

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

Subject: -

Appeal No. 58 of 2022

M/s Multitech Towers Pvt. Ltd. through its Managing Director/authorized representative C/O SCO 139-141, Sector-17-C, Chandigarh.

....Appellant

Versus

Mr. Krishan Kumar Chaudhari R/o H.No.36, SP No.24, Tripuri Town, Patiala, Punjab-147004, Chandigarh.

.....Respondent

Appeal No. 59 of 2022

M/s Multitech Towers Pvt. Ltd. through its Managing Director/authorized representative C/O SCO 139-141, Sector-17-C, Chandigarh.

....Appellant

Versus

Mr. Surinder Kumar Garg, R/o H.No.253, Ajit Nagar, Patiala, Punjab-147001.

.....Respondent

Memo No. R.E.A.T./2022/271.

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

07 day of June, 2022.



REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 58/2022

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

AT CHANDIGARH

MEMO OF PARTIES

M/s Multitech Towers Pvt. Ltd. through its Managing
Director/authorized representative C/O SCO 139-141,
Sector 17-C, Chandigarh. ...Appellant.

Versus

MR. KRISHAN KUMAR CHAUDHARI, R/O H.NO. 36, SP No.
24 , Tripuri Town, Patiala., PUNJAB-147004
Chandigarh.

Dated: 13.04.2022.

Dinesh Madra

(Dinesh K. Madra & Manmohan Sharma)

Advocates.



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Sector 17-C, Chandigarh. ...Appellant.

Versus

MR. SURINDER KUMAR GARG, R/O H.NO. 253, AJIT
NAGAR, PATIALA, PUNJAB-147001
Chandigarh.

Dated: 13.04.2022.

Dinesh K. Madra

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Versus

Mr. Surinder Kumar Garg, R/o H.No.253, Ajit Nagar, Patiala, Punjab-147001.

.....Respondent



Mr. Dinesh Madra, Advocate with Mr. Manmohan Sharma, Advocate for the appellant.

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.)

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

1. These appeals are directed against the order dated 09.09.2021, 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

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 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



4

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 **04.07.2022**. Files be consigned to record room.
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.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

May 27, 2022
AN



Certified To Be True Copy
Toranshet Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
07/06/2022

REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

Appeal No. 58 of 2022

Multitech Towers Pvt. Ltd., through its Managing Director/authorized representative, SCO 139-141, Sector 17-C, Chandigarh.

.....Appellant

Versus

Krishan Kumar Chaudhary, H.No. 36, St. No. 24, Tripuri Town, Patiala, Punjab-147004.

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Appeal No. 59 of 2022

Multitech Towers Pvt. Ltd., through its Managing Director/authorized representative, SCO 139-141, Sector 17-C, Chandigarh.

.....Appellant

Versus

Surinder Kumar Garg, H.No. 253, Ajit Nagar, Patiala, Punjab-147001.

.....Respondent

Present: Mr. Dinesh Madra, Advocate with Mr. Manmohan Singh, Advocate for the appellant in both the appeals



**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 two appeals filed against separate orders dated 09.09.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the Adjudicating Officer or the AO*) of Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*).
2. The said complaints has been accepted by the Adjudicating Officer to the following extent:-

1.	Appeal No.	58/2022	59/2022
2.	Complaint AdC No.	15192020UR	17562020UR
3.	Complaint date	25.02.2020	21.09.2020
4.	AO's order dated	09.09.2021	09.09.2021
5.	Principal amount	Rs.13,18,500/-	Rs.15,50,000/-
6.	Simple interest	At the SBI highest marginal cost of lending rate (as on the date of order i.e. 09.09.2021) plus 2% on the above said amount from the date of respective payments till realization.	
7.	On account of compensation	Rs.1,00,000/-	Rs.1,00,000/-

The appellants have been directed vide aforesaid orders to pay the above said amounts to the complainants within sixty days from the date of the impugned orders and it has also been ordered therein that the amounts, if any, received by the complainant from the appellant on account of delay in delivery of possession shall be adjusted against above respective amounts.

3. The facts have been extracted from Appeal No. 58 of 2022 (**Multitech Towers Pvt. Ltd. versus Krishan Kumar Chaudhary**).

4. The complaint bearing AdC No. 15192020UR has been filed before the Adjudicating Officer by Mr. Krishan Kumar Chaudhary, 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*) praying for refund of an amount of Rs.13,18,500/- with interest @ 15% per annum and compensation of Rs.6,00,000/- for mental harassment, financial loss, breach of trust, opportunity cost and Rs.2,00,000/- as legal and litigation expenses etc.

5. Aggrieved by the above said order dated 09.09.2021 of the Adjudicating Officer, the appellant filed Appeal No. 58 of 2022 before this Tribunal and prayed to set aside the same & dismiss the complaint with costs.
6. The appellant initially prayed, vide Application No. 87 of 2022 that was filed along with the appeal, to exempt it from paying any money to comply with the provisions of Section 43(5) of the Act. However, vide its Application No. 140 of 2022, the appellant has inter alia placed on record demand draft dated 23.05.2022 for Rs.26,96,563/- payable in terms of Section 43(5) of the Act.
7. In the grounds of the aforesaid appeal bearing Appeal No. 58 of 2022, it has inter alia been contended (i) that the Adjudicating Officer no jurisdiction to decide the refund of amount deposited by an allottee with the promoter-appellant; (ii) that after expression of interest dated 07.01.2011 and payment of Rs.13,18,500/- till 16.11.2012 for the plot, the respondent-complainant did not follow the payment schedule; (iii) that the respondent-complainant didn't come forward to return the original documents and non-encumbrance affidavit and indemnity bonds to get his amount refunded; (iv) that due to discontinuation of the project by the appellant prior to commencement of the Act, the appellant did not



get it registered with the Authority; (v) that the review petition filed by the appellant was dismissed by the Adjudicating Officer despite the fact that the Adjudicating Officer as well as the Authority have already dismissed the cases pertaining to the unregistered projects

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:

8. 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

9. 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 issues as detailed hereinafter.
10. One of the contentions of the appellant is that the Adjudicating Officer wrongly assumed jurisdiction to entertain and decide the complaint, whereas vide order dated 11.11.2021 in M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others, Hon'ble Supreme Court of India has held that matter regarding refund of amount and interest thereon is within the power of the Authority.
11. In this regard, it is mentioned that taking notice of reference of circular dated 05.03.2021 of the Authority in the another order dated 15.04.2021 of the Adjudicating Officer in Appeal No. 130 of 2021 (**Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others**) and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2021 titled 'M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc and connected matters', I arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 120 & 116 (in this sequence) of the aforementioned judgment dated 11.11.2021 and section 81 of the Act, that the delegation of its power of "refund of the amount



and interest thereon” by the Authority vide aforementioned circular dated 05.03.2021 to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed is in accordance with the mandate of law viz section 81 of the Act and hence, the so empowered/directed Adjudicating Officer has the jurisdiction to deal all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation). Accordingly, during the proceedings held on 10.01.2022 in the afore-mentioned Appeal No. 130 of 2021, I expressed my aforementioned opinion, which has also been expressed by me as minority view in the judgments/orders of this Tribunal in the appeals mentioned under paragraph 8 above and some more appeals disposed off thereafter. Because aforesaid circular dated 05.03.2021 has been amended by the Authority vide its circular dated 06.12.2021 i.e. after the date of the impugned order dated 09.09.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing the impugned order dated 09.09.2021 to deal with the complaints/applications involving refund of the amount deposited, interest thereon and compensation etc.

12. So far as the issue regarding the applicability of the Act to the unregistered projects is concerned, this Tribunal, in its common judgment dated 25.04.2022 passed in Appeal No. 60 of 2022 titled as **“Aman Sethi and Another versus M/s Dara Buildtech & Developers Limited and others”**, Appeal No. 61 of 2022 titled as **“Ravinder Kumar versus Amritsar Improvement Trust”**, Appeal No. 64 of 2022 titled as **“Sapandeep Singh Bakshi and Another versus Real Estate Regulatory Authority, Punjab and**



others” and Appeal No. 65 of 2022 titled as “**Sapandeep Singh and Another versus Real Estate Regulatory Authority, Punjab and Others**”, has set aside the orders of the Authority and Adjudicating Officer wherein the Authority and Adjudicating Officer have declared that the complaints against the projects that are not registered with the Authority are not maintainable; and this Tribunal has remitted the matter pertaining to those appeals back to the Authority to decide the complaints in accordance with law and in light of the observations made in aforesaid order dated 25.04.2022 of this Tribunal.

13. Hence, in my opinion, there is no reason to interfere in the impugned orders.
14. 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.

May 27, 2022

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



Certified To Be True Copy
T. Hemant Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
07/06/2022