

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

Subject: -

Appeal No. 14 of 2022

1. Innovative Housing and Infrastructure Private Limited SCF No.198, Sector 7-C, Chandigarh through Jagjit Singh son of S.Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.
2. Jagjit Singh son of S. Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.

.....Appellants

Versus

1. Neelam Rani Sharma daughter of Shri Mehar Chand resident of House No.HM-10, Phase 3-B-I, SAS Nagar, Mohali.
2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh

.....Respondents

Appeal No. 19 of 2022

1. Innovative Housing and Infrastructure Private Limited SCF No.198, Sector 7-C, Chandigarh through Jagjit Singh son of S.Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.
2. Jagjit Singh son of S. Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.

.....Appellants

Versus

1. Bithal Hari Sharma son of Shri B.D. Sharma, resident of House No.HM-10, Phase 3-B-I, SAS Nagar (Mohali).
2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh

.....Respondents

Memo No. R.E.A.T./2022/ 248

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 were 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 27th day of May, 2022.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

06/01/2022/12
14 of 2022
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**IN THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT
CHANDIGARH**

APPEAL NO.-----14----- 2021

1. Innovative Housing and Infrastructure Private Limited SCF No.198, Sector 7-C, Chandigarh through Jagjit Singh son of S.Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.
2. Jagjit Singh son of S. Bhagwant Singh, Promoter -cum- Managing Director, resident of House No. 1179, Sector 21-B, Chandigarh.

..... Appellants

Versus

1. Neelam Rani Sharma daughter of Shri Mehar Chand resident of House No.HM-10, Phase 3-B-I, SAS Nagar, Mohali.
2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh.

.....Respondents

Appeal under Section 44 of the Real Estate(Regulation & Development) Act, 2016 against the order passed by the Adjudicating Officer of Real Estate Regulatory Authority, Punjab in Complaint ADC No. 1410 of 2019 UR dated 28.10.2021.



Details of Appeal

1. Particulars of the Appellants:

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IN THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT

CHANDIGARH

APPEAL NO.-----19----- 2021

Memo Of Parties

1. Innovative Housing and Infrastructure Private Limited SCF No.198, Sector 7-C, Chandigarh through Jagjit Singh son of S.Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.
2. Jagjit Singh son of S. Bhagwant Singh, Promoter -cum- Managing Director, resident of House No. 1179, Sector 21-B, Chandigarh.

..... Appellants

Versus

1. Bithal Hari Sharma son of Shri B.D. Sharma, resident of House No.HM- 10, Phase 3-B-1, S.A.S. Nagar (Mohali).
2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh.

.....Respondents

Appeal under Section 44 of the Real Estate(Regulation & Development) Act, 2016 against the order passed by the Adjudicating Officer of Real Estate Regulatory Authority, Punjab in Complaint ADC No. 1352 of 2019 UR dated 28.10.2021.

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

Appeal No. 14 of 2022

1. Innovative Housing and Infrastructure Private Limited SCF No.198, Sector 7-C, Chandigarh through Jagjit Singh son of S.Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.
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Versus

1. Neelam Rani Sharma daughter of Shri Mehar Chand resident of House No.HM-10, Phase 3-B-I, SAS Nagar, Mohali.
2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh

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Appeal No. 19 of 2022



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Versus

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2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh

.....Respondents

Present: Mr. Berjeshwar Singh Jaswal & Aanchal Thakur, Advocates for the appellants.
Mr. Bithal Hari Sharma in person in Appeal No. 19 of 2022 and as authorized representative of the respondent No. 1 in Appeal No. 14 of 2022;
None for respondent No. 2

**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. These appeals are directed against the order dated 28.10.2021, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.

2. 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.

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



Appeal No. 14 of 2022 & Appeal No. 19 of 2022

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4. 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.
5. 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.
6. 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



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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.

7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on **30.05.2022**. Files be consigned to record room.
8. 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)

May 09, 2022
AN



Certified To Be True Copy
T. Dhanraj Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

27/05/2022

Appeal No. 14 of 2022 & Appeal No. 19 of 2022

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REAL ESTATE APPELLATE TRIBUNAL PUNJAB (AT CHANDIGARH)

Appeal No. 14 of 2022

1. Innovative Housing and Infrastructure Private Limited SCF No.198, Sector 7-C, Chandigarh through Jagjit Singh son of S.Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.
2. Jagjit Singh son of S. Bhagwant Singh, Promoter-cum-Managing Director, resident of House No.1179, Sector 21-B, Chandigarh.

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Versus

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Appeal No. 19 of 2022

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Versus

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2. Punjab Police Primary Consumer's Co-operative Society Ltd. through its Vice President, SCO No. 198, Opposite Sports Complex, Sector 7-C, Chandigarh

.....Respondents

Present: Mr. Berjeshwar Singh Jaswal & Aanchal Thakur, Advocate(s) for the appellant in both the appeals;
Mr. Bithal Hari Sharma in person in Appeal No. 19 of 2022 and as authorized representative of the respondent No. 1 in Appeal No. 14 of 2022; &
None for respondent No. 2 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)



By this order, I will dispose off above mentioned two appeals filed against a common order dated 28.10.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the Adjudicating Officer or the AO*) of Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*).

2. The complaints have been accepted by the Adjudicating Officer vide his common order dated 28.10.2021 to the following extent:-

1.	Appeal No.	14/2022	19/2022
2.	Respondent No. 1 (complainant)	Neelam Rani Shrama	Bithal Hari Sharma
3.	Complaint AdC No.	14102019UR	13522019UR
4.	Complaint filing date	25.11.2019	10.10.2019
5.	Principal amount	Rs.16,30,000/-	Rs.15,73,750/-
6.	Simple interest	At the SBI highest marginal cost of landing rate (as on today) plus 2% on the above amount from the date of respective payments till realization.	
7.	On account of mental agony and compensation etc.	Rs.1,25,000/-	Rs.1,25,000/-

The appellants-developers and the respondent No. 2-society (*hereinafter referred to as the respondent-society*) have been directed vide aforesaid order dated 28.10.2021 to pay the above said amounts to the Respondents No. 1-complainants within sixty days from the date of the order and it has also been ordered that the amount if any already paid by the appellants and the respondent No. 2 to the complainants on account of compensation for delay in delivery of possession shall be set off against above said amount.

3. The facts have been extracted from Appeal No. 14 of 2022 (**Innovative Housing and Infrastructure Private Limited and another versus Neelam Rani Sharma and another**).



The complaint bearing AdC No. 14102019UR has been filed before the Adjudicating Officer by the complainant Ms. Neelam Rani Sharma, 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) seeking (i) refund of Rs.15,73,750/- paid for the purchase of a residential plot along with interest @ 18% along with 2% extra as per Sections 18(1) and 19(4) of the Act read with Rule 16 of the Rules as the Promoter-Developer failed to give possession of the plot even after 7 years; and (ii) compensation for mental torture, harassment, inconvenience and deficiency of service by the promoter to the tune of Rs.10 lacs as well as litigation cost of Rs. one lac and other incidental expenses.

5. Aggrieved by the above said order dated 28.10.2021 of the Adjudicating Officer, the appellants-respondents filed Appeal No. 14 of 2022 before this Tribunal and prayed to set aside the impugned order & dismiss the complaint with costs.
6. In the grounds of the aforesaid appeal bearing Appeal No. 14 of 2022, it has inter alia been contended (i) that reasons for delay are (a) Payment on the part of the society (respondent No. 2 in the appeal) is not made timely to the appellant, (b) Amendment in the Punjab Apartment & Property Regulation Act, 1995 (hereinafter referred to as the PAPRA) as applicable on date of execution of Memorandum of Understanding (MoU), (c) Enlargement of road width area from 60' to 100' and thus re-planning the entire area before development, (d) Requirement to own 25% of land in the name of the appellants' company resulting in investment of entire amount in the purchase of land, (e) Coming into force of the Act, (f) Fresh application for grant of Certificate of Registration to continue the licence, (g) Granting of validity of certificate from 20.04.2019 to 06.03.2022, (h) Outbreak of Covid-19 and lock



down, (i) Shifting of labour and expert supervisor due to lock down and (j) Unforeseen facts and circumstances and Government notifications, amendments and future prospects; (ii) that once the default is on the part of the society, the member-complainant can not claim refund with interest and damages from the society; (iii) that there is no MOU with the members and the members gave money to the society and in such a circumstance, instead of claiming refund from the society, how they are claiming refund from the society; (iv) that entire payment is not made within 45 days and even till date, the society has to pay a substantial amount (in crores of Rs.); (v) that the claim of society members, if any arises, the same will be against their society only and not against the company; (vi) that claim against the society is maintainable before the forum provided under the law and no lis can be produced before the authority where there is no dealing directly between the two; (vi) that the parties to the complaint are not properly mentioned as company itself is not competent to represent; and (vii) that there is no privity of contract between the complainant and appellant No. 2.

7. During the proceedings held before this Tribunal on 18.04.2022, the issue of jurisdiction of the Adjudicating Officer for refund of amount deposited and interest thereon and the issue of entertaining a complaint filed against an unregistered project were also raised.



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. 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 PRESENT APPEALS:



9. Most of the contentions of the appellants-developers 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 hereinafter.
10. One of the issues raised before this Tribunal on 18.04.2022 is regarding the jurisdiction of the Adjudicating Officer for refund of amount deposited and interest thereon under section 18(1) of the Act and remanding the case to the Authority for fresh adjudication on the issue in view of the decision dated 11.11.2021 of Hon'ble Supreme Court of India in M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc.
11. In this regard, it has been contended that order passed by the Adjudicating Officer to refund the amount deposited and interest thereon is without jurisdiction in view of aforesaid judgment dated 11.11.2021 passed by the Hon'ble Supreme Court.
12. Taking notice of reference of circular dated 05.03.2021 of the Authority in the another order dated 15.04.2021 of the Adjudicating Officer in Appeal No. 130 of 2021 (**Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others**) and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2021 titled 'M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc and connected matters', I arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 120 & 116 (in this sequence) of the aforementioned judgment



dated 11.11.2021 and section 81 of the Act, that the delegation of its power of “refund of the amount and interest thereon” by the Authority 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 and hence, the so empowered/directed 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). Accordingly, during the proceedings held on 10.01.2022 in the afore-mentioned Appeal No. 130 of 2021, I expressed my aforementioned opinion, which has also been expressed by me as minority view in the judgments/orders of this Tribunal in the appeals mentioned under paragraph 7 above and some more appeals disposed off thereafter. Because aforesaid circular dated 05.03.2021 has been amended by the Authority vide its circular dated 06.12.2021 i.e. after the date of the impugned order dated 28.10.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing the impugned order dated 28.10.2021 to deal with the complaints/ applications involving refund of the amount deposited, interest thereon and compensation etc.

Hence, in my opinion, there is no need on this account to set aside the part of the impugned order dealing with refund of the amount deposited and interest thereon and remand it to the Authority on the grounds of jurisdiction.



14. So far as the issue regarding the applicability of the Act to the unregistered projects is concerned, this Tribunal, in its common judgment dated 25.04.2022 passed in Appeal No. 60 of 2022 titled as "**Aman Sethi and Another versus M/s Dara Buildtech & Developers Limited and others**", Appeal No. 61 of 2022 titled as "**Ravinder Kumar versus Amritsar Improvement Trust**", Appeal No. 64 of 2022 titled as "**Sapandeep Singh Bakshi and Another versus Real Estate Regulatory Authority, Punjab and others**" and Appeal No. 65 of 2022 titled as "**Sapandeep Singh and Another versus Real Estate Regulatory Authority, Punjab and Others**", has set aside the orders of the Authority and Adjudicating Officer wherein the Authority and Adjudicating Officer have declared that the complaints against the projects that are not registered with the Authority are not maintainable; and this Tribunal has remitted the matter pertaining to those appeals back to the Authority to decide the complaints in accordance with law and in light of the observations made in aforesaid order dated 25.04.2022 of this Tribunal.
15. Reverting to the merits of the case, as per MOU entered into between the appellants-developers and the respondent No. 2-society on 26.05.2011 (i) the appellant-developer (licensed) was duly qualified to obtain license under section 5 of PAPRA for developing a colony and was planning 100 acre integrated township in residential zone in Mullanpur Master Plan (Mullanpur Local Planned Area) notified on 11.12.2008; (ii) the appellant-developer agreed to provide 55,000 square yards of Developed Residential Plots (including all township facilities and amenities) and to provide developed residential plots @ Rs.11,000/- per square yard and Rs.3,500/- per square yard ETC and IDC etc., which were to be paid as and when demanded by the appellant-developer; (iii) the appellant-developer was to have exclusive right over the areas other than 55,000 square yards residential plotted;



(iv) 30% of the cost of 55,000 square yards was to be paid by the respondent-society up to 31.05.2011 and 70% within 45 days of the MOU i.e. by 10.07.2011 (the IDC & EDC etc. were to be paid after CLU and this schedule of payment could be mutually adjusted/changed); (v) **appellant-developer was to ensure execution/completion of the project within 3 years and was to provide developed plots to the members of the respondent-society within 3 years after approval of the integrated township likely within 6 months from the submission of the proposed project;**

16. The complainant became member of the respondent-society and applied for a plot measuring 150 square yards vide application dated 31.12.2012 @ Rs.12,750/- per square yard (more than the rate of Rs.11,000/- agreed in the MOU dated 26.05.2011) besides Rs.3,500/-per square yard as development charges after the grant of CLU of land and paid earnest money of Rs.5,73,750/- and further paid Rs.10,00,000/- on 18.09.2013.
17. The appellant-developer failed to develop the project and to give possession of the plot within the time frame stipulated in the MOU. Therefore, after waiting for a sufficiently long period of about 7 years, the complainant opted vide her complaint dated 25.11.2019 to withdraw from the project and sought refund of the amount paid by her along with interest and compensation, in view of Section 18 of the Act read with Rule 16 of the Rules.
18. There is no default on the part of the complainant. The delay in development of the project is admitted by the promoters. It may be that the delay is due to the reasons beyond the control of the



promoters, but once there is no fault on the part of the complainant, she has every right to withdraw from the project and seek refund along with interest and compensation as per provisions under Section 18(1) of the Act which entitle her to do so if the promoter fails to complete or even is unable to give possession in accordance with the agreed terms duly completed by the stipulated period and the promoter is liable, on such demand, to return the amount received with interest at prescribed rate including compensation. None of the grounds taken by the appellants in their appeal call for inference in the impugned order.

19. In view of above, I deem it appropriate not to interfere in aforesaid common order dated 28.10.2021 passed by the Adjudicating Officer. Hence, both the appeals are liable to be dismissed.
20. 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.

May 09, 2022



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

Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
21/5/2022