

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

Complaint No. GC No.0074 of 2023
Date of Decision: 05.06.2025

Kuldip Kaur, resident of village Chor Sidhwa,
Gurdaspur (Punjab).

...Complainant

Versus

1. Mona Township Private Limited through its Directors, Sector 115, Kharar Landran Road, SAS Nagar (Mohali), Punjab;
2. Tejinder Singh Setia, Director Mona Township Private Limited, Sector 115, Kharar Landran Road, SAS Nagar (Mohali), Punjab;
3. Municipal Council, Kharar through its Executive Officer, village Khanpur, SAS Nagar (Mohali), Punjab

...Respondents

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

Present: Mr. Inderpal Singh Issar Advocate representative for the complainants
Mr. Vipul Monga Advocate representative for the respondent No.1

ORDER




The present complaint is one of the complaints that have been filed by the various complainants on the similar grounds against the same respondent/ promoter. But the present complaint since involved different facts and questions, is being dealt with separately vide a separate order in this regard of the Authority.

2. Complainant alleged in the complaint that she had purchased the residential plot no.40 in the township developed by the respondent company i.e. M/s Mona Township Private Limited situated at Sector 115, Khunimajra, Kharar-Landran Road inside JLPL City, Mohali on 23.01.2023 vide a registered sale deed. She had purchased the plot in question as per the sanctioned layout plan approved by the competent authority. And, there was a road of 35 ft. plus 4.5 ft. ramp i.e. total 39.5 ft. shown and existing in front of the house of complainant. But later the respondent had made the material alterations i.e. reducing the width of the road from 35 ft. to 24 ft., in the said approved plan and started the construction over the said road. It was thus claimed that respondent had also got the said revised plan approved from the competent authority without first obtaining any consent and giving intimation to her and other allottees. In this way, the respondent company had violated the provisions of Section 14 as well as various other provisions of the Act. Hence, the present complaint.

3. Notice of the complaint was issued to the respondent, who upon service put in appearance and contested the complaint by filing its reply. It was submitted by the respondent that the present complaint was nothing but an abuse of the process of law. The allegations levelled by the complainant were baseless and were strongly denied submitting that the project was initially got approved on




25.07.2013 from the Municipal Corporation Kharar and was subsequently got revised from it on 19.08.2019 as per the Municipal Byelaws. It was further submitted that there was absolutely no violation of Section 14 (2) in going ahead with the construction. Whatever construction has been raised by the promoter was as per the revised sanctioned plan that was duly approved by the competent authority.

It was further submitted that as per the second proviso of Rule 8 of Punjab State Real Estate (Regulation and Development) Rules 2017 the competent authority once approved the revised layout plan no consent of allottees was required. So much so, in the case in hand in the original layout plan as well the road provided in front of the villas purchased by the complainant was only of 12 ft wide while the rest 24 ft space was left for parking meant to be used by both residents of the villas as well as multi-storied towers that were to be constructed on the other side of the road and villas. Even after the approved revised plan as well as the road that has been left for the use of both villa people as well as of allottees of the residential towers on the opposite side was even increased up to 24 ft wide. It was thus submitted that there was absolutely no violation of any provisions of the Act as the construction of towers was being raised as per the approved site plan by the competent authority. Respondent promoter thus denying rest of the averments as well of the complaint finally prayed for dismissal of the complaint.



4. Parties through their learned authorized representatives have been heard patiently by the Authority. The arguments of the authorized representatives had been on the lines of the averments contained in their respective pleadings and elaboration thereof shall be made in the course of the discussion.

5. While putting forth his arguments, learned counsel for the complainant put the main emphasis on violation of Section 14(2) of the Act by the promoter submitting that promoter/ respondent had failed to seek and obtain the consent of 2/3rd allottees before getting the original sanctioned plan revised by the competent authority. It was not only a serious violation of the mandate of provisions of above section but the defiant act of promoter had also gone to the extent that it did not even care about the restraint order/ interim injunction issued by the Authority and continued with the construction. Such defiance and its continuance when complained of was clearly endorsed by the Commission in its report that was sent to inspect the spot by the Authority. The respondent/ promoter was therefore liable to be strictly penalized first for committing the violation of the provisions of the Act provided u/S 14(2) and secondly for defying and non-compliance of the interim restraint order issued by the Authority.



6. While countering the above contentions, it was argued on behalf of the respondent/ promoter that there was

absolutely no violation whatsoever of any provisions of the Act what to talk of violation of Section 14 (2) in going ahead with the construction. Whatever construction has been raised by the promoter was as per the revised sanctioned plan that was duly approved by the competent authority which is MC, Kharar in the present case. Besides, as per the second proviso of Rule 8 of Punjab State Real Estate (Regulation and Development) Rules 2017 the competent authority once approved the revised layout plan no consent of allottees was required. So much so, in the case in hand in the original layout plan the road provided in front of the villas purchased by the complainants was only of 12 ft wide while the rest of 24 ft space was left for parking meant to be used by both residents of the villas as well as of multi-storied towers that were to be constructed on the other side of the road opposite the villas. Even after the approved revised plan as well the road that has been left for the use of both villa people as well as of allottees of the residential towers on the opposite side was even increased up to 24 ft wide. It was thus argued that there was absolutely no violation of any provisions of the Act as the construction of towers was being raised as per the approved site plan by the competent authority. The complaint being false and frivolous was liable to be dismissed.

7. Submissions and contentions of both the sides have been considered and examined after giving patient hearing to both the parties by the Authority. Upon doing so

this Authority finds that the complainants although have put much emphasis on the violation of the mandate of Section 14 (2) of the Act, but have neither been able to show as to how they have the locus standi to file the complaint nor the fact if there is a violation of the provisions of Section 14 of the Act. As it is the complainant who alleges the contravention of the provisions of the Act, the burden of proof to show it to be so lies upon her/ him at the first instance. But the complainant has more or less failed in her that attempt specially in view of the fact that the revised plan was duly approved by the competent authority and that the second proviso of Rule 8 provided if the authority competent to issue approvals was of the view that certain changes in the project were necessary, it might on application of the promoter do so for the reasons to be recorded in writing and in that case consent of allottees was not required. In this way, the complainant has also not been able to show it to the Authority even this that competent authority while giving approval to the revised layout plan did not have reasons for doing that or that approved it without recording reasons or even that if the approval was without the consent of allottees at that very point of time. She has even failed to bring on record the agreement for sale executed between the promoter and original allottee which was the most important document in the case wherefrom she being subsequent purchaser i.e. complainant drew her rights.

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8. Not only this, complainant has not come before the Authority fairly disclosing the facts involved in a plain and straight manner. In her complaint Kuldeep Kaur has clearly stated that when the sale deed dated 23.01.2023 in her favour was executed by the respondent company in the approved layout plan there was shown to be a road of 35 ft plus 4.5 ft ramp i.e. total 39.5 ft in front of her/ complainant house. The said approved plan/map was shown by the respondent to the complainant at the time of purchase. The first thing here is that she did not directly purchase the plot from the respondent company she being a second purchaser from the original allottee. While at the same time she has also not produced the sale deed executed by the promoter in favour of original allottee. She is rather a subsequent purchaser who purchased the plot vide sale deed executed on 23.01.2023. Whereas the revised plan was approved in the year 2019 although was put on the website of RERA without getting this revised layout registered with it. Thus, it remains a fact that at the time of purchase of plot by the complainant revised plan was being displayed there on the Website although put by the promoter concealing the fact of revised layout being unregistered. In this way, if the things are seen the approved revised plan was very much there on the website though not registered with RERA at the time when purchase of the plot was made by the complainant. Here, the well-

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known principle/rule of '*Caveat Emptor*' also debars the complainant to agitate the matter on that account.

9. Another thing which is being noticed by this Authority is the proviso to Rule 8 of Punjab State Real Estate (Regulation and Development) Rules 2017, which read as under:

"Provided further that if the authority competent to issue approvals is of the view that certain changes in the project are necessary, he may on application of the promoter do so for the reasons to be recorded in writing and in that case consent of allottees shall not be required."

In the case in hand the original sanctioned plan has been revised and approved by the competent authority. Thus, nothing is shown to have been done by the promoter against the revised sanctioned plan. It cannot be said in these circumstances that sanctioned plan has not been adhered to. The complainant has also not been able to show if the said additions and alterations were beyond the extent of 5% in the sanctioned plan and layout as per Rule 8(3) of the Rules of 2017. Otherwise also, the vires and validity of the rules cannot be questioned before this Authority which cannot go into the question that may be raised in this behalf.

10. Moreover, the 39 ft road complainant is talking about that has been shown to be there in the sale deed

executed in her favour was just a description of the boundary of the plot being purchased by her so that the purchased plot could be identified. Such description of the property being sold did not also bind any third party. And the sale deed executed was not between the promoter/ respondent and complainant which did not bind them otherwise as well. As such, complainant loses any locus standi even to claim that she was anyway misrepresented or that something was being done against the facts that were not disclosed to her or against the sanctioned layout.....

Section 14 of the Act is reproduced as under:

14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said

apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee.

11. The reading of Section 14 above makes it clear that observance of the above provisions was mandatory. There is no doubt that the contravention of the provisions of Section 14 and non-adherence to the sanctioned plans and project specifications disclosed or furnished to the person who agreed to take one or more apartment, plot or building, as the case may be could be taken note of or could be considered by the Authority as well even if such violation was missed by the competent authority as was submitted on behalf of the

complainant. The mandate of Section 14 of the Act is a rule of estoppel based on principles of equity, fair play and good conscience. He who seeks equity must do equity. But one thing is clear that it has to be shown and proved that the provisions have been contravened which in the present case have not been done so on account of lack of proof on the part of the complainant.

12. The relief complainant seeks is an equitable relief it being a relief of issuance of injunction in her favour. The one who does not come to the court with clean hands cannot be granted the relief of injunction. Above all, the relief prayed for by the complainant cannot be granted in her favour as the compensation if any on account of violation and contravention of provisions of Section 14 is to be taken care of or adjudged by the Adjudicating Officer as per the observations made by the Hon'ble Supreme Court in its landmark decision in **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 taken on 11.11.2021, wherein it has been held that the Adjudicating Officer was the sole authority to adjudge compensation relating to violation and contravention of Sections 12, 14, 18 and 19 conferred u/S 71 of the Act. If for argument's sake, it is presumed that complainant is able to prove her case on the question that provisions of Section 14 have been contravened, then also the compensation in that case is to be adjudicated

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upon or adjudged by the Adjudicating Officer who is the sole authority in the matter.

13. For all these reasons, it is found that complainant has not been able to make out her case before the Authority concerning contravention and violation of Section 14 that has been the main contention put forth on her behalf by her learned counsel. The only relief and remedy left with complainant if any is to ask for compensation.

14. Somehow, it is found by the Authority that respondent is prima facie guilty of non-compliance and violation of the orders of the Authority by defying the interim restraint order against the construction by continuing the same, as is more or less admitted and as per the report of Commission appointed. Respondent is therefore liable to be proceeded against for non-compliance and violations of the provisions of the Act U/s 59.

15. Another violation which is also apparent on the face of it in view of the report given by the Director (Project and Regulation) that the revised sanctioned plan by the competent authority was not got registered with the Authority which was although put on the website giving impression to the general public if that revised plan is registered. Respondent is therefore liable to be proceeded against for misleading the general public also by bringing unregistered revised layout in public domain and indulging in selling of the unregistered parts of the project.

16. While deciding the present matter, this Authority came across certain instances of non-cooperation on the part of competent authority which failed to furnish the details of sanctioning and approval given by it to the revised layout alongwith reasons if there were any despite issuance of directions in that regard following which one of the Directors (P&R) was even directed to obtain the information. Due to non-furnishing of such details, this Authority faced difficulty in deciding the matter in an effective and justful manner and accordingly it feels to recommend suitable action to be taken by the competent authority in its discretion against its erring officials who may be found responsible for withholding that information from the Authority. And, that necessary direction may be issued by the competent authority to concerned officials that they should not withhold such information asked for. It is also further being felt to make certain recommendations to the competent authorities in the State throughout under Section 32 of the RERD Act in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector and to protect the interest of allottees, promoter and real estate agent which are as follows: -

- a) That upon approving or giving sanction to a layout and site plan of a project and while issuing licence/ permit that required mandatory registration with RERA, it would share all the information and details relating to

that with Authority (RERA) and a condition may also be included in the sanction letter informing the Promoter about its compulsory registration under RERD Act;

- b) That while approving or revising the original layout, site plan and licencing etc. competent authority must keep in mind RERD Act's provisions and rules and regulations made thereunder, for instance recording reasons where any addition or alteration is of more than 5% and such alterations are found to be necessary that should also be shared with the Authority (RERA).

And, the State Government is also requested through Hon'ble Ministry of Housing and Urban Development to approve those recommendations to be followed if it considers those to be useful and needed for the protection of interest of the allottees, promoter and real estate agent and in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

17. Accordingly, as an outcome of the above Secretary of this Authority is directed to initiate proceedings U/s 59 and 63 of the Act against the respondent/ promoter. Copy of this order be also sent to the competent authority concerned for holding either an enquiry and taking action against those responsible for withholding the information sought by the Authority or issuing necessary direction in that regard in its discretion. Although complainant is not able to make out her case for the violation/contravention of Section 14 of the Act by promoter before

this Authority, yet she is kept at liberty to claim compensation on the ground if any before the Adjudicating Officer who shall not be prejudiced by the observations made by this authority on the question of violation of Section 14 of the Act if any by the violator/promoter.

Copy of this order be sent to all the quarters concerned, for consideration and compliance. File be consigned to the record room after necessary compliance as per rules.

Announced: 05.06.2025


(Arunvir Vashista)
Member, RERA, Punjab


(Binod Kumar Singh)
Member, RERA, Punjab


(Rakesh Kumar Goyal),
Chairman, RERA, Punjab