

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

Subject: -

Appeal No. 56 of 2021

Estate Officer, Patiala Urban Planning and Development
Authority, Urban Estate-II Baran Road, Patiala, District Patiala
.....Appellant

Versus

1. Harkaran Singh Nehal, House No. 3008, Phase II, Urban Estate, Patiala, Punjab-147001; and
2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Appeal No. 57 of 2021

Estate Officer, Patiala Urban Planning and Development
Authority, Urban Estate-II Baran Road, Patiala, District Patiala
.....Appellant

Versus

1. Maninder Kaur, House No. 3008, Phase II, Urban Estate, Patiala, Punjab-147001; and
2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Memo No. R.E.A.T./2022/173

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 ^{20th}~~19th~~
day of April, 2022.



Manan Kaur

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

**BEFORE THE REAL ESTATE APPELLATE, TRIBUNAL, PUNJAB,
SECTOR 17, CHANDIGARH-160017.**

Civil Appeal No. 56 of 2021

MEMO OF PARTIES

Estate Officer, Patiala Urban Planning and Development Authority,
Urban Estate-II Baran Road, Patiala, District Patiala ...**Appellant.**

Versus

1. Harkaran Singh Nehal, House No. 3008, Phase II, Urban Estate,
Patiala, Punjab-147001.

2. Adjudicating Officer of Real Estate Regulatory Authority Punjab,
Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-
160018

...**Respondents.**

Place: S.A.S Nagar

Date: 25.08.2021



(Bhupinder Singh)
Advocate
Counsel for the Appellant

BEFORE THE REAL ESTATE APPELLATE, TRIBUNAL, PUNJAB,
SECTOR 17, CHANDIGARH-160017.

Civil Appeal No. 57 of 2021

MEMO OF PARTIES

Estate Officer, Patiala Urban Planning and Development Authority,
Urban Estate-II Baran Road, Patiala, District Patiala

...Appellant.

Versus

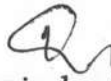
1. Maninder Kaur, House No. 3008, Phase II, Urban Estate, Patiala,
Punjab-147001.

2. Adjudicating Officer of Real Estate Regulatory Authority Punjab,
Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-160018

...Respondents.

Place: S.A.S Nagar
Date: 23.08.2021




(Bhupinder Singh)
Advocate
Counsel for the Appellant

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 56 of 2021

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala

.....Appellant

Versus

1. Harkaran Singh Nehal, House No. 3008, Phase II, Urban Estate, Patiala, Punjab-147001; and
2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

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Appeal No. 57 of 2021

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala

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1. Maninder Kaur, House No. 3008, Phase II, Urban Estate, Patiala, Punjab-147001; and
2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Mr. Bhupinder Singh, Advocate with Mr. Balwinder Singh, Advocate for the appellant;

Mr. Sahil Sharma, Advocate for respondents (other than the Real Estate Regulatory Authority Punjab); and

Mr. Vipul Joshi, Advocate for Real Estate Regulatory Authority Punjab.

CORAM:

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.)**



Appeal No. 56 of 2021 & Appeal No. 57 of 2021

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JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)
(MAJORITY VIEW)

1. These appeals are directed against the order dated 27.04.2021, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.
2. 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 need to be set aside.
3. The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.
4. Accordingly, we deem it appropriate to dispose of the appeal with a liberty to the complainants to move an appropriate



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application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/ Adjudicating Officer.

5. 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.
6. 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.
7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on **30.04.2022**. Files be consigned to record room.



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8. 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.

Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

March 31, 2022
AN



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

20/04/2022

Appeal No. 54 of 2021 to Appeal No. 57 of 2021

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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 54 of 2021

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala

.....Appellant

Versus

1. Anil Arora, House No. 4, Siri Niwas Colony, Patiala, District Patiala, Punjab;
2. Raj Rani, House No. 4, Siri Niwas Colony, Patiala, District Patiala, Punjab;
3. Sukhman Sidhu, House No. 4, Siri Niwas Colony, Patiala, District Patiala, Punjab; and
4. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Appeal No. 55 of 2021

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala

.....Appellant

Versus

1. Jaswinder Singh, F-36, PDA Omaxe City, Patiala, District Patiala, Punjab;
- Gurpreet Singh, House No. 454/3, Khalsa Mohalla, Patiala, District Patiala, Punjab; and
3. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Appeal No. 56 of 2021

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala



Appeal No. 54 of 2021 to Appeal No. 57 of 2021

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.....Appellant

Versus

1. Harkaran Singh Nehal, House No. 3008, Phase II, Urban Estate, Patiala, Punjab-147001; and
2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Appeal No. 57 of 2021

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II Baran Road, Patiala, District Patiala

.....Appellant

Versus

1. Maninder Kaur, House No. 3008, Phase II, Urban Estate, Patiala, Punjab-147001; and
2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18A Chandigarh-160018

.....Respondents

Present: Mr. Bhupinder Singh, Advocate with Mr. Balwinder Singh, Advocate for the appellant;
Mr. Sahil Sharma, Advocate for respondents (other than the Real Estate Regulatory Authority Punjab); and
Mr. Vipul Joshi, Advocate for Real Estate Regulatory Authority Punjab.

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)



Appeal No. 54 of 2021 to Appeal No. 57 of 2021

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1. By this order, I will dispose off above mentioned four appeals bearing Appeal No. 54 of 2021 (**Estate Officer, Patiala Urban Planning and Development Authority versus Anil Arora and others**), Appeal No. 55 of 2021 (**Estate Officer, Patiala Urban Planning and Development Authority versus Jaswinder Singh and others**), Appeal No. 56 of 2021 (**Estate Officer, Patiala Urban Planning and Development Authority versus Harkaran Singh Nehal and another**) and Appeal No. 57 of 2021 (**Estate Officer, Patiala Urban Planning and Development Authority versus Maninder Kaur and another**) against similar common orders dated 17.05.2021, 17.05.2021, 27.04.2021 and 27.04.2021, both passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AO*) of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaints bearing GC No. 15162020URTR-AO01032020, GC No. 15132019URTR-AO01042020, ADC No. 15282020UR and AdC No. 15292020UR filed on 06.01.2020, 31.12.2019, 16.01.2020 and 16.01.2020 respectively.

2. The said complaints has been accepted by the AO to the following extent and heads:-

1.	Appeal No.	54/2021	55/2021	56/2021	57/2021
2.	Complaint No.	GC No. 15162020URTR-AO01032020	GC No. 15132019URTR-AO01042020	ADC No. 15282020UR	AdC No. 15292020UR
3.	Complaint date	06.01.2020	31.12.2019	16.01.2020	16.01.2020
4.	AO's order dated	17.05.2021	17.05.2021	27.04.2021	27.04.2021
5.	Principal amount already refunded (Rs.)	62,85,600	56,54,000	65,44,800	63,99,000



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6.	Interest	@ 6% per annum on the above said already refunded principal amount from the respective dates of deposited till the refund which had already been made to respondents-complainants.			
7.	Compensation on account of mental agony, litigation expenses etc.	Rs.25,000	Rs.25,000	Rs.25,000	Rs.25,000

Further, the appellant has been directed to pay the above said amount of interest and compensation to the respondents-complainants within sixty days from the date of the impugned orders.

3. The facts have been extracted from Appeal No. 54 of 2021 (**Estate Officer, Patiala Urban Planning & Development Authority versus Anil Arora and others**).
4. The complaint bearing GC No. 15162020URTR-AO01032020 has been filed before the Authority by Sh. Anil Arora and others in form 'M' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*) claiming payment of interest @ 18% per annum from the date of depositing of the amount till receipt of their money back (which has already been refunded but without interest) and payment of Rs.2 lakhs for mental harassment and costs to the tune of Rs.1 lakh as legal cost.

5.

Aggrieved by the above said order dated 17.05.2021 of the Adjudicating Officer in complaint bearing GC No. 15162020URTR-AO01032020, the appellant filed appeal dated 23.08.2021 bearing Appeal No. 54 of 2021 before this Tribunal



and prayed to set aside and quash the impugned order & dismiss the complaint.

6. In the grounds of the aforesaid appeal bearing Appeal No. 54 of 2021, it has inter alia been contended (i) that the real estate project in question was not in existence at the time of coming into operation of the Act; (ii) that the complaint against the project which is not registered with the Authority under the Act is not maintainable; (iii) that the issue of maintainability of the complaints pertaining to the projects which are not registered with 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; (iv) 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 passed by this Tribunal in Appeal No. 49 of 2018 titled as **M/s Silver City Construction Limited versus State of Punjab and others**, is pending adjudication before before Hon'ble Punjab and Haryana High Court; (v) that the amount deposited by the respondents-complainants had been refunded as per decision taken by the Government and there is no provision in the Act to file a complaint against the order/decision of the State Government; (vi) that the Punjab Urban Planning and Development Authority, who initiated the project and with which the amount was deposited, has not been impleaded as a party and appellant is not a necessary party; (vii) that the respondents-complainants had already taken refund in compliance to the refund order passed by the Estate Officer, PDA, Patiala and as such there was/is no Agreement to Sell, Letter of



Intent or Allotment Letter in existence at the time of the filing of the complaint, provisions of which can be said to be violated; (viii) that there is a provision of appeal and revision under section 45 of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*) against the order of refund; (x) that in the subsequent development, the Competent Authority declared the site of the project a Heritage Monument and Protected Site; (xi) that the Adjudicating Officer has also observed that the complainants were not entitled to any penal or normal interest as per provisions of the Rules; (xii) that no solid grounds have been given in the order for awarding compensation of Rs.25,000/-; and (xiii) 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:

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



Appeal No. 54 of 2021 to Appeal No. 57 of 2021

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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 PRESENT APPEALS

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 certain issue as detailed in the later part of this judgment.
9. The appellant, in its reply dated 31.08.2020 to the complaint as well as in its present appeal dated 23.08.2021 (Appeal No. 54 of 2021), has inter alia contended that the project in question not registered with the Authority and that the complaints against the projects, which are not registered with the Authority, are not maintainable and as such the Authority/Adjudicating Officer has no jurisdiction. It has also been contended that similar complaints had already been dismissed by the Authority.
10. The Adjudicating Officer has taken notice of such submission of the appellant-respondent in paragraph 3 of the impugned order dated 17.05.2021. However, no finding in this regard has been returned by the Adjudicating Officer.



11. The appellant has also pointed out in its appeal against the impugned order dated 17.05.2021 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 by passed by this Tribunal in Appeal No. 49 of 2018 titled as **M/s Silver City Construction Limited versus State of Punjab and others**, is pending adjudication before before Hon'ble Punjab and Haryana High Court.
12. The appellant in his appeal has also contended that the issue of maintainability of the complaints pertaining to the projects, which are not registered with 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.
13. 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."

14. In view of above facts, as no finding in respect of contentions of the appellant regarding maintainability and jurisdiction in respect of unregistered projects has been returned by the Adjudicating Officer in the impugned order dated 17.05.2021, I deem it appropriate to remand the parts of the complaints relating to the grant of interest on the amounts already refunded to the Authority and compensation parts of the complaints to the Adjudicating officer to decide this issue of maintainability of complaints in respect of unregistered projects in the light of aforesaid circular dated 06.12.2021 of the Authority and also the provisions of the applicable law.
15. The Adjudicating Officer, while re-adjudging the compensation, if the need be, shall follow 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.**).
16. The appeals are accordingly disposed off. Files be consigned to record room and a copy of this order be filed in the files of the appeals and also be communicated to the parties as well as to the Authority and the Adjudicating officer.



March 31, 2022

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

Certified To Be True Copy

Shamsher Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

20/04/2022