

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

Subject: -

**APPLICATION NO. 108 OF 2021**  
**APPEAL NO. 95 OF 2021**  
**M/S TDI INFRATECH LTD.**  
**VERSUS**  
**SHARAD SETHI & ANR.**  
\*\*\*

Memo No. R.E.A.T./2022/ 139

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup>**  
**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 01<sup>st</sup>  
day of April, 2022.

*Dr. Manoj Kumar*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**Appeal No. 95 of 2021**MEMO OF PARTIES**

M/s TDI Infratech Ltd., SCO 144-145, 200 ft International Airport, Sector 117, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

**...Appellant****Versus**

1. Sharad Sethi son of Sh. Narinder Kumar Sethi
2. Mrs Simple Sethi wife Sh. Sharad Sethi

Both residents of House No. 182/A FF, Sector 51-A, Chandigarh.

**...Respondents**

DATE:- 20/08/21

  
Puneet Tuli

Advocate  
COUNSEL FOR THE APPELLANT

Date of Filing 28/09/2021/286  
Date of Receipt by post \_\_\_\_\_  
Appeal No. 95/2021  
Signature [Signature]  
Registrar \_\_\_\_\_



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPLICATION NO. 108 OF 2021

APPEAL NO. 95 OF 2021

M/S TDI INFRATECH LTD.

VERSUS

SHARAD SETHI & ANR.

\*\*\*

**Present: -** Mr. Puneet Tuli Singh, Advocate for the appellant.  
Ms. Manju Goyal, Advocate for the respondents.

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This appeal is directed against the order dated 26.07.2021 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.", and 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.

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 appeal 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.



APPEAL NO. 95 OF 2021

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Parties are directed to appear before the Real Estate Regulatory Authority on 30.04.2022. Files be consigned to record room.

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

Sd/-  
JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

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

March 08, 2022

AN



Certified To Be True Copy

*Shamande Kaur*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

01/04/2022

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 95 of 2021

M/s TDI Infratech Ltd., SCO 144-145, 200 ft International Airport,  
Sector 117, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

.....Appellant

pral Versus

1. Sharad Sethi son of Sh. Narinder Kumar Sethi
2. Mrs. Simple Sethi wife of Sharad Sethi

Both residents of House No. 182/A FF, Sector 51-A, Chandigarh.

.....Respondents

Present: Mr. Vipin Kumar, Advocate for the appellants  
Mr. Bhupinder Singh with Mr. Ishneet Bhatia,  
Advocates 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.))

(TIE/AT PAR VIEW)

1. By this order, I will dispose off the appeal in question bearing  
Appeal No. 95 of 2021 (**TDI Infratech Ltd. versus Sharad Sethi  
and Anr.**) against order dated 26.07.2021 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. ADC1605/2020  
filed on 19.03.2020.



2. The complaint has been filed before the AO, jointly by Sh. Sharad Sethi & Simple Sethi, 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 the amount deposited by the complainants with the appellant along with interest payable under the Act and Rs.5 lakhs as compensation for mental agony, harassment financial loss to the complainants and Rs.1 lakh as legal fees.
3. The said complaint has been accepted by the AO vide his order dated 26.07.2021 to the following extent and heads:-

1.	Principal amount	Rs.51,23,663/-
2.	Simple interest	At the SBI highest marginal cost of landing rate (as on the date of the impugned order) plus 2% on the above said amount from the date of respective payments till realization
3.	On account of compensation	Rs.1,25,000/-

Further, the appellant has been directed to pay the above said amount to the complainants within sixty days from the date of the impugned order i.e. 26.07.2021; and it has also been ordered that the amount, if any, received by the complainants from the appellant on account of delay in delivery of possession shall stand adjusted against above amount and that home loan obtained by the complainants from UCO Bank shall be first charge on the above said amount.

Aggrieved by the above said order of the AO, the appellant has filed Appeal No. 95 of 2021 before this Tribunal and prayed mainly to set aside the impugned order and to dismiss the complaint with costs.



5. The grounds of the appeal taken by the appellant before this Tribunal are (i) that the Adjudicating Officer does not have jurisdiction to deal with and decide matters involving refund and interest; (ii) that the construction of the unit stands complete and Occupancy Certificate has been duly obtained; (iii) that the complainants have defaulted in making their due payments under the terms and conditions of the Allottee Arrangement and thus violated section 19 of the Act; (iv) that the AO has awarded excessive compensation; (v) that the complainants failed to implead UCO Bank as a party; (vi) that the complainants have no cause of action to file the complaint; and (vi) that no adjudication has been done on specific legal objections taken by the appellant.

**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:**

6. I have expressed my opinion 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 and as further updated it while disposing off cross appeals bearing Appeal No. 268 of 2020 (Vijay Mohan Goyal & Anr. versus Real Estate Regulatory Authority Punjab & Ors.) and Appeal No. 6 of 2021 (PDA Patiala versus Vijay Mohan & Ors.) vide order dated 03.03.2022. Therefore, 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 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 vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority but before (in both cases) the decision of the Authority circulated vide its circular No. RERA/ LEGAL/ 2021/8950 dated 06.12.2021.

**MY OPINION IN THE PRESENT APPEAL:**

7. I have gone through the contentions of the appellant and the material on record and have noticed as follows.
8. The appellant's contention is that the construction of the unit stands complete and Occupancy Certificate has been duly obtained. As per appellant's own version, Occupancy Certificate was issued on 11.08.2020 for the unit in question and the possession of the plot was offered on 16.07.2021, though nothing has been mentioned in the impugned order dated 26.07.2021 about the offer of possession. Even after allowing grace period of six months provided for in the Buyer Agreement dated 13.07.2017, the possession of the unit was to be delivered by 12.01.2020, but the appellant failed to do so. Thus, in terms of section 18(1) of the Act, the appellant is liable on demand (made by the allottee-complainants through their complaint filed on 19.03.2020) to return the amount received by the appellant in respect of the unit with interest at prescribed rate including compensation.
9. The appellant's next contention is that the complainants have defaulted in making their due payments under the terms and conditions of the Allottee Arrangement violated section 19 of the



Act, which has been found to be without any substance as already detailed in the impugned order in this regard.

10. The another contention of the appellant is that the AO has awarded excessive compensation. In this regard, the perusal of the impugned order reveals that 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.**).
11. The contention of the appellant that the complainants failed to implead UCO Bank as a party has no merit, because while ordering the refund, interest thereon and compensation, it has also been ordered through the impugned order that UCO Bank, who has given loan to the complainants, shall be first charge on the awarded amount.
12. The cause of action to file the complaint is obvious i.e. the appellant has failed to deliver possession of the unit duly completed by the date specified in the agreement.
13. The contention that no adjudication has been done on specific legal objections taken by the appellant is frivolous.

14. In view of above, the appeal is partially accepted only to the extent that the quantum of compensation only is liable to be re-adjudged by the Adjudicating Officer by following the procedure 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.**). The case is accordingly remanded back to the Adjudicating Officer



only for re-adjudging the compensation. The appeal is accordingly disposed off. File be consigned to record room and a copy of this order be filed in the file of the appeal 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 08, 2022



Certified To Be True Copy  
*Shamendra Kaur*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh  
01/04/2022