

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

Subject: -

APPEAL NO. 13 OF 2023

1. Pratibha Dhundia wife of Sh. Surinder Dhundia, Mobile 9815956545. Email: surinderdhundia16@gmail.com
 2. Swantika Dhundia daughter of Surinder Dhundia through her mother namely Pratibha Dhundia. Mobile 9815956545
Email: surinderdhundia16@gmail.com
- Both Residents of House No.1138, Sector – 43 B, Chandigarh

...Appellants/Complainants

Versus

The Greater Mohali Area Development Authority through its Chief Administrator having its registered office The Greater Mohali Area Development Authority, PUDA BHAWAN, Sector 62, District SAS Nagar, (Mohali), Punjab. Email: ce@gmada.gov.in

....Respondent



No. R.E.A.T./2023/ 308

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST FLOOR,
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,
CHANDIGARH-160018.

Whereas appeal 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 appeal 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 29th
day of August, 2023.

[Handwritten Signature]
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

Appeal No. 13 of 2023

In GC No. 1815 of 2020

MEMO OF PARTIES

1. Pratibha Dhundia wife of Sh.Surinder Dhundia, Mobile 9815956545
Email: surinderdhundia16@gmail.com
2. Swantika Dhundia daughter of Surinder Dhundia through her mother
namely Pratibha Dhundia. Mobile 9815956545
Email: surinderdhundia16@gmail.com
Both Residents of House No. 1138, Sector – 43 B, Chandigarh
...Appellants/Complainants

Versus

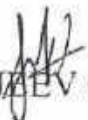

The Greater Mohali Area Development Authority through Its Chief
Administrator having its registered office The Greater Mohali Area
Development Authority, PUDA BHAWAN, Sector 62, District S.A.S.
Nagar, (Mohali) , Punjab. .Email: ce@gmada.gov.in

...Respondent



Chandigarh

Dated: 16.03.2023



SANJEEV GUPTA & RIPUDAMAN SINGH
ADVOCATES
COUNSEL FOR THE APPELLANTS

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

APPEAL NO. 13 OF 2023

1. Pratibha Dhundia wife of Sh. Surinder Dhundia, Mobile 9815956545. Email: surinderdhundia16@gmail.com
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....Respondent

Present: Mr. Sanjeev Gupta, Advocate for the appellant.



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)
(Oral)**

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1. This appeal is directed against the order dated 28.05.2021 passed by Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. It is accompanied by an application for condonation of delay of 322 days.
3. As a justification offered by the appellant, seeking condonation of delay, voluminous record has been submitted suggesting ailment of Mr. Surinder Dhundia who is the husband of Pratibha Dhundia and father of Swantika Dhundia arrayed as appellants in the memorandum of parties to the appeal.
4. It is essential to point out here that a complaint under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act) was initiated by Smt. Pratibha Dhundia and Swantika Dhundia. However, the reasons for the delay have been attributed largely to the ailments of Mr. Surinder Dhundia and not of the appellants i.e. Smt. Pratibha Dhundia and Swantika Dhundia.
5. We have perused the application for condonation of delay and it merely mentions that since Sh. Surinder Dhundia husband of appellant No.1 (Smt. Pratibha Dhundia) was unwell, that prevented her from filing the appeal within time. Subsequently the medical record of the appellant's



husband was also placed on record, which we have perused and find that none of the problems referred to in the reports are of such a nature that would incapacitate either the appellants or Sh. Surinder Dhundia in pursuing the matter. All the ailments referred to in the medical records do not in any way suggest an ailment of a nature that can be termed to be life threatening or even restrictive of movement of the patient himself or even the caretakers which in this case we would presume to be the appellants. Even after granting the benefit of the orders of Hon'ble Supreme Court with regard to extension of limitation on account of the pandemic the delay in filing the appeal is too enormous to be condoned in the absence of any justifiable reason.

6. We are thus of the opinion that the appeal is badly hit by the consequences of delay and does not merit any consideration on this count.



Having said so we even perused the impugned order and do not find any reason to interfere with it. The Authority has noticed that in the absence of any defined date of delivery of possession finding mention in the Letter of Intent, it could not be held that there was any delay in handing over possession by the developer more particularly when there is nothing else brought on record by the complainant about the due date of delivery of

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possession. Besides the argument that in related schemes by the same developer date of possession was mentioned would be of no consequences as each scheme has to be considered separately, being governed by different set of terms set out in agreements that may have been executed between the prospective allottees and the developers. It has been noticed by the Authority that the complainants/allottees land was a part of land pooling and plots offered were in lieu of land acquired and it contemplated grant of rent in lieu of their land till possession of the developed plot was handed over to them. This provision adequately takes care of the interest of the appellants as in the absence of any date of delivery of possession they would continue to enjoy this benefit which is compensatory to them. There is thus no ground to interfere in the appeal which is dismissed primarily on the ground of delay as also on merits.



Sd/-
JUSTICE/MAHESH GROVER (RETD.)
CHAIRMAN

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

My view is appended on subsequent
ER. ASHOK KUMAR GARG, C.E. (RETD.), *pages*
MEMBER (ADMINISTRATIVE/TECHNICAL) *No. 5 to 6*

August 28, 2023
CND

Sd/-
Certified To Be True Copy
Shanmukh Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

29/08/2023

Appeal No. 13 of 2023

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REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

Appeal No. 13 of 2023

1. **Pratibha Dhundia** wife of Sh. Surinder Dhundia, Mobile 9815956545 Email: surinderdhundia16@gmail.com
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Versus

The Greater Mohali Area Development Authority through Its Chief Administrator having its registered office The Greater Mohali Area Development Authority, PUDA BHAWAN, Sector 62, District S.A.S. Nagar, (Mohali) , Punjab. .Email: ce@gmada.gov.in

.....Respondent

Present: Mr. Sanjeev Gupta, Advocate for the appellants.

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.) – **HIS VIEW**)

1. By this order, I will dispose of above mentioned appeal, bearing Appeal No. 13 of 2023 (**Pratibha Dhundia and another versus The Greater Mohali Area Development Authority**), filed against the order dated 28.05.2021 passed by the full Bench of the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in a complaint bearing GC No. 18152020 instituted on 25.10.2020. The said appeal is accompanied by an application bearing Application No. 45 of 2023 for condoning a delay of 322 days (after taking into account the period granted by



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Hon'ble Supreme Court in a suo moto Writ Petition (Civil) No. 3/2020 taking suo moto cognizance of the situation due to Covid-19) because the husband of the appellant No. 1 was not well.

2. A complaint was filed before the Authority by the appellant (*hereinafter may also be referred to as the complainants or the allottees*) against the respondent (*hereinafter may also be referred to as the promoter or the developer or the GMADA*) in form 'M' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*), praying therein for the reliefs of (i) the delivery of possession of the plot No. 2151 after completion of the development works and all the facilities and after getting the completion certificate; (ii) payment of interest on the deemed sale consideration of Rs.31,50,000/- for causing delay in handing over possession w.e.f. 18.02.2016 till the date of delivery of actual physical possession; and (iii) payment of litigation expenses to the tune of Rs.60,000/-.



3. It has inter alia been stated in aforesaid complaint dated 25.10.2020 that (i) the Government of Punjab acquired some land falling in Village Hoshiarpur, Tehsil Kharar District SAS Nagar for setting up Residential Urban Estate Phase II, whereby the land of the complainant was also got acquired; (ii) that the land acquisition Collector, vide his award dated 31.12.2013, awarded an amount of Rs.2,04,61,181/- per acre inclusive of all statutory benefits; (iii) that the complainants opted for land pooling scheme & as per their landholdings, a residential plot measuring 150 square yards was allotted to them vide letter dated 18.02.2014; (iv) that the respondent had issued an advertisement on 16.04.2015 in

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the newspapers vide which it invited applications for allotment of plots in Eco City-2; (v) that the price of 150 square yards plot was fixed as Rs.31,50,000/-; (vi) that since the complainants had opted for land-pooling scheme, the respondent issued an LOI to the complainants on 28.04.2015 in respect of said 150 square yards plot; (vii) that after the announcement of the award by the Land Acquisition Collector, the complainants had opted for land-pooling scheme with the hope that the possession of the plot would be delivered within a period of two years but till date the respondent has not been able to deliver the possession of the said plot; (viii) that the complainant also applied to the respondent for the information under RTI for getting the photocopy of the file pertaining to the LOI issued to the complainant; (ix) that after getting the information under RTI, the complainant came to know that an allotment letter in respect of said plot has been issued on 12.02.2020; (x) that plot bearing No. 2151 has been shown to be allotted to the complainants; (xi) that as per clause 7 of the said allotment letter, the allottees are required to take possession within 30 days & in case the allottee fails to take the allotted plot within the said period, it shall be deemed to have been handed over on the due date; (xii) that the complainants have not received the said allotment letter, since it was sent to the village address where the complainants did not reside ever; (xiii) that when enquired by the complainant, the respondent informed her that the said allotment letter was received back since it was not delivered; (xiv) that the complainant No. 1 also visited the project site on 23.0.2020 but she could not locate the plot; (xv) that there was no marking of plots, no development and no proper roads; (xvi) that the respondent was/is bound to offer the possession of the said plot after completing all the development works & providing all the facilities



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which will make the said plot habitable; (xvii) that the respondent has failed to offer the possession of said plot, complete in all respects, till date; (xviii) that the respondent is bound to pay interest for causing delay in handing over the possession of the said plot on the deemed price of Rs.31,50,000/-; (xix) that the period within which the respondent was required to handover the possession has to be calculated from the date of entitlement for the said plot i.e. 18.02.2014; (xx) that the reasonable period of handing over the possession of the plot can be taken as two years; (xxi) that thus the respondent was bound to handover the possession of the plot by 18.02.2016; (xxii) that the respondent cannot discriminate with the complainants; (xxiii) that it is liable to pay delay period interest to the complainants even (if) they got the plot under land pooling scheme; (xxiv) that the complainants wish to remain in the project.

The complainant has attached with his complaint copies of the award by the Collector, advertisement, letter of intent (LOI), application under RTI and documents supplied under RTI.

4. The respondent, in their reply dated nil to the complaint, has prayed to dismiss the complaint and have inter alia contended that (i) in the original LOI, the said land owners were made aware that possession of the plot will be handed over to them after acquisition of land and completion of development works of the scheme and no specific (date/time schedule) was given for handing over the possession; (ii) that since no price of plot has been charged from the land poolers, no compensation on account of delay in completion of development works is payable as land poolers themselves were stakeholders in the scheme; (iii) that the complainants opted for the land pooling under which



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commercial/residential plots were to be given to the land owners in lieu of cash compensation; (iv) that under the land pooling scheme, the land owners including the present ones were being paid annual Chakota/Theka as per market rates recommended by the the Deputy Commissioner for the period from taking over the possession of the acquired land, to hand over the possession of the developed plots to the original land owner and the said condition is also part and parcel of the Award dated 13.12.2013; (v) that after completion of development works and EIA clearance given by the Government of India, numbering draw of plots to be allotted under the scheme was conducted on 22.10.2019 and after completion of formalities, allotment letter was issued on 12.02.2020; (vi) that the advertisement dated 16.04.2015 is not applicable to the complainants due to the fact that through this advertisement applications were invited from the general public for allotment of plots in Eco City-2; (vii) that no assurance was given to the complainants that possession of the plot to be allotted under the land pooling scheme shall be delivered to them within a period of 2 years; and there is a specific condition in the LOI issued to the complainants that the possession of plot shall be handed over after completion of development works; (viii) that the allotment letter dated 12.02.2020 has been sent on the address given by the complainants in the option form claiming allotment of residential plots in lieu of cash compensation and in fact, the LOI dated 28.04.2015 was also sent on the same address; (ix) that the averments of the complainants made in their complaint regarding development or proper roads in the project are without any substance; (x) that as per condition No. 7 of the allotment letter dated 12.02.2020, the complainants were required to take possession of the plot within 30 days of the issuance the allotment



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letter but they neither took possession of the plot nor cited any reason for not taking over the possession and as per condition No. 7 of the allotment letter, possession of the plot is deemed to have been delivered to the complainants; (xi) that the complainants had not paid any amount to the respondents on which they are claiming interest; (xii) that there is no provision in land pooling policy, award announced for the land acquired, LOI, allotment letter and Punjab Regional Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPDA*) to award interest.

The promoter has not attached any document with his aforesaid reply.

5. The complainant, vide their rejoinder dated 25.02.2021, have inter alia contended that (i) it is denied that no price of plot was charged from the complainant; (ii) that the Land Acquisition Collector, vide award dated 31.12.2013, awarded an amount of Rs.2,04,61,181/- per acre and the land measuring 851.48 square yards of the complainants in village Hoshiarpur was acquired entitling them to a compensation of Rs.35,99,655/- in the year 2013-14; (iii) that in lieu of that, plot measuring 150 square yards was allotted to the complainants; (iv) that deemed sale consideration of Rs.31,50,000/- was fixed by the respondent for the said 150 square yard plot; (v) that the respondent has mentioned in the LOI issued to other allottees of this project that the period of development works at site shall be approximately 36 months; (vi) that the allotment letter dated 12.02.2020 has not been delivered to the complainant by the respondent till date and it is only when the complainants applied under RTI that they came to know that the allotment letter has already been issued to them; (vii) that there is no development at the project site and no proper roads and plot



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number allotted to the complainant cannot be located; (viii) that the respondent should place on record the completion certificate and other approvals which are necessary for handing over the possession; (ix) that at the time of registration of the project in May 2020, there was no rain water harvesting system, no provision for drinking water, no parks and no internal roads; (x) that a local commissioner may be appointed to assess the exact position regarding the completion of development works.

The complainants have attached copies of the LOI issued to one Mukul Bansal and project registration certificate along with some documents submitted by the respondent before the Authority at the time of project registration.

6. The Authority, in its aforesaid order dated 28.05.2021, has decided as under:-

"5. We have carefully considered the rival arguments and have perused the record. Having done so, we do not find any merit in the contention raised on behalf of the complainants. This is because of the following reasons:

- i. *No date for delivery of possession was mentioned in the LOI - thus there is no commitment to deliver possession by a particular date. It is therefore difficult to hold that there has been delay on part of the respondent. The copy of the LOI attached with the rejoinder does not help the complainants' case at all since it was issued to a person who had been successful in the draw of lots and allotted a residential unit. This is totally a different category, and hence there is no prejudice in this allotment of the complainants being governed by a different set of conditions. Since we have held that there has been no delay, the issue of whether allotment letter dated 12.02.2020 was received by the complainants or not loses much of its relevance. We do however note that it was sent to the same address as the LOI which has admittedly been received by the complainants.*
- ii. *The land acquisition award itself provides that land owners whose land was acquired and who opted for land pooling would be given rent in lieu of their land till possession of the developed plot was handed over to them. This provision adequately takes care of the complainants' interest; and any grievance about non payment of this rent should be addressed to the competent authority. Awarding Interest on*



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top of this compensation would amount to unjust enrichment of the complainants.

6. *As a result of the above discussion this complaint is held to be without merit and is dismissed."*

7. Aggrieved by the above said order dated 28.05.2021 of the Authority, the appellants have impugned the same before this Tribunal by filing their present appeal dated 16.03/03.04.2023, wherein the appellants have inter alia contended that (i) even if no date of delivery of possession was mentioned in the LOI, the Authority ought to have considered a reasonable period for handing over the possession of the plot in question; (ii) that the respondent, by not inserting the possession clause in the LOI issued to the appellants, has discriminated against the appellant.

The appellant, in his appeal, has inter alia prayed for the following reliefs:- (i) To set aside aforesaid order dated 28.05.2021; (ii) To deliver possession of the plot after completion of development works etc.; (iii) To grant interest on the deemed sale consideration of Rs.31,50,000/- for delay in handing over the possession w.e.f. 18.02.2016 till the date of delivery of actual possession, complete in all respects after getting the completion certificate.

8. During the arguments before this Tribunal on 07.08.2023, the counsel for the appellants inter alia contended that this Tribunal had allowed interest in a similar case of land pooling by passing a judgment dated 19.01.2022 in Appeal No. 258 of 2020 titled as **Akhilesh Khanna and another versus Chief Administrator, Greater Mohali Area Development Authority.**

MY FINDINGS:

9. In view of the argument before this Tribunal on 07.08.2023 by the counsel for the appellants that this Tribunal had allowed interest in



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a similar case of land pooling by passing a judgment dated 19.01.2022 in Appeal No. 258 of 2020 titled as **Akhilesh Khanna and another versus Chief Administrator, Greater Mohali Area Development Authority**, I would like to mention the following facts extracted from the material placed on record before this Tribunal, whereas some of such vital material was not placed before this Tribunal in case of Appeal No. 258 of 2020.

10. As per appellants' application dated 12.02.2014 for land pooling, 32 Marlas of land was to be acquired against which they claimed their entitlement of 250 square yards residential plots (one plot each 150 square yards and 100 square yards. However, as per 'Entitlement of Landpooling' sheet dated 10.04.2015 issued by the LAC, ownership/net acquired/land pooling opted area is 851.48 square yards, against which entitlement for developed plotted residential area is 211.11 square yard. For the said 851.48 square yards of land acquired under the option of land pooling, the appellants are entitled to a residential plot of 150 square yards in lieu of 605 square yards of their acquired land and also entitled to Sp. LOI of 61.11 square yards in lieu of remaining 246.48 square yards of their acquired land.



11. As per clause 10 of the LOI dated 28.04.2015, the special LOI pertains to fractional share resulting from land Pooling Scheme and the same can be consolidated for residential/SCO/Booth/Small Booth/Shop subject to the condition that the aggregate of special LOI's equalises with the size of the respective plot of available size; and consequently the special LOI's will have to be returned in original for the issue of fresh LOI.

12. As per award No. 549 dated 31.12.2013 made by the Land Acquisition Collector (LAC), the gross compensation rate is

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Rs.2,04,61,181/- per acre of acquired land which includes 10% compensation for not instituting any court case, otherwise it is Rs.1,86,01,074/- per acre.

13. Therefore, had the appellants not instituted any court case, they would have been entitled to a compensation of Rs.25,57,648/- for acquisition of 605 square yard of their acquired land, in lieu of which they have actually opted for and been entitled to a 150 square yards residential plot, which was admittedly priced at Rs.31,50,000/- as per invitation, in April 2015, of applications for allotment of residential plots in the project.
14. Thus, the appellants have straight way been benefitted even at the initial stage (around April 2015) to the tune of Rs.5,92,352/- (i.e. 23.16%) by opting for a plot instead of availing compensation for their acquired land.
15. Further, as per the said award dated 31.12.2013, benefit of land pooling scheme shall be given in accordance with the amendment made as per notification dated 19.06.2013 issued by the Department of Housing and Urban Development, Government of Punjab and following facilities/benefits are also to be given:-
 - (i) Annual Theka as per market rate from the taking over the possession of the acquired land i.e. 31.12.2013 till its development and handing over the possession of their entitled share;
 - (ii) Exemption of stamp paper duty for execution of registration deed of the plot to be allotted in favour of the land owners;



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16. Bank of India released a loan for education amounting to Rs.25,00,000 to the appellant No. 1 against first charge of their 150 square yards residential plot in Eco City-2 allotted under land pooling, on the basis of permission to mortgage of the said plot upon grant of permission sought in July, 2015.
17. In view of above, the appellants cannot be equated with an allottee like one Mukul Bansal whom LOI dated 14/17.08.2015 was issued consequent upon being successful in draw of lots held on 16.06.2015 with reference to his application for allotment of a residential plot in this very project against the respondent's invitation for the scheme that closed on 30.04.2015.
18. Had all such document, as mentioned under paragraphs 10, 12 and 15 above, been placed on record before this Tribunal in case of Appeal No. 258 of 2020, then depending upon the outcome of the analysis in that case, the judgment could have been different.
19. So far as the condonation of 322 days' delay (which is over and above the period granted by Hon'ble Supreme Court in suo moto writ petition on account of pandemic Covid-19) in filing the present appeal, as the reasons for delay in filing the present appeal were not specifically forthcoming from Application No. 45 of 2023 filed along with the present appeal, the appellants preferred to file fresh application dated 27/28.04.2023, bearing Application No. 51 of 2023, for condonation of delay with better particulars. The only reason for delay, as mentioned in the said fresh application is that the husband of the appellant No. 1 was suffering from various ailments since 07.03.2019 to February 2023 and has not been able to recover from these ailments till that day and the appellant No. 1 was/is the only person to take care of her. This reason also does not justify the delay in filing the appeal because any of the two



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appellants could have filed the appeal with the assistance of their advocate as has been done by them while filing and pursuing their complaint dated 25.10.2020 before the Authority.

MY DECISION:

20. In view of above, I too am not inclined to interfere in the order dated 28.05.2021 passed by Authority in complaint bearing GC No. 18152020. Hence, the appeal filed by the appellants thereagainst is hereby ordered to be dismissed.

21. The appeal is accordingly disposed of. 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 thereafter the files be consigned to the record room.



August 28, 2023

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

Certified To Be True Copy

Dhanraj Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

29/08/2023 *[Signature]*