

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

Appeal No. 264 of 2020 (O&M)

Lt. Col (retd) Praveen Gangwani, S/o Late Shri H R Gangwani,
age 56 years, Resident of Flat No. B-90, Jal Vayu Vihar, Sector
30, Gurgaon (Haryana).

....Appellant

Versus

1. Army Welfare Housing Organization, South Hutments,
Kashmir House, Rajaji Marg, New Delhi, Pin-110011.
2. Project Director, AWHO Mohali, AWHO Complex, Sector-114,
Sahibzada Ajit Singh Nagar (Mohali) Punjab Pin-143017.

.....Respondents

Present: Mr. Balwinder Singh and Bhupinder Singh,
Advocates for the appellant.
Mr. A.K Tewari, Advocate for the respondents.

**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)**



This appeal is directed against the order dated 08.10.2020,
passed by the Adjudicating Officer, Real Estate Regulatory
Authority, Punjab.

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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 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



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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 **25.07.2022**. Files be consigned to record room.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

July 07, 2022
AN



Certified To Be True Copy
Chanderjit Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

12/07/2022

Appeal No. 264 of 2020

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REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

Appeal No. 264 of 2020

Lt Col (Retd) Praveen Gangwani, S/o Late Shri H R Ganwani, age 56 years, Resident of Flat No. B-90, Jal Vayu Vihar, Sector 30, Gurgaon (Haryana), Email: pgangs@gmail.com Mobile: 9810774699

.....Appellant

Versus

1. Army Welfare Housing Organization, South Hutments, Kashmir House, Rajaji Marg, New Delhi, Pin-110011, Email: awho@awahosena.in Mob: 6283435049, 9592231758,
2. Project Director, AWHO Mohali, AWHO Complex, Sector 114, Sahibzada Ajit Singh Nagar (Mohali) Punjab, Pin-140307. Email: pdmohali@awhosena.in Mob:8958797681, 6283435087

.....Respondents

Present: Mr. Balwinder Singh and Mr. Bhupinder Singh,
Advocates for the appellant
Mr. A.K. Tiwari, Advocate for the Respondents

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 16.11.2020 bearing No. 264 of 2020 (Lt Col (Retd) Praveen Gangwani versus Army Welfare Housing Organization) that

has been filed against the orders dated 08.10.2020 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*) in the complaint bearing AdC No. 1219/2019 instituted on 18.05.2019.

2. The said complaint has been dismissed by the Adjudicating Officer, inter alia holding that the complaint is not entitled to seek refund of the amount and there is no merit in the complaint.
3. The complaint bearing AdC No. 1219/2019 has been filed before the Adjudicating Officer by Mr. Praveen Gangwani 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 to refund the amounts paid to the respondents along with interest @ 24% per annum from the date of each payment till the date of actual refund; and to pay an amount of Rs.1,00,000/- as penalty for contraventions of the provisions of the Act and the Rules.



4. Aggrieved by the above said order dated 08.10.2020 of the Adjudicating Officer, the appellant filed an appeal bearing Appeal

No. 264 of 2020 before this Tribunal and prayed to set it aside, to allow the complaint and to grant relief as prayed therein.

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:

5. 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 PRESENT APPEAL



6. The main contention taken by the appellant in the grounds of his appeal dated 16.11.2020 is that the project is still not complete as on date as the Completion Certificate for the project or Occupation Certificate for the unit has not been granted by the competent authorities as the basic amenities like sewage treatment plant is still under construction (though not mentioned so in his complaint dated 18.05.2019). In this regard, it has also been contended that the communication with the competent authorities as regards to denial of Completion/Occupation Certificate by the concerned authority, involving Ansal's Golf Link at this point of time, has nothing to do with the delayed possession by the respondents; and that if the Ansals, who is another builder like them, was at fault with the respondents, then they should have approached the appropriate legal forum to set the things in right place. It has also been contended that as per section 14(1) of the Punjab Apartment and Property Regulation Act, 1995 (*hereinafter referred to as the PAPRA*), it is the responsibility of the Promoter to obtain Completion and Occupation Certificate from the competent authority before handing over the possession of the apartment; and that as per paragraph 3.12(i) of the notification dated 07.07.2015 published in the Punjab Government Gazette Extraordinary by the Department of Local Government (Town Planning Wing) provides that *"No person shall occupy or allow other person to occupy any new building or part of a new building for any purpose whatsoever until such building or part thereof has been certified by the local authority or of any person authorized by it in this behalf to be in every respect completed according to the sanctioned plan and fit for the use for which it is erected."*



7. The appellant's emails/letters dated 01.11.2018, 30.11.2018, 20.01.2019, 23.01.2019, 05.02.2019, 05.04.2019 [C-5 & C-6], though indicated as if he was willing to take the possession of the flat allotted to him after rectification or repairs needed (vide respondents' letter dated 01.04.2019, it has been intimated to the appellant that defects have been rectified), but these very emails/letters also reveal his intention to take over only after the Completion Certificate and/or Occupation Certificate is provided to him prior to handing over the dwelling unit and after completion of all facilities like the community centre, back up power, etc and garages. Ultimately, when no confirmation on completion certificate and/or occupancy certificate was received, then vide his email dated 28.04.2019, opted to withdraw from the project and sought refund along with interest.
8. On the other hand, the respondents have been continuously ignoring prime and valid pending concern of the appellant regarding completion/occupancy certificate as is evident from the appellant's aforementioned communications dated 01.11.2018 to 28.04.2019 and respondents' reply to some of such communications (C-5 & C-6), even though the appellant's such concern is well founded as per law.
9. Under paragraph 35 of the respondents' reply dated 26.07.2019 to the appellant's complaint, it has inter alia been stated by respondents (i) that 1048 Dus have been constructed on 22 Acres of land acquired by the respondent society from M/s Ansal Properties and Infrastructure Limited; out of their their larger land holding at Plot BB-1 & CC-1, Ansal Gold Link at Sector 114, Mohali; (ii) that the respondent society completed its group housing project in June 2017 and thereafter applied to Chief



Administrator GMADA for Occupation Certificate; (iii) that in response to respondent's letter dated 07.07.2017, GMADA vide its letter dated 08.09.2017 stated that respondent society's request of the Occupation Certificate cannot be processed for want of completion of Ansal's Golf Link-1 or the part completion thereof in which respondent's Group Housing is located; (iv) that thereafter, reminders have been issued to GMADA vide respondent society's letters dated 23.06.2018, 17.11.2018 and 18.12.2018; (v) that since the respondent society had completed the construction, therefore **GMADA allowed the respondent society to handover, occupy and enjoy the possession and occupation of the DUs to the respondent's allottees** and 604 till date have been handed over to the allottees, who have occupied and are enjoying their DUs; (vi) that it is reiterated that GMADA is delaying and denying the Occupation Certificate to the respondent society for no fault of the respondent society, but merely on the technical grounds that since M/s Ansal Properties and Infrastructure Limited has not partly completed its project.

10. However, the respondents have not placed on record the evidence qua which they have been allowed by GMADA to handover, occupy and enjoy the possession and occupation of the DUs to the allottees after the completion of the project.

11. The complainant, in his complaint has also prayed the Authority, as one of the interim reliefs, to appoint a Local Commissioner to visit the site and assess the status of construction as per agreement, completion certificate and occupancy certificate. However, the Adjudicating Officer, in his aforesaid order dated 08.10.2020, has not mentioned any thing about the same, thereby implying that Local Commissioner was not appointed.



12. The Adjudicating Officer has also not used the powers conferred upon the Authority under the provisions of the Act to ascertain as to why GMADA is not issuing requisite completion certificate, partial completion certificate and/or occupation certificate.
13. Hence, I deem it appropriate to remand the case to the Authority which vide its circular dated 06.12.2021 has withdrawn its powers delegated to the Adjudicating Officer.
14. Before parting with this order, I also deem it appropriate to mention here that Annexures A-1 to A-7 (appended by the appellant-complainant to his appeal as its page 22 to 82) appear to be same as the Annexures C-1 to C-7 of the complaint (appended by the appellant-complainant to his appeal as its page 88 to 148). The respondents have also appended another set of all those documents with his Application No. 50 of 2021 filed in the present appeal itself. In my opinion, unless necessity arises to highlight any discrepancy in the copy of a document placed on record by a party as an annexure of a complaint, reply, rejoinder etc, or otherwise, the same should be referred to wherever required instead of placing multiple copies of the same on record. This shall not only avoid wastage of paper, but more importantly shall lead to lesser weight and volume of the case files resulting in ease in handling and storage as well as will avoid wastage of precious time of many persons.

15. The appeal is 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

July 07, 2022

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

