

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

Subject: -

**APPEAL NO. 93 OF 2021**

1. Hitesh Thakur S/o Sh. Verender Singh.
2. Verender Singh S/o Sh. Ganga Ram.

Both R/o Village Natli, P.O Kandraur, Tehsil Ghumarwin,  
Bilaspur, Himachal Pradesh-174004.

...Appellants

Versus

M/s Manohar Infrastructure & Constructions Private Limited  
through its Managing Director, Registered Office at SCO 13-  
141, Sector 17 C, Chandigarh-160017.

....Respondent

Memo No. R.E.A.T./2023/ 162

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 11<sup>th</sup>  
day of April, 2023.

*Shamset Khan*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

Appeal No. 93 of 2021  
In GC No. 1483 of 2019

**MEMO OF PARTIES**

1. Hitesh Thakur son of Sh. Verender Singh
2. Verender Singh son of Sh. Ganga Ram

Both residents of Village Natli, P.O. Kandraur, Tehsil Ghumarwin,  
Bilaspur, Himachal Pradesh-174004. Mobile Number- 8219018035,  
Email- hiteshthakur5215@gmail.com

...Appellants/Complainants

Versus

M/s Manohar Infrastructure & Constructions Private Limited through  
its Managing Director, registered office at SCO 139-141, Sector-17C,  
Chandigarh-160017. ...Respondent



Chandigarh

Dated: 14.09.2021

*Sanjeev Gupta*  
*Ripudaman Singh*  
SANJEEV GUPTA & RIPUDAMAN SINGH  
ADVOCATE  
COUNSEL FOR THE APPELLANTS

(9)

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

---

**APPEAL NO. 93 OF 2021**

1. Hitesh Thakur S/o Sh. Verender Singh.
2. Verender Singh S/o Sh. Ganga Ram.

Both R/o Village Natli, P.O Kandraur, Tehsil Ghumarwin,  
Bilaspur, Himachal Pradesh-174004.

...Appellants

Versus

M/s Manohar Infrastructure & Constructions Private Limited  
through its Managing Director, Registered Office at SCO 13-  
141, Sector 17-C, Chandigarh-160017.

....Respondent

\*\*\*

**Present:** - Mr. Sanjeev Gupta, Advocate for the appellants.  
Mr. Dinesh Madra and Mr. Manmohan Sharma,  
Advocates, for the respondent.



**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)**

**(ORAL)**

## Appeal No. 93 of 2021

2

1. This appeal is directed against the order dated 04.06.2021 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. The grievances of the appellant as set out in the complaint though multi-dimensional do not survive any longer, as they have been broadly settled vide the impugned order:
  - i. Plot No. 743/E measuring 233.33 sq. yards was applied for, and an agreement executed qua it.
  - ii. The total sale consideration was about Rs.42,44,973/- out of which the appellant had paid in all Rs.37,61,000/- (approx) till, and after, the agreement was executed.
3. Concededly, the possession of the plot has not materialized so far.
4. The Authority while disposing of the complaint had in Para 6 granted the relief in the following terms:-
  - "6. In view of the above, the complaint is partly accepted and following is ordered:-
    - i. The respondent shall pay interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) for the delay in handing over possession of the plot w.e.f. 22.09.2020 till valid offer of possession is made. The interest shall be paid/adjusted at the time of valid offer of possession.
    - ii. The complainant(s) shall be liable to pay interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) in respect of the balance amount of BSP and PLC charges as per buyer's agreement



## Appeal No. 93 of 2021

3

*w.e.f. 10.10.2019 till the date of making the payment.”*

Although, the appellant made some efforts to stave off his own liability for delayed payments and the consequences of interest liability fastened upon him by the Authority, but during the course of hearing he could not effectively substantiate such a grievance to our satisfaction. This issue was thus not pressed any further. Upon perusal of the issues raised in the complaint and after hearing the arguments of the parties before us, we cannot, but say that the impugned order of the Authority is fair and conclusions have been recorded by taking into consideration the interest of both the parties and balancing them equitably.

5. There would thus be no occasion for us to interfere with the order but the appeal has to be disposed of now keeping in view the fact that more than 1 ½ year has elapsed since passing of the impugned order, which has created a situation where the equities have to be balanced afresh. There is substance in the grievance of the appellant that the plot initially offered to him and qua which the agreement was also executed is of a bigger dimension i.e. 233.33 sq. yards whereas the one now being offered is of 217 sq. yards. That is approximately 16 yards less than what was agreed upon. The respondent obviously cannot insist on charging the



Appeal No. 93 of 2021

with interest. <sup>4</sup> However, this liability of the appellant for this deficit area. Therefore, price would have to be refixed and pegged down to only 217 sq. yards. The remaining amount would have to be settled/adjusted towards monetary liabilities flowing from the impugned order. This area shall also be adjusted by the parties.

6. The appeal is thus disposed of in the following terms. The appellant is bound to the payment of the balance amount along with interest. However, this liability of the appellant can be adjusted by the respondent while calculating the interest component due from him on account of delayed possession. Likewise, the difference of principle amount, be calculated after taking into account the deficit area shall also be adjusted in the payments to be mutually made by the parties.
7. The respondent has stated that they would be in a position to hand over the plot to the appellant in about 8 to 9 months of time. This offer is acceptable to the appellant.



8. We therefore grant the respondent time till 31.12.2023 to hand over the possession of the plot to the appellant and till that time the interest component for delayed possession shall continue to run as per the orders passed by the Authority and affirmed by us. Needless to say, the

Appeal No. 93 of 2021

5

adjustments so ordered by us shall also be taken into account as the time when such payments are made.

File be consigned to the record room.



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

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

*My view is appended on the subsequent page No. 570/30.*

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

**March 27, 2023**  
**AG**

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

*11/04/2023*

**Appeal No. 93 of 2021**

6

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

**APPEAL NO. 93 OF 2021**

1. **Hitesh Thakur** S/o Sh. Verender Singh,
2. Verender Singh S/o Sh. Ganga Ram,  
Both R/o Village Natli, P.O Kandraur, Tehsil Ghumarwin,  
Bilaspur, Himachal Pradesh-174004.

.....Appellants

Versus

**Manohar Infrastructure & Constructions Private Limited** through  
its Managing Director, Registered Office at SCO 139-141, Sector 17 C,  
Chandigarh-160017.

..... Respondent

**Present:** Mr. Sanjeev Gupta, Advocate for the decree  
holders/appellants  
Mr. Dinesh Madra and Mr. Manmohan Sharma, Advocates  
for the judgment debtor/respondent

**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: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER  
(RETD.), MEMBER (ADMN./TECH.), HIS VIEW)**

1. In the interim order dated 05.01.2023 passed by me in the present appeal bearing Appeal No. 93 of 2021, I have mentioned the detailed facts of the case based on the material placed before this Tribunal, the relevant ones of which are being reiterated hereinafter.





Appeal No. 93 of 2021

7

2. The complainants, in their complaint dated 14.09.2020, have inter alia prayed for the reliefs of (i) payment of interest @ prescribed under Rule 16, for the period from 21.09.2019 till the date of handing over possession of plot No. 743E after obtaining the completion certificate; (ii) penalizing the respondent under sections 61 of the Act for violating the provisions section 13 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 8 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).
3. The respondent, in its reply dated 23.02.2021 to the complaint, has inter alia submitted that (i) the complainants were regularly committing default in payments as per schedule contained in the agreement; (ii) that the respondent is ready to handover the possession of the plot; (iii) that the development of the projects all over India was affected due to covid-19 and as per notification of the Govt., the extension is being granted to the projects till 31.12.2022 and the respondent is also seeking the extension of its project; (iv) that the respondent has never refused to hand over the possession of plot No. 743E, which got delayed due to Covid-19 and the same will be delivered by 30.09.2021 and the completion certificate will be obtained in due course.
4. The complainants, in their rejoinder dated 08.04.2021, have inter alia contended that (i) the respondent has no right to accept any amount from the complainants without getting the layout plan approved and as, in spite of no approved layout plan, the respondent has collected more than 80% of sale consideration (*more than 86% as the actual size of the plot is 217 square yards as mentioned in the revised layout plan dated 10.10.2019 is instead*



Appeal No. 93 of 2021

8

of 233.33 square yards as mentioned in the agreement dated 22.09.2017); (ii) that accordingly the respondent did not demand any further installments; (iii) that the complainant had already got a loan of Rs. 20 lakh approved out of which an amount of Rs. 10,09,000/- has already been paid to the respondent; (iv) that the remaining installments would have been paid by the bank on raising the demand by the respondent; (v) that the said plot was not there in the layout plan for the project approved on 06.10.2015 but the same was there in the one revised on 10.10.2019.

5. The Authority, vide its aforesaid order dated 04.06.2021, concluded and decided the complaint as under:-

*"5. Based on the submissions and the pleadings, we are of the following view:-*

- i. No doubt, plot No. 743/E was not part of the layout plan approved on 06.10.2015 and offer of sale in respect of the same could not have been made while executing the plot buyers agreement on 22.09.2017. However, as already admitted by the complainant(s) the same has been got approved in the revised layout plan dated 10.10.2019. Since, the possession of the plot has still not been offered, no loss has accrued to the complainant(s) as the respondent is undertaking to offer possession of the plot, which is now duly approved, by 30.09.2021, for which he is liable to pay interest for the period of delay.*
- ii. The possession of the plot was to be handed over till 22.09.2020 after grant of 6 months extension due to force majeure on account of COVID-19. Thus, there is delay in handing over possession.*
- iii. Since the plot in question was approved in the revised layout plan dated 10.10.2019, liability if any in regards to delayed*



**Appeal No. 93 of 2021**

9

payments by the complainant(s) shall also arise only from the date of approval of the revised layout plan. Accordingly, the complainant(s) cannot be held responsible for any delay in making payments till the date the respondent did not get approval of the said plot.

- iv. The complainant(s) have failed to make timely payment of the installments as per the agreed upon payment schedule. He was required to make payment of 90% of BSP alongwith 100% of PLC on or before June, 2017, as mentioned in the agreement executed on 20.09.2017. As already held above, the complainant(s) were entitled to hold back the pending payments till 10.10.2019 i.e. the date on which the revised layout plan was approved. Therefore, the complainant(s) shall be liable for payment of interest, for delay, if any, in making payment of pending installments w.e.f. 10.10.2019 and not June, 2017.
- v. A perusal of Schedule II of the buyers agreement reveals that a payment schedule was duly signed by the complainant(s) on 22<sup>nd</sup> September, 2017 itself alongwith the buyers agreement in which a detailed schedule of payments was specified and further the total amount of BSP paid till that date was also mentioned. Hence, the complainant(s) were fully aware of his liability towards the pending amount of BSP and PLC Charges which he did not clear in time, thus making him liable for interest for delay in making timely payments as provided U/s. 19(6) of the Act. He cannot now hide behind the argument that he did not make the payments as the respondent never made any demand.

6. In view of the above, the complaint is partly accepted and following is ordered:-



**Appeal No. 93 of 2021**

**10**

- i. The respondent shall pay interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) for the delay in handing over possession of the plot w.e.f. 22.09.2020 till valid offer of possession is made. The interest shall be paid/adjusted at the time of valid offer of possession.*
  - ii. The complainant(s) shall be liable to pay interest @ 9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) in respect of the balance amount of BSP and PLC charges as per buyer's agreement w.e.f. 10.10.2019 till the date of making the payment."*
6. Aggrieved by the aforementioned order dated 04.06.2021 of the Authority, the appellants have filed their appeal dated 14.09.2021 against the same, wherein it has additionally been contended that (i) as per the revised layout plan dated 10.10.2019, the size of the said plot No. 743E has been mentioned as 217 square yards; (ii) that the fact of reduction of size of the plot was never informed by the respondent to the appellants; (iii) that in fact no preferential location charges are payable as ordered by the Authority; (iv) that the Authority ought to have granted the interest w.e.f. 21.09.2019 (i.e. on expiry of the stipulated period of 24 months as per the agreement dated 22.09.2017) instead of w.e.f. 22.09.2020; (v) that the Authority should have directed the respondent to pay interest within 2 months instead of ordering that the interest would be paid/adjusted at the time of valid offer of possession; (vi) that the interest on the balance BSP is not payable by the complainants since the appellants had paid an amount of Rs. 34,11,000/- (more than 86% of the sale consideration for the plot of size 217 square yards as mentioned in the revised layout plan dated 10.10.2019) by

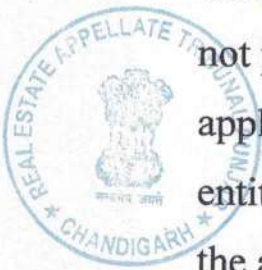


**Appeal No. 93 of 2021**

**11**

23.10.2017; (viii) that the appellants have paid an additional amount of Rs. 3,50,000/- vide cheque dated 02.08.2021.

7. The appellants, in their appeal, have prayed for the reliefs of inter alia (i) payment of interest to the appellant for delay in delivery of possession w.e.f. 21.09.2019 up to the date of actual physical possession; (ii) payment of interest due till the date of passing of the order on 04.06.2021 instead of adjusting the same at the time of possession; (iii) not to charge any interest on the amount of Rs. 3,50,000/-; (iv) not to charge any other amount from the appellants as the agreed rate of Rs. 18,193/- is inclusive of external and internal development charges; (v) not to charge PLC; (vi) penalizing the respondents under section 61 of the Act for violation of the provisions section 13 of the Act and the provisions of Rule 8 of the Rules.
8. It is noticed that as per clause 4.2 of the agreement dated 22.09.2017, the respondent is entitled for applying and obtaining the occupation/completion certificate. However, the respondent has not placed on record any material on record to show they have ever applied for any completion certificate. Therefore, they are not entitled to any grace period of 6 months in terms of clause 4.1 of the agreement dated 22.09.2017 for offering the possession.
9. Under the above circumstances pertaining to this case, in my opinion the order of the Authority is liable to be modified to the following extent:-
  - (i) No benefit of the COVID-19 can be given to a party at the cost of the rights of the other party as already held by me as my minority view dated 01.09.2022 in Appeal No. 10 of 2022 (**TDI Infratech Ltd. versus Monika Sharma and**



**Appeal No. 93 of 2021**

**12**

**another**) and thus promised date of possession within 24 months of the date of allotment in terms of clause 4.1 of the agreement dated 22.09.2017 works out to be by 22.09.2019.

- (ii) Even if the benefit of the grace period of 6 months in terms of the said clause 4.1 of the agreement would have been liable to be given to the respondent, despite the fact that a valid offer of possession of the said plot has not been made even till date, the similar benefit should also be given to appellants for not making further payments, even after 10.10.2019 (the date of approval of the revised layout plan), of just remaining about 9% of the cost of the plot of actual size of 217 square yards before the offer of possession. The appellants have also claimed to have made payment of an amount of Rs. 3,50,000/- vide cheque dated 02.08.2021. However, valid offer of possession of the plot is yet to be made by the respondent.

The stipulation in the payment schedule of the agreement dated 22.09.2017, requiring the allottee to make payment of 95% of BSP alongwith 100% of PLC on or before June, 2017 i.e. even before the execution of the agreement on 22.09.2017 and even when it is unambiguously mentioned in Schedule II of the said agreement dated 22.09.2017 that preferential location charges (PLC) are not applicable for the plot in question, is arbitrary. The due dates of the payments, subsequent to the payment of booking/earnest money amount (which can not be more than 10% of the price of the plot as per provisions of section 13(1) of the Act), have to be after the date of the agreement. This also constitutes one of the contradictions in the said agreement dated 22.09.2017 which



**Appeal No. 93 of 2021**

**13**

is not executed by the respondent in the format prescribed in the Rules in terms of the provisions of section 13(2) of the Act read with Rule 8(1) of the Rules. The respondent can not be rewarded on the strength of such a contradicting stipulation made in the said agreement dated 22.09.2017. Thus, the complainants have the right to stop making further payments to the promoter in terms of the clauses 9.1(i) and 9.2 of the Form 'Q' appended to the Rules as the prescribed format of the agreement for sale in terms of section 13(2) of the Act read with Rule 8(1) of the Rules, without any penal interest, till making a valid offer of possession.

(iii) No preferential location charges (PLC) are applicable for the plot in question as per Schedule II of the Plot Buyer's Agreement dated 22.09.2017.

(iv) The respondent is liable to pay interest to the appellants till the date of this order within 2 months from today, after adjusting the amount payable by the appellants towards the remaining price of the plot and is liable to continue to pay such interest every month from the date of this order till handing over of the possession after valid offer.



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

*March 27th*  
*3ay* ~~January 5th~~, 2023

Certified To Be True Copy

Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

11/04/2023.