Pvt. Ltd. Chandigarh accepting my/our application to provisionally allot a Unit, I/we agrees to **pay all further installments of the sale price and all other monies/dues as stipulated in the payment plan.***

By signing this Expression of Interest (EOI) I confirm that I have read the terms and conditions mentioned herein.

*Please note : **EDC and PLC charges will be in addition to the rates quoted.** There shall be additional cost for maintenance etc."*

6. A copy of "Palm Garden Application Acknowledgement" dated 09.04.2012 has been brought on record by the respondent as page No. 9 of his written arguments dated 07.10.2021 (Diary dated 08.10.2021) in Appeal No. 236 of 2020.

"**PGH-44**" is appended in the top right corner of the said "Application Acknowledgement" dated 09.04.2012. As per this "Application Acknowledgement", the appellant-complainant had applied for a plot of 250 sq.



yd. @ Rs. 18,500 per sq. yd. with Price (BSP) as Rs. 46,25,000 and with "Booking Amount Received" shown as "Rs. 13,87,500" vide RTGS/Cheque/DD No. SBINH12096313580 dated 05.04.2012.

7. As per notes 4 & 5 of "Application Acknowledgement" dated 09.04.2012 (Annexure C-1 of the complaint), "**Preferred location, if available, will attract Preference Location Charges (PLC)**" and "**External Development charges (EDC) will be extra**".

8. As per the "PAYMENT PLAN" (Annexure-2 of the Appeal), first installment of "30% of BSP" is to be paid "With the Application", second installment of "20% of BSP+25% EDC and PLC" is to be paid "On Confirmation of Application & **Issuing of Registration No.**", next three installments each of "10% of BSP+25% EDC and PLC" are to be paid "Within 3/6/9 months of **Issuing of Registration No.**", sixth installment of "10% of BSP" is to be paid "Within 12 months of **Issuing of Registration No.**" and the last installment of "10% BSP+100% IFMS +100% Additional Facilities Charges" is to be paid "On Possession".

9. The "PAYMENT PLAN" also inter alia stipulates that "*All Govt. Charges and Taxes as Applicable*", and that "*Preferential Charges (PLC) :- // 1PLC = 5% per sq. yd, 2 PLC = 9% per sq yd., 3 PLC + 13% of BSP. // It will be one or combination of the following locations :- Corner Locations // Two Side Open Locations // Park Facing // Major Road (60ft & above)*".

Note:- The sign "//" has been used in paragraph 9 above to denote a line break.

DUE/SCHEDULED DATE OF HANDING OVER POSSESSION

10. As per sub section (1) of section 6 of the Punjab Apartment and Property Regulation Act, 1995 (*hereinafter referred to the PAPRA*), a promoter shall, before he accepts any sum of money as advance payment or deposit, which shall not be more than twenty five per cent of the sale price, enter into a written agreement for sale of apartments, or plots, as the case may be; and as per sub section (1) of section 13 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter*



referred to the Act), a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale.

11. Further, as per sub clause (i) of clause (b) of sub section (3) of section 6 of the PAPRA, the agreement to be prescribed under its sub-section (1) shall contain inter alia the date by which the possession of the plot is to be handed over to allottee; and as per sub section (2) of section 13 of the Act, the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify, inter alia, the date on which the possession of the apartment, plot or building is to be handed over, pursuant to which, under clause 7.1 of the prescribed 'AGREEMENT FOR SALE' i.e. the Form 'Q' (which was ANNEXURE 'A' before September/October 2020 amendment) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to the Rules*), a Promoter has to specify a date in the said clause to assure to hand over possession of the Apartment/Plot.

12. Thus, whereas a promoter lays down the time schedule for the payments by an allottee to watch his own interest, at the same time he is duty bound as per provisions of law to commit the time schedule for handing over possession of the plot/apartment.

13. Hence, the respondent, was required to enter into an agreement with the appellant indicating therein scheduled date of handing over the possession of the plot, before receipt of first installment of Rs. 13,87,500 (i.e. 30% of BSP in terms of the 'PAYMENT PLAN') on 05.04.2012 towards a plot of BSP of Rs. 46,25,000 and before raising a demand of Rs. 9,25,000 vide his letter dated 18.03.2014 as well as before accepting an additional amount of Rs. 15,50,000 vide aforesaid receipts dated 29.01.2018. No agreement or any other document has been brought on record before this Tribunal, in which due/scheduled date of handing over possession of the plot has been mentioned, which indicates that the respondent has, right from beginning in 2012, been contravening aforementioned provisions of the



sub sections (1) & (3) of section 6 of the PAPRA as well as has been contravening similar provisions of the Act and the Rules after their coming into force in the year 2017.

14. A letter of the respondent (Annexure C-2 of the complaint or Annexure A-3 of the appeal) inter alia states *“For Palm Spaces New Chandigarh, we have received CLU for 103 acres and we are in the process to offer you a plot number by December 2014. Please keep your payments up to date to get your plot number in December 2014”*.

15. Vide letter dated 18.03.2014 of the respondent on the subject *“Expression of Interest form No. PGH-44 dated 27.03.2012”* (Annexure C-3 of the complaint or Annexure A-4 of the appeal), the Respondent inter alia informed the appellant-complainant that the project has reached final stage and raised a demand of an additional amount of Rs. 9,25,000.

16. Plot No. 1069, North facing has been allotted vide *“Preference request”* dated 15.02.2018 (Annexure C-5 of the complaint). It may be noted that the format of the said *“Preference request”* has been devised in such a manner that by signing the *“Preference request”* form/letter by an allottee, readiness of the allottee to pay PLC @ 10% (irrespective of the location of the plot opted for out of the six locations mentioned in this form/letter dated 15.02.2018, namely *“East facing”, “North facing”, “Corner location”, “Facing 100 Road”, “Adjoining Green/Facing Green” & “North-East”, even though some of these location are not covered under the locations attracting PLC as mentioned in the “PAYMENT PLAN” and even though only 5% for 1-PLC, 9% for 2-PLCs & 13% for 3+ -PLCs, depending upon option for/applicability of one or combination of locations out of four specified in the “PAYMENT PLAN” are attracted, if applicable) and development charges (EDC+IDC) @ Rs. 4,000 per sq. yd. (even though there is no mention of “IDC” in the EOI, Application Acknowledgement and the “PAYMENT PLAN”*) is also expressed.



17. In the complaint dated 05.12.2018, it has inter alia been stated that the respondent assured the complainant that he would be in a position to deliver the possession by 2015.
18. As per interim order dated 12.09.2019 of the Authority (A-7 of the appeal), the counsel for the complainant had inter alia argued for a period of 3 years from the date of payment as the date by which the possession should have been offered as the project was only a plotted development and not much of construction was involved in the same.
19. As per impugned order dated 07.08.2020, on 27.02.2020, the respondent admitted before the Authority that the plot in question was not ready for offer of possession, as the development work at the site was still not complete; and stated that he was willing to offer an alternate plot at a location where the possession could be offered, subject to payment of the balance amount as claimed/demanded by the respondent; and the authorized representative of the complainant argued that he has already raised an objection to the demand made by the respondent in respect of IDC etc. and as such objected to a conditional offer and also argued for offer of a specific plot number to enable him to check if the plot is fit for possession or not.
20. From the so called mutually agreed upon issues by Sh. Lalit (brother-in-law of the complainant and son of Sh. J.N. Singh, the authorized representative of the complainant) mentioned in the interim order dated 01.07.2020 of the Authority (which has been disowned by the authorized representative of the complainant in the next hearing before the Authority), the respondent agreed to make an offer of possessionable plot by 10th July, 2020 and in the same stretch, the counsel for the respondent inter alia submitted that in case they are unable to make a definite offer by 10th July or next date of hearing, the offer of possession shall definitely be made on or before 31st March, 2021.
21. On 04.09.2020, the counsel for the appellant has inter alia contended before this Tribunal that plot No. 1402, which has been offered to him by the respondent in lieu of the appellant's original choice of plot No. 1069, is not ready for possession. The appellant has also argued in his written arguments before this



Tribunal that the respondent has not brought on record any document to show that the respondent had the completion certificate to offer possession of the plot or even applied for the completion certificate of the project.

22. Perusal of paragraphs 10 to 21 above reveals that without committing in writing the due date of handing over the possession of the plot, the respondent, while raising demand, has been luring the appellant-complainant by indirectly assuring early hand over of the possession of the plot and not been able to make an offer in writing to the appellant-complainant to hand over the possession of a plot after completion of development works & obtaining a completion certificate.

23. The appellant has inter alia argued in his written arguments before this Tribunal that the Authority has wrongly recorded that the parties have failed to establish the date by which the possession of the plot had been agreed upon, whereas it has specifically been mentioned in the complaint that the respondent had promised to deliver the possession of the plot by the year 2015 and even its Annexure C-2 and C-3 also support the said plea of the appellant. He has further argued that the said observations of the Authority are contrary to its own findings regarding the same promoter in regard to the other allottees and has attached a copy of orders passed by the Authority in this regard on 04.06.2021 in GC No. 17912020TR (**Rishu Munjal & Anr. versus M/s Manohar Infrastructure & Constructions Pvt. Ltd.**), part of its paragraph 5, which is relevant in the present context, is reproduced below:

"5. ----- We note that in the absence of any agreed payment schedule, or an agreement between the parties, it is difficult to pin point an exact date from which the delay in making payment - or delivering possession - can be calculated. The matter therefore has to be decided more on principles of equity and good conscience. Having done so, it is felt that a period of 3 years is adequate for the development and handing over of a plot in a project. -----."

24. Under paragraph (iii) of the operative part of the impugned order dated 07.08.2020, it has been ordered that *"Since the complainant made a total payment of Rs.29,37,500/- by 08.02.2018 including a sum of Rs.13,87,500/- paid at the time of signing of "expression of interest" on 09.04.2012, the respondent is liable to*



pay interest for the delay in offering possession to the complainant as provided under section 18 (1) proviso 2 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. The respondent shall pay interest w.e.f. 09.02.2018, as per State Bank of India highest marginal cost of lending rate + 2% as prevailing from time to time, till the date of this order i.e. 07.08.2020. This amount shall be paid within 15 days of the consent, if given, by the complainant.”. Its perusal reveals that interest has been allowed with effect from 09.02.2018 even on an amount of Rs. 13,87,500 paid on 05.04.2012 at the time of signing of EOI on 09.04.2012, whereas as per proviso to section 18(1) of the Act, interest for every month of delay, till the handing over of the possession, is payable. Therefore, in my opinion, the date from which interest should be payable on an amount of Rs.13,87,500/- deposited on 05.04.2012 needs correction by taking the due date of handing over possession of the plot as 31.12.2015 and the interest as per proviso to section 18(1) of the Act should be allowed in the light of my foregoing findings/observation under paragraph 10 to 24 above.

**PREFERENTIAL LOCATION CHARGES (PLC) &
DEVELOPMENT CHARGES (EDC + IDC)**

25. Plot No. 1609, North facing has been allotted vide “Preference request” dated 15.02.2018 (Annexure C-5 of the complaint). As already brought out under paragraph 16 above, the format of the said “Preference request” has been devised in such a manner that by signing the “Preference request” form/letter by an allottee, readiness of the allottee to pay PLC @ 10% (irrespective of the location of the plot opted for out of the six locations mentioned in this form/letter dated 15.02.2018, namely “East facing”, “North facing”, “Corner location”, “Facing 100’ Road”, “Adjoining Green/Facing Green” & “North-East”, even though some of these location are not covered under the locations attracting PLC as mentioned in the “PAYMENT PLAN” and even though only 5% for 1-PLC, 9% for 2-PLCs & 13% for 3-PLCs, depending upon option for/applicability of one or combination of locations out of four specified in the “PAYMENT PLAN” are attracted, if applicable) and even to pay development charges (EDC+IDC) @ Rs. 4,000 per sq.



yd. (which has no relation to the subject matter of the form/letter i.e. "Preference request" and even though there is no mention of "IDC" in the EOI, Application Acknowledgement and the "PAYMENT PLAN") are also expressed.

26. It has also been stated in the complaint dated 05.12.2018 that "*The respondent had issued a letter to the complainant dated 15.02.2018 wherein the respondent levied the charges of IDC, PLC, Possession charges or any arbitrary charges which were not disclosed or agreed for at the time of initial booking of the plot*".

27. As per interim order dated 12.09.2019 of the Authority, the counsel for the complainant argued that "Preference request" signed by the complainant in February 2018 was a standard printed proforma which was signed under duress and was never given voluntarily because it was against the terms and conditions to which he had agreed upon in the year 2012.

28. As per interim order dated 12.09.2019 of the Authority, on the prompting by the bench, both the parties had agreed to once again explore the possibility of mutual settlement and that day it was also ordered by the authority that failing settlement, the respondent shall produce evidence in regards to the calculation of EDC and proof of deposit of the same with the Competent Authority along with the reasons for amended definition of PLC and also justification for introducing IDC at a belated stage, without the prior consent of the buyers. It is worth mentioning here that as per record produced before this Tribunal, the reasons for amended definition of PLC and also justification for introducing IDC at a belated stage have not been brought on record.

29. As per so called mutual agreement mentioned in interim order dated 01.07.2020 of the Authority (A-9 of the appeal), the respondent inter alia offered to waive off EDC @ Rs. 1,500 per sq. yards as against Rs. 4,000 per sq. yards demanded from the complainant.

30. On 07.08.2020, the respondent inter alia argued that (i) the complainant had consented to pay both the PLC charges as well as the EDC charges demanded from



him by way of a copy of the customer ledger account handed over to him on 29.01.2018, as he never raised any objection to the same; (ii) that the very fact that the complainant made a payment of Rs. 15,50,000 on 30.01.2018, 31.01.2018 & 08.02.2018 subsequent to issuance of a customer ledger account to the complainant on 29.01.2018 indicates that the demand raised by the respondent was acceptable to the complainant and he made payments in response to the same. However, it is apposite to hereby bring out in this context that perusal of the aforesaid customer ledger account dated 29.01.2018 (*Annexure C-6 of the complaint*) reveals that BSP, EDC & PLC received are shown as Rs. 21,87,500, Rs. zero & Rs. zero respectively in the said customer ledger account dated 29.01.2018 and the amount due for 95% (*BSP*), 100% EDC & 100% PLC are shown as Rs. 22,06,250, Rs. 10,00,000 & Rs. zero respectively. Thus, an amount of Rs. 15,50,000, the receipt of which was acknowledged by the respondent vide aforesaid receipts No. 3728 & 3729 both dated 29.01.2018 as detailed in the paragraph No. 3 above, was paid by the complainant before receipt of the aforesaid customer ledger account. Hence, this contention of the respondent does not seem to be credible.

31. On 07.08.2020, the respondent argued that based on the demand for EDC raised by GMADA vide its notice dated 18.06.2015 for deposit of dues of the mega residential project "The Palm" in respect of EDC, license fee, urban development fund, social infrastructure and cess for PR-4, they submitted a calculation sheet with the written arguments claiming that the EDC payable by them works out to be Rs. 2,398 per sq. yard plus Rs. 567 per sq. yards towards License Fee, Interest on L.F., UDF, SIF, PR-4 Cess, interest on PR-4 Cess etc. making a total of Rs. 2,965; and also argued that as a goodwill gesture and one time exception the respondent offered to reduce the demand in respect of EDC by Rs. 1,500 per sq. yards from Rs. 4,000 per sq. yards. In this context, it is worth mentioning here that the EDC payable was worked out by the respondent himself as only Rs. 2,398 or Rs.2,965 as mentioned above, then how does the question of the respondent's offer to waive off/reduce EDC @ Rs. 1500/- per sq. yards as against Rs. 4000/- per sq. yards demanded from the complainant arise. Rather, it supports the contention of the appellant-complainant that the respondent has obtained the signatures of the



complainant on the "Preference request" dated 15.02.2018 under duress, whereby besides the preference of North facing plot No. 1069, readiness of the appellant-complainant got expressed even to pay PLC @ 10% for a North facing plot (*which is not one of the four preferential categories mentioned in the "PAYMENT PLAN" to attract levy of PLC*) and to pay development charges (EDC+IDC) @ Rs. 4,000 per sq. yd. (*whereas there is no relation of the development charges with the subject matter i.e. "Preference request" of aforesaid form/letter dated 15.02.2018; no mention of IDC has been made in the initial documents viz EOI & PAYMENT PLAN; and IDC are usually included in the BSP unless initially agreed upon to be payable separately*). As already brought out under paragraph 30 above, the respondent had inter alia argued on 07.08.2020 before the authority that the complainant had consented to pay both the PLC charges as well as the EDC charges demanded from him by way of a copy of the customer ledger account handed over to him on 29.01.2018, as he never raised any objection to the same. However, perusal of the aforesaid customer ledger account dated 29.01.2018 (*Annexure C-6 of the complaint*) reveals that "Due for 100% EDC" & "Due for 100% PLC" are shown in the said customer ledger account dated 29.01.2018 as Rs. 10,00,000 & Rs. zero respectively for a 250 sq. yd. area plot. It may also be noted that though as per the said ledger account, the rate of the EDC alone (i.e. without IDC as allegedly claimed through the "Preference request" form/letter dated 15.02.2018) works out to be Rs. 4,000 per sq. yd., whereas through aforesaid "Preference request" form/letter dated 15.02.2018, "development charges [EDC+IDC] @ Rs. 4,000/- per sq. yard" have been demanded. The stand of the respondent, in these two documents and his arguments made on 07.08.2020 in this regard, is thus inconsistent.

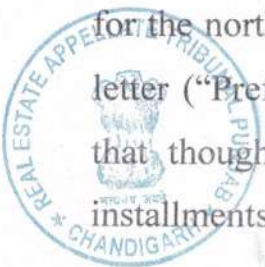
32. It may also be noted that though the conditional offer for the new possessionable plot No. 1402, made by the respondent by way of offer letter submitted before the Authority was not acceptable to the authorized representative of the complainant, but at the same time perusal of some of the submissions made by him (as recorded under paragraphs (e) to (g) in the impugned order dated 07.08.2020) implies that the appellant-complainant had agreed before the



Authority on 07.08.2020 to sign the agreement as per Annexure A (Now Form 'Q') of the Rules which he himself downloaded and also to make payment after prior payment/adjustment of interest for delay in possession and also reducing the demand of EDC as per the calculations submitted by him based on a notification of the department of Housing and Urban Development dated 22.06.2010 vide which the complainant calculated EDC liability to be Rs. 578.60 per sq. yards only, instead of agreeing to adjustment of all pending dues at the time of possession. These contentions of the appellant-complainant do not seem to be altogether unreasonable.

33. The rate of EDC etc. as calculated by the respondent is Rs. 2,965 per sq. yd. (which is claimed to be based on the demand for EDC raised by GMADA vide its notice dated 18.06.2015 for the mega residential project "The Palm" and includes Rs. 567 per sq. yards towards License Fee, Interest on L.F., UDF, SIF, PR-4 Cess, interest on PR-4 Cess etc., besides EDC rate worked out as Rs. 2,398 per sq. yard) and rate of EDC as calculated by the appellant-complainant is Rs. 578.60 per sq. yards (which is claimed to be based on a notification of the department of Housing and Urban Development dated 22.06.2010). Their respective calculation sheets are stated, in the impugned order, to be submitted but these have not been brought on record before this Tribunal. There being a huge difference between two rates, the matter needs to be looked into to give specific finding in this regard.

34. On 07.08.2020, the authorized representative for the complainant also submitted that he had signed the consent letter ("Preference request") of 15.02.2018 only under coercion and he does not stand by the same; whereas the respondent alongwith his counsel had inter alia submitted before the Authority that the authorized representative of the appellant-complainant himself had accepted and signed the conditions of payment of development charges ("EDC+IDC" as mentioned in the aforesaid "Preference request") @ Rs. 4,000 per sq. yd. and PLC for the north facing plot @ 10% as mentioned at conditions No. 5 & 4 of consent letter ("Preference request") on 15.02.2018. It is appropriate to hereby bring out that though as per "PAYMENT PLAN", PLC are to be paid in four equal installments, the first being payable "On Confirmation of Application & Issuing of



Registration No.” and the other three “within 3/6/9 months of Issuing of Registration No.”, and it is clear from the contents at the bottom of the same one page “PAYMENT PLAN” (Annexure A-2 of the appeal) that 5%, 9% & 13% of BSP are applicable for 1-PLC, 2-PLCs & 3⁺-PLCs respectively depending upon option for/applicability of one or combination of locations out of specified four types, namely “Corner Locations”, “Two side Open Locations”, “Park Facing” and “Major Road (60ft & above)”. It does not seem to be credible that the appellant-complainant would have agreed, vide alleged “Preference request” dated 15.02.2018, to assume an additional liability to pay an additional charges @ 10% for his preference of “North facing” plot No. 1069, for which not even 5% is payable as per the aforesaid “PAYMENT PLAN” because “North facing” is not one of the four locations specified therein, which attract PLC; and to bear additional liability of even “IDC”, which finds no mention in the EOI & the PAYMENT PLAN.

35. As the respondent has not entered into an agreement for sale and no other document, regulating the terms and conditions of selling/buying the plot, has been brought on record before this Tribunal except the documents mentioned under paragraphs 5 to 9 above. From these available documents, the following main points are hereby extracted which are being used for deciding the issue of admissibility of Preferential Location Charges (PLC) and the Development Charges (IDC+IDC) claimed by the respondent from the appellant through “preference request” dated 15.02.2018:-

- (i) As per EOI relating to appeal No. 238 of 2020, the allottee agreed to pay all further installments (*obviously excludes first installment of 30% of BSP deposited with the application, as is also indicated in the “PAYMENT PLAN”*) of the sale price and all other monies/dues as stipulated in the payment plan & EDC and PLC charges (*obviously only if applicable*) being in addition to the rates quoted.
- (ii) As per “PAYMENT PLAN”, second installment of “20% of BSP+25% EDC and PLC” is to be paid “On Confirmation of



Application & Issuing of Registration No.”, next three installments each of “10% of BSP+25% EDC and PLC” are to be paid “Within 3/6/9 months of Issuing of Registration No.”, sixth installment of “10% of BSP” is to be paid “Within 12 months of Issuing of Registration No.” and the last installment of “10% BSP+100% IFMS +100% Additional Facilities Charges” is to be paid “On Possession”.

- (iii) The “PAYMENT PLAN” also inter alia stipulates that “*All Govt. Charges and Taxes as Applicable*”; that *All Govt. Charges and Taxes as Applicable*”, and that “*Preferential Charges (PLC) :- // 1PLC = 5% per sq. yd, 2 PLC = 9% per sq yd., 3 PLC + 13% of BSP. // It will be one or combination of the following locations :- Corner Locations // Two Side Open Locations // Park Facing // Major Road (60ft & above)*”.

Note:- The sign “//” has been used in paragraph 9 above to denote a line break.

- (iv) As per notes 4 & 5 of Palm Garden Application Acknowledgement dated 09.04.2012, “*Preferred location, if available, will attract Preference Location Charges (PLC)*” and “*External Development charges (EDC) will be extra*”.

TIME SCHEDULE FOR PAYMENT OF INSTALLMENTS

36. It has inter alia been alleged by the respondent in paragraph No. 4 of preliminary objections of his reply dated 28.02.2019 (Annexure A-6 of the appeal) that the appellant failed to pay balance amount and to execute Plot Buyers agreement, a draft copy containing terms and conditions was given to the complainant. But neither the appellant-complainant nor the respondent has brought on record before this Tribunal any evidence either in support of the efforts made by the respondent to execute agreement to sell before the year 2020 or in support of alleged default of the complainant in making payments of the installments as per payment plan. As per section 6(1) of PAPRA, the respondent



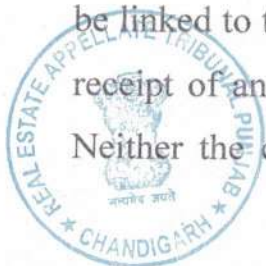
was required not accept more than twenty five per cent of the sale price before entering into a written agreement for sale of the plot, whereas he accepted an amount of Rs. 13,87,500 i.e. 30% of BSP with the application/EOI and thus the respondent was duty bound to enter into agreement of sale before accepting 30% of BSP with the application/EOI.

37. As per order dated 01.07.2020 of the Authority (Annexure A-9 of the appeal), the respondent had inter alia argued that the complainant was “bound by the terms and conditions of payment, as per the payment plan” and that after the initial payment of 30% of BSP, the appellant-complainant has not made the remaining payments of the BSP and also the EDC & PLC in time as a consequence of which the respondent was not bound to offer him possession; and, on the other hand, Sh. Lalit, brother-in-law of the complainant argued that the complainant has made substantial payment in addition to payment of the initial amount of 30% of the BSP but did not make the balance payment as the respondent was not in a position to offer him a plot, in respect of which, development activities had been completed and also because of ongoing dispute in regards to EDC charges. It is worth mentioning here that as per impugned order dated 07.08.2020, the plot in question (i.e. plot No. 1609 allotted on 15.02.2018) is not ready for offer of possession as admitted by the respondent before the Authority on 27.02.2020.

38. During the proceedings held before this Tribunal on 30.09.2021, the counsel for the respondent, on specific query by this Tribunal about the term “Issuing of Registration No.” appearing in the aforesaid “PAYMENT PLAN”, told that “PGH-44” appearing in the top-right corner of the Application Acknowledgement dated 09.04.2012 is the “Registration No.” which was issued after receipt of Rs. 13,87,500 on 05.04.2012. However, the appellant refuted it and has inter alia contended in his written arguments dated 11.10.2021 that “PGH-44” is only the file number as evident from the Customer Ledger (Annexure C-6 of the complaint) and from Annexure R-4 attached by the Respondent with his reply. It has also been argued by the appellant in his written arguments before this Tribunal that contention of the respondent that registration number was allotted to the appellant in April 2012 i.e. PGH-44 is proved to be false from the letter dated 18.03.2014



(Annexure C-3 of the complaint and Annexure A-4 of the appeal), wherein it is apparent that the registration number was not allotted till 2014 or even thereafter, rather contrary to the payment plan, the respondent was demanding more money even for providing registration number. In my opinion, had the contention of the respondent (that "PGH-44" appearing in the top-right corner of the Application Acknowledgement dated 09.04.2012 is the "Registration No.") been correct, then "the Registration No." would have been issued on or before 09.04.2012 and hence, as per the "PAYMENT PLAN", (i) the second installment of "*20% of BSP+25% EDC and PLC*" would have become due on or before 09.04.2012; and (ii) the third to sixth installments aggregating to "*40% of BSP+75% EDC and PLC*" would have become due upto 09.04.2013 or before. However, the demand of just Rs. 9,25,000 (*equivalent to "20% of BSP" only*) was raised by the respondent only vide his aforesaid letter dated 18.03.2014 (with its subject titled as "Expression of Interest form No. PGH-44 dated 27.03.2012", Annexure C-3 of the complaint) to further proceed on the appellant's 'Expression of Interest'. Thus, this contention of the respondent is not correct. Moreover, as per the Customer Ledger Account dated 29.01.2018 (Annexure C-6 of the complaint), the "PLC Chrgs", "PLC Recd." & "Due for 100% PLC" are all mentioned to be zero. A demand of Rs. 9,25,000 (*equivalent to "20% of BSP" only*) was raised by the respondent only vide his aforesaid letter dated 18.03.2014 to further proceed on the appellant's 'Expression of Interest', instead of raising a demand for an amount at least equivalent to the the second installment of "*20% of BSP+25% EDC and PLC*" as per "PAYMENT PLAN" due "*On Confirmation of Application & Issuing of Registration No.*". Further, in the aforesaid letter dated 18.03.2014, neither any registration number was issued nor any allotment of plot number was made and in the absence of allotment of the specific plot, applicability of PLC can not be ascertained and consequently the quantum of the second installment of "*20% of BSP+25% EDC and PLC*" can also not be determined till then. Thus, the "Registration No." may be linked to the allotment of the plot. The allotment was made on 15.02.2018 after receipt of an additional amount of Rs. 15,50,000 vide receipts dated 29.01.2018. Neither the connotation of the term "Issuing of Registration No." (that appears



repeatedly in the "PAYMENT PLAN" and regulates the scheduled time of payment of second to sixth installments) is forthcoming from the record produced before this Tribunal, nor any satisfactory proof of issuing of the said "Registration No." has been brought on record even by the respondent. Moreover, the respondent did not execute the agreement in compliance of the provisions of the law, from which scheduled time of payment of the installments and the default in payment of installments, if any, could be ascertained.

39. On 07.08.2020, the respondent also argued that he made a conditional offer in respect of an alternate plot, the possession of which he was willing to offer by 31.10.2010 subject to the condition that the complainant shall sign the buyer's agreement and make 95% amount of the total payment within 15 days of the offer and the balance 5% amount at the time of actual possession. However, as per the "PAYMENT PLAN", the last installment of "10% of BSP + 100% IFMS + Additional Facilities Charges" is payable "On Possession". The appellant-complainant can not be forced to make 95% payment before possession, especially when delay in possession is on the part of the respondent.

40. It is apposite to hereby bring out that as per clause 9.2(i) of the Form 'Q' of the Rules, an allottee is entitled to stop making further payments in case of default to provide ready to move in possession of the Apartment/plot within time period specified.

SETTLEMENT BETWEEN THE PARTIES

41. As per impugned order dated 07.08.2020, during the proceedings held from 23.07.2019 to 07.08.2020 before the Authority, the possibility of mutual settlement was also explored repeatedly. On 27.02.2020, the respondent admitted before the Authority that the plot in question was not ready for offer of possession, as the development work at the site was still not complete; and stated that he was willing to offer an alternate plot at a location where the possession could be offered, subject to payment of the balance amount as claimed/demanded by the respondent; and the authorized representative of the complainant argued that he has already raised an objection to the demand made by the respondent in respect of IDC etc.



and as such objected to a conditional offer and also argued for offer of a specific plot number to enable him to check if the plot is fit for possession or not. As per interim order dated 01.07.2020 of the Authority, Sh. Lalit, brother-in-law of the complainant and four authorized representatives of the respondent mutually agreed upon certain issues, which were disowned on the next hearing on 07.08.2020 by the authorized representative of the complainant, who is also father-in-law of the complainant. On 07.08.2020, the respondent also argued that he made a conditional offer in respect of plot No. 704E (*correctness of the plot number needs to be checked*), the possession of which he was willing to offer by 31.10.2020 subject to the condition that the complainant shall sign the buyer's agreement and make 95% amount of the total payment within 15 days of the offer and the balance 5% amount at the time of actual possession. This conditional offer was not accepted by the authorized representative of the complainant; whereas he agreed to sign the agreement as per Annexure A (*Now Form 'Q'*) of the Rules which he himself downloaded and also to make payment after prior payment/adjustment of interest for delay in possession and also reducing the demand of EDC as per the calculations submitted by him based on a notification of the department of Housing and Urban Development dated 22.06.2010 vide which the complainant calculated EDC liability to be Rs. 578.60 per sq. yards only (instead of accepting the respondent's offer of discount of Rs. 1,500 per sq. yard from the demand of EDC @ 4,000 per sq. yds.), instead of agreeing to adjustment of all pending dues at the time of taking over possession. It is apposite to hereby bring out that as per proviso to sub-section (1) of section 18 of the Act, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

ALLEGED PAUCITY OF FUNDS

42. On 07.08.2020, the respondent also argued before the Authority that the authorized representative for the complainant had made a request in the year 2018 that he was unable to make payment for all the 3 plots (one each relating to this appeal No. 236/2020, appeal No. 237/2020 and appeal No. 238/2020) due to his



financial difficulties and requested the respondent to adjust Rs. 10.00 lakhs from PEC-14 (plot No. 1035) in his personal name to PGH-45 (plot No. 702), also in his personal name; and that he further made a request to them that he wants to wait for the remaining 2 plots (*as*) he was short of funds and only wanted possession of plot No. 702 which was in his name. With his written arguments dated 07.10.2021 before this Tribunal, the respondent has brought on record a copy of a letter allegedly dated 06.08.2018, as per which Sh. J.N. Singh had allegedly requested the respondent to transfer Rs. 10,00,000 (which was paid vide cheque No. 406285 dated 09.01.2018) from PEC-14 (Plot No. 1035) to PGH-45 (Plot No. 702) thus making total payments after such adjustment in those two plots to be Rs. 23,12,500 and Rs. 38,87,500 respectively. It is appropriate to hereby bring out that after payment of an additional amount of Rs. 15,50,000 vide the receipts No. 3728 & 3729 both dated 29.01.2018 (Annexure C-4 of the complaint), a total payment of Rs. 29,37,500 was made by the appellant-complainant between 05.04.2012 to 29.01.2018 against BSP of Rs. 46,25,000 of the plot booked by the appellant-complainant. Further, as per customer ledger account dated 29.01.2018 (Annexure C-6 of the complaint), Rs. 28,87,500 and Rs. 33,12,500 stood received as BSP for each of the two plots booked by Sh. J.N. Singh in his own name for BSP of Rs. 46,25,000 each. Thus as on 29.01.2018, an amount of Rs. 91,37,500 stood paid for aforesaid three plots of BSP of Rs. 46,25,000 each. Moreover, as the possession of the plot No. 1069 allotted on 15.02.2018 has not been offered (it was admitted by the respondent on 27.02.2020 before the Authority that the plot in question is not ready), hence provisions of paragraph 9.2(i) of the Form 'Q' of the Rules are attracted, which entitles an allottee to stop making further payments in case of default to provide possession within specified time period. Hence, even if the authorized representative has got an amount of Rs. 10,00,000 transferred at his own volition from his own one account with the respondent to the other, the same is immaterial.

43. Under paragraph (iii) of the operative part of each of the impugned orders dated 07.08.2020 in complaints bearing GC No. 11102018 and GC No. 10872018 relating to Appeal No. 237 of 2020 and Appeal No. 238 of 2020, it has inter alia



been ordered that (i) in view of the fact that the complainant got a sum of Rs. 10,00,000 transferred from PEC-14 (plot No. 1035) to PGH-45 (plot No. 702), both of which were in his own name, clearly establishes his intent to take possession of only one plot i.e. plot No. 702 and not the other one, in view of deficiency of funds; (ii) that the complainant instead of seeking possession of the plot at the time of adjustment of funds, filed a complaint alleging contraventions in regards to demand of EDC & PLC although he had consistently agreed to pay the same right from the initial expression of interest signed in 2012 and subsequent documents signed in February, 2018 & August, 2018. Under aforesaid paragraph (iii) of the operative part of the impugned order dated 07.08.2020 in complaint bearing GC No. 11102018 relating to Appeal No. 237 of 2020, it has further been ordered that hence, no relief of interest for delayed possession can be granted to him as he himself has deliberately refused to sign the buyers agreement and also himself made a request for delay in offer of plot No. 1035 as there was no justification for transferring Rs. 10,00,000 from plot No. 1035 to plot No. 702 in his own name. Similarly, under paragraph (iii) of the operative part of the impugned order dated 07.08.2020 in complaint bearing GC No. 10872018 relating to Appeal No. 238 of 2020, it has further been ordered that hence, no relief of interest for delayed possession can be granted to him as he himself has deliberately refused to sign the buyers agreement and also take possession of the possessionable plot although he has himself admitted that the possession was offered to him in 2018. However, it has unambiguously been brought on record in the impugned order dated 07.08.2020 that on 27.02.2020, the respondent admitted that plot in question (*i.e. plot No. 1035*) is not ready for possession, as the development work at site is still not complete. In this context, the appellant-complainant has argued in his oral arguments on 30.09.2021 as well as in his written arguments before this Tribunal that though the appellant-complainant had requested for the adjustment of payment from one plot to another plot, however the said request was submitted in February 2018 when the allotment of plots were made (*but obviously after the allotment of plot numbers as the allotted plot numbers are mentioned in the request for transfer of funds*), only for the reason



that the respondent had promised that plot No. 702 will be available for possession soon (*this contention of the appellant-complainant seems to be credible because on 27.02.2020, whereas the respondent has admitted that the plots No. 1069 & 1035 allotted in February, 2018 relating to complaints bearing GC No. 11122018 & GC No. 11102018 were not ready for offer of possession even then, but the plot No. 702 relating to complainant GC No. 10872018 also allotted in February, 2018 is claimed to be ready for possession*). Moreover, the Authority, under paragraphs (i) & (ii) of the operative part of the impugned order dated 07.08.2020 in complaint bearing GC No. 11102018 has inter alia directed the complainant to give his written consent or refusal, within 30 days, to offer of possessionable plot No. 740E (*in lieu of originally choice of plot No. 1035 of the appellant-complainant*) and has inter alia held the complainant liable to make the balance payment BSP alongwith payment of EDC & PLC as per agreed terms and conditions, both of which imply that as an amount of Rs. 23,12,500 still stood at the credit of the appellant's even after transfer of Rs. 10,00,000, therefore, even the Authority has taken his application for a plot as a pending one and not as a canceled one. Similarly, the Authority, under paragraphs (i) & (ii) of the operative part of the impugned order dated 07.08.2020 in complaint bearing GC No. 10872018 has inter alia directed the complainant to take over the possession of plot No. 702 already offered for possession in 2018, within 30 days of this order by making the balance payment of BSP along with EDC & PLC as applicable and has inter alia held the complainant liable to make the balance payment BSP alongwith payment of EDC & PLC as per agreed terms and conditions, both of which imply that as an amount of Rs. 38,87,500 stood at the credit of the appellant's after transfer of Rs. 10,00,000, therefore, even the Authority has taken his application for a plot as a pending one and not as a canceled one. Further the respondent has been using the money paid by the appellant-complainant from time to time (Rs. 23,12,500 on 05.04.2012 and Rs. 10,00,000 paid on 09.01.2018 in complaint GC No. 11102018, out of which aforesaid Rs. 10,00,000 were later transferred to the plot No. 702 relating to complainant GC No. 10872018, for which Rs. 13,87,500 & Rs. 15,00,000 also were already deposited on 05.04.2012 and vide cheque dated 09.01.2018



respectively). Therefore, in the light of my foregoing findings/observations, in my opinion, the respondent is liable to pay interest as per proviso to section 18(1) of the Act, on these entire amounts aggregating to Rs. 62,00,00 paid by the appellant-complainant to the respondent by taking the due date of handing over possession of the plot as 31.12.2015 (out of which, on the transferred amount of Rs. 10,00,000, interest for the period from 09.01.2018 to the date of transfer may be accounted for against the plot 1035 and for the period after the transfer, the same be accounted for against the plot No. 702 to which it was transferred or in the alternate, the amount may be got transferred back in the books of the respondent and interest on it be allowed from 09.01.2018 till possession of plot No. 1035 or alternate plot in lieu thereof relating to complaint GC No. 11102018).

JURISDICTION OF SINGLE MEMBER BENCH OF THE AUTHORITY

44. Though neither of the parties to the dispute have raised any objection during entire proceedings before this Tribunal up to and including 30.09.2021 (when the case was reserved for the judgment), the appellant, at the outset of his written arguments dated 11.10.2021 (diary dated 22.10.2021), has submitted that in view of the judgment dated 16.10.2020 passed by Hon'ble High Court in CWP-8548/2020 titled as JLPPL vs UOI, wherein it has been held that a Single Member of the Authority cannot validly pass orders on a complaint under the Act, the impugned order is totally illegal and without jurisdiction and the same is liable to be set aside on this score only and the matter needs to be remitted to the Authority for a fresh decision after hearing the parties. However, as the Hon'ble Supreme Court of India, vide its interim order dated 25.11.2020 in SLP(C) No. 13005/2020 and connected matters, has inter alia made the following order:-

"IN ALL THE MATTERS EXCEPT 10396 OF 2020

Issue notice.

There would be stay of the operation of the impugned judgment and order passed by the High Court till the disposal of the matters.

However, we clarify that the Appellate Authority under the Real Estate (Regulation and Development) Act, 2016 would be entitled to take up the the appeal for hearing and decision on merits, in case there is no objection from the respondents."



In view of aforesaid order dated 25.11.2020 of the Hon'ble Supreme Court of India and the fact that the neither of the parties to the dispute have raised any objection during entire proceedings before this Tribunal up to and including 30.09.2021 (when the case was reserved for the judgment), the matter is hereby being decided on merits in all these three appeals.

CONCLUSIONS

45. In view of above discussion and observations, in my opinion the matter be remanded to the Authority for modifying the impugned orders dated 07.08.2020 in complaints bearing GC No. 11122018, GC No. 11102018 & GC No. 11122018 relating to Appeal No. 236 of 2020, Appeal No. 237 of 2020 & Appeal No. 238 of 2020 respectively, in the light of paragraphs 1 to 44 above, to the following extent:-

- (i) Preferential Location Charges (PLC), if applicable in terms of the aforesaid "PAYMENT PLAN" only, be charged by the respondent at the rates specified in the said "PAYMENT PLAN";
- (ii) The rate of EDC be decided by the Authority, keeping in view respective calculation sheets already submitted by the parties and relevant rules & regulations etc.
- (iii) No separate IDC be allowed besides the BSP.
- (iv) The due date of handing over possession of the plot be taken as 31.12.2015.
- (v) The interest in terms of proviso to section 18(1) of the Act be allowed in all the three appeals with effect from 01.01.2016 on the amounts of Rs. 13,87,500, Rs. 23,12,500 and Rs. 13,87,500 deposited on 05.04.2012 and with effect from the respective dates of all other



payments made/to be made by the appellant-complainant till the date of possession;

- (vi) "AGREEMENT FOR SALE" for already allotted plots No. 1069, 1035 & 702 (or for any alternate plot offered/to be offered in lieu of plot No. 1069 & 1035, provided that such offers are duly accepted by the appellant-complainant) in the Form 'Q', prescribed under the Rules in terms of section 13(2) of the Act, be got prepared keeping in view the contents of sub paragraphs (i) to (v) of this paragraph and keeping in view the provision of the "PAYMENT PLAN" (except that its time schedule for payment of second to sixth installments be changed keeping in view the payments already made and that the remaining installment(s) should fall due only after the execution of such agreement); and the same be got executed in a time bound manner.
- (vii) Paragraphs (v) & (vi) of the operative part of the impugned order dated 07.08.2020 in complainant GC No. 11122018 relating to Appeal No. 236 of 2020, paragraphs (iii), (iv) & (v) of the operative part of the impugned order dated 07.08.2020 in complainant GC No. 11102018 relating to Appeal No. 237 of 2020 and paragraphs (iii), (iv), (v) & (vi) of the operative part of the impugned order dated 07.08.2020 in complainant GC No. 10872018 relating to Appeal No. 238 of 2020, be set aside.

(viii) The appellant-complainant be allowed to make payments after adjustment of the interest accrued in terms of proviso to section 18(1) of the Act, till the time of such payment, if any.



Appeal No. 236 of 2020
Appeal No. 237 of 2020
Appeal No. 238 of 2020

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The appeals may be accordingly disposed off. Files may be consigned to record room and a copy of this order may be filed in the files of Appeal No. 237 of 2020 and Appeal No. 238 of 2020 and also may be provided to the parties.

sd/-

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

November 22nd, 2021



Certified To Be True Copy
Shamant Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh 24/11/2021