REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 22 OF 2021

PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY (PUDA) THROUGH ESTATE OFFICER, PUDA BAWAN, SECTOR-62, S.AS. NAGAR (MOHALI)

VERSUS

MOHINDER JIT KAUR

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Present: - Mr. Bhupinder Singh, Advocate for the appellant.
Mr. Satish Mishra, Advocate for the respondent.

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This appeal is directed against the impugned order dated 17.01.2020 passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab. The complainant made a grievance of non-delivery of the plot within the stipulated time and also highlighted lack of development and infrastructure. He prayed for refund of the amount along with interest and compensation as per the Rules and Regulations of the Act.

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.***", and 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.

We have heard 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, still if composite application is filed, can be segregated at the appropriate stage.*
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> *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 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, which to our minds is contrary to the observations made by the Hon'ble Supreme Court in this regard as noticed above.

Having regard to the above, we 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. 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 **21.12.2021**.

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

REAL ESTATE APPELLATE TRIBUNAL PUNJAB * CHANDIGARH *

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Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
20-12-2021