

***BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A, MADHYA MARG,
CHANDIGARH.***

Complaint No.AdC 0160/2021UR

Dated of Decision: 07.02.2022

1. Bhupender Pal Singh Dhillon son of Mr. M.S.Dhillon, resident of Flat No.15 B, City Central Apartment, near Phatak No.22 Patiala.
2. Navjot Kaur wife of Bhupender Pal Singh Dhillon, resident of Flat No.15 B, City Central Apartment, near Phatak No.22 Patiala

...Complainants

Versus

Punjab Urban Planning & Development Authority, PUDA Complex,
Urban Estate, Master Tara Singh Urban Estate, Patiala.

.....Respondents

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri Munish Gupta, Advocate representative for the complainants.
Shri Bhupinder Singh, Advocate, representative for respondents.

ORDER

1. The present complaint was filed by Mr. Bhupender Pal Singh Dhillon and Ms. Navjot Kaur against Punjab Urban Planning & Development Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") alongwith documents alleging violation of provisions of the Act seeking compensation.

2. The complainants filed a composite complaint for seeking the relief of refund, interest and compensation etc. Vide order dated 06.01.2022, the present complaint was ordered to be segregated and one set of paper-book was ordered



to be sent before Hon'ble Regulatory Authority regarding the claim of refund and interest sought by the complainant and qua relief of compensation case is before this Bench.

3. The case is pending for filing additional document and it has been brought to the notice that the present complaint pertains to the unregistered project namely 'Fountain Chowk, Mall Road, Patiala. Thus, the question that arises for determination in the complaint before proceeding further is as under:-

“Whether after the judgment of the Hon'ble Supreme Court of India in the case of **Civil Appeal No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** alongwith connected appeals decided on 11.11.2021, complaints filed under Section 31 of the Act in relations to the projects that are not registered with the RERA Authority would be maintainable or not ?”

4. It would not be out of place to mention here brief background of the issue. Earlier Full Bench of the RERA Authority in its judgment titled **Bikramjit Singh and others Vs. State of Punjab and others**”(Complaint No.3 of 2017) decided on 13.12.2017 held that the complaints filed in relation to the projects that were not registered with the Authority would not be maintainable. However, the said decision was set aside by the Real Estate Appellate Tribunal, Punjab (hereinafter referred to as “the Tribunal”) in appeal titled **M/s Silver City Construction Ltd. Vs. State of Punjab and others (Appeal No.49 of 2018)** decided on 24.7.2019 and it was held that the complaints were maintainable under Section 31 of the Act against all real estate projects whether registered or not. This decision of the Tribunal was being followed till now when the decision of the Hon'ble Apex Court in **M/s Newtech Promoters case (supra)** was pronounced which has necessitated for



deciding the maintainability of the complaints filed in relation to the unregistered projects, at this stage.

5. The Hon'ble Apex Court in judgment **M/s Newtech Promoters case (supra)** was pleased to formulate following five questions for consideration

1. Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?

2. Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Section 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

3. Whether Section 81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?

4. Whether the condition of predeposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

5. Whether the authority has power to issue recovery certificate for recovery of the principal amount under Section 40(1) of the Act?

6. However, for decision of the objection regarding maintainability of the present complaint in relation to unregistered projects, we are only concerned with decision on the first question as to whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence. The Hon'ble Apex Court considered this question in para nos. 32 to 54 of the judgment and was pleased to hold that the Act is retroactive in nature. After elaborately discussing the entire issue, the conclusion finds reflected in in para no.54 of the judgment which runs as under:-



“54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

7. The argument of the learned Authorised Representative of the respondent-builder was that as the project of the case in hand was ‘ongoing project’ and had not been got registered in accordance with the relevant provisions of the Act and therefore the present complaint was not maintainable. Reliance in this behalf was placed upon the Authority of the Hon’ble Supreme Court in **M/s Newtech Promoters case (supra)**. Learned AR has also placed reliance upon the Full Bench judgment of the RERA Authority in **Dr. Anjali Sharma Vs. Gupta Builders and Promoters Pvt. Ltd. and other connected appeals (Complaint No.RERA/GC0419/2021)** decided on 12.01.2022.

8. On the other hand the argument on behalf of the complainants was that the complaint of the case in hand, in relation to the unregistered project of the case in hand was maintainable. Further argument was that the Hon’ble Apex Court had not specifically dealt with the question of maintainability of the complaints under Section 31 of the Act.

9. The argument advanced by authorized representatives of the parties have been anxiously considered and the record on the file has been perused.

10. The declaration of law by the Hon’ble Apex Court in the aforesaid Authority in para no.54 of the judgment is unambiguous and admits no other

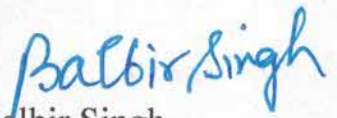


interpretation that the projects which were already complete or in respect of which completion certificate had been obtained at the time of commencement of the Act are not within the purview of the Act and further that the Act would be applicable to 'ongoing projects' and future projects after they are registered in compliance of provisions of Section 3 of the Act. The necessary implication of these two declarations of the Hon'ble Apex Court will be that the projects which are 'ongoing projects' and are not registered with the RERA Authority, will not be within the purview of the Act till they are got registered. So far the argument advanced on behalf of the complainant that the question of maintainability of the complaint under Section 31 of the Act was not considered by the Hon'ble Apex Court is concerned, when the question of retroactive application of the provisions of the Act has been considered by the Hon'ble Apex Court by holding that the Act would apply to the 'ongoing projects' and the future projects after they are got registered with the RERA Authority under the provisions of Section 3 of the Act, the necessary implication is that the projects which were ongoing projects but had not got registered with the RERA Authority would fall outside the purview of the Act. Therefore, the complaints in relation to the said ongoing unregistered project would not be maintainable. Even the Full Bench of the RERA Authority relying upon the judgment of the Hon'ble Apex Court in **M/s Newtech Promoters case (supra)** while deciding **Dr. Anjali Sharma and connected complaints (Supra)** was pleased to hold that the complaints against unregistered ongoing projects would not maintainable unless the said projects are got registered under Section 3 of the Act. Thus, the present complaint, having been filed under Section 31 of the Act, in relation to the ongoing project which was not got registered would not be maintainable and



the same is accordingly dismissed. It is further made clear that the complainants would be at liberty to file fresh complaint after registration of the project of the case in hand with the RERA, Punjab.

Dated: 07.02.2022


Balbir Singh
Adjudicating Office
Real Estate Regulatory Authority