

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

Subject: -

APPEAL NO. 11 OF 2021

M/S OMAXE NEW CHANDIGARH EXTENSION PVT. LTD.

VERSUS

GURMEET KAUR GULATI & ANR.

Memo No. R.E.A.T./2021/ 362

dated: 09/12/2021.

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
09th day of December, 2021.



Shaminder Kaur
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

① 18

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 11 of 2021

MEMO OF PARTIES

M/s Omaxe New Chandigarh Extension Pvt. Ltd., through its Authorized Representative namely Sh. Deepanjit Singh, India Trade Tower, Ist Floor, Baddi-Kurali Road, Mullanpur, District Mohali

...Appellant


Versus

1. Gurmeet Kaur Gulati wife of Sh. Parminder Singh Gulati, resident of House No. 711-A, 2nd Floor, Silver Birch, Omaxe City, Mullanpur, District Mohali.
2. Parminder Singh Gulati son of Shri Surinder Singh, resident of House No. 711-A, 2nd Floor, Silver Birch, Omaxe City, Mullanpur, District Mohali.

...Respondents/Complainants

Place: Chandigarh,
Dated: 09.03.2021




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

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 11 OF 2021

M/S OMAXE NEW CHANDIGARH EXTENSION PVT. LTD.

VERSUS

GURMEET KAUR GULATI & ANR.

Present: - Mr. Maninder Kumar, Advocate for Mr. Munish Gupta, Advocate for the appellant.

This is an appeal directed against the order dated 10.06.2020, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.

Learned counsel for the appellant at the outset places reliance on the recent judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", refers to Para 83 and 86, to contend that the Adjudicating Officer would have no jurisdiction to entertain and decide issues relating to refund and interest, even though he is specifically empowered under the Act to deal with the issues of compensation, which has also been approvingly observed by the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." He thus prays that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned orders are need to be set aside.

He has further argued that not only this the Adjudicating Officer while assessing the compensation has



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

made references to the Workman Compensation Act and the Land Acquisition Act to reason out the quantum of compensation apart from using his discretion, but none of the factors envisaged in the RERA Act have formed the basis of reasoning while assessing the quantum of compensation.

He thus contends on both the above counts, the impugned order deserves to be set aside.

We have heard the learned counsel for the appellant.

The Hon'ble Supreme Court of India has held in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", Para No. 83 & 86 as below:-

"83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated,



Certified To Be True Copy
Dhanendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

still if composite application is filed, can be segregated at the appropriate stage.

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the



Certified To Be True Copy

Dhanraj Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

In the instant case the Adjudicating Officer decided the prayer for refund and interest as also the compensation, which to our minds is contrary to the observations made by the Hon'ble Supreme Court in this regard as noticed above.

We also notice that in Para 16 of the impugned order the Adjudicating Officer has, while assessing compensation fallen back on factors alien to the ones referred to in the Act and made references to some of the statutes such as Workman Compensation Act and Land Acquisition Act, which though dealing with the grant of compensation are irrelevant for the purposes of RERA Act, being operative in different realms and thus any attempt to draw parallels to those factors is completely unwarranted.

The Officer has indeed referred to Section 72 of the RERA Act but while assessing compensation has merely paid lip service to it. We may for the purpose of reference extract the relevant portion from the impugned order:-



Certified To Be True Copy
Anamol Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

"The compensation has not been defined under this Act; however, it has been defined under some other statutes such like Workman Compensation Act, Land Acquisition Act etc. etc. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72 of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but, keeping in view all the factors enunciated under Section 72 of the Act, in the instant case, the extent of mental agony and harassment can also be gauged in view of the circumstances of the case and as such, I am of the considered view that the complainants are held entitled for compensation under all the heads i.e. mental agony, litigation expenses etc. to the tune of Rs.25,000/-."

The factors mentioned in Section 72 of the Act have no comparables with the other statutes such as Workman Compensation Act and Land Acquisition Act.

There is indeed no doubt that the provisions of the Act, in particular Section 71 talk of the Adjudicating Officer's power to adjudge compensation under Section 12, 14, 18 and 19 of the Act. For the sake of reference Section 12 and 14 are reproduced herein below:-



"12. Obligations of promoter regarding veracity of the advertisement or prospectus.

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

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

14. Adherence to sanctioned plans and project.

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make –

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the



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

nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation. – For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation. – For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as



Certified To Be True Copy
Thaneesh Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Section 12 talks of obligations of a promoter regarding veracity of the advertisement or the prospectus. Section 14 talks of the adherence to sanctioned plans and project specifications by the promoter. Section 18 talks of return of amount and compensation while Section 19 talks of rights and duties of the allottees. Violation of any of the factors mentioned in these sections give a right to agitate to an aggrieved person.

In short if the promoter default in terms of Section

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

12, 14 and 18 then he would be obligated upon a demand of

withdrawal from the project by the allottee, interest at such rate as may be prescribed including compensation in the manner as provided under the Act.

Section 18(1)(b)(2)(3) are extracted herein below:-

18. Return of amount and compensation.

- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –
- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that 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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and



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

the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Similarly Section 19(4) also talks of grant of compensation and the same is extracted hereinbelow:-

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder



Section 71 empowers the Adjudicating Officer to adjudicate upon the quantum of compensation. Section 71 is reproduced herein below in entirety:-

“71. Power to adjudicate.

Certified To Be True Copy
Dhanendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

- (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

- (2) The application for adjudging compensation under subsection (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application: Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

- (3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating



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

officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

Now the question arises as to what is the course to be adopted by the Adjudicating Officer and the factors that he needs to take into account while adjudging the quantum of compensation in terms of the provisions of the Act.

Section 72 delineates the factors to be taken into account which are as below:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice

The cumulative effect of reading of the Section 71 and 72 is that an inquiry has to be held by the Adjudicating Officer and the application for grant of compensation disposed of within a period of 60 days from the date of receipt of the



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

application. Failure to do so would obligate the Adjudicating Officer to record reasons in writing for not doing so.

Sub Sections (1) & (3) of Section 71 lays down the manner in which the AO has to conduct an inquiry into various factors and reasons to conclude the question of grant of compensation as also the quantum thereof. The Adjudicating Officer is empowered even to summon any person, in order to establish the veracity and extent of default; and it is evident that the inquiry has to take into its ambit and relate not only to the defaults of the promoter as detailed in Section 12, 14 and 18 of the Act but also the factors detailed in Section 72 (a),(b),(c),(d), while assessing of quantum of compensation.

It is imperative therefore for the AO to strictly adhere to the procedure by holding an inquiry which may entail the summoning and enforcing appearance of any person acquainted with the facts of the case to give evidence or to produce any document which may be useful or relevant to the inquiry.

The grievance of the allottee regarding defaults or deficiencies of the promoter detailed in the compliant would in itself cast a duty upon the A.O to hold an enquiry to ascertain

the veracity of the allegations made by the allottee against the



Certified To Be True Copy
Dhanendra Kumar
Registrar
Great Estate Appellate Tribunal Punjab
Chandigarh

promoter but while addressing the question of compensation the Adjudicating Officer would necessarily have to keep in mind the provisions of Sections 71 and 72 as also the defaults singular or successive of the promoter. In other words a more comprehensive inquiry against the promoter would be a direct consequence and effect of language of Sections 12, 14, 18, 19, 71 and 72. The AO would be required to address this question in extenso by referring in the enquiry the default or defaults and the extent thereof to determine the disproportionate gain or unfair advantage of the promoter and more importantly the consequent loss to the allottee and quantify the compensation.

In addition, discretion has been bestowed by the Legislature upon the AO to take into consideration any such factors as may be necessary to the case in furtherance of cause of justice.

This would mean that the Adjudicating Officer has to pass a comprehensive order which would contain reasons and material to justify the exercise of discretion in assessing the quantum of compensation. He cannot whimsically assess the compensation without supportive material and reasoning in this regard otherwise the order would suffer from the vice of arbitrariness.



Certified To Be True Copy
Dhanraj Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

To sum up:-

- (i) The AO is not only to record his satisfaction qua the veracity of the allegation of the allottee but also measure the unfair advantage gained by the promoter, while causing loss to the allottee.
- (ii) While doing so, he shall specifically record whether default is singular, multiple and continuing.
- (iii) The extent of loss either specific or in proximation caused to the allottee as a result of defaults.
- (iv) Keep in mind the factors manifesting from a conjoint reading of Section 71 & 72.
- (v) Take a holistic view of the entire controversy to arrive at a conclusion with supportive reasons that can withstand judicial scrutiny.

Likewise the complainant too has to specifically make out a case for compensation keeping in view the factors set out in Section 72 of the Act. It shall be obligatory upon him to plead and produce material to establish and the repetitive nature of defaults that would entitle him to compensation.

Keeping in view the above and the observations made by Hon'ble Supreme Court in M/s. NEWTECH



Certified To Be True Copy
Registrar
Estate Appellate Tribunal Punjab
Chandigarh

PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC., the Adjudicating Officer would have no jurisdiction to deal with the matters of refund and we therefore deem it appropriate to dispose of the appeals with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/Adjudicating Officer.

In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/Adjudicating Officer as the case may be in accordance with law.

We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in appearance before the Authority/Adjudicating Officer as the case may be. Which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The Authority in this manner would have the benefit of providing a time-frame for the entire process as both the parties would be



before it and the necessity of affecting service etc. may not arise.

Certified to Be True Copy
Onemendia Jaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

The Authority/Adjudicating Officer shall then proceed to determine the matter in accordance with law.

Parties are directed to appear before the Real Estate Regulatory Authority on 14.12.2021.

The amount deposited under Section 43(5) of the Act by the appellant be refunded back to the appellant.

Sd/-

JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-

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

Sd/-

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

November 30, 2021

AN



Certified To Be True Copy
Chandigarh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
9-12-2021