

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

Subject: -

Appeal No. 277 of 2020

EMAAR India Ltd. (formerly known as EMAAR MGF Land Limited),
having its office at Office No.40, Central Plaza, Sector 105, Mohali-140306,
Punjab.

.....Appellant

Versus

Sandeep Bansal S/o Sh. S.L. Bansal, R/o B-3/9, Janak Puri, New Delhi
110058.

.....Respondent

Memo No. R.E.A.T./2022/ 78

To,

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

Whereas appeals 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 appeals 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
25th day of February, 2022.



REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, AT CHANDIGARH

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.....Appellant

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Sandeep Bansal S/o Sh. S.L. Bansal, R/o B-3/9, Janak Puri, New Delhi
110058.

.....Respondent

Present:- Mr. Tejeshwar Singh, Advocate for the appellant.
Mr. Sanjeev Gupta, Advocate for the respondent.

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)**

JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

(Majority view)

1. Learned counsel for the appellant contends that in view of the decision rendered by the Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", the Adjudicating officer who has decided the issue of refund etc. would have no jurisdiction to do so and thus the matter would need to be remanded back for decision afresh.
2. We were inclined to accept the prayer in view of the observations of the Hon'ble Supreme Court in M/s. Newtech's



case (supra), when our esteemed Member Shri A.K. Garg expressed his view that the Adjudicating Officer would have the power to decide the issue of refund and interest as against our view to the contrary particularly in view of the circular of the Authority dated 05.03.2021.

3. We may note here, that a similar view was expressed by him in few other appeals particularly in Appeal No.128 of 2021, where we had passed a detailed order while issuing notice to the respondent. However, the occasion to address it did not offer itself in view of the appeal having disposed of in terms of a settlement between the parties. We deem it appropriate to extract the order dated 10.01.2022 hereinbelow:-

“Learned counsel for the appellant at the outset contends that the Adjudicating Officer has passed the impugned order directing refund along with interest and certain amount of compensation on account of mental agony etc. for which he would have no jurisdiction. By placing reliance on the judgment passed by the Hon’ble Supreme Court in “M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.”, it has been argued that such an order would be sans jurisdiction and consequently liable to be set aside only on this ground. He also states that such an order, which is without jurisdiction can even be ignored in the eyes of law being completely non est.



Appeal No. 277 of 2020

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One of the Members of our Bench, Mr. Ashok Kumar Garg has brought up the issue that there is an internal mechanism with the Authority to delegate powers and such power was specifically delegated to the Adjudicating Officer by an internal circular.

Prima facie, two of us (Mr. Mahesh Grover) and (Mr. Sanjeev Kumar Garg) are of the opinion that the view expressed by Shri Ashok Kumar Garg is erroneous and if accepted would run contrary to the orders of the Hon'ble Supreme Court in (M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.), which has provided the complete answer in this regard, while dealing with the issues of delegation of powers of the Authority apart from other issues where power of the Adjudicating Officer and the Members have been very clearly delineated. But since the opinion by Shri Ashok Kumar Garg has been voiced in the open, we need to record it, to be true to the proceedings and provide a detailed answer to set the matter at rest conclusively on the next date of hearing.

Be that as it may, we deem it appropriate to issue notice to the respondents for 10.02.2022."

4. In our above order dated 10.01.2022, although we had noticed the opinion expressed by one of the Members, Mr. A.K. Garg but he has now submitted a detailed note in support of his view, which we take on record. The relevant portion of his view as expressed by him in Para 4 & 5 are extracted hereinbelow:-



- "4. While deciding aforementioned second question, Hon'ble Supreme Court of India, under paragraph 116 of aforesaid judgement, has inter alia held as under (some portion has hereby been emboldened to lay emphasis):

"116. The further submission made by learned counsel for the promoters that Section 81 of the Act empowers even delegation to any officer of the authority or any other person, it is true that the authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the authority or any other person but we are not examining the delegation of power to any third party. To be more specific, this Court is examining the limited question as to whether the power under Section 81 of the Act can be delegated by the authority to any of its member to decide the complaint under Section 31 of the Act. What has been urged by learned counsel for the promoters is hypothetical which does not arise in the facts of the case. If the delegation is made at any point of time which is in contravention to the scheme of the Act or is not going to serve the purpose and object with which power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review."

5. In view of above, in my opinion, the delegation of its power of "refund of the amount and interest thereon" by the Real Estate Regulatory Authority, Punjab vide aforementioned circular dated 05.03.2021, to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed is in accordance with the mandate of law viz section 81 of the Act. Hence, in my opinion, the Adjudicating Officer has the jurisdiction to deal all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation)".



5. We however, cannot persuade ourselves to align with his view and are in disagreement with him regarding his interpretation about the validity of the delegation of powers in the matters of

refund and grant of interest to the Adjudicating officer as it, would run completely contrary to the observations made by the Hon'ble Supreme Court delineating the powers of the Authority and the Adjudicating Officer. The judgment of the Hon'ble Supreme Court, clearly notes that in matters referred to in Section 12, 14, 18 and 19, the power to decide them would vest with the Authority, whereas in the matter of a grant of compensation etc. the power would vest exclusively with the Adjudicating Officer.

6. The Adjudicating Officer in the scheme of the Act is not the Member of the Authority as Section 21 of the Act dealing with the composition of the Authority is extracted hereinbelow; would reveal:-

"The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government."

7. It is evident that the Chairperson and not less than two whole time Members of the Authority are to be appointed by the appropriate Government.

Section 71 on the other hand deals with the issues of grant of compensation empowering the Adjudicating Officer to pass orders in this regard. It also deals with the appointment of



Adjudicating Officer for which the Authority has been empowered. The relevant extract of Section 71 is as below:-

- (1) *For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:*

9. The words the Authority shall appoint in consultation with the Government one or more judicial officer to be an Adjudicating Officer, makes it clear, that the Adjudicating Officer is distinct from the other Members of the Authority, which find mention in Section 21 of the Act. His eligibility condition and the mode of appointment are distinguishable from those of the Members of the Authority. The Language of Section 21 is unambiguous to include only the Chairperson and not less than two members to be appointed by the appropriate Government.

The judgment of the Hon'ble Supreme Court if read in entirety first goes on to pose the following questions for determination:-

- (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 lies with the Adjudicating Authority under Section 71 of the Act?
- (3) Whether Section 81 of the Act authorises the Authority to delegate its power to Single Member of the Authority to hear complaints instituted under Section 31 of the Act?
- (4) Whether the conditions of pre-deposit under proviso to Section 43(5) of the Act of the entertaining right of appeal is sustainable of law?
- (5) Whether the Authority has power to issue recovery certificates for recovery of the principal amount under Section 43(5) of the Act?

For the present, we are concerned with Questions No.2 and 3.

11. Under Question No.2 the Hon'ble Supreme Court concluded that powers to refund and grant of interest shall vest with the Authority, while the issue of compensation shall be decided by the Adjudicating Officer.

Para 86 where such a conclusion has been drawn is as below:-

From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication



delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.

It is extremely relevant to refer to Para 83 as well, where a single complaint is filed seeking a combination of reliefs.



83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person

aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

84. So far as submission in respect of the expeditious disposal of the application before the adjudicating officer, as referred to under subsection (2) of Section 71 is concerned, it presupposes that the adjudicatory mechanism provided under Section 71(3) of the Act has to be disposed of within 60 days. It is expected by the regulatory authority to dispose of the application expeditiously and not to restrain the mandate of 60 days as referred to under Section 71(3) of the Act.

13. Para 83 of the judgment as extracted above makes it abundantly clear that where an allottee makes a conjoint application of refund and compensation etc., he would be required to file a complaint in separate forms i.e. in Form-M for refund etc. and Form N for compensation. These would then be channelized to the Authority and the Adjudicating Officer for decision as the case may be. Thus the Hon'ble Supreme Court very clearly delineated the powers conscious of the fact, that an allottee while drafting his complaint to set out his grievance,



can possibly seek a combination of reliefs i.e. refund with interest and compensation with interest.

14. The circular dated 05.03.2021, was issued much prior to the decision of the Hon'ble Supreme Court and is based on a valuable opinion of a Senior Advocate, the occasion for which arose when the Hon'ble High Court in CWP No.8548 of 2020 held that only complaints in which compensation or payment of interest by way of compensation (and no other relief) sought would lie with the Adjudicating Officer. Reading of the circular also discloses that though an interpretation of various provisions of the Act was granted by the Hon'ble High Court in CWP No.8478 of 2020 relating to the jurisdiction of the Authority and the Adjudicating Officer, but it was clarified by the Hon'ble High Court that findings recorded in CWP No. 38144 of 2018, which pertained to the State of Haryana would hold good in the matters of Punjab as well. This judgment in CWP No.38144 was however stayed by the Hon'ble Supreme Court. It is in these circumstances that an opinion of Senior Advocate was obtained and acting thereon the circular was issued with the following decisions.

- "i. Complaints falling under Section 18(1) of the Act where the claim is only for return of the amount paid by the



allottee and interest provided for in this Section, shall be dealt with by the Authority.

- ii. *All cases where the claim is for the return of the amount deposited by the allottee, interest thereon as mentioned at Serial No.(i) above, and in addition compensation (including payment of interest as compensation) will be dealt with by the Adjudicating Officer.*
- iii. *All complaints falling under the proviso of Section 18(1) of the Act i.e. where the allottee does not intend to withdraw from the project but seeks interest for the period of delay in delivery of possession will continue to be heard by the Authority."*

15. The decision of the Authority in Clause 2 of the circular is to our minds is in conflict with the observations of the Hon'ble Supreme Court made in Para 83. At the cost of repetition it is observed that the Hon'ble Supreme Court very clearly laid down that where a combination of reliefs are sought by an allottee he would have to set out his grievance for refund with interest etc. in Form-M while grievance regarding compensation and interest would be set out in Form-N, which would thereafter be sent to the appropriate Forum i.e. the Authority or the Adjudicating Officer, as the case may be.



16. The compulsion to work out a mechanism through a circular was ostensibly the reason for the Authority to seek an opinion from a Senior Advocate in order to obviate the chances of any conflict with the judgments available at that point of time as also to effectively continue with its functioning while dealing with complaints that were being filed or were pending.
17. To our minds there is no ambiguity now on the issue of respective jurisdiction of the Authority and the Adjudicating Officer in view of what we have expressed in the forgoing paragraphs, after perusal of the judgment of the Hon'ble Supreme Court.

Question No.3 is as below:-

Question no. 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?

18. As far as the issue of delegation of powers is concerned the Hon'ble Supreme Court has observed that the Act empowers the Authority under Section 81 of the Act by general or special order to delegate its power to **Members of the Authority**. It went on to observe that under Section 81 of the Act, the power can be delegated by the Authority to any of its 'Members' to decide a complaint under Section 31 of the Act. It evidently



implies that delegation of power can be made in favour of a 'Member' of the Authority. It may not be out of place to mention here that the Hon'ble Supreme Court was examining the issues, where delegation of power under Section 81 of the Act had been exercised in favour of Single Member of the Authority and it was upheld. The Court also observed that it was examining the limited question as to whether the power under Section 81 of the Act can be delegated by the Authority to any of its Members to decide the complaint under Section 31 of the Act and did not venture to determine the question on the plea of the learned counsel for the promoters of delegating the powers to any 'third party' and made it clear in the following words " If the delineation is made at any point of time, which is in contravention of the scheme of the Act or is not going to serve the purpose and object with which the power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review". The term "any other person" has not been defined in the Act.

19. In Para 118 the Hon'ble Supreme Court observed as follows:-



"In the instant case, by exercising its power under Section 81 of the Act, the authority, by a special order dated 5 th December, 2018 has delegated its power to the single member of the authority to exercise and decide

complaints under Section 31 of the Act and that being permissible in law, cannot be said to be de hors the mandate of the Act. At the same time, the power to be exercised by the adjudicating officer who has been appointed by the authority in consultation with the appropriate Government under Section 71 of the Act, such powers are non-delegable to any of its members or officers in exercise of power under Section 81 of the Act."

20. It is imperative for us to set out the relevant portion of Section 31 of the Act: -

"(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be."

Clearly, what is envisaged in Section 31 is a filing of complaint for violation of provisions of the Act, Rules and Regulations against any promoter, allottee, or real estate agent as the case may be to the Authority or the Adjudicating Officer.

In the case being dealt with by the Hon'ble Supreme Court the Real Estate Regulatory Authority of Uttar Pradesh had delegated the adjudicatory function of complaints under Section 31 to its Member. The Hon'ble Supreme Court upheld



such an order being in conformity with the delegatory process mandated by the statute but in the same breath, it held that the power to be exercised by the Adjudicating Officer, who has been appointed by the Authority in consultation with the appropriate Government under Section 71 of the Act, as non-delegable to any of its Members or Officers in exercise of the power under Section 81 of the Act.

21. Implicit, in this language of the judgment is the fact that Adjudicating Officer and the Member of the Authority are two distinct identities and whereas the power under Section 31 of the Act can legitimately be delegated to any of the Members of the Authority in view of the mandate of the statute, the same is not true of the Adjudicating Officer.
22. A conjoint reading of Para 116 to 120 of the judgment of the Hon'ble Supreme Court makes it abundantly clear that a delegation of power by the Authority in favour of any Member is admissible for the following reasons: -



- (i) **The mandate of the statute permits so.**
- (ii) **Power to decide all the complaint under Section 31 of the Act is quasi-judicial in nature, which is delegable as there is a provision in the statute.**

- (iii) The said power of delegation being permissible in statute is distinct from the powers to be exercised by the Adjudicating Officer, who has been appointed by the Authority in consultation with the appropriate Government under Section 71 of the Act. This power is non-delegable to any of its members or officers in exercise of the power under Section 81 of the Act.
- (iv) The scheme of the Act provides for the remedial mechanism, as any order passed on a complaint by the Authority under Section 31 is appealable before the Tribunal with a further appeal to the High Court.
- (v) The power of delegation under Section 81 of the Act by the Authority to one of its Members for deciding applications/complaints under Section 31 is well-defined and expressly permissible and hence cannot be said to be de hors the mandate of law.



23. The language of Section 81 does not mandate that the Authority has any power to delegate its functions to the Adjudicating

Officer, even though it mentions that the Authority can delegate such powers and functions under the Act, except power to make Regulation under Section 85 of the Act to any Member, Officer of the Authority or 'any other person' subject to the conditions as may be specified in the order.

24. The Hon'ble Supreme Court has in more than ample terms held the Adjudicating Officer and the Member of the Authority to be distinct and in its discussion relating to delegation of power by the Authority to any of its Members to decide complaints under Section 31 has not said anything about such a delegation in favour of the Adjudicating Officer.
25. The only conclusion, we derive from the reading of the above is that the Adjudicating Officer and the Members of the Authority are distinct entities under the scheme of the Act and whereas the Authority can delegate its adjudicatory power being quasi-judicial to decide complaints under Section 31 of the Act to any of the Members, in view of the mandate of the statute, it cannot do so in favour of the Adjudicating Officer. Had the Hon'ble Supreme Court intended to hold the delegation of an adjudicatory power under Section 31 in favour of the Adjudicating Officer as valid, it would have certainly commented so being alive to the controversy of delegation of



power of an adjudicatory function by the Authority to any of its Members.

26. To us, at a first blush the power of delegation under Section 81 to a third person can possibly relate to various other functions other than the adjudicatory function that the Authority is empowered to perform. But this may not be taken to be a conclusive opinion because we as an Appellate Authority under the statute, deriving our powers solely from the statute would refrain from placing any interpretation on the words of a statute, unless such an issue is specifically raised before us. We decline to take upon ourselves suo moto powers to examine the legality or validity of any provision unless questioned to be in conflict with the Act by one who is aggrieved of it.
27. The circular dated 05.03.2021 is much prior in time to the judgment of the Hon'ble Supreme Court in "M/s Newtech Promoters" rendered on 11.11.2021 and loses its significance altogether in view of the judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." rendered on 11.11.2021 and the subsequent circulars issued by the Authority on 06.12.2021 and 10.12.2021.



28. The Hon'ble Member in his dissenting view has laboured to draw a distinction in the judgment of Hon'ble Supreme Court from the language in Form M and N appearing in the case of Uttar Pradesh under consideration. Assuming for the sake of an argument that a rule or regulation or even the language and requirements of Form-M and N as given in the Punjab State Real Estate (Regulation and Development) Rules, 2017, is suggestive of a course bestowing any function to the Adjudicating Officer not intended by the Act, it would lose all significance after the decision of Newtech's case (supra). Even otherwise Forms M and N, owe their genesis to the Rules, which cannot override the provisions of the Act and if inconsistent they have to be held to be bad to that extent. Rules cannot have primacy over the substantive provision of the Act. The settled law is that if a rule is inconsistent with the substantive provision of the Act then it has to be read down to be harmoniously construed with the provisions of the Act or struck down to the extent of the inconsistency but it can never prevail over the Act. In the instant case the Hon'ble Supreme Court has clarified in ample terms the jurisdiction of the members of the Authority and the Adjudicating Officer.



29. Any other view other than what we have expressed to our minds would render ourselves in conflict with the conclusions of the Hon'ble Supreme Court under Question No.2 and 3, for the reasons that we have set out in the forgoing paragraphs and also put us on the path of violating the mandate of law, we derive from the statute to which we owe our creation.
30. We have noticed with satisfaction that the Authority has vide its Circular No.8950 dated 06.12.2021 and Circular No.9046 dated 10.12.2021 brought all these issues relating to hearing of complaints by the Authority and the Adjudicating Officer in conformity with the judgment of the Hon'ble Supreme Court and is reflective of our views as well.
31. In view of the above, we proceed to determine the issue raised before us in the appeal.

CONCLUSION:-

32. We are in complete agreement with the argument raised by the counsel for the appellant, which we find to be in conformity with the observations of the Hon'ble Supreme Court noticed above.
33. In view of our detailed reasoning recorded above, we find no reason as to why the prayer of appellant be not accepted,



particularly when there is no serious objection by the learned counsel for the respondent, who stated in unequivocal terms that in view of the observations made by the Hon'ble Supreme Court he would have no serious defence.

34. Accordingly, we deem it appropriate to dispose of the appeals with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/ Adjudicating Officer.

In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/ Adjudicating Officer as the case may be in accordance with law.

We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in appearance before the Authority/Adjudicating Officer as the case may be. Which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The Authority in this manner would have the benefit of providing a time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise.



The Authority/ Adjudicating Officer shall then proceed to determine the matter in accordance with law.

35. Parties are directed to appear before the Real Estate Regulatory Authority on 07.03.2022. Files be consigned to record room.

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

Sd/-
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)

February 24, 2022
AN



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Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB, AT CHANDIGARH

Appeal No. 277 of 2020

EMAAR India Ltd. (formerly known as EMAAR MGF Land Limited),
having its office at Office No.40, Central Plaza, Sector 105, Mohali-140306,
Punjab.

.....Appellant

Versus

Sandeep Bansal S/o Sh. S.L. Bansal, R/o B-3/9, Janak Puri, New Delhi
110058.

.....Respondent

Present:- Mr. Tejeshwar Singh, Advocate for the appellant.
Mr. Sanjeev Gupta, Advocate for the respondent.

QUORUM: 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.):**

(MINORITY VIEW)

1. By this order, I will dispose off Appeal No. 277 of 2020 (EMAAR India Ltd. (formerly EMAAR MGF Land Limited) versus Sandeep Bansal) against order dated 03.02.2020 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AQ*), Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing No. AdC 1055 of 2019.



2. The complaint has been filed before the AO, by the complainant (who is respondent in present appeal) against the appellant in form 'N' under section 31 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) claiming an amount of Rs.1,00,000/- as compensation for mental agony and Rs.4,00,000/- as cost of litigation and physical harassment and other reliefs. It is inter alia mentioned in the complaint that present complaint has been filed afresh because vide order dated 28.11.2018 in case No. AO 07 2017 passed by the AO, the earlier complaint was returned with liberty to file a fresh one before the Authority. Moreover, it is mentioned in the impugned order dated 03.02.2020 that complainant also filed another complaint bearing GC No. 1180 of 2019 in form 'M'.
3. The said complaint has been accepted by the AO to the following extent and heads:-

1.	Principal amount	Rs. 41,32,278/-
2.	Simple interest	At the SBI highest marginal cost of landing rate plus 2% on the principal amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

The appellant has thereby been directed to pay the above said amount to the complainants within sixty days from the date of the impugned order i.e. 03.02.2020; and it has also been ordered that any amount already received by the complainant from the



appellant in this matter on account of delay in delivery of possession shall stand adjusted against the above said due amount.

4. Aggrieved by the above said order/judgment of the AO, the appellant filed Appeal No. 277 of 2020 before this Tribunal and inter alia prayed to set aside the impugned order and to dismiss the complaint.
5. In the grounds of the complainants' appeal it has inter alia been contended (i) that the AO does not have the jurisdiction to entertain and decide complaints seeking refund & interest under the Act; (ii) that construction of the apartment is complete and Occupancy Certificate and Partial Completion Certificate have been obtained.

MY OPINION IN THE MATTER OF JURISDICTION OF THE ADJUDICATING OFFICER OF REAL ESTATE REGULATORY AUTHORITY PUNJAB FOR ADJUDICATION OF COMPLAINTS IN MADE IN COMPOSITE APPLICATION INVOLVING REFUND/RETURN OF AMOUNT DEPOSITED BY THE ALLOTTEE, INTEREST THEREON AND COMPENSATION:

6. While hearing the matter regarding Appeals bearing No. 128 to 129 of 2021 on 10.01.2022 through video conferencing, I expressed my opinion that the delegation of its power of "refund of the amount and interest thereon" by the Real Estate Regulatory Authority Punjab to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed, is in accordance with the mandate of law viz section 81 of the Act; and hence, **the so empowered Adjudicating Officer has the jurisdiction to deal all cases where the claim is**



for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation). On 11.01.2022, to support my aforesaid opinion, I have put up a two page note, titled "Regarding decision taken by the Real Estate Regulatory Authority Punjab vide its circular No. RERA/PB./LEGAL/24 dated 05.03.2021", to Hon'ble Chiirman & Learned Member (Judicial) of this Tribunal, wherein besides paragraphs 86 and 120 of the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS. ETC.** (Civil Appeal No(s). 6745-6749 of 2021) and connected matters, paragraph 116 thereof was also reproduced emphasizing on its some portion (viz "*--- it is true that the authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the authority or any other person ---*").

7. During the proceedings held on 14.02.2022, learned counsel Sh. Tejeshwar Singh, Advocate for appellant in Appeal No. 277 of 2020 (**EMAAR INDIA LIMITED VERSUS SANDEEP BANSAL**), while arguing the matter before the Real Estate Appellate Tribunal Punjab (*hereinafter also referred to as this Tribunal*) against jurisdiction of the Adjudicating Officer to adjudicate 'refund' & 'interest' under Sections 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*), by relying upon aforesaid judgment dated 11.11.2021 in **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS. ETC.**, especially upon its paragraphs 81 to 86, inter alia contended



(i) that after the rules have been framed, the aggrieved person has to file complaint in a separate format; (ii) that the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules; & (iii) that the procedure for inquiry is different in both the set of adjudication {all the aforementioned contentions (i) to (iii) are part of paragraph 83 of aforesaid judgment dated 11.11.2021 and are regarding **the single complaint filed seeking a combination of reliefs**, and aforesaid paragraph 83 also provided that “--- still if **composite application is filed, can be segregated at the appropriate stage**”}.

8. The Rules referred to under aforementioned parts of paragraph 83 of aforesaid judgment dated 11.11.2021 are Rules 33 & 34 of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (*hereinafter referred to as the UP Rules*), sub-rule (1) of each of which is reproduced under paragraph 66 of the aforesaid judgment dated 11.11.2021, which (i.e. the said sub-rule) is relatable to the adjudicatory powers of the regulatory authority/adjudicating officer. The corresponding Rules of Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Punjab Rules*) are its Rules 36 & 37 under its Chapter IX, titled “FILING OF COMPLAINT WITH THE AUTHORITY AND THE ADJUDICATING OFFICER”, each of which (i.e. Rules 36 & 37 of Punjab Rules) has been made for carrying out the provisions under Sections 31, 71(1) & 84(2)(zc) of the Act. As per Rule 34(1) of **UP Rules**, any aggrieved person may file a complaint with the adjudicating officer for **compensation** under Sections 12, 14, 18 and 19 in Form N.



However, as per Rule 37(1) of **Punjab Rules**, any aggrieved person may file a complaint with the adjudicating officer for **interest and compensation** as provided under Sections 12, 14, 18 and 19 in Form N. Perusal of Rules 37(2)(d)(i) and 37(2)(h)(i) of Punjab Rules inter alia provide that the adjudicating officer shall “**order payment of interest as specified in rule 15**”. But Rule 15, under Chapter IV titled “DETAILS TO BE UPLOADED ON THE WEBSITE OF THE AUTHORITY”, of Punjab Rules has been made for carrying out the provisions under Sections 34(b) & 84(2)(p) of the Act and it (Rule 15 of Punjab Rules) does not specify anything about **payment of interest**, whereas Rule 16, under Chapter V titled “INTEREST PAYABLE BY PROMOTER AND ALLOTTEE AND TIMELINES FOR REFUND”, of Punjab Rules, made for carrying out the provisions under Sections 18(1), 19(4), 19(7) and 84(2)(i)(j)(k) of the Act does specify the same. This implies there is typographical error while referring to “rule 15” (instead of “rule 16”) in the Rule 37 of Punjab Rules. Therefore, as per Rule 37(1) of Punjab Rules (read with its Rules 37(2)(d)(i) and 37(2)(h)(i), as corrected to aforementioned extent), any aggrieved person may file a complaint with the adjudicating officer for **interest** (payable for carrying out the provisions under Sections 18(1), 19(4) and 19(7)) **and compensation** as provided under Sections 12, 14, 18 and 19 in Form N.

Perusal of FORM 'N' appended in the Punjab Rules reveals that it is a format for filing “Claim for compensation under section 31 read with section 71 of the Act” with regard to “rule 37(1)” of the Punjab Rules and is titled as “APPLICATION TO ADJUDICATING OFFICER”. Thus, there is some inconsistency



in the Rule 37(1) of Punjab Rules (read with its Rules 37(2)(d)(i) and 37(2)(h)(i)) and FORM 'N' thereof, because whereas the Rule 37(1) of Punjab Rules provides that a complaint for claiming **interest and compensation** under sections 12, 14, 18 and 19 may be filed with the AO in Form 'N' but its Form 'N' is for claiming **compensation** only. In aforesaid Form 'N', an applicant is required to furnish details of claim for compensation in the fields numbered 1 to 8 as specified therein in respect of a apartment, plot or building (details of which are to be furnished by the complainant against appropriate fields in the Form) in a project (registration number and address of which is to be indicated by the complainant against appropriate fields in the Form).

10. Perusal of FORM 'M' appended in the Punjab Rules reveals that it is a format for filing "Complaint under section 31 of the Act" with regard to "rule 36(1)" of the Punjab Rules and is titled as "COMPLAINT TO REGULATORY AUTHORITY". In aforesaid Form 'M', a complainant is required to furnish details of complaint and relief(s) sought in the fields numbered 1 to 9 as specified therein.

11. The fields of the Forms 'N' and 'M', in respect of which details is to be furnished by the applicant and complainant respectively, are similar except that (i) there is an additional field for praying for interim order in FORM 'M'; & (ii) application Form 'N' is only for claim for compensation in respect of a apartment, plot or building in a project. As per Rule 36(1) of Punjab Rules, a complaint, for refund/return to the complainant-allottee, in terms of section 18(1) or 19(4) of the Act, the amount received by the promoter in respect of an apartment, plot or building in a project, is to be filed by a



complainant in Form 'M'. Though unlike Form 'N', prescribed Form 'M' does not contain specific fields for indicating detail of apartment, plot or building and for indicating registration number and address of the project, such information can be and is generally being indicated in complaints in Form 'M' under its field "Facts of the case". Hon'ble Supreme Court of India has inter alia held under paragraph 83 of its aforesaid judgment dated 11.11.2021 that "-----
- if composite application is filed, can be segregated at the appropriate stage". If composite application claiming refund/return of amount deposited, interest thereon and compensation are claimed in Form 'N', then interim order may either be prayed under the field titled "Compensation(s) sought" in Form 'N' or through a separate general application as is many a times being prayed for before this Tribunal for granting stay etc. Hence, in my opinion, format of complaint (i.e. Form 'M' or 'N') should not be considered as a constraint for dealing a composite application for claiming refund, interest thereon and compensation by the AO if he has been specifically been directed by the competent authority to deal such composite case.

12. Paragraph 55 of aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court of India reads as under (some portion of which has been emboldened hereby to lay emphasis):

"55. Before examining the question, we have to take a holistic view of the scheme of the Act along with the rules/regulations framed by the Authority in exercise of its powers under Sections 84 and 85 of the Act that postulates certain functions and duties to the promoter of the real estate project and its entailing consequences if the promoter fails to fulfil his obligations defined under Chapter III. Some of the obligations are spelt out in Sections 12, 14, 18 and 19 of the Act."



13. Paragraph 86 of aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court of India reads as under (some portion of which has been emboldened hereby to lay emphasis):-

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a **conjoint reading of Sections 18 and 19 clearly manifests that** when it comes to refund of the amount, and **interest on the refund** amount, or directing payment of **interest for delayed delivery of possession**, or penalty and interest thereon, **it is the regulatory authority which has the power to examine and determine** the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

14. Paragraph 85 of aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court of India reads as under:-

“85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature



and the Courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.”

15. Paragraph 116 of aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court of India reads as under (some portion of which has been emboldened hereby to lay emphasis):-

*“116. The further submission made by learned counsel for the promoters that Section 81 of the Act empowers even delegation to any officer of the authority or any other person, **it is true that the authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the authority or any other person** but we are not examining the delegation of power to any third party. To be more specific, this Court is examining the limited question as to whether the power under Section 81 of the Act can be delegated by the authority to any of its member to decide the complaint under Section 31 of the Act. What has been urged by learned counsel for the promoters is hypothetical which does not arise in the facts of the case. If the delegation is made at any point of time which is in contravention to the scheme of the Act or is not going to serve the purpose and object with which power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review.”*

16. Section 81 of the Act reads as under (some portion of which has been emboldened hereby to lay emphasis):-

*“81. The Authority may, by general or special order in writing, **delegate to any member, officer of the Authority or any other person** subject to such conditions, if any, as may be specified in the order, **such of its powers and functions under this Act** (except the power to make regulations under section 85, as it may deem necessary.”*



17. As is evident from Circular No. RERA/PB./Legal/24 dated 05.03.2021, during the pendency before Hon'ble Supreme Court of India of the challenge to the judgments dated 16.10.2020 passed by Hon'ble Punjab & Haryana High Court in CWP No. 38144 of 2018 and CWP No. 8548 of 2020 and related matters, the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*), after obtaining opinion of its Senior Advocate in the Supreme Court of India in SLP (Civil) No. 13192 of 2020, has inter alia decided in its meeting held on 04.03.2021 that **all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation) will be dealt with by the Adjudicating Officer.**
18. Perusal of the impugned order dated 03.02.2020 passed by the Adjudicating Officer in complaint bearing AdC No. 1055 of 2019 (Annexure A-4 of the Appeal No. 277 of 2020) reveals that the complaint seeking refund, interest & compensation was earlier filed in form 'N' bearing AO No. 07 of 2017, which was dismissed by the Adjudicating Officer on 28.11.2018 in view of the circulars dated 09.10.2018 and 21.11.2018 passed by the Authority, but, the said circulars were set aside by this Tribunal vide order dated 27.02.2019 passed in Appeal bearing No. 53 of 2018 and therefore another complaint bearing GC No. 1180 of 2019 was also filed by the complainant in form 'M' and the present complaint, bearing AdC No. 1055 of 2019 instituted on 22.01.2019, was accepted vide impugned order dated 03.02.2020 passed by the Adjudicating Officer to the extent of refund/return of principal amount of Rs.41,32,278 along with interest thereon from the date of



respective payments till realization and compensation on account of mental agony & litigation expenses aggregating to Rs.1,25,000 to be paid within 60 days from 03.02.2020, the date of the impugned order.

19. The appellant in his present appeal has not disclosed any thing about above mentioned two earlier complaints.
20. In view of above, in my opinion, the delegation of power of the Authority to deal with the complaints/applications for "refund of the amount and interest thereon as provided under section 18(1) of the Act" by the Authority itself vide aforementioned circular dated 05.03.2021 or by any other document or as per directions of a competent authority, to its Adjudicating Officer, in addition to AO's own exclusive powers to adjudge compensation and interest thereon under sections 12, 14, 18 and 19 of the Act, is in accordance with the mandate of law viz section 81 of the Act. Hence, in my opinion, the so empowered/directed Adjudicating Officer has the jurisdiction to deal with all the cases where the composite claim is for the return of amount deposited by the allottee, interest thereon and compensation along with interest thereon. It is pertinent to mention hereby that as per section 71(1) of the Act, an Adjudicating Officer has be a judicial officer, who is or has been a District Judge.

MY OPINION IN THE APPEAL NO. 277 OF 2020 ON MERITS:

21. The Act has been enacted inter alia to establish an adjudicating mechanism for speedy dispute redressal, but the complainant-respondent in Appeal No. 277 of 2020 is obviously facing hardship in getting returned/refunded an amount of Rs.41,32,278 (almost 90% of the total sale price) deposited by him during the period



August 2006 to December 2013 (as per page-92 of the paper-book) despite the fact that after coming into force of the provisions of section 18(1) with effect from 01.05.2017, which inter alia provide for refund on demand with interest at prescribed rate including compensation, the complainant-respondent filed its first complaint bearing AO No. 07 of 2017 and subsequent complaints bearing GC No. 1180 of 2019 and AdC No. 1055 of 2019 as per directions of the Adjudicating Officer/Authority/this Tribunal.

22. It is admitted by the appellant-promoter in its reply dated 01.08.2019 to the complaint bearing AdC No. 1055 of 2019 that as per Apartment Buyer Agreement dated 14.03.2008, the possession of the allotted unit/flat was to be handed over on or before 06.10.2010 and that the possession of the unit, even at the time of aforesaid reply dated 01.08.2019, was only likely to be offered within 5-6 months. Thus, the appellant-promoter has miserably failed to give possession of the flat in accordance with the terms of the agreement for sale by the date specified therein and hence as per provisions under section 18(1) of the Act, he is liable on demand to the allottee to return the amount received by him in respect of the flat with interest at the rate prescribed under Rule 16 of Punjab Rules including compensation.

23. The AO has not followed the procedure for adjudging the quantum of compensation as laid down in the Act and as directed by this Tribunal vide order dated 30.11.2021 in Appeal No. 11 of 2021 (**Omaxe New Chandigarh Extension Pvt. Ltd. versus Gurmeet Singh Gulati & Anr.**). However, complainant too has not specifically made out a case for compensation keeping in view the factors set out in section 72 of the Act. Moreover, no objection



regarding the quantum of the compensation allowed by the AO in the impugned order has been raised by any of the parties in present appeal. Therefore, there is no necessity to interfere on this account and consequently there is no necessity to remand the case back to the AO to re-determine the quantum of compensation.

24. Paragraph 25 of aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court of India reads as under (some portion of which has been emboldened hereby to lay emphasis):-

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

25. In view of above, the Appeal No. 277 of 2020 is hereby dismissed. File be consigned to record room and a copy of this order be communicated to the parties as well as the Adjudicating Officer/Authority.



Dated .02.2022

Certified To Be True Copy

Dhanendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

Sd/-

Er. Ashok Kumar Garg
Member (Administrative/Technical),
Real Estate Appellate Tribunal Punjab