

**BEFORE THE HON'BLE REAL ESTATE APPELLATE
TRIBUNAL SECTOR-17 CHANDIGARH**

F A NO. 29 OF 2022

MEMO OF PARTIES

Mandeep Kaur Sodhi d/o Harjit Singh Sodhi resident of House No.302, 3rd Floor, Tower 2, Sky Gardens, Sector-66 A, SAS Nagar Mohali (correspondence address House No. 613, Sarvhitkari Society, Sector 48 A, Chandigarh 160047).

.....Complainant


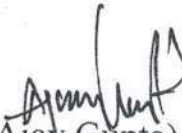
Versus

1. Janta Land Promoters Pvt. Ltd. SCO 39-42, Sector 82, SAS Nagar, Mohali (Pb) Through its Director
2. Janta Land Promoters Pvt. Ltd. SCO 39-42, Sector 82, SAS Nagar, Mohali (Pb) through its Additional Project Manager.

....Respondent

Place : Chandigarh

Dated: 24.1.2022



 (Suresh Kumar) (Ajay Gupta)
 Advocate

Counsel for the Appellant/Complainant



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 29 of 2022

Mandeep Kaur Sodhi d/o Harjit Singh Sodhi resident of House No.302, 3rd Floor, Tower 2, Sky Gardens, Sector-66 A, SAS Nagar Mohali (correspondence address House No. 613, Sarvhitkkari Society, Sector 48 A, Chandigarh 160047).

.....Appellant

Versus

1. Janta Land Promoters Pvt. Ltd. SCO 39-42, Sector 82, SAS Nagar, Mohali (Pb) Through its Director

2. Janta Land Promoters Pvt. Ltd. SCO 39-42, Sector 82, SAS Nagar, Mohali (Pb) Through its Additional Project Manager.

.....Respondents

Present: Mr. Suresh Kumar, Advocate for the appellant

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.))

1. By this order, we will dispose off above mentioned appeal filed against order dated 10.11.2021 passed by the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing AdC No. 01762021TR-AUTH00462021 filed by the appellant on 30.08.2021 under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) seeking (a) refund of maintenance charges deposited by the complainant-appellant with



the respondent with effect from 01.01.2019 till date for the area of 1431 square feet instead of internal area; and (b) to restrain the the respondents from charging the maintenance charges on the area not being maintained by the respondents as agreed under clause 8 of the sale agreement.

2. The complainant has contended before the Authority that the maintenance should be charged only for an area of 323 square feet after deducting the covered area of his apartment (880 square feet) and balcony (142 square feet) from its super area (1,431 square feet), because only this remaining area of 323 square feet is being maintained by the respondent and because clause 8 of their agreement dated 06.02.2014 inter alia stipulates that “----. *However, the maintenance of the area inside the purchaser's space/premises is responsibility of the purchaser. ----*”.
3. The Authority, vide its order dated 10.11.2021, held the aforementioned contention of the complainant-appellant without any substance, keeping in view the initial part of aforesaid clause 8 of the agreement as per which maintenance charges will be calculated on the basis of the super area of the apartment, which, as per experience of the Authority, is also the norm followed in all real estate projects in the State. Therefore, the Authority dismissed the complaint in limine, being without merit.
4. Aggrieved by the above said order dated 10.11.2021 of the Authority, the complainant-appellant filed Appeal No. 29 of 2022 before this Tribunal and prayed to set aside the impugned order & to allow the complaint in its entirety.



5. In the grounds of his appeal, it has inter alia been contended (i) that Section 11(4)(d) of the Act mandates that the promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till taking over of the maintenance of the project by association of the allottees; (ii) that Section 19(6) of the Act mandates that the allottee shall be responsible to make payment, inter alia, of maintenance charges in the manner and within the time as specified in the agreement for sale; (iii) that as per clause 8 of the agreement, the maintenance of the area inside the purchaser's space/premises is the responsibility of the purchaser; (iv) that the respondents can charge the maintenance only for the common area of 323 square feet, being maintained by the builder, after deducting the carpet area of 880 square feet and balcony area 142 square feet out of 1345 square feet (which is the super area of the apartment as per the agreement and was allegedly enhanced to 1431 square feet by increasing it by 86 square feet by charging an amount of Rs.1,63,800/-); (v) that the respondent are charging the maintenance on the area of 1431 square feet; (vi) that the possession of the plot was delivered after a delay of 16 months; (vii) that as per clause 2.23 of the re-allotment letter possession was to be handed over after obtaining the occupation certificate but was delivered without it and the same has not been given till date; (viii) that out of 11 towers, 3 (other than the tower in which appellant's apartment is located) are yet to be build and the club house of 5000 square feet is yet to be provided, thus the project is not complete and therefore it is the responsibility of the respondent to bear the maintenance charges till the completion of the project; (ix) that as per GST circular dated 22.07.2019, the builder can not charge GST if the monthly



maintenance charges are less than Rs.7,500/-; (x) that as per the information under RTI, neither any map has been got passed from the competent authority nor the respondent have applied for the occupation certificate from the concerned authority; & (xi) that the maintenance bill for the month of January 2020 has been sent twice.

6. The appellant has prayed in his appeal that his complaint may be allowed in its entirety. The first of the two reliefs sought by the complainant-appellant through his complaint is that maintenance should be charged on internal area instead of on 1431 square feet (which is allegedly enhanced super area of the apartment); and second relief sought is to restrain the respondents from charging maintenance charges on the area not being maintained by the respondents as agreed under clause 8 of the agreement (i.e. not to charge on the area inside the purchaser's premises, which is being referred to as the "internal area" in the first relief sought by the appellant in his complaint). Thus, combined effect of the two reliefs leads only to absurdity.

7. Perusal of the possession letter dated 31.08.2018, the respondents' bills dated 30.09.2019, 06.12.2019 and 06.02.2020 for the period of 13 months from 01.01.2019 to 31.01.2020 and the complainant's references dated 18.05.2020, 27.07.2020 & 13.08.2020 addressed to the respondents reveals that the appellant believes that the maintenance charges along with GST @18% should have been charged @ Rs.1.10 per month per square feet of the carpet area of 880 square feet (possession of which has been handed over to him) and not on allegedly enhanced super area of 1431 square feet.



8. However, before the Authority as well as through his present appeal, the complainant-appellant is of the view that the respondents can charge maintenance only on 323 square feet common area being maintained by the builder, which has been arrived at by the appellant by deducting internal area of 1022 square feet (880 square feet carpet area of the apartment + 142 square feet area of its balcony) from the original super area of 1345 square feet.
9. Neither of the above mentioned three inconsistent contentions of the appellant is reasonable in view of clauses 8 & 9 of the agreement dated 06.02.2014 (reproduced below) and corresponding similar clauses 2.10 & 2.11 of the re-allotment letter dated 17.09.2014:-

*"8. That the maintenance, upkeep, repairs, security, landscaping and common services including compound wall, roads, paths, electricity, drainage, sewerage & services in the other common area including replacement, up-gradation and addition of capital equipments of the project shall be determined & managed by the Company or its nominated Maintenance Agency **after charging maintenance charges on the Super Area of the apartment.** The purchaser of the Residential Apartment shall pay, as and when demanded, the maintenance charges including interest, free security deposit for maintaining and up-keeping the said Project and the various services therein, as may determined by the Company or the maintenance agency appointed for this purpose. Any delay in making payment will render the purchaser liable to pay interest @ 12% per annum. Non-payment of any of the charges within the time specified shall also dis-entitle the purchaser from the enjoyment of the common areas and services. **However, the maintenance of the area inside the purchaser's space / premises is the responsibility***



of the purchaser. This right is not an integral part of sale and the same shall be available only on regular payment of the charges as envisaged therein. This maintenance will not cover the major repair or replacement of equipment if funds for the same are not contributed by the purchaser.

That the purchaser will be charged IFMS (Interest Free Maintenance Security) charges @ Rs. 53,800/- before handing over possession which will be used to meet the expenditure of capital equipment & its allied expenditure of the complex of 2 BHK Housing Scheme, Sector 66-A, Mohali. Unspent/ surplus security fund, if any, shall be transferred to the Residents Welfare Association of the complex of 2 BHK Housing Scheme, Sector 66-A, Mohali or to Local Authority at the time of transfer of complex for subsequent maintenance of the complex.

9. That the purchaser will pay maintenance Charges monthly which will be intimated at the time of delivery of possession. These charges will be used for the maintenance of the complex of 2 BHK Housing Scheme, Sector 66-A, Mohali.”

10. Perusal of GST circular dated 22.09.2019 reveals that this circular is on the subject of issues related to GST on monthly subscription/contribution charged by Residential Welfare Association from its members.

11. The issue of duplicity of claim of the maintenance bill for the month of January 2020 has already been taken up by the appellant, his letter dated 27.07.2020, with the respondents. Needless to say, it has to be set right by the respondents, if it is so.

12. Thus, we see no reason to interfere in the impugned order dated 10.11.2021 passed by the Authority in the appellant's complaint. Therefore, we deem it appropriate to dismiss the appeal, being without any merit.



Appeal No. 29 of 2022

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13. 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.

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

Sd/-
JUSTICE MAHESH GROVER (RETD.),
CHAIRMAN

Sd/-
SH. S.K. GARG, DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)

March 14, 2022



Certified to Be True Copy
Sh. Anand Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
08/07/2022