

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

Subject: -

APPEAL NO. 103 OF 2021

**ESTATE OFFICER, PUDA, PUDA BHAWAN, SECTOR-62, SAHIBZADA AJIT
SINGH NAGAR, (MOHALI), PUNJAB**

VERSUS

ANIL KUMAR AND ANOTHER

Memo No. R.E.A.T./2022/ **114**

To,

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

Whereas appeals 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 appeals 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
15th day of March, 2022.



Manoj Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

MEMO OF PARTIES

Estate Officer, PUDA, PUDA Bhawan, Sector- 62,
Sahibzada Ajit Singh Nagar,(Mohali), Punjab.


...Appellant

Versus

1. Anil Kumar, resident of # 2047, Sector-71 SAS Nagar, (Mohali), Punjab and Another
2. Adjudicating Officer, Real Estate Regulatory Authority Punjab, First Floor, Plot No.3, Block-B, Madhya Marg, Sector-18/A, Chandigarh-160018.

...Respondents

Place: SAS Nagar
Date: 01.10.2021


(Bhupinder Singh)
Advocate
Counsel for the Appellant



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 103 OF 2021

ESTATE OFFICER, PUDA, PUDA BHAWAN, SECTOR-62, SAHIBZADA AJIT
SINGH NAGAR, (MOHALI), PUNJAB

VERSUS

ANIL KUMAR AND ANOTHER

Present: - Mr. Bhupinder Singh, Advocate for the appellant.
Ms. Manju Goyal, Advocate for the respondent
No.1.
Mr. Jaspal Singh Khara, Assistant Manager, Real
Estate Regulatory Authority, Punjab/respondent.

This appeal is directed against the order dated
01.07.2020 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." ^{and use} 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 need to be set aside.



The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.

Accordingly, we deem it appropriate to dispose of the appeal 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.



3

Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on 30.03.2022. Files be consigned to record room.

The amount deposited by the appellant/promoter under Section 43(5) of the Act be disbursed to the appellant/promoter after proper identification and due verification in accordance with law.

Sd:-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

March 10, 2022
AN

Dr. Anand Kaur
Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

15/03/2022



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 103 of 2021

Estate Officer, PUDA, PUDA Bhawan, Sector-62, Sahibzada Ajit Singh Nagar, (Mohali), Punjab

.....Appellant

Versus

1. Anil Kumar, resident of # 2047, Sector-71 SAS Nagar, (Mohali), Punjab; and
2. Adjudcating Officer, Real Estate Regulatory Authority Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector 18-A, Chandigarh-160018.

.....Respondents

Present: Mr. Bhupinder Singh, Advocate for the appellant.
Ms. Manju Goyal, Advocate for the respondent No. 1
Mr. Jaspal Khara, Asstt. Manager for respondent No. 2

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)
ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./ TECH.)

JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.))

(MINORITY VIEW)

1. By this order, I will dispose off above mentioned appeal dated 01.10.2021 and bearing Appeal No. 103 of 2021 (**Estate Officer, PUDA versus Anil Kumar & Anr.**) filed against order 01.07.2020 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AO*) of Real Estate Regulatory



Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing AdC No. 1087 of 2019 filed on 05.04.2019.

2. The complaint bearing AdC No. 1087 of 2019 has been filed by the complainant (respondent No. 1) before the Adjudicating Officer (respondent No. 2) in form 'N' under section 31 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*), wishing to withdraw from the project and seeking/claiming refund of the amount paid by the complainant to the appellant along with interest thereon payable under the Act as well as compensation (Rs.1,00,000/-).
3. The said complaint has been accepted by the AO vide aforesaid order dated 01.07.2020 to the following extent and heads:-

1.	Principal amount	Rs.8,50,500/-
2.	Simple interest	At the SBI highest marginal cost of lending rate plus 2% on the principal amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs.25,000/-

The appellant has further been directed to pay the above said amount to the complainant within sixty days from the date of the impugned order; and it has also been ordered that if any amount has been received by the complainant from the appellant by way of compensation on the amount paid to the appellant by way of sale consideration of property unit in question, the same shall be adjusted from the total amount awarded to the complainant in the impugned order.



4. Aggrieved by the above said order dated 01.07.2020 of the AO, the appellant filed aforesaid Appeal No. 103 of 2021 before this Tribunal and prayed to quash and set aside the impugned order & dismiss the complaint.
5. In the grounds of the aforesaid Appeal No. 103 of 2021, it has inter alia been contended (i) that part of the project involved in the present case has been completed prior to coming into force of the Act and partial completion certificate for the same had already been issued by the Competent Authority on 28.04.2017 and hence the provisions of the Act are not applicable to such already completed part of the project; (ii) that the Act is applicable only to those projects which are registered with the Authority; (iii) that Rule 2(h) of the Rules reveals that 'on-going' projects are those projects in which development and development works as defined in section 2(s) and section 2(t) are still underway but excluding the area of portion of the Real Estate Project for which Partial Completion or Occupation Certificate has been obtained by the promoter; (iv) that Allotment Letter had been issued on 27.09.2016 in which possession of the plot had also been offered to the complainant; (v) that the complainant himself is at fault for not taking possession of the plot allotted to him; (vi) that as per clause 7.5 of "Annexure-A" ("*Form 'Q'*" with effect from 08.10.2020) of the Rules, where the allottee proposes to cancel/withdraw from the project without any fault of the Promoter, the promoter is entitled is entitled to forfeit 10% of the total amount of the consideration money, interest and other dues payable for the allotment and the balance amount of money paid shall be returned within 90 days such cancellation; (vii) that the similar issue of maintainability of the complaints pertaining to the project in question before the



Authority is pending adjudication in RERA Appeals No. 31 to 38 and 40 of 2020 in which notice of motion and notice regarding stay for 07.04.2021 had already been issued by Hon'ble Punjab and Haryana High Court on 12.01.2021; (viii) that Appeal No. RERA-APPL-22-2019 (Silver City (Main) Residents Welfare Association Regd. Zirakpur versus State of Punjab and others), filed against the order dated 24.07.2019 is pending adjudication before before Hon'ble Punjab and Haryana High Court; (ix) that the Adjudicating Officer does not have the jurisdiction to examine and decide the complaints for refund of amount and interest thereon.

MY OPINION IN THE MATTER OF JURISDICTION OF THE ADJUDICATING OFFICER OF REAL ESTATE REGULATORY AUTHORITY PUNJAB FOR ADJUDICATION OF COMPLAINTS MADE IN COMPOSITE APPLICATION INVOLVING REFUND/RETURN OF AMOUNT DEPOSITED BY THE ALLOTTEE, INTEREST THEREON AND COMPENSATION:

6. I have expressed my opinion in detail while disposing off Appeal No. 277 of 2020 (EMAAR India Ltd. (formerly EMAAR MGF Land Limited) versus Sandeep Bansal) vide order dated 24.02.2022 and further updated it while disposing off cross appeals bearing Appeal No. 268 of 2020 (Vijay Mohan Goyal & Anr. versus Real Estate Regulatory Authority Punjab & Ors.) and Appeal No. 6 of 2021 (PDA Patiala versus Vijay Mohan & Ors.) vide order dated 03.03.2022, as per which, I am of the view that the appeals, against the orders passed by the Adjudicating Officer in the complaints involving composite claim of refund, interest thereon and compensation, need not be remanded by this Tribunal to the Authority but should be decided by this Tribunal on merit, provided that such orders have been passed by the Adjudicating Officer pursuant to the directions imparted by the Authority in this



regard vide its circular No. RERA/Pb./ENF-17 dated 19.03.2019 in view of the judgment dated 27.02.2019 of this Tribunal in Appeal No. 53 of 2018 or vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority but before (in both the cases) the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.

MY OPINION IN THE APPEAL

7. Most of the contentions of the appellant in the appeal have already been adjudicated upon by the Adjudicating Officer and I generally don't see any merit in those contentions to interfere in the findings of the Adjudicating Officer, except on the certain issues as detailed hereinafter.
8. The allotment letter dated 27.09.2016 issued by the appellant to the complainant inter alia reveals that (i) residential plot No. 693/Park Facing measuring 150 square yards of General category at Gateway-City, Sector 118-119 SAS Nagar has been allotted to the complainant; (ii) that the tentative price of the plot is Rs.33,07,500/- @ Rs.21,000/- per square yard (*including 5% extra for a plot facing park*); (iii) that the payment of Rs.7,87,500/- and Rs.63,000/- made by the complainant have been adjusted towards 25% of the price of the plot and 2% cancer cess respectively and **payments of Rs.39,375/- & Rs.3,150/-, being balances of 25% amount of price of the plot and 2% cancer cess respectively for Park Facing plot were to be deposited within 30 days from the date of issue of the allotment letter i.e. by 27.10.2016;** (iv) that the balance 75% of the tentative price of the plot amounting to **Rs. Rs.24,80,625/- was to be paid** either in lumpsum without interest within 60 days from the issue of allotment letter or in 6 equated



half-yearly installments along with interest @ 12% per annum falling due on 22.09.2017, 22.03.2018, 22.09.2018, 22.03.2019, 22.09.2019 and 22.03.2020; (v) that no separate notice for payment of installment(s) was to be sent; (vi) that in case any installment or part thereof is not paid by the due date, then without prejudice to any action under section 45 of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*), the allottee is liable to pay penalty on the amount due at the rates 12% + 3%, 4% & 5% p.a. if the delay is up to 1 year, up to 2 years & beyond 2 years, as the case may be; (vii) that **the possession of the plot was be handed over to the allottee after the completion of the development work at site or 18 months from the date of issuance of the allotment letter whichever is earlier;** (viii) that in case of breach of any conditions of allotment or regulations or non-payment of any amount due together with the penalty, the plot is liable to be resumed and in that case an amount shall be forfeited as per provision of section 45(3) of the PRTPD Act.

9. As per partial completion certificate, issued vide office order dated 28.04.2017 of the Chief Administrator, GMADA, SAS Nagar, which has been placed on record by the appellant (as Annexure R/1 of the appellant's reply dated 16.10.2019), reads "*As per report of Inspection Committee of PUDA, development of Gateway City in Sector 118-119, SAS Nagar (under Land Owners Become Partners Scheme) have been partially completed. Accordingly, Partial Completion Certificate of the aforesaid project is hereby accepted.*". As per report of inspection dated 26.04.2017 for issuance of Partial Completion Certificate (Annexure R/1), a net area measuring 91.46 acre was developed out of total area of



121.25 acre after excluding the Reserved area measuring 23.26 acre and EWS area measuring 6.53 acre.

10. Vide memo dated 28.07.2017 (Annexure R/2), the appellant applied to the Authority for registration of on-going project "LOBP Scheme in Sector 118-119, SAS Nagar", wherein it is inter alia mentioned (i) that the Scheme is being developed on the land made available by M/s Emaar MGF Land Ltd.; (ii) that out of total 121.25 acre land, partial completion certificate for an area of 91.46 acre has been obtained; (iii) that the application was for registration of remaining area of 29.79 acres (23.26 acre reserved area & 6.53 acre EWS area) which was yet to be planned and developed.
11. As per "Zoning Plan of Residential Plots (Regular size only) in Gateway City Sector 118-119 SAS Nagar (LOBP Scheme with M/s Emaar MGF Land Ltd.)" dated 06.09.2018 (Annexure R/3), plot No. 693 facing park is residential and does not fall either under reserved area or EWS area.
12. The appellant's application for registration of Real Estate Project "LOBP Scheme" in Sector 118-119, SAS Nagar has been accepted by the Authority and registration No. PBRERA-SAS81-PR0022 has been allotted, vide memo dated 04.09.2017 (Annexure R/4).
13. The above facts show that the plot No. 693 facing park allotted to the complainant does not fall under the area for which registration No. PBRERA-SAS81-PR0022 has been allotted and falls under the area for which aforesaid partial completion certificate dated 28.04.2017 was issued.



14. Thus, as per clause 4(I) of the allotment letter, the possession of the plot should have been handed over by the appellant immediately after 28.04.2017.
15. From the contents of the LOI dated 27.05.2015 and receipt No. 53 dated 22.06.2015, it emerges that an amount of Rs.3,15,000/-, being 10% of the tentative price of the plot, was paid before the draw of lots on 19.03.2015 and an amount of Rs.5,35,500/- (Rs.4,72,500/- being 15% of the tentative price of the plot + Rs.63,000/- towards 2% cancer cess) was paid vide Demand Drafts bearing No. 060778 & 060799 dated 22.06.2015. As mentioned under paragraph 8 of the impugned order, the appellant as well as the complainant have admitted that an amount of Rs.8,50,500/- has been paid by the complainant to the appellant.
16. Thus, the complainant did not pay even an amount of Rs.42,525/- which was due to be paid by 27.10.2016 towards the balance of 25% of the tentative price of the plot and of 2% cancer cess for allotment of a park facing plot vide allotment letter dated 27.09.2016 and also did not make payment of any of the 6 half-yearly installments due from 22.09.2017 to 22.03.2020.
17. In his complaint dated 21.04.2019, the complainant has inter alia alleged that the project has not been completed. It implies that to the mind of the complainant, the possession of the plot was due for handing over by 27.03.2018 (i.e. 18 months from the date of issuance of the allotment letter dated 27.06.2016). However, the complainant has not given any justification for non-payment of amounts that had fallen due before 27.03.2018 (i.e. aforementioned amount of Rs.42,525/- due with effect from 27.10.2016, first installment of Rs.7,11,113/- due with effect from 22.09.2017,



second installment of Rs.5,37,469/- due with effect from 22.03.2018) and third installment of Rs.5,12,663/- due with effect from 22.09.2018.

18. On the other hand, the appellant has not placed on record (at least before this Tribunal) any material to show that after completion of development work by 26/28.04.2017 for the part of project in which the plot of the complainant is located, the complainant was informed by the appellant about the same and specifically made an offer to hand over the possession of the plot in terms of clause 4(I) of the allotment letter dated 27.09.2016. The contentions of the appellant, that allotment letter had been issued on 27.09.2016 in which possession of the plot had also been offered to the complainant and that the complainant himself is at fault for not taking possession of the plot allotted to him, holds no water in the absence of any evidence before this Tribunal.
19. As per circular No. RERA/LEGAL/2021/8950 dated 06.12.2021 issued by the Authority, after considering in detail the judgment dated 11.11.2021 of Hon'ble Supreme Court in case titled '*M/s Newtech Promoters and Developers Pvt Ltd vs State of UP and Others etc.*' in Civil Appeals No(s) 6745-649 of 2021 and other connected matter and after due deliberations in its meeting held on 22.11.2021, the Authority inter alia decided as under:



"I. Complaints against unregistered projects:

- a. *No complaint under Section 31 of the Act filed against any unregistered project shall be entertained. However, proceedings under Section 59 of the Act may be initiated by the Authority against any defaulting promoters on the basis of the evidence available on record.*

b. In case of complaints against unregistered projects filed prior to passing of the judgement dated 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgement dated 11.11.2021."

20. In view of the above facts, the case needs to be remanded to the Authority, because circular dated 05.03.2021 of the Authority stands modified vide its aforesaid circular dated 06.12.2021.
21. Therefore, I deem it appropriate to remand the complaint to the Authority to decide this case as per provisions of the applicable law.
22. The appeal is accordingly disposed off. File be consigned to record room and a copy of this order be filed in the file of the appeal and also be communicated to the parties as well as to the Authority and the Adjudicating officer.

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

March 10, 2022



Certified To Be True Copy
Shanesh Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
15/03/2022