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

Subject: -

APPEAL NO. 113 OF 2021

ESTATE OFFICER, PATIALA URBAN PLANNING AND DEVELOPMENT AUTHORITY PDA, PUDA COMPLEX, URBAN ESTATE, PHASE-II, PATIALA, PUNJAB- 147001

VERSUS

ASHIM KUMAR SEN AND OTHERS

***

Memo No. R.E.A.T./2022/ 126

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 **21st day of March, 2022.**

REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE, TRIBUNAL, PUNJAB, SECTOR 17, CHANDIGARH.

Civil Appeal No. 113 of 2021

MEMO OF PARTIES

Estate Officer, Patiala Urban Planning & Development Authority PDA PUDA Complex, Urban Estate, Phase-II, PATIALA, Punjab-14700. .... Appellant

Versus

1. Ashim Kumar Sen House No. 11, PDA, Omaxe City, Sirhind Road, Patiala, Punjab-147001.

2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-160018. ...Respondents

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

.... Proforma Respondent.

Date : 01.11.2021

(Bhupinder Singh)
Advocate
Counsel for the Appellant

REAL ESTATE APPELLATE TRIBUNAL PUNJAB ★ CHANDIGARH ★

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 113 OF 2021

ESTATE OFFICER, PATIALA URBAN PLANNING AND DEVELOPMENT AUTHORITY PDA, PUDA COMPLEX, URBAN ESTATE, PHASE-II, PATIALA, PUNJAB- 147001

VERSUS

ASHIM KUMAR SEN AND OTHERS

***

Present: - Mr. Bhupinder Singh Advocate for the appellant.
Mr. Jaspal Singh Khara, Assistant Manager, Real Estate Regulatory Authority, Punjab/respondent No.2.
Mr. Munish Gupta, Advocate for the respondent No.3.

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We had noticed on the previous date of hearing that service is complete but none appeared on behalf of respondent No.1-Ashim Kumar Sen.

Today, when the matter was called out, the situation was same. Consequently, we are left with no other option but to proceed against the respondent No.1 as ex parte.

This appeal is directed against the order dated 12.05.2021 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 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 **30.03.2022**. 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 10, 2022
AN

REAL ESTATE APPELLATE TRIBUNAL PUNJAB ★ CHANDIGARH ★ सत्यमेव जयते

Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
21/03/2022

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 113 of 2021

Estate Officer, Patiala Urban Planning & Development Authority PDA PUDA Complex, Urban Estate, Phase-II, PATIALA, Punjab-14700.
.....Appellant

Versus

1. Ashim Kumar Sen House No. 11, PDA, Omaxe City, Sirhind Road, Patiala-147001

2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-160018

.....Respondents

3. Omaxe Limited, 7 L.S.C. Kalkaji, New Delhi, Pin code. 110019
.....Proforma Respondent

Appeal No. 114 of 2021

Estate Officer, Patiala Urban Planning & Development Authority PDA PUDA Complex, Urban Estate, Phase-II, PATIALA, Punjab-147001.
.....Appellant

Versus

1. Kajal, House No. 538 Street No. 4, Tripuri Town Patiala, District Patiala, Punjab-147001

2. Adjudicating Officer of Real Estate Regulatory Authority Punjab, Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-160018
.....Respondent

3. Omaxe Limited, 7 L.S.C. Kalkaji, New Delhi, Pin code. 110019
.....Proforma Respondent

REAL ESTATE APPELLATE TRIBUNAL PUNJAB CHANDIGARH

Present: Mr. Bhupinder Singh, Advocate for the appellant in both the appeals

None for respondent No. 1 in both the appeal

Mr. Jaspal Khara, AM for the respondent No. 2 in both the appeals

Mr. Munish Gupta for respondent No. 3 in both the appeals.

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 above mentioned two appeals filed against separate orders dated 12.05.2021 passed by Sh. Balbir Singh, Adjudicating Officer *(hereinafter referred to as the AO)* of Real Estate Regulatory Authority Punjab *(hereinafter referred to as the Authority)*.

2. The said complaints has been accepted by the AO to the following extent and heads:-

1.	Appeal No.	113/2021	114/2021
2.	Complaint AdC No.	17672020UR	17422020UR
3.	Complaint date	28.09.2020	16.09.2020
4.	AO's order dated	12.05.2021	12.05.2021
5.	Principal amount	Rs.76,601/-	Rs.4,21,182/-
6.	Simple interest	At the rate of 7% per annum on the above said amount from the date of respective payments till realization	At the rate of 7% per annum on the above said amount from the date of payment(s) till realization and also interest at the same rate on the amount of Rs.3,03,713/- from the date of its payment by the complainant till 22.11.2018 the date on which it was refunded by the respondents

7.	On account of mental agony and litigation expenses	Rs.25,000/-	Rs.50,000/-

The appellant and M/s Omaxe Ltd. have been directed vide aforesaid orders to pay the above said amounts to the complainants within sixty days from the date of the impugned orders; and in respect of complaint bearing AdC No. 1742 of 2020, it has also been ordered that in case, any amount has been received by the complainant from the appellant and M/s Omaxe Ltd. in this matter on account of delay of possession shall stand adjusted against the above said due amount.

3. The facts have been extracted from Appeal No. 113 of 2021 (**Estate Officer, Patiala Urban Planning & Development Authority versus Ashim Kumar Sen and Others**).

4. The complaint bearing AdC No. 17672020UR has been filed before the Adjudicating Officer by Sh. Ashim Kumar Sen, 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)* and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 *(hereinafter referred to as the Rules)* claiming payment of interest @ 18% per annum from the date of depositing of the amount till receipt of his money back with deduction and without any interest and payment of Rs.2 lakhs for mental harassment and costs to the tune of Rs.1 lakh as legal cost.

5. Aggrieved by the above said order dated 12.05.2021 of the AO in complaint bearing AdC No. 17672020UR, the appellant (who is one of the two promoters against whom the impugned order has been passed) filed Appeal No. 113 of 2021 before this Tribunal

and prayed to set aside and quash the impugned order & dismiss the complaint.

6. In the grounds of the aforesaid appeal bearing Appeal No. 113 of 2021, it has inter alia been contended (i) that as the allotment of the plot in question is governed by the provisions of the Punjab Regional and Town Planning and Development Act, 1995 *(hereinafter referred to as the PRTPD Act)*, the complainant was required to approach the authorities (under PRTPD Act) for redressal of his grievance through appeal and revision; (ii) that in view of provisions under Section 3 of the Act and Rule 2(h) of the Rules the Real Estate Project was/is not ongoing at the time of coming into operation of the relevant provisions of the Act and is not registered with the Authorities and there is no marketing/booking/sale/offer for sale of any plot/site/flat/building in the project in question at the time or thereafter coming into operation of the provisions of the Act; (iii) that the complaint against the project which is not registered with the Authority under the Act is not maintainable; (iv) that the issue of maintainability of the complaints pertaining to the projects which are not registered with the Authority is pending adjudication in RERA Appeals No. 31 to 38 and 40 of 2020 in which notice of motion and notice regarding stay for 07.04.2021 had already been issued by Hon'ble Punjab and Haryana High Court on 12.01.2021; (v) that Appeal No. RERA-APPL-22-2019 (Silver City (Main) Residents Welfare Association Regd. Zirakpur versus State of Punjab and others), filed against the order dated 24.07.2019 is pending adjudication before before Hon'ble Punjab and Haryana High Court; (vi) that the complainant had already taken refund in compliance to the refund order passed by the Estate Officer, PDA, Patiala on the

request of the respondent No. 1 and as such there was/is no Agreement to Sell, Letter of Intent or Allotment Letter in existence at the time of the filing of the complaint, provisions of which can be said to be violated; (vii) that there is no provision under the Act for enforcing or taking cognizance of violation of any in terms of the refund order; (viii) that C.W.P. No. 14348 of 2016, preferred by the PDA Residents Welfare Association before Hon'ble Punjab and Haryana High Court, wherein issue regarding possession and development has been raised (the complainant had requested for refund on the ground that no development works are initiated in the PDA-Omaxe City project), is still pending adjudication, in which the development of the project is being monitored by Hon'ble Punjab and Haryana High Court; (ix) that the complainant had failed to implead either the original allottee Sh. Amit Kumar or the State Government; (x) that the complainant failed to pay price of the flat as per agreed terms and conditions of allotment and was a defaulter of Rs.16,384/- till 04.10.2018; (xi) that benefit of the period of status quo order passed by Hon'ble High Court in CWP No. 8100 of 2011 had been given to the complainant by rescheduling the payment of installments; (xii) that the Adjudicating Officer does not have the jurisdiction to examine and decide the complaints for refund of amount and interest thereon and that the circular dated 05.03.2021 issued by the Authority is not in consonance with the law laid down by Hon'ble Punjab and Haryana High Court in CWP No. 8548 of 2020 and CWP No. 38144 of 2018.

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:

7. 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 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, as per which, 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 decided by this Tribunal 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 the cases) the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.

MY OPINION IN THE APPEAL

8. Most of the contentions of the appellant in the appeal have already been adjudicated upon by the Adjudicating Officer and I generally don't see any merit in those contentions to interfere in the findings of the Adjudicating Officer, except on certain issue as detailed in the later part of this judgment.

9. The appellant, in its reply dated 09.11.2020 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. It has also been contended in the said reply as well as in its appeal dated 01.11.2021 (Appeal No. 113 of 2021) that the complaints against the projects, which are not registered with the Authority, are not maintainable and therefore, the Authority/ Adjudicating Officer has no jurisdiction. Similar submission on this account has also been made before the Adjudicating Officer by M/s Omaxe Limited as mentioned in the impugned order.

10. The Adjudicating Officer repelled such submission, in paragraph 8 of the impugned order dated 05.10.2020, by referring to the decision delivered by this Tribunal in Appeal No. 49 of 2018 titled as M/s Silver City Construction versus State of Punjab and others, wherein, it was stated to be held that the complaints against unregistered projects were maintainable before his Bench.

11. The appellant has also pointed out in its reply to the complaint as well as in its appeal against the impugned order that Appeal No. RERA-APPL-22-2019 (Silver City (Main) Residents Welfare Association Regd. Zirakpur versus State of Punjab and others), filed against the order dated 24.07.2019 passed by this Tribunal in Appeal No. 49 of 2018 is pending adjudication before before Hon'ble Punjab and Haryana High Court. No finding has been returned by the Adjudicating Officer in his impugned order on such submission of the appellant.

12. The appellant in his appeal has also contended that the issue of maintainability of the complaints pertaining to the projects which are not registered with the Authority is pending adjudication in RERA Appeals No. 31 to 38 and 40 of 2020 in which notice of motion and notice regarding stay for 07.04.2021 had already been issued by Hon'ble Punjab and Haryana High Court on 12.01.2021.

13. As per 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 tittled '***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."*

14. In view of the above facts, these cases need to be remanded to the Authority, because circular dated 05.03.2021 of the Authority stands modified vide its aforesaid circular dated 06.12.2021.

15. Therefore, I deem it appropriate to remand these complaints to the Authority to decide this case as per provisions of the applicable law.

16. 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.

March 10, 2022

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

REAL ESTATE APPELLATE TRIBUNAL PUNJAB
CHANDIGARH

Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
21/03/2022