

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

Subject: -

APPEAL NO. 268 OF 2020 VIJAY MOHAN GOYAL AND ANOTHER VERSUS REAL ESTATE REGULATORY AUTHORITY PUNJAB AND ANR	APPEAL NO. 06 OF 2021 (O&M) PDA PATIALA VERSUS VIJAY MOHAN AND ORS.
--	--

Memo No. R.E.A.T./2022/ 108

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 11th
day of March, 2022.



Shanmukh Singh
REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

A

**APPEAL BEFORE THE HON'BLE REAL ESTATE APPELLATE
TRIBUNAL PUNJAB, SAS NAGAR MOHALI.**

Appeal No. 268 of 2020

MEMO OF PARTIES

1. Vijay Mohan Goyal
2. Kiran Kanta Goyal

Both Resident of H.No. 246, Ajit Nagar, Patiala, Pb.

...Appellant

Versus

1. Real Estate Regulatory Authority Punjab, Sector 18, Chandigarh.
Through its Secretary.
2. Estate Officer, Patiala Urban Planning & Development Authority,
Urban Estate Phase II, Patiala., Punjab.
3. M/s Omaxe Limited., Office 7, LSC, Kalkaji, New Delhi-110019

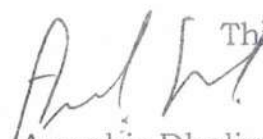
Now at : Office : PDA Patiala Patiala Urban Planning Development
Authority Urban Estate Phase II, Patiala, Punjab.

Respondents

Place : Chandigarh

Date : 14/12/2020



Through Counsel

Amarbir Dhaliwal (Advocate)
Counsel for Appellant

BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE,
TRIBUNAL, PUNJAB, FOREST COMPLEX, SECTOR 68, SAS
NAGAR-160062

Civil Appeal No. 06 of 2021

MEMO OF PARTIES

PDA PATIALA, PUDA Complex, Urban Estate, Phase-II, PATIALA,
DISTRICT PATIALA-147002.

..... Appellant

Versus

1. Vijay Mohan, Residents of House No. 246, Ajit Nagar,
Patiala, District Patiala, Punjab-147001.
2. Kiran Kanta, Residents of House No. 246, Ajit Nagar,
Patiala, District Patiala, Punjab-147001.
3. Adjudicating officer of Real Estate Regulatory Authority
Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18 A
Chandigarh-160018.

..... Respondents

4. OMAXE Limited, 7 L.S. C. Kalkaji, New Delhi, Pin code.
110019.

.... Proforma Respondent.


(Bhupinder Singh)
Advocate

Counsel for the Appellant



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 268 OF 2020 VIJAY MOHAN GOYAL AND ANOTHER VERSUS REAL ESTATE REGULATORY AUTHORITY PUNJAB AND ANR	APPEAL NO. 06 OF 2021 (O&M) PDA PATIALA VERSUS VIJAY MOHAN AND ORS.
---	--

Present: - Mr. Jatin Bansal, Advocate for the appellant in Appeal No.268 of 2020 and for respondent in Appeal No. 06 of 2021(O&M).
Mr. Bhupinder Singh, Advocate for the appellant in Appeal No. 06 of 2021 (O&M) and for respondent in Appeal No. 268 of 2020.
Mr. Munish Gupta, Advocate for respondent No.3 in Appeal No.268 of 2020 and for respondent No.4 in Appeal No.06 of 2021

These appeals are directed against the order dated 05.10.2020, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.

Learned counsel for the appellant at the outset places reliance on the recent judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", refers to Para 83 and 86, to contend that the Adjudicating Officer would have no jurisdiction to entertain and decide issues relating to refund and interest, even though he is specifically empowered under the Act to deal with the issues of compensation, which has also been approvingly observed by the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." He thus prays that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned orders need to be set aside.



APPEAL NO. 268 OF 2020 & APPEAL NO. 06 OF 2021

2

The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.

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.

Parties are directed to appear before the Real Estate Regulatory Authority on **14.03.2022**. Files be consigned to record room.



APPEAL NO. 268 OF 2020 & APPEAL NO. 06 OF 2021

3

The amount deposited by the GMADA/promoter under Section 43(5) of the Act be disbursed to the GMADA/promoter after proper identification and due verification in accordance with law.

Photocopy of this order be placed in connected case.

Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sdr
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

March 03, 2022
AN



Certified To Be True Copy

Shanesh Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

11/03/222

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 268 of 2020

1. Vijay Mohan Goyal
2. Kiran Kanta Goyal

Both resident of H.No.246, Ajit Nagar, Patiala, Pb.

....Appellant

Versus

1. Real Estate Regulatory Authority Punjab, Sector-18, Chandigarh Through its Secretary.
2. Estate Officer, Patiala Urban Planning & Development Authority, Urban Estate Phase II, Patiala, Punjab.
3. M/s Omaxe Limited., Office 7, LSC, Kalkaji, New Delhi-110019
Now at: Office: PDA Patiala Urban Planning Development Authority Urban Estate Phase II, Patiala, Punjab.

.....Respondents

AND

Appeal No. 6 of 2021

PDA Patiala, PUDA Complex, Urban Estate, Phase-II, Patiala, District Patiala-147002.

.....Appellant

Versus

1. Vijay Mohan residents of H.No.246, Ajit Nagar, Patiala, District Patiala, Punjab-147001.
2. Kiran Kanta, Residents of House No.246, Ajit Nagar, Patiala, District Patiala, Punjab-147001.
3. Adjudicating Officer of Real Estate Regulatory Authority, Punjab, Plot No.3, Block-B, Madhya Marg, Sector-18A, Chandigarh-160018,

.....Respondents

4. OMAXE Limited, 7 L.S.C. Kalkaji, New Delhi, Pin code 110019.



Present:

Mr. Jatin Bansal, Advocate for the appellant in Appeal No.268 of 2020 and for respondent in Appeal No. 06 of 2021(O&M).

Mr. Bhupinder Singh, Advocate for the appellant in Appeal No. 06 of 2021 (O&M) and for respondent in Appeal No. 268 of 2020.

Mr. Munish Gupta, Advocate for respondent No.3 in Appeal No.268 of 2020 and for respondent No.4 in Appeal No.06 of 2021

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)

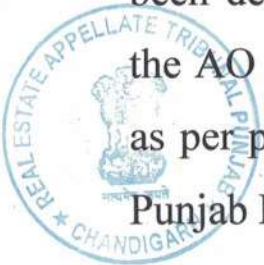
1. By this order, I will dispose off cross appeals bearing Appeal No. 268 of 2020 (**Vijay Mohan Goyal and Another versus Real Estate Regulatory Authority Punjab and Others**) and Appeal No. 6 of 2021 (**PDA Patiala versus Vijay Mohan and Others**) against order dated 05.10.2020 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AO*), Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing No. AdC13432019UR filed/instituted on 29.09.2019.
2. The complaint has been filed before the AO, jointly by Sh. Vijay Mohan Goyal & Kiran Kanta, 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 refund of entire amount deposited by the complainants with the promoters (Omaxe Limited and PDA Patiala) along with interest payable under the Act and the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Punjab Rules*) and Rs.5 lakhs as compensation for mental harassment and Rs.2 lakhs as litigation costs.
3. The said complaint has been accepted by the AO vide his order dated 05.10.2020 to the following extent and heads:-



1.	Principal amount	Rs.28,43,446/-
2.	Simple interest	At the rate of 7% per annum on the above said amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs.75,000/-

Further, the promoters have been directed to pay the above said amount to the complainants within sixty days from the date of the impugned order i.e. 05.10.2020; and it has also been ordered that any amount already received by the complainants from the promoters 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 of the AO, the complainants filed Appeal No. 268 of 2020 before this Tribunal and prayed to modify the impugned order to the extent to direct the promoters to refund the amount without any deduction and also to pay the interest thereon as per Rule 16 of the Punjab Rules instead of 7% allowed by the AO along with compensation and litigation cost.
5. In the grounds of the complainants' appeal, it has inter alia been contended that the AO has completely ignored the objective of the Act and the very purpose and intention of passing of this Act has been defeated by narrowing its own jurisdiction which otherwise the AO has the power to exercise in the overall interest of justice as per provisions of the Section 18 of the Act and Rule 16 of the Punjab Rules.
6. On the other hand, one of the promoters, namely PDA Patiala, is also aggrieved by the above said order of the AO and has filed Appeal No. 6 of 2021 before this Tribunal and prayed to set aside and quash the impugned order and to dismiss the complaint.



7. The grounds of the appeal taken by the PDA Patiala before this Tribunal are more or less similar to its contentions in its reply dated 19.12.2019 before the Adjudicating Officer to the complaint dated 29.09.2019.

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

8. As per opinion expressed by me in detail while disposing off Appeal No. 277 of 2020 (**EMAAR India Ltd. (formerly EMAAR MGF Land Limited)** versus **Sandeep Bansal**) vide order dated 24.02.2022, the delegation of power of the Punjab Real Estate Regulatory Authority (*hereinafter referred to as 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 its circular dated 05.03.2021 or by any other document or as per directions of a competent authority, to its Adjudicating Officer (*hereinafter also referred to as the AO*), 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.



9. After I finalized draft of my view in aforementioned Appeal No. 277 of 2020 and copies thereof were handed over for information of Hon'ble Chairman and Learned Member (Judicial) of this Tribunal on 23.02.2022 forenoon, I was apprised about the circular No. RERA/LEGAL/2021/8950 dated 06.12.2021 issued by the Authority. Vide opening paragraph of the said circular dated 06.12.2021, certain decisions taken by the Authority in its meeting held on 22.11.2021 have been brought out. As per second paragraph of the said circular dated 06.12.2021, the aforesaid decisions taken by the Authority will apply with immediate effect to all pending complaints and those to be received in future. As per third paragraph of the said circular dated 06.12.2021, **the circular No. RERA/PB/LEGAL/24 dated 05.03.2021 stands modified to this extent.**
10. After perusing the said circular dated 06.12.2021, I am of the view that the appeals, against the orders passed by the Adjudicating Officer in the complaints involving composite claim of refund, interest thereon and compensation, need not be remanded by this Tribunal to the Authority but should be dealt on merit, provided that such orders have been passed by the Adjudicating Officer pursuant to the directions imparted by the Authority in this regard (i) vide its circular No. RERA/Pb./ENF-17 dated 19.03.2019 in view of the judgment dated 27.02.2019 of this Tribunal in Appeal No. 53 of 2018 but before the date of the issue of its circular No. RERA/PB./LEGAL/24 dated 05.03.2021; or (ii) vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority but before the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.



11. After pronouncement of judgment on 24.02.2022 in Appeal No. 277 of 2020, I obtained a copy of majority view of Hon'ble Chairperson and Learned Member (Judicial) of this Tribunal and I have gone through their detailed view to dispose of the appeal with liberty to the complainants to move the appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/Adjudicating Officer. Even after going through the same, I am still of the view that the appeals, against the orders passed by the Adjudicating Officer in the complaints involving composite claim of refund, interest thereon and compensation, need not be remanded by this Tribunal to the Authority but should be dealt on merit, provided that such orders have been passed by the Adjudicating Officer pursuant to the directions imparted by the Authority in this regard (i) vide its circular No. RERA/Pb./ENF-17 dated 19.03.2019 in view of the judgment dated 27.02.2019 of this Tribunal in Appeal No. 53 of 2018; or (ii) vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority; but before in both the cases the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.
12. My aforesaid view is not contradictory to the aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2021 and other connected matters. Rather the same is as per the said judgment, (i) while deciding the question No. 2 "*Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?*", Hon'ble Supreme Court has concluded under paragraph 86 of the judgment



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 regulatory authority which has the power to examine 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. (ii) while deciding the 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?”, Hon'ble Supreme Court has inter alia concluded under paragraph 120 of the judgment that “the power of delegation under Section 81 of the Act by the authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be de hors the mandate of law.”; and (iii) while deciding the aforementioned question No. 3, Hon'ble Supreme Court has inter alia also held under paragraph 116 of the judgment that “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.”.

13. It is also mentioned hereby that my aforementioned view is regarding delegation of powers to the Adjudicating Officer as an “officer of the Authority” (which expression also finds mention under section 81 of the Act), who (i.e. the Adjudicating Officer), as per section 71(1) of the Act, is or has been a District Judge.

MY OPINION IN THE PRESENT CROSS APPEALS

14. The PDA Patiala, in its reply dated 19.12.2019 to the complaint, has inter alia contended that its application dated 29.09.2017 to the Authority for registration of the project in question had been rejected vide order dated 21.06.2018 of the Authority on the ground that time frame for completion of project was not given in the application; and it has also been contended in the said reply that the said ground had been in existence even at the time of said reply dated 19.12.2019, because the matter in dispute of PDA Patiala with Omaxe Ltd. (the Developer of the project) was pending. It has also been contended in the said reply as well as in its appeal dated 13.01.2021 (Appeal No. 6 of 2021) that the complaint against project, which is not registered with the Authority, is not maintainable and the Authority has no jurisdiction. Similar contention on this account by M/s Omaxe



Limited has also been brought out at almost end of paragraph 2 at page 7 of the impugned order.

15. No finding in respect of aforementioned contentions of the promoters regarding maintainability and jurisdiction in respect of unregistered projects has been returned by the Adjudicating Officer in the impugned order dated 05.10.2020.
16. As per aforementioned circular No. RERA/LEGAL/2021/8950 dated 06.12.2021 issued by the Authority, after considering in detail the judgment dated 11.11.2021 of Hon'ble Supreme Court in case titled '*M/s Newtech Promoters and Developers Pvt Ltd vs State of UP and Others etc.*' in Civil Appeals No(s) 6745-649 of 2021 and other connected matter and after due deliberations in its meeting held on 22.11.2021, the Authority inter alia decided as under:

"I. Complaints against unregistered projects:

a. No complaint under Section 31 of the Act filed against any unregistered project shall be entertained. However, proceedings under Section 59 of the Act may be initiated by the Authority against any defaulting promoters on the basis of the evidence available on record.

b. In case of complaints against unregistered projects filed prior to passing of the judgement dated 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgement dated 11.11.2021."

17. In view of fact that no finding in respect of contentions of the promoters regarding maintainability and jurisdiction in respect of unregistered projects has been returned by the Adjudicating Officer



in the impugned order dated 05.10.2020, I deem it appropriate to remand the complaint to the Authority to decide this issue in the light of applicable law.

18. The appeals are accordingly disposed off. Files be consigned to record room and a copy of this order be filed in the files of the appeals and also be communicated to the parties as well as to the Authority and the Adjudicating officer.

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

March 03, 2022



Certified To Be True Copy
Shamansh Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
11/03/2022