

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

Subject: -

**APPEAL NO. 99 OF 2022**

Madan Lal Chaudhary, R/o village Barai, Near Baroh Road,  
P.O sunehar, District Kangra, Himachal Pradesh (176056).

...Appellant

Versus

1. Real Estate Regulatory Authority, Punjab through: its Secretary, 1<sup>st</sup> Floor, Block B, Plot No. 3, Madhya Marg, Sector-18, Chandigarh (160018).
2. OM Divine Developers & Infrastructure Pvt. Ltd. through its Director/Partner/Authorized Representative, NH-4, Sector-115, Kharar-Landran Road, Sahibzada Ajit Singh Nagar Mohali (Punjab).

....Respondents

Memo No. R.E.A.T./2022/579

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup>  
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 23<sup>rd</sup>  
day of November, 2022.

*Manoj Kumar*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

For use of Appellate Tribunal's office:

Date of filing: 24/05/22/350

Date of [receipt at the filing counter of the Registry/ receipt by post/ online filing]:

Appeal No.: 99 of 2022

Signature: [Signature]

Registrar: [Signature]

**IN THE REAL ESTATE APPELLATE TRIBUNAL AT CHANDIGARH**

**APPEAL NO. 99 OF 2022**

IN THE MATTER OF:

**MADAN LAL CHAUDHRY**

**... Appellant**

**AND**

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB & ORS.**

...

**Respondents**

**APPEAL UNDER SECTION 44 OF THE REAL ESTATE  
(REGULATION AND DEVELOPMENT) ACT, 2016 READ  
WITH RULE 26 OF THE PUNJAB REAL ESTATE  
(REGULATION AND DEVELOPMENT) RULES, 2017  
AGAINST THE ORDER DATED 25.03.2022 AS PASSED IN  
ADC NO. 0226 OF 2021 BY THE REAL ESTATE  
REGULATORY AUTHORITY, PUNJAB**

**MOST RESPECTFULLY SHOWETH:**

**1. PARTICULARS OF THE APPELLANT:**

- (I) **Name of Appellant :** Madan Lal Choudhary
- (II) **Address of the Appellant:** Resident of Village Barai, Near Baroh Road, P.O Sunehar , District Kangra, Himachal Pradesh -176056.
- (III) **Address for service of all notices:** Ace Legal Solutions,SCO-89-90-91, First Floor, Sector-17-D, Chandigarh-160017.
- (IV) **Registered Mobile Number (RMN):** 9816472749,9815468786
- (IV) **Registered Email ID (RMID):** advsartajkhan@gmail.com

**2. PARTICULARS OF THE RESPONDENTS:**

**RESPONDENTS**



- (I) **Name of the Respondent No-1:** Real Estate Regulatory Authority Punjab through its Secretary.
- (II) **Address of the residence of the Respondent:** 1<sup>st</sup> Floor, Block B, Plot No. 3, Madhya Marg, Sector-18, Chandigarh-160018
- (III) **Address for service of all notices:** 1<sup>st</sup> Floor, Block B, Plot No. 3, Madhya Marg, Sector-18, Chandigarh-160018
- (IV) **Name of the Respondent No-2:** OM Divine Developers & Infrastructures Pvt Ltd Through its Director/ Partner/ Authorised Representative.
- (V) **Address of the Respondent :** Nh-4, Sector 115, Kharar Landran Road, Sahibzada Ajit Singh Nagar Mohali, Punjab.
- (VI) **Address for service of all notices :** Nh-4, Sector 115, Kharar Landran Road, Sahibzada Ajit Singh Nagar Mohali, Punjab.
- (VII) **Registered Email ID (RMID):** info@omdivineworld.com
- (VIII) **Registered Mobile Number(RMN):** 9646060304
- (IX) **Location of the Real Estate project to which the complaint relates:**  
"Divine World" at village Khunimajra and Santemajra sector 115 , Tehsil Kharar , District S.A.S Nagar , Mohali.
- (X) **Registration number of the project granted by RERA, Punjab :** PBRERA-SAS80-PRO248

### 3. JURISDICTION OF THE APPELLATE TRIBUNAL:

The Appellant is challenging order dated 25.03.2022 passed by the Punjab Real Estate Regulatory Authority under section 44(1) of the Act, 2016 and further declares that the subject matter of the appeal falls within the jurisdiction of the Appellate Tribunal.

### 4. LIMITATION:

The Appellant declares that the appeal is being filed well within the limitation period prescribed under Section 44(2) of the Act, 2016.

### 5. FACTS OF THE CASE:



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

---

**APPEAL NO. 99 OF 2022**

Madan Lal Chaudhary, R/o village Barai, Near Baroh Road,  
P.O sunchar, District Kangra, Himachal Pradesh (176056).

...Appellant

Versus

1. Real Estate Regulatory Authority, Punjab through its Secretary, 1<sup>st</sup> Floor, Block B, Plot No. 3, Madhya Marg, Sector-18, Chandigarh (160018).
2. OM Divine Developers & Infrastructure Pvt. Ltd. through its Director/Partner/Authorized Representative, NH-4, Sector-115, Kharar-Landran Road, Sahibzada Ajit Singh Nagar Mohali (Punjab).

....Respondents

\*\*\*

Present: Mr. Mohammad Sartaj Khan, Advocate for the appellant.  
Mr. Jaspal Singh Khara, Assistant Legal Manager, RERA, Punjab (respondent no. 1).  
None for respondent No. 2

**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)**

## APPEAL NO. 99 OF 2022

2

1. This appeal is against the order dated 25.03.2022 passed by the Real Estate Regulatory Authority (hereinafter known as the Authority) vide which the complaint of the appellant seeking refund in terms of Section 18 of the Act was dismissed as being premature.
2. While declining interference as above the Authority noticed in Para 8 (IV) of its order that the date of agreement is 17.07.2019 and a reasonable period of 3 years is generally provided for construction of Group Housing/Independent Floors. On this premise the Authority held the promoter entitled to a benefit of 3 years for handing over the possession from the date of signing of the agreement. In this way the date of handing over possession was taken as 16.07.2022 and since the complaint was filed prior in time to it i.e. on 07.10.2021 it was dismissed as premature.
3. Learned counsel for the appellant while questioning the above reasoning of the Authority referred to Annexure A5, an order passed by the same Member of the Authority while considering a similar agreement pertaining to the same project wherein while allowing the complaint of the complainant, a refund as per Section 18 (1) of the Act was ordered with a direction that compliance be made within 90 days of the order. Statutory interest as envisaged in the Act was also granted.
4. It is thus contended that apart from the fact that the order of the Authority is arbitrary, if para 8(IV) is seen, there is no justification in allowing a complaint in similar



circumstances while declining interference in the case of the appellant as such a course is discriminatory.

5. Learned counsel appearing for the Authority could not advance any justification for a dissimilar treatment offered to two set of persons placed in similar circumstances.
6. After hearing the learned counsels for the parties we are of the opinion that the reasoning adopted by the Authority in the impugned order and referred in para 8(IV) is sans any justification and without rationale. Providing a period of 3 years for handing over possession from the date of agreement is not envisaged anywhere in the agreement and the Authority could not have simply conjured up this timeline of 3 years as the date of handing over the possession to decline interference in the complaint by terming it as premature, without doing injustice to the complainant which is further compounded by the fact that in similar circumstances while dealing with the complaint of one **Brijinder Pal Kaur Versus M/s OM Divine Developers and Infrastructure Pvt. Ltd.** who had a similar agreement pertaining to the same project the complaint was accepted to grant the necessary relief under Section 18(1) of the Act.
7. Looking at it from any angle the order of the Authority is unsustainable in the eyes of Law. The Authority could not have passed orders which are in essence dichotomous to afford different reliefs to two set of persons identically placed and define the period of handing over possession on its own, when there is no material to support it.



8. An order passed by a quasi judicial Authority has to be based on sound reasoning that can withstand judicial scrutiny. Since we find the order arbitrary, we set it aside and remit the matter back to the Authority for reconsideration.
9. We are also at pains to note that the agreement executed by the promoter with the appellant is not in accordance with the statutory requirements and it was for the Authority to have taken cognizance of this fact, to proceed against such a violation by the promoter in accordance with law.
10. Since the appellant is already in litigation for a considerable time by now the Authority shall decide the matter within 3 months from the date of receipt of the copy of this order. Parties shall appear before the Authority on 05.12.2022.

File be consigned to the record room.

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

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

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

**November 10, 2022**  
**DS**

**Certified To Be True Copy**  
*Shanend Kumar*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

23/11/2022

