

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

Subject: -

APPEAL NO. 94 OF 2021

**GREATER MOHALI AREA DEVELOPMENT AUTHORITY (GMADA) THROUGH
ESTATE OFFICER (HOUSING), PUDA BHAWAN, SECTOR-62, SAS NAGAR,
MOHALI-160062**

VERSUS

PARAMPAL SINGH DHILLON AND ANR.

Memo No. R.E.A.T./2022/ 113

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.



Shanendra Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

MEMO OF PARTIES

Greater Mohali Area Development Authority (GMADA) through
Estate Officer (Housing), PUDA Bhawan, Sector- 62,
S.A.S.Nagar, Mohali-160062.

...Appellant

Versus

1. Parampal Singh Dhillon, Dhillon Farm, H. No. 1010, Kot-
Kapura Road, Moga, District Moga-142001 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: 20.8.2021




(Bhupinder Singh)

Advocate

Counsel for the Appellant

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 94 OF 2021

GREATER MOHALI AREA DEVELOPMENT AUTHORITY (GMADA) THROUGH
ESTATE OFFICER (HOUSING), PUDA BHAWAN, SECTOR-62, SAS NAGAR,
MOHALI-160062

VERSUS

PARAMPAL SINGH DHILLON AND ANR.

Present: - Mr. Bhupinder Singh, Advocate for the appellant.
Mr. Jaspal Singh Khara, Assistant Manager, Real
Estate Regulatory Authority, Punjab.
None for respondent No.1.

We had noticed on the previous date of hearing that
service is complete but none appeared on behalf of respondent
No.1-Mr. Parampal Singh Dhillon.

Today, when the matter was called out, the
situation was same. Consequently, we are left with no other
option but to proceed against the respondent ex parte.

This appeal is directed against the order dated
03.06.2020 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." ^{and de} 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



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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 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



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

15/03/2022

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 94 of 2021

Greater Mohali Area Development Authority (GMADA) through
Estate Officer (Housing), PUDA Bhawan, Sector 62, S.A.S. Nagar,
Mohali-1600062

.....Appellant

Versus

1. Parampal Singh Dhillon, Dhillon Farm, H. No. 1010,
Kotkapura Road, Moga, District Moga-142001; 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.
None for 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
20.08.2021 and bearing Appeal No. 94 of 2021 (**Greater Mohali**
Area Development Authority versus Parampal Singh & Anr.)
filed against order 03.06.2020 passed by Sh. Balbir Singh,
Adjudicating Officer (*hereinafter referred to as the AO*) of Real



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Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing No. TR AO/58/2019 (old GC No. 1236 of 2019) filed on 26.02.2019.

2. The complaint bearing TR AO/58/2019 (old GC No. 1236 of 2019) has been filed by the complainant (respondent No. 1) before the Adjudicating Officer (respondent No. 2) in form 'N' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) claiming refund of an amount of Rs.98,63,825/- deposited by the complainant with the appellant along with interest payable under the Act as well as compensation (Rs.10.00 Lacs for harassment, mental agony and physical agony, Rs.5.0 Lacs for loss of opportunity to buy the flat with other builder and escalation of cost of fitments and furnishings and Rs.1,10,000/- towards the litigation cost).
3. The said complaint has been accepted by the AO vide aforesaid order dated 03.06.2020 to the following extent and heads:-

1.	Principal amount	Rs.98,63,825/-
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.1,25,000/-

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 in case, any amount has already been received by the complainant from the appellant in this matter on account of delay in delivery of possession shall stand adjusted against the above said due amount.



4. Aggrieved by the above said order dated 03.06.2020 of the AO, the appellant filed aforesaid Appeal No. 94 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. 94 of 2021, it has inter alia been contended (i) that the complaint failed to deposit service tax despite requests vide letters dated 05.09.2014, 13.11.2014, & 16.02.2015 and despite appellant's letter dated 27.06.2019 did not pay a sum of Rs.11,40,801/- (principal amount Rs.8,06,925/- + penal interest Rs.3,33,876/-); (ii) that at the time of filing of complaint as well as at the time of filing of the appeal, there was/is no allotment letter and no agreement to sell, even in the format prescribed under the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules); (iii) that the averments made by the Adjudicating Officer in paragraph 6 of the impugned order that "the respondent did not cancel the allotment of the flat in favour of the complainant" are factually incorrect; (iv) that the possession was to be delivered on clearance of all the dues as mentioned in condition No. 2.3(i) of the Letter of Intent; (v) that the development works in the project are complete; (vi) that the Adjudicating Officer does not have the jurisdiction to deal with and decide matters involving refund and interest; (vii) that there is no valid grounds to award compensation of Rs.1,25,000/-.

6. It is admitted in grounds of the appeal that (i) due to clerical mistake, the name of the complainant was included in the list of Type-II Apartments instead of the list of Apartment Type-III category, uploaded on the website of GMADA for calling



objections from the eligible allottees till 24.12.2015, for conducting draw of lots to allot flat numbers to the Letter of Intent (*hereinafter referred to as the LOI*) Holders on 05.01.2016 and 06.01.2016; (ii) that Apartment No. 1303, C-8 Type-II was earmarked to the complainant and allotment letter dated 25.07.2016 was issued to him; (iii) that vide letter No. 44719-720 dated 23.09.2016, the complainant was informed that allotment letter dated 25.07.2016 stood canceled and that fresh allotment letter for the Apartment No. 1302, A-3 (*earmarked for the complainant after rectification of mistake in the draw held on 15.02.2016*) would be issued soon; (iv) that due to failure of the complainant to make payment of the outstanding amount on time as per schedule of the Letter of Intent, fresh Allotment Letter could not be issued to the complainant.

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:

7. 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

8. 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 a certain issue as detailed in the later part of this judgment.
9. There is no merit in the appellant's contention that the complainant has defaulted in making timely payments. Perusal of the appellant's Property Ledger Reports dated 05.06.2015 & 03.06.2019 vis-a-vis Letter of Intent bearing No. 13973 dated 05.06.2014 reveal that all the payments towards the price of the Apartment, including first four installments due up to 05.06.2016, were paid in time. Next three installments have also been paid on 25.08.2017 (fifth & sixth installments) and 17.02.2018 (seventh installment) as well as an amount of Rs.3,26,250/- paid on 29.06.2017 towards Service Tax. On the other hand, appellant miserably failed to hand over the possession of the apartment to the complainant after completion of development works at site by December 2015 as promised under



clause 3(II) of the Letter of Intent dated 05.06.2014. Thus, appellant defaulted prior to the complainant made delay in the payment of fifth to seventh installments and did not pay the last installment of Rs.8,06,925/-. Moreover, the appellant not only made the mistake in earmarking Apartment No. 1303, C-8 of Type-II (instead of Type-III applied for by the complainant) in the draw held on 05/06.01.2016 but also (i) repeated the mistake by issuing allotment letter dated 25.07.2016 for inappropriate Apartment No. 1303, Tower-8, Block-C even when first mistake was admittedly noticed and rectified by the appellant by earmarking flat No. 1302-A-3 in the draw held on 15.02.2016; and (ii) thereafter, the appellant even did not bother to issue fresh appropriate allotment letter and appropriate offer of possession despite repeated requests of the complainant, though earlier allotment letter dated 25.07.2016 and offer of possession were canceled by the appellant vide his letter dated 23.09.2016.

10. The contention of the appellant, that at the time of filing of complaint as well as at the time of filing of the appeal, there was/is no allotment letter and no agreement to sell, even in the format prescribed under the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*), does not help the appellant because non-issue of the allotment letter as well as non-execution of agreement to sell, both are defaults on the part of the appellant. Rather penal action under the Act could have been attracted for non-execution of the agreement to sell.

11. The contention of the appellant, that the averments made by the Adjudicating Officer in paragraph 6 of the impugned order that



“the respondent did not cancel the allotment of the flat in favour of the complainant” are factually incorrect, is false. The inappropriate allotment letter dated 25.07.2016 was canceled vide appellant's letter dated 23.09.2016, with the promise to issue appropriate one soon, but allotment of the apartment was not canceled and could not be canceled because all the installments due before 05.12.2016 were paid by the complainant in time.

12. Another contention of the appellant is that the possession was to be delivered on clearance of all the dues as mentioned in condition No. 2.3(i) of the Letter of Intent. This contention is of no use when clause 3(II) of the LOI provide for handing over the possession of the apartment by December 2015 and as per clause 2.2 of the LOI, the payment of last five installments fell due between 05.06.2016 to 05.06.2018.

13. The contention of the appellant, that the development works in the project were complete, holds no water. Even if appellant's own report/completion certificate dated 05.07.2018 is presumed to be true, then why did the appellant not issue fresh/appropriate allotment letter and offer of possession even when the complainant has paid Rs.98,63,825/- by 17.02.2018 and only last installment amounting to Rs.8,06,925/- remained to be paid?



14. Another contention of the appellant is that there is no valid grounds to award compensation of Rs.1,25,000/-. In this regard, the perusal of the impugned order reveals that the Adjudicating Officer has not followed the procedure for adjudging the quantum of compensation as laid down in the Act and as has been directed by this Tribunal vide order dated 30.11.2021 in Appeal No. 11 of

2021 (**Omaxe New Chandigarh Extension Pvt. Ltd. versus Gurmeet Singh Gulati & Anr.**).

15. In view of above, the appeal is partially accepted only to the extent that the quantum of compensation only is liable to be re-adjudged by the Adjudicating Officer by following the procedure as laid down in the Act and as directed by this Tribunal vide order dated 30.11.2021 in Appeal No. 11 of 2021 (**Omaxe New Chandigarh Extension Pvt. Ltd. versus Gurmeet Singh Gulati & Anr.**). The case is accordingly remanded back to the Adjudicating Officer **only for re-adjudging the compensation.**
16. 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

Shanand Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

15/03/2022