

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

Subject: -

APPEAL NO. 184 of 2022

Rajwinder Singh S/o of Hakam Singh R/o 85, Ram Rajia
Kaloni, Tikriwala Road, Barnala.

...Applicant/Appellant

Versus

- (i) Greater Mohali Area Development Authority, PUDA
Bhawan Sector 62, SAS NAGAR, Through its Chief
Adminsitrator.
- (ii) Estate Officer GMADA, PUDA Bhawan Sector 62, SAS
NAGAR.

....Respondents

Memo No. R.E.A.T./2022/ **563**

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,
SECTOR-18, CHANDIGARH-160018.**

Whereas appeal 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 appeal 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 09th
day of November, 2022.



Shanand Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB,
CHANDIGARH

Appeal No. 184 of 2022

Date of Filing 05/09/2022

Rajwinder Singh Vs. GMADA

Memo of Parties

Rajwinder Singh Son Of Hakam Singh Resident of 85, Ram Rajia Kaloni,
Tikriwala Road, Barnala

...Applicant/ Appellant

AND

- (i) Greater Mohali Area Development Authority, PUDA Bhawan Sector 62,
SAS NAGAR, Through It's Chief Administrator (ce@gmada.gov.in)
- (ii) Estate Officer GMADA , PUDA Bhawan Sector 62, SAS NAGAR
(ce@gmada.gov.in) ..Respondents

Submitted by:



Jagtar Singh Dhaliwal Advocate

Date: 22/09/2022

Enrl. No. P/195/2002

Mobile No.: 83603 80893



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

Appeal No. 184 of 2022

Rajwinder Singh son of Hakam Singh resident of 85, Ram Rajia Kaloni,
Tikriwala Road, Barnala

.....Applicant/Appellant

Versus

- (i) Greater Mohali Area Development Authority, PUDA Bhawan Sector 62, SAS Nagar, through its Chief Administrator (ce@gmada.gov.in)
- (ii) Estate Officer GMADA, PUDA Bhawan Sector 62, SAS Nagar (ce@gmada.gov.in)

.....Respondents

Present: Mr. Jagtar Singh Dhaliwal, Advocate for the appellant

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
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 of above mentioned appeal dated 02/05.09.2022 bearing Appeal No. 184 of 2022 (**Rajwinder Singh versus Greater Mohali Area Development Authority and another**) filed against the order dated 05.04.2022 passed by Sh. Ajay Pal Singh, Member, Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in his complaint bearing AdC No. 16992020 filed on 14.08.2020.
2. Mr. Rajwinder Singh (*the appellant, hereinafter also referred to as the complainant or the allottee*), in his complaint filed on 14.08.2020 in Form 'N' before the Adjudicating Officer of the Authority under section 31 of the Real Estate (Regulation and



Development) Act, 2016 (*hereinafter referred to as the Act*) read with its section 71 and rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*) has claimed/alleged that (i) he applied for a type 2 apartment in the Purab Premium Apartments Scheme of GMADA (*the respondent, hereinafter also referred to as the promoter or developer*) for a total consideration of Rs. 55 lac by depositing 10% earnest money amounting to Rs. 5.5 lac; (ii) that on being successful in draw held on 19.03.2012, letter of intent (LOI) dated 21.05.2012 was issued, allotting apartment No. 363 and an amount of Rs. 11 lac was demanded to complete 30% of the apartment price which was deposited vide receipt dated 20.06.2012; (iii) that as per plan B for payment of remaining price in installments as stipulated in the LOI, he paid an amount of Rs. 8,10,333/- on 21.11.2012 towards the first installment; (iv) that as per terms and conditions of the scheme/brochure and clause 3(II) of the LOI, possession was to be delivered within three years from the date of the LOI i.e. by 20.05.2015; (v) that as the respondents failed to complete the project and deliver the possession, he stopped further payment; (vi) that the respondent No. 2, vide its order dated 26.11.2015, cancelled the allotment without any intimation to the complainant, after publishing public notices in newspapers, without giving opportunity of being heard, even ignoring to serve personal notice and also forfeited 10% amounting to Rs.7,41,227/- and sent cheque dated 05.01.2016 for Rs. 17,19,106/- accompanied with covering letter dated 18.01.2016; (vii) that the respondents' failure to complete the project by the due date i.e. by 20.05.2015 is evident from the fact that the respondents had to register the project with the Authority; (viii) that the complainant is no more



interested in the project and had requested the respondents several times to refund the remaining amount with interest and compensation but the respondents refused to accede to his requests. In view of aforesaid, the appellant in his complaint prayed for refund of the deducted/forfeited amount of Rs. 7,41,227/- with interest and compensation of Rs. 5,00,000/- on account of litigation expenses, transportation charges, harassment and loss of time and money etc., as well as interest on the already refunded amount of Rs. 17,19,106/- for the period of its retention by the respondents under section 18, 31 and 71 of the Act read with rule 37 of the Rules.

3. The respondents, in their reply dated 17.11.2020 to the said complaint, have inter alia submitted that (i) the complainant does not fall within the definition of "allottee" as given under section 2(d) of the Act; (ii) that there is no violation of the provisions of the Act by the respondents; (iii) that as per section 174 of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*), under the provisions of which allotment has been made, orders passed by the State Government or the Competent Authority are final and therefore, the Authority lacks jurisdiction to entertain and adjudicate upon the present complaint; (iv) that the amount already refunded by the respondents on 26.11.2015 as per terms and conditions of allotment has been accepted by the appellant; (v) that the present complaint filed after a period of 5 years is barred by limitation; (vi) that the appellant deposited only first installment and failed to pay the subsequent installments as per schedule and as such allotment of the apartment was liable to be cancelled as per clause 2.3(II) of the LOI; (vii) that the appellant failed to give his option, in



response to public notice given in various newspapers, to deposit balance amount along with interest and penalty by 15.03.2015 and also failed to deposit the price of the apartment as per schedule given in the LOI, hence the LOI was cancelled vide order dated 26.11.2015; (viii) that there is condition in the allotment letter that possession shall not be handed over till all dues are cleared; (ix) that amount of refund has been made as per agreed terms and conditions of allotment; (x) that the respondents have already invested in the construction of the apartments and allotment letters as well as offer of possession letters have already been issued to the successful applicants and the allottees are residing therein. It is worth mentioning here that ending part of paragraph 13 to beginning part of paragraph 16 of the respondents' aforesaid reply between pages 26 and 27 of the paper-book of the appeal are missing. However, the copies of such missing part, which is available at page 82 of the file No. 2 of the original record of this case submitted by the Authority in compliance to our order dated 03.10.2022, have been placed in each of the files of the Chairman and Members of this Tribunal as page 26A between pages 26 and 27 of the paper-book of the appeal.

4. The Authority, after considering the pleadings of the parties, passed order dated 05.04.2022, concluding and operative parts of which reads as under:-



“4. I have perused the oral and written pleadings of both the sides. The brief facts of the matter are that the complainant has booked one residential apartment in the project of respondent No.1, called Purab Premium Apartments, vide letter of intent dated 21.05.2012, for a tentative price of Rs.55,00,000/- and paid an amount of Rs.5,50,000/- as earnest money. As per terms and conditions of LOI, 30% (Rs. 11,00,000/-) of the sale

consideration was to be paid by 22.06.2012 (which he paid on 20.06.2012) and the balance was to be paid as per payment plan-A in lump-sum within sixty days or as per payment plan-B; in six half yearly installments, beginning with the first installment due on 21.11.2012. Apparently, the complainant opted for payment plan B by paying the first installment of Rs.8,10,333/-, on 21.11.2012. Till this point, there is no dispute on the facts of the case. Subsequent, to the above payments, the complainant did not pay further installments. During the course of arguments, Sh. J.S. Dhaliwal, counsel for complainant, argued that the subsequent installment were not paid as the complainant found that the project was not being completed as per plan by the respondent. However, Shri Dhaliwal admitted that there was no such clause in the LOI and there was no correspondence to this effect between the complainant and respondent No.1. Subsequently, Shri Dhaliwal drew attention of this Bench, to the order of the Estate Officer dated 16.11.2015, Annexure A6, cancelling the allotment of the complainant and ordering refund after deducting 10% of the consideration amount and interest and other dues under Section 45(3) of the Punjab Regional and Town Planning and Development Act 1995. Shri Dhaliwal object to the said cancellation order on the ground that the same has been made after issuing public notice in the newspaper and not on the basis of show cause notice to the complainant, even though, the address of the complainant was known to the respondents. It was also pointed out by Shri Dhaliwal that an appeal was filed against the said order of the Estate Officer to the Additional Chief Administrator, GMADA, Mohali. However, the same was withdrawn subsequently. On the other hand, counsel for respondent Shri Bhupinder Singh, submitted that as the order for cancellation has neither been challenged in appeal under the provisions of the Punjab Regional and Town Planning and Development Act 1995 nor before this Authority, the complainant cannot be held to be an allottee within the meaning of Section 2(d) of the Act and was, therefore, not entitled to any refund under Section 18(1) of the Act and in this regard reliance was placed on the order of Maharashtra Real Estate Appellate Tribunal, Mumbai, No.



*AT005000000010847 in in case of appeal complaint No.CC 005000000011109 titled as **Powle Sonali Tushar and another Vs. DSK Worldman Projects Ltd.***

5. On consideration of the submissions of the parties and documents, the only point for consideration arises is whether the complainant is entitled for relief as prayed for in the complaint and the answer to the point is in the negative for the reasons discussed hereinafter.

(a) Perusal of clause 2.3(11) of LOI reads as flows:-

"delay in payment of installments shall result in cancellation of the allotment. However, on request establishing genuine grounds, delay upto 12 months can be condoned by the Estate Officer, by charging 18% interest for the period of delay. Delay beyond 12 months shall not be condoned under any circumstance and shall result in cancellation of allotment and refund of the amounts paid, after forfeiture of 10% of the amount. Possession shall not be handed over till all dues are cleared."

As mentioned supra, the last installment paid by the complainant was on 21.11.2012 and next installment was due on 21.05.2013, as per plan-B mentioned in clause 2.2 of the LOI. Between 21.11.2012, to the date of cancellation on 26.11.2015, no installment was paid by the complainant, apparently on the ground that work in progress at the site was not to his satisfaction. Payment Plan B is not a construction linked plan and therefore, the progress of the project cannot be a material consideration for non-payment of any installment. Therefore, on merits, no fault can be found in the cancellation order of the respondent No.2.

(b) As mentioned supra, the allotment of the complainant was cancelled 26.11.2015. Subsequent to the cancellation, the complainant appears to have filed an appeal as



per Annexure A8 but, claims to have withdrawn the same. In other words, there has been no challenge to the cancellation of the allotment. In terms of Section 18(1) of the Act, only an allottee who wishes to withdraw from the project, due to discontinuance of business or due to failure to give possession as per the terms of the agreement for sale, is entitled to refund. The definition of an allottee has been given in Section 2(d) of the Act as follows:

“allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

As the said allotment was cancelled prior to coming into effect of the Act on 01.05.2017, the complainant was not an allottee on that particular date. Hence, the complainant is not entitled to any relief under Section 18(1) of the Act.

6. Keeping in view the above discussion and reasons, this complaint is without any merit and the same is hereby dismissed. A copy of this order be supplied to both the parties free of costs under rules and file be consigned to record room.”



5. Aggrieved by the above said order dated 05.04.2022 of the Authority, the appellant has filed appeal dated 02.09.2022 (diary dated 05.09.2022), bearing Appeal No. 184 of 2022, before this Tribunal and prayed (i) to set aside the impugned order dated 05.04.2022; (ii) to allow refund of the deducted/forfeited amount of Rs. 7,41,227/- with interest; and (iii) to allow interest on the

already refunded amount of Rs. 17,19,106/- for the period of its retention by the respondents.

6. The appellant has also filed, along with his aforesaid appeal, an application bearing Application No. 264 of 2022 for condoning a delay of 72 days in filing the said appeal caused due to appellants pre-occupation in his official work/duty; and has also filed another application bearing Application No. 265 of 2022 for additional evidence viz letter letter No. 1050 dated 18.01.2022 and has inter alia stated therein that (i) vide aforesaid letter dated 18.01.2022, his appeal Annexure A8 was withdrawn; (ii) that withdrawal letter could not be produced in the complaint evidence as the respondent intentionally withheld it despite written application for withdrawal of appeal.
7. The appellant has inter alia contended in the grounds of the appeal (i) that cancellation order was passed on 26.11.2015 after more than six months from the date of completion and delivery of possession i.e. 21.05.2015; (ii) that no completion certificate issued by the competent authority or offer of possession letter was produced on record by the respondents; (iii) that the respondents were under the condition of default as stated under clause 9.1 of Form 'Q' (*the prescribed 'agreement of sale' in terms of section 13(2) of the Act read with rule 8(1) of the Rules*) appended to the Rules.
8. As observed by us on 03.10.2022, there is no mention in the complaint dated 14.08.2020 about the appeal against the order of cancellation. However, critical perusal of the impugned order dated 05.04.2022 reveals that the complaint appeared to have filed an appeal as per Annexure A8 of the complaint but claimed to have




withdrawn the same. "Appeal to Res. No 1" is shown to appended as Annexure A8 only in the list of enclosures in the complaint. The appellant has declared in his aforesaid complaint that the matter regarding which his complaint has been made is not pending before any court of law or any other authority or any other tribunal(s) and has not been decided by any court of law or any other authority or any other tribunal(s).

9. In the facts of the case as mentioned in the present appeal, the appellant has claimed to have filed appeal Annexure A8 against the respondents' order dated 26.11.2015 which was withdrawn vide order dated 18.01.2022 as complainant decided to withdraw from the project due to non-completion and poor quality of development works being carried out by the respondents.
10. Perusal of Annexure A8 reveals that it is an appeal dated 18.01.2016 of the appellant before the Additional Chief Administrator, GMADA, Mohali, wherein the appellant has inter alia stated that (i) due to financial difficulty and house hold conditions the appellant could not pay some of the installments; (ii) that as the said conditions improved, he had written some letter dated 19.11.2015 for payment to the Estate Officer, GMADA to know the due amount of the flat; (iii) that in response to his above mentioned letter (*not placed on record before us*), aforesaid order dated 26.11.2015 for cancellation of LOI and forfeiture of 10% was issued. It has been prayed in the aforesaid appeal dated 18.01.2016 to set aside the said order and to accept application of the appellant for payment of due amount.
11. Perusal of the letter No. GMADA-ACA(G)/2022/1050 dated 18.01.2022 issued by the Additional Chief Administrator,



GMADA, certified copy of which has been placed on record by the appellant before us vide his application dated 22/26.10.2022 bearing Application No. 290 of 2022, reveals that some appeal of the appellant has been dismissed as withdrawn in view of some application of the appellant (*not placed on record before us*).

12. Thus, the appellant has been pursuing his appeal dated 18.01.2016 till 18.01.2022 before an authority of the respondents to set aside aforesaid order dated 26.11.2015 and to accept some application of the appellant to accept the payment of due amount; however on 14.08.2020 also filed a complaint before the Authority praying for a different remedy namely refund of the deducted/forfeited amount, interest on thereon as well as on already refunded amount and compensation.
13. Hence, the appellant has been pursuing dual proceedings in respect of the same matter for the period 14.08.2020 to 18.01.2022. He did not candidly disclose the pendency of his appeal dated 16.01.2018 (Annexure A8) in his complaint; rather preferred to conceal the same by not expressly mentioning any thing about it in his complaint dated 14.08.2020 and by making false declaration that the matter is not pending before any other authority.
14. As per clause 2.2(I) of the LOI dated 21.05.2012, under PLAN-B for payment of 65% of the tentative price, the same should have been paid with @ 12% interest in 6 half-yearly installments from the date of issue of LOI, out of which the appellant has claimed to have paid only first installment, as under:-



Installments due as per clause 2(I) under PLAN B of the LOI					Payment made	
No.	Principal	Interest	Total	Due Date	Date	Amount
1 st	5,95,833	2,14,500	8,10,333	21.11.2012	21.11.2012	8,10,333
2 nd	5,95,833	1,78,750	7,74,583	21.05.2013		
3 rd	5,95,833	1,43,000	7,38,833	21.11.2013		
4 th	5,95,833	1,07,250	7,03,083	21.05.2014		
5 th	5,95,833	71,500	6,67,333	21.11.2014		
6 th	5,95,835	35,750	6,31,585	21.05.2015		
Total	35,75,000	7,50,750	43,25,750			8,10,333

15. It is worth mentioning here that neither the receipt of aforesaid amount of Rs. 8,10,333/-, claimed by the appellant to have been paid on 21.12.2012, has been acknowledged in respondents' aforesaid order dated 26.11.2015 (Annexure A-6) nor the customer's copy for deposit of the amount in the bank (Annexure A5) bears stamp of the bank, like the one on such copy for deposit of Rs. 11,00,000/- on 20.06.2012 (Annexure A4). However, vide respondents' letter dated 18.01.2016 (Annexure A7), cheque dated 05.01.2016 for Rs. 17,19,106/- has been sent to the appellant on account of refund as per some sanction dated 23.12.2015 (*not placed on record before us*).
16. As per clause 2.3(I) of the LOI, the balance 5% amounting to Rs. 2,75,000/- was payable at the time of possession. As per its clause 2.3(II), possession was not to be handed over till all dues were cleared; and delay in payments beyond 12 months was to result in cancellation of allotment and refund of the amounts paid, after forfeiture of 10% of the amount.
17. As per clause 3(II) of the LOI dated 21.05.2012, possession of the apartment was to be handed over after completion of development works at site in a period of 36 months from the date of issuance of the LOI i.e. by 21.05.2015.
18. As per clause 5(I) of the LOI, the allotment was to be governed by the provisions of the PRTPD Act, rules and regulations framed there-under; and as per clause 5(VII) of the LOI, in case of breach of any condition(s) of allotment or of regulations or non-payment of any amount due together with the penalty, the apartment was liable to be resumed and in that case an amount not exceeding 10% of the total amount of consideration money, interest and other fees



payable in respect of the apartment were to be forfeited as per provisions of section 45(3) of the PRTPD Act.

19. Thus, the appellant was at fault much before the due date of possession for not paying at least second to sixth installments due on 21.05.2013 to 21.05.2015 as detailed above.
20. As mentioned in the impugned order dated 05.04.2022, during the course of arguments before the Authority, the counsel for the complainant argued that second and subsequent installments were not paid as the complainant found that the project was not being completed as per plan by the respondent. However, he had admitted before the Authority that there was no such clause in the LOI and there was no correspondence to this effect between the complainant and the respondent No.1.
21. As per section 11(5) of the Act, which came into force with effect from 01.05.2017, the promoter may cancel the allotment only in terms of the agreement for sale, provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancelation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.
22. Even as per clause 9.3 of the said Form 'Q' (*the prescribed 'agreement of sale' in terms of section 13(2) of the Act read with rule 8(1) of the Rules*), in case of default by the allottee in making payments continues for a period beyond certain months as specified in the agreement after notice from the promoter in this regard, the promoter shall cancel the allotment of the apartment/plot in favour of the allottee and refund the amount of money paid to the promoter by the allottee by deducting the



booking amount and the interest liabilities and the agreement shall thereupon stand terminated.

23. In view of above, we are not inclined to interfere in the order dated 05.04.2022 of the Authority in the appellant's complaint bearing AdC No. 16992020.
24. Hence, the present appeal is hereby dismissed. File be consigned to record room after filing a copy of this order in the file of this appeal and sending a copy to each of 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

October 27, 2022



Certified To Be True Copy
Manoj Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
09/11/2022