

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

Subject: -

Appeal No. 112 of 2019

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

Tejbir Singh Sawhney son of Sh. Q.S. Sawhney, #2302, Wing A, Ajmera Zeon, Ajmera I-Land, Bhakti Park, Anik Wadala Road, Wadala East, Mumbai, Maharashtra - 400037.

.....Respondent

Memo No. R.E.A.T./2022/ 198

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 28th day of April, 2022.



Thamara Kaur
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

TRIBUNAL, PUNJAB

RERA/Appeal No. 112 of 2019

MEMO OF PARTIES

M/s Janta Land Promoters Pvt. Ltd. through its General Manager,
Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S.
Nagar, Mohali-140306.

.....Appellant

Versus

Tejbir Singh Sawhney son of Sh. Q.S. Sawhney, #2302, Wing A,
Ajmera Zeon, Ajmera I-Land, Bhakti Park, Anik Wadala Road,
Wadala East, Mumbai, Maharashtra – 400037.

..... Respondent



Place:

Date : 21-12-19

[Abhinav Gupta & Yash Yadav]
P- 971 /2013 & D - 3735/2013
Advocates
Counsels for the Appellant

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB
AT CHANDIGARH**

Appeal No. 112 of 2019

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

Tejbir Singh Sawhney son of Sh. Q.S. Sawhney, #2302, Wing A, Ajmera Zeon, Ajmera I-Land, Bhakti Park, Anik Wadala Road, Wadala East, Mumbai, Maharashtra - 400037.

.....Respondent

Present: Mr. Ranjit Singh Kalra, Advocate for the appellant;
None for the respondent;

**CORAM: 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: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)
(MAJORITY VIEW)**



1. This is an appeal directed against the order dated 17.09.2019, passed by the Member, Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority).
2. The allottee had preferred a complaint with the grievance that despite payment of the agreed sale price within time,

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possession had not been offered within the promised period and no compensation on account of the delay had been given by the promoter. The following prayer was made by the complainant.

- "i) To direct the respondent to deliver the flat to the complainant immediately without any increased charges.*
- ii) To direct the respondent to pay interest on the Amount of Rs.1,09,34,794/- i.e. the payment made by the applicant till date as prescribed by the Act and the Rules framed there under.*
- iii) The applicant/complainant reserves his rights to claim any compensation/recover from the respondent/developer owing to expenses incurred on account mental tension, agony and harassment suffered by the complainant due to the acts of negligence and deficiency on the part of the respondent for delaying the delivery of possession and including but not limited to rent, storage expenses, etc.*
- iv) Any other relief which the Applicant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Punjab State Real Estate (Regulation and Development) Rules, 2017."*



3. The promoter relied upon Clause 2.24 of the agreement and pleaded that the complainant has no cause to complain in view of the interest that the appellant was paying by way of compensation on account of the delayed payment. Clause 2.24 of the agreement is extracted hereinbelow:-

“2.24 That construction of the residential apartment is likely to be completed within a period of 18 months from the date of issue of allotment letter and possession will be delivered after obtaining Occupation Certificate from the Competent Authority but shall be subject to force majeure and circumstances beyond the control of developers and that period shall not be counted towards the said period of 18 months.

In case possession of the residential apartment is not offered to the allottee within a period of 18 months or extended period as stated above, the allottee shall be entitled to receive compensation @ Rs.10/- per sq. ft. of the area of the residential apartment per month and to no other compensation of any kind. In case the allottee fails to clear his account and take possession of the residential apartment within 30 days of the date of offer, the allottee shall be liable to pay holding charges @ Rs.10/- per sq.



ft. of the Super Area of the Apartment per month in addition to liability to pay the Janta Land Promoters Limited and other consequences of default in payment.”

4. The Authority concluded in favour of the complainant and ordered as below: -

“1. As provided in Section 18(1) para two and Section 2za(ii) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 the respondent shall pay interest for the delayed period w.e.f. 27.01.2016 till 11.09.2019 (the date on which offer of possession was made to the complainant) as per State Bank of India highest marginal cost of landing rate + 2% till the date of this order. This amount shall be paid within 60 days of this order.

2. The complainant is not entitled to any separate compensation as provided in Section 18(1) as he sought the relief of possession and not refund and withdrawal from the project.”

5. After hearing, learned counsel for the appellant, we are of the opinion that the order of the Authority needs to be modified only to the extent of Clause 2 relief granted.



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6. Indeed the allottee was entitled to interest on account of the delayed payment, which was granted in terms of the Statute with effect from 27.01.2016 till 11.09.2019, but the Authority was wrong in observing that the complainant cannot get any separate compensation.
7. The Authority could not have placed a complete embargo on the right of allottee to claim compensation as Section 72 of the Act, envisages such a course available to an aggrieved allottee for the harassment and loss caused on account of a default of a promoter.
8. We notice that the respondent has reserved his right to file a plea of compensation. Needless to say, the same shall be looked into by the Authority and decided in accordance with law, in case such a course is resorted to by the allottee.
9. File be consigned to record room and a copy of this order be communicated to the parties as well as to the Real Estate Regulatory Authority, Punjab.



April 04, 2021
AN

Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

Certified To Be True Copy
Shaminder
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

Appeals No. 104 to 107 and 112 of 2019

A

REAL ESTATE APPELLATE TRIBUNAL PUNJAB (AT CHANDIGARH)

Appeal No. 104 of 2019

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

1. Jasbir Singh son of Dalip Singh;
2. Hardeep Kaur w/o Jasbir Singh;

(Both residents of House No. 201, H-Block, Rishi Apartments, Lohgarh, Zirakpur, Mohali.)

.....Respondents

Appeal No. 105 of 2019

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

Mandeep Kaur Sodhi, House No. 613, Sarvhitkari Society, Sector-48-A, Chandigarh -160047

.....Respondent

Appeal No. 106 of 2019

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

Pramod Mehta son of Rampal Mehta, resident of House No. 1425-B, Sector-61, Chandigarh.

.....Respondent

Appeal No. 107 of 2019



Appeals No. 104 to 107 and 112 of 2019

B

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

1. Vicky Francis son of Francis Sushil Kumar;
2. Mrs. Avin Francis W/o Francis Sushil Kumar;

R/o 253, Sector-4, Mansa Devi Complex, Ambala, Haryana – 134114.

.....Respondents

Appeal No. 112 of 2019

Janta Land Promoters Pvt. Ltd. through its General Manager, Tilak Raj Vyas, Corporate Office, SCO No. 39-42, Sector-82, S.A.S. Nagar, Mohali-140306.

.....Appellant

Versus

Tejbir Singh Sawhney son of Sh. Q.S. Sawhney, #2302, Wing A, Ajmera Zeon, Ajmera I-Land, Bhakti Park, Anik Wadala Road, Wadala East, Mumbai, Maharashtra – 400037.

.....Respondent

Present:

Mr. Ranjit Singh Kalra, Advocate for the appellant;
Mr. Gaurav Gupta, Advocate for respondents in Appeal No. 104;
Mr. Suresh Kumar, Advocate for respondent in Appeal No. 105;
Ms. Manju Goyal, Advocate for respondent in Appeal No. 106; and
Mr. Sanjiv Gupta, Advocate for respondent in Appeal No. 107;



**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 five appeals bearing Appeal No. 104 of 2019 (**Janta Land Promoters Pvt. Ltd. versus Jasbir Singh and another**), Appeal No. 105 of 2019 (**Janta Land Promoters Pvt. Ltd. versus Mandeep Kaur Sodhi**), Appeal No. 106 of 2019 (**Janta Land Promoters Pvt. Ltd. versus Pramod Mehta**), Appeal No. 107 of 2019 (**Janta Land Promoters Pvt. Ltd. versus Vicky Francis and another**) and Appeal No. 112 of 2019 (**Janta Land Promoters Pvt. Ltd. versus Tejbir Singh Sawhney**) against orders dated 30.08.2019, 16.08.2019, 02.09.2019, 03.09.2019 and 17.09.2019, all the five passed by Sh. Sanjiv Gupta, Member (*hereinafter also referred to as the single member bench*) of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaints bearing No. 103 of 2018 (filed on 05.07.2018), No. 5 of 2018, No. RERA/Tr/04/2019 in AO/46/2018 (filed on 19.06.2018), GC No. 11582018 (filed on 25.03.2019) and GC No. 11962019 (filed on 07.05.2019) respectively.



2. The said complaints have been accepted by the Single Member Bench to the following extent:-

Appeal No.	104/2019	105/2019	106/2019	107/2019	112/19
Appeal dated	15.11.2019	15.11.2019	18.11.2019	18.11.2019	21.11.2019
Respondent(s)-complainant(s)	Jasbir Singh and another	Mandeep Kaur Sodhi	Pramod Mehta	Vicky Francis and another	Tejbir Singh Sawhney
Complaint No.	103 of 2018	5 of 2018	RERA/Tr/04/2019 in AO/46/2018	GC No. 11582018	GC No. 11962019

Appeals No. 104 to 107 and 112 of 2019

D

Complaint filed on	05.07.2018		19.06.2018	25.03.2019	07.05.2019
Impugned order dated	30.08.2019	16.08.2019	02.09.2019	03.09.2019	17.09.2019
Order regarding interest for delay in delivery of possession, in brief	The appellant shall pay interest for the delayed period w.e.f. 27.08.2015 to 08.06.2019 (the date of taking over the possession) at prescribed rate, within 60 days of the impugned order.	The appellant shall pay interest for the delayed period w.e.f. 16.09.2017 to 30.08.2018 (the date of taking possession) at prescribed rate, within 60 days of the impugned order.	The appellant shall pay interest w.e.f. 06.06.2017 at prescribed rate till the date of offer of possession. Interest up to the date of order is to be paid within sixty days of the order and the interest thereafter shall be adjusted towards the final demand notice at the time of offer of possession.	The appellant shall pay interest w.e.f. 23.12.2016 at prescribed rate till the date of offer of possession. Interest up to the date of order is to be paid within sixty days of the order and the interest thereafter shall be adjusted towards the final demand notice at the time of offer of possession.	The appellant shall pay interest for the delayed period w.e.f. 27.01.2016 till 11.09.2019 (the date of offer of possession) at prescribed rate, within 60 days of the impugned order.
Order, in brief, regarding amount paid by the appellant to the respondent(s) in consequence of clause 2.24 of the allotment letter or regarding compensation.	Amount paid in consequence of clause 2.24, if any, is deemed to be over and above the interest for delayed possession payable and can not be adjusted against interest payable by the appellant as the very basis of payment of interest is different from liability of compensation. The complainants are not entitled to any separate compensation as they have already taken possession on 08.06.2019.		Amount paid in consequence of clause 2.24 (Rs.82,314/- up to December 2017) is deemed to be over and above the interest payable and can not be adjusted against interest payable by the appellant as the very basis of payment of interest is different from liability of compensation.	Compensation paid in consequence of clause 2.24 (Rs.1,54,807/-) shall be adjusted against the interest payable by the appellant.	The complainant is not entitled to any separate compensation as provided in Section 18(1) as he has sought the relief of possession and not refund and withdrawal from the project.



3. The facts have mainly been extracted from Appeal No. 104 of 2019 (**Janta Land Promoters Pvt. Ltd. versus Jasbir Singh and another**).

4. The complaint bearing No. 103 of 2018, out of which present Appeal No. 104 of 2019 has arisen, has originally been filed before

the Authority on 05.07.2018. In the first instance, the Single Member Bench of the Authority allowed the complaint and passed order dated 11.09.2018, thereby inter alia holding the appellant-respondent liable to pay interest from the date of receipt of first payment from the complainant i.e. from 20.12.2012 till the date of offer of possession of the flat to the complainant; and it was also held therein that no case is made out for award of any compensation amount. Against the said order, the appellant preferred an appeal bearing No. 41 of 2018 before this Tribunal. This Tribunal, vide order dated 14.01.2019, remanded the complaint to the Authority for adjudication afresh, in accordance with law and the Registry was directed to forward the amount deposited by the appellant to the Authority which was to, while deciding the complaint afresh, pass an order in relation to the amount so forwarded. Accordingly, the Single Member Bench of the Authority, after conducting the proceedings afresh, passed present impugned order dated 30.08.2019.

5. Aggrieved by the above said order dated 30.08.2019 of the Single Member Bench of the Authority in the complaint bearing No. 103 of 2018, the appellant filed appeal dated 15.11.2019 bearing Appeal No. 104 of 2019 before this Tribunal and prayed to set aside the impugned order dated 30.08.2019.



6. In the grounds of the aforesaid appeal bearing Appeal No. 104 of 2019, it has inter alia been contended (i) that allotment letter is binding on both the parties; (ii) that the implementation of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) does not rewrite the agreement between the parties; (iii) that the provisions of the Act are prospective in nature

and while registering the project or a phase thereof, the builder is entitled to reassess the time which is likely to be taken for the completion of the project; (iv) that the provisions of the Act were made enforceable on 01.05.2016/01.05.2017 and in any case, the buyer can not claim compensation prior to the enforcement of the provisions of the Act; (v) that the words "as may be prescribed" in the proviso to Section 18(1) of the Act are to be interpreted as prescribed in the agreement for sale; (vi) that it is provided in the allotment letter that in case the possession is not handed over within the stipulated date, the allottee will be entitled to receive compensation @ Rs.10/- per square foot of the area of the residential apartment per month and to no other compensation of any kind; (vii) that as per clause 2.24 of the allotment letter, delivery of possession within the stipulated period is subject to force majeure and circumstances beyond the control of the developer; (viii) that in some cases, the Authority has deducted the compensation already paid (at page 24 of the paper-book of the Appeal No. 104 of 2019, the appellant has inter alia contended that *"In the present case, a compensation of Rs.12,85,250/- has already been paid/adjusted to the respondent as per clause 2.24 of the allotment letter"*; however, in paragraph 13 of the additional affidavit dated 07.06.2020 of the appellant's Deputy Manager, Sh. Tilak Raj Vyas, it has inter alia been affirmed and declared that *"the due compensation for the period of delay amounting to Rs.10,56,330/- for the period of 01-04-2018 to 31-03-2019 (till the date of pre-possession) has already been paid."*

7. The appellant has also contended that (i) the single member does not constitute the Authority and, therefore, can not hear the complaint; (ii) that the respondent-complainant is claiming interest



(from the respective date of payment till the date of delivery of the possession in accordance with section 18 of the Act) as well as is claiming compensation (Rs.10,00,000/- for mental & physical harassment and agony and punitive damages for unfair trade practice; and Rs.1,50,000/- as costs of litigation); (iii) that as per the Act, the power to deal the complaint lies with the Adjudicating Officer; (iv) that the SLP (C) No. 13192 of 2020 filed against the order dated 16.10.2020 passed by Hon'ble Punjab and Haryana High Court is still pending and the issue "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?", though has been decided by Hon'ble Supreme Court of India on 11.11.2021 in Uttar Pradesh matters, but this issue is yet to be decided by Hon'ble Supreme Court of India in respect of Punjab matters.

8. Most of the contentions of the appellant in the appeal have already been adjudicated upon by the single member bench of the Authority and I don't see any merit in those contentions to interfere in the findings of the Single Member Bench, except in certain issues as detailed hereinafter.

9. One of the contentions of the appellant is that the single member of the Authority can not hear the complaint and as the respondent-complainant has claimed interest for the delay in delivery of the possession as well as compensation (for mental & physical harassment, agony, punitive damages for unfair trade practice and costs of litigation), the power to deal the complaint lies with the Adjudicating Officer.



10. In 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, following two questions have inter alia been decided:-

The Question	Para Nos.	Concluding paragraph of the judgment dated 11.11.2021 passed by Hon'able Supreme Court
<p><i>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?</i></p>	<p>55 to 86</p>	<p><i>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. [emphasis laid]</i></p>
<p><i>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?</i></p>	<p>87 to 120</p>	<p><i>120. In view of the remedial mechanism provided under the scheme of the Act 2016, in our considered view, 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. [emphasis laid]</i></p>



- 11.** Thus, against the first of aforementioned two questions, it has inter alia been concluded that as per the scheme of the Act, when it comes to refund of the amount, and interest on the refund amount, it is the regulatory authority which has the power to examine and determine the outcome of a complaint; and against aforementioned second question, it has inter alia been concluded that in view of the remedial mechanism provided under the scheme of the Act, 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.
- 12.** Though the aforesaid judgment dated 11.11.2021 has been passed by Hon'ble Supreme Court of India in the Uttar Pradesh matters, all the five questions decided in it by Hon'ble Supreme Court of India are generic in nature and therefore, in my opinion, these decision can safely be followed even for the similar Punjab matters.
- 13.** As held by Hon'ble Supreme Court of India in its aforesaid judgment dated 11.11.2021 in Uttar Pradesh matters, 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.
- 14.** As per record placed before this Tribunal by the appellant in these five appeals, the complainants have claimed in their complaints and/or reserved their right to file separate application for claiming compensation for physical & mental tension/harassment/agonny,



damages, financial loss, incidence of additional statutory levies like GST, rent, storage expenses etc, caused due to non-delivery of possession within stipulated time, besides the litigation expenses/charges.

15. Such pending/undecided issues of compensation claimed/to be claimed have to be referred to the Adjudicating Officer, who, while adjudging the compensation, shall follow the procedure as laid down in the Act and as has been 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.**).
16. In the grounds of the aforesaid appeal bearing Appeal No. 104 of 2019, it has also been contended that (i) it is provided in the allotment letter that in case the possession is not handed over within the stipulated date, the allottee will be entitled to receive compensation @ Rs.10/- per square foot of the area of the residential apartment per month and to no other compensation of any kind; (ii) that in some cases, the Authority has deducted the compensation already paid; and (iii) that in the present case, a compensation of Rs.12,85,250/- has already been paid/adjusted to the respondent as per clause 2.24 of the allotment letter (or, as per another version of the appellant, the due compensation for the period of delay amounting to Rs.10,56,330/- for the period of 01.04.2018 to 31.03.2019 has already been paid).
17. Perusal of the impugned orders passed by the Single Member Bench of the Authority in the complaints relating to present five appeals reveals that in the impugned orders dated 30.08.2019 and 17.09.2019 challenged in the Appeal No. 104 of 2019 and the



Appeal No. 112 of 2019 respectively, it has been held that the complainants are not entitled to any separate compensation as they have already taken possession or have sought relief of possession and not refund by wishing to withdraw from the project. Further, in the impugned order dated 30.08.2019 challenged in the Appeal No. 104 of 2019, as well as in the impugned order dated 02.09.2019 challenged in the Appeal No. 106 of 2019, it has been held that the amount paid in consequence of clause 2.24, if any, is deemed to be over and above the interest for delayed possession payable and can not be adjusted against interest payable by the appellant as the very basis of payment of interest is different from liability of compensation. However, in the impugned order dated 03.09.2019 challenged in the Appeal No. 107 of 2019, it has been held by the Single Member Bench that as per request of the complainants while filing the complaint and pleading during the arguments, the encashed compensation paid in consequence of clause 2.24 amounting to Rs.1,54,807/- to the respondents-complainants, shall be adjusted against the interest payable by the appellant-respondent.

- 18.** Clause 2.24 of the allotment letter issued on 27.02.2013, as reproduced in the impugned order dated 30.08.2019 in complaint No. 103 of 2018 (Appeal No. 104 of 2019), reads as under:-



“2.24 That construction of the residential apartment is likely to be completed within a period of 30 months from the date of issue of allotment letter and possession but shall be subject to force majeure and circumstances beyond the control of developers and that period shall not be counted towards the said period of 30 months.

In case possession of the residential apartment is not offered to the allottee within a period of 30 months or extended period as stated above, the allottee shall be

entitled to receive compensation @ Rs. 10/- per sq. ft. of the area of the residential apartment per month and to no other compensation of any kind. In case the allottee fails to clear his account and take possession of the residential apartment within 30 days of the date of offer, the allottee shall be liable to pay holding charges @ Rs. 10/- per sq. ft. alongwith service tax as applicable of the Super Area of the Apartment per month in addition to liability to pay to the Janta Land Promoters Limited and other consequences of default in payment.” [emphasis laid]

19. Perusal of relevant part of the above mentioned clause 2.24 of the allotment letter issued on 27.02.2013 (in the case relating to the Appeal No. 104 of 2019) reveals that in case possession is not offered within the stipulated period, the allottee is entitled to receive compensation @ Rs. 10/- per sq. ft. per month. Though such a provision of compensation in the allotment letter issued prior to coming in force of the Act, amounts in terms of interest just to 3.21% per annum on the sale consideration paid by the buyer as observed by the Single Member Bench in the impugned order dated 30.08.2019, even then, in my opinion such amount is liable to be adjusted against the interest for every month payable as per proviso under section 18(1) of the Act, for the delay in delivery of possession, where an allottee does not intend to withdraw from the project.

20. Another contention of the appellant is that the words “as may be prescribed” in the proviso to Section 18(1) of the Act are to be interpreted as prescribed in the agreement for sale. In this regard, I have observed that this phrase “as may be prescribed” has frequently been used in the Act, mostly without being followed by any thing specifying as to where prescribed (whether prescribed in the agreement between the parties or elsewhere). Thus, such a use



of this phrase, in the first instance may appear to be elusive. However, the word “prescribed” is defined under section 2(z) of the Act to mean “*prescribed by rules made under this Act*”, thus leaving no ambiguity.

21. In case of the Appeal No. 105 of 2019, the record placed before this Tribunal by the appellant reveals that the respondent-complainant in his complaint has also claimed (i) the refund of excess payment of Rs.16,59,280/- charged for 1,345 square feet super buildup area instead of charging for carpet area as per the Act; & (ii) non-applicability of GST implemented on 01.07.2017 while claiming due date of possession to be 01.05.2017.
22. In this regard, it has been held by the Single Member Bench in the impugned order dated 16.08.2019 that (i) the appellant shall not be liable to refund any differential in the cost of flat based on calculation of Carpet Area as well as Super Area mentioned at the allotment of flat, as the total cost of the flat was fixed at Rs.48,00,000/- as per paragraph 2.2 of the allotment letter, as tentative & subject to variation; & (ii) that the complainant was liable for payment of taxes as applicable.
23. During the arguments held on 04.04.2022 before this Tribunal, a copy of the judgment dated 07.11.2019 in Appeal No. 94 of 2019 (**Mandeep Kaur Sodhi versus M/s Janta Land Promoters Pvt. Ltd.**), arising out of impugned order dated 16.08.2019, was produced on behalf of the respondent-complainant in present Appeal No. 105 of 2019. As per said judgment dated 07.11.2019, that appeal was dismissed.



24. In view of above, I deem it appropriate to modify all or any of the impugned orders in the present five appeals, as may be applicable/required, only to the extent that (i) the amount paid by the appellant-respondent to the respondent(s)-complainant(s) in consequence of aforementioned clause 2.24 of their respective allotment letter, if any, should be adjusted against interest payable by the appellant-respondent to the respondent(s)-complainant(s) in terms of proviso to section 18(1) of the Act; and (ii) that the pending/undecided issues of compensation claimed/to be claimed in the complaints be referred by the Authority to the Adjudicating Officer, who, while adjudging the compensation, shall follow the procedure as laid down in the Act and as has been 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.**).
25. 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.

April 04, 2022



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

Certified To Be True Copy
Pranav Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

20/04/2022