

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

Subject: -

**APPEAL NO. 152 OF 2022**

Subhash Chandra Basu s/o Shyam Sundar Prasad

**Correspondence/Local Address:** #134, Krishna Enclave,  
Dhakaoli, SAS Nagar (Mohali), Punjab – 160104.

**Permanent Address:** At & PO- Vidyapuri, Hilsa, Distt-  
Nalanda, Bihar, PIN- 801302

Email – [forensic.subhash@gmail.com](mailto:forensic.subhash@gmail.com)

...Appellant

Versus

1. Punjab Empires Pvt. Ltd, #1309, Sector 15-B, Chandigarh-  
160015, Email- [punjabempires1309@gmail.com](mailto:punjabempires1309@gmail.com)
2. Rahul Mehra #1115, Sector 15B, Chandigarh- 160015  
Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)
3. Dara estates Pvt. Ltd, SCO: 3-4, Surya Enclave Adj. Yes  
Bank, Sector 115, Kharar-Landran road, Mohali, Sahibjada  
Ajit Singh Nagar (Mohali), Punjab – 140301  
Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)

....Respondents

Memo No. R.E.A.T./2023/ 309.



REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup> 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 29<sup>th</sup>  
day of August, 2023.

*T. Hanuman Prasad*

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



**IN THE HON'BLE COURT REAL ESTATE APPELLATE  
TRIBUNAL PUNJAB, CHANDIGARH**

**IN THE MATTER OF:**

Subhash Chandra Basu .....Appellant

Versus

Punjab Empires Pvt. Ltd. and Ors. ....Respondent

**MEMO OF PARTIES**

**Subhash Chandra Basu**

Coresspondence/Local Address: #

C/O Smt. Nutan Singh,

#134, Krishna Enclave, Dhakaoii,

SAS Nagar (Mohali), Punjab- 160104

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S/o- Shyam Sundar Prasad

At & PO- Vidyapuri, Hilsa, Distt- Nalanda, Bihar, PIN- 801302

Email – [forensic.subhash@gmail.com](mailto:forensic.subhash@gmail.com)

Mob No. - +91 9464441950 .....Appellant

**V E R S U S**

**1. Punjab Empires Pvt. Ltd**

# 1309, sector 15 B, Chandigarh- 160015

Email: [punjabempires1309@gmail.com](mailto:punjabempires1309@gmail.com)

**2. Rahul Mehra**

# 1115, sector 15 B, Chandigarh- 160015

Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)



**3. Dara estates Pvt. Ltd**

SCO: 3-4, surya Enclave Adj. Yes Bank,  
Sector 115, Kharar-Landran road, Mohali,  
Sahibjada Ajit Singh Nagar (Mohali),  
Punjab – 140301


Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)

.....Respondents

Place: Chandigarh

Dated: 10.08.2022



  
Subhash Chandra Basu

**Appellant/complainant-in-person**

Vidyapuri, Hilsa, Nalanda, Bihar-801302

Email: [forensic.subhash@gmail.com](mailto:forensic.subhash@gmail.com)

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

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**APPEAL NO. 152 OF 2022**

Subhash Chandra Basu s/o Shyam Sundar Prasad

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Versus

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160015, Email- [punjabempires1309@gmail.com](mailto:punjabempires1309@gmail.com)
2. Rahul Mehra #1115, Sector 15B, Chandigarh- 160015  
Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)
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Bank, Sector 115, Kharar-Landran road, Mohali, Sahibjada  
Ajit Singh Nagar (Mohali), Punjab – 140301  
Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)

....Respondents

\*\*\*

Present: Mr. Subhash Chandra Basu, appellant (In person).  
Ms. Manju Goyal, Advocate for the respondents.



**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 05.07.2022 passed by Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. Before us in appeal, is the complainant who filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016 (hereinafter known as the Act) with the allegation that he booked two flats in the project named as "Gulmohar Valley-I", Lalru on the Chandigarh-Ambala Highway. This project was allegedly being promoted by one Dara Group. A total sum of Rs.5,25,000/- was paid by the complainant before he realized that there was no project by the name of "Gulmohar Valley-I", being promoted by the Dara Group. He thus asked for the refund of the deposited amount. He also made inquiries from the RERA Office which revealed that the said project was being promoted by Punjab Empires Pvt Ltd and Dara Group was occasionally marketing the project. Allegation was made against one Rahul Mehra of cheating the complainant.
3. The respondents appeared and filed their reply. The important thing is that they did not deny the payments made by the appellant but took up certain technical pleas to oppose the complaint. It was admitted that the complainant had also filed FIRs before the Police





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authorities where he had agreed to settle the matter by accepting a refund and not pursuing the criminal matters further. This payment was to be made to the complainant in instalments. The respondents also took up the plea that the provisions of RERA Act could not be applied.

4. The findings of the Authority particularly in paragraph 4 of the impugned order is extremely revealing insofar as the activities of the respondents are concerned but before this aspect is dealt with it is to be noticed that payments made by the complainant of an amount of Rs.5,25,000/- was established and accepted so by the Authority. These payments were accepted by Sh. Rahul Mehra and M/s Dara Estates Private Ltd. even though they were not owners of the project "Gulmohar Valley-I".
5. The Authority recorded, upon an inquiry that the project by the name of "Gulmohar Valley-I" and "Gulmohar-II" located in village Kauli Majra, Dera Bassi, was being promoted by M/s Punjab Empires Pvt Ltd. which had two directors i.e. Sh. Rahul Mehra and Sh. Randhir Sood. In addition a project titled "Gulmohar Valley" was also registered by M/s Dara Estates Ltd, in the name and style of "The D Homes Gulmohar Residency" Sector 116, SAS Nagar (Mohali). Interestingly Sh. Ashok Kumar and Sh. Rahul Mehra have been shown as directors of M/s Dara Estates Pvt Ltd.



6. There is another entity by the name of M/s Dara Buildtech Pvt Ltd which was promoting a project by the name of "Dara Gardens" in SAS Nagar, Punjab in which Rahul Mehra is again shown as the director of the company. This person's name also appears as director in the company M/s Dara Buildtech Developers even though no project has been registered in the name of this company.
7. Clearly Sh. Rahul Mehra was a common thread in all the above mentioned three companies i.e. M/s Dara Estates Private Ltd, M/s Dara Buildtech & Developers Pvt Ltd and M/s Punjab Empires Pvt Ltd.
8. Sh. Rahul Mehra has not denied receiving Rs.5,25,000/- from the complainant even though the cheques were issued by the complainant in the name of M/s Dara Buildtech & Developers Pvt Ltd. To cut the matter short the proceedings before the Authority and even before us at some stage boiled down to an attempted settlement in view of the statement made by Rahul Mehra and his willingness to return the sum of Rs.5,25,000/- to the complainant. This was so before the Police authorities as well.
9. Attempts were made by us during the course of proceedings to encourage a settlement, keeping in view the fact that the respondent company was stated to be in



a financial mess and virtually extinct as disclosed to us, which would have made recovery by the appellant extremely difficult. It was purely this aspect that prompted us to seek the path of resolution so as safeguard the interest of the complaint and ensure instant recovery. During the course of proceedings the respondent brought a sum of Rs.5,25,000/- in the shape of draft and further amount of Rs.58,600/- and Rs.95,000/- in cash which was in addition to Rs.60,000/- that already stood paid to the complainant. A draft copy of the settlement deed was also placed on record but the complainant was not agreeable to such a course and insisted upon an order on merits. We have thus proceeded in the above backdrop to answer the controversy.

10. At the cost of repetition we have to state that the receipt of Rs.5,25,000/- was admitted by the respondents which is also demonstrated by their willingness to return this amount along with certain other compensatory amounts mentioned above.

11. Having said so we now examine the legality of the issue. There is indeed no doubt that Mr. Rahul Mehra and the various groups that he represents have duped the appellant after luring him into a transaction of promised two units against which they took Rs.5,25,000/- without





even executing an agreement mandatory in terms of Section 13 of the Act.

12. A perusal of the impugned order also shows that the Authority has declined the grant of interest under Section 18 solely on the ground of absence of an agreement executed between the buyer and the allottee.
13. This reasoning to our minds is incorrect. Two things have been established i.e. the payment of the amount by the complainant to the developer and his prayer for refund when confronted with the fact of a virtual fraud rendering the promised possession illusory. It was therefore incumbent upon the Authority to evaluate this prayer in terms of Section 18. Merely because an agreement has not been executed by the developer with the complainant cannot be made the sole basis of denial of the statutory interest unless the remaining provisions of Section 18 are ignored. Section 18 is extracted herebelow:-



- “(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, ”*

14. A perusal of the relevant portion of Section 18 indicates that if a promoter fails to complete or is unable to give

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possession of any apartment, plot or building in accordance with the terms of the agreement for sale or as a case may be, duly completed by the dates specified therein and if the allottee demands a refund he shall be liable to pay the amount along with interest.

15. The Authority fell in error by ignoring Clause (b) of Section 18 which lays down that if the promoter fails to give possession due to "discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act", or "for any other reason", then he shall be liable to pay the amount along with interest, upon a request being made by the allottee.
16. Clearly the words "for any other reason" contained in Clause (b) are of a very wide amplitude, envisaging contingencies not specifically mentioned in the provisions of Section 18. Before us is a case of fraud, a fraudulent registration and consequent of duping the complainant. Therefore, the developer cannot escape the consequences of the Act particularly when he admits, both, the receipt of the payment and his default as established by the revelation of facts before the Authority.
17. We are thus of the opinion that the appellant would be entitled to interest under Section 18 of the Act on the amount of Rs.5,25,000/- in terms of the statute i.e. highest lending rate of State Bank of India \_\_\_\_\_.



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18. With the aforesaid modification in the impugned order the appeal stands allowed.

*Sdr*  
**JUSTICE MAHESH GROVER (RETD.)**  
**CHAIRMAN**

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



*my view is appended on subsequent page*  
**ER. ASHOK KUMAR GARG, C.E. (RETD.)**  
**MEMBER (ADMINISTRATIVE/TECHNICAL)**  
*Sdr*

August 28, 2023  
CND

Certified To Be True Copy

*Manendra Paul*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

29/08/2023 *[Signature]*



REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

**Appeal No. 152 of 2022**

**Subhash Chandra Basu** Correspondence/Local Address: C/O Smt. Nutan Singh, #134, Krishna Enclave, Dhakaoli, SAS Nagar (Mohali), Punjab- 160104;

Permanent Address: S/o- Shyam Sundar Prasad, At & PO- Vidyapuri, Hilsa, Distt- Nalanda, Bihar, PIN- 801302

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.....Appellant

Versus

1. **Punjab Empires Pvt. Ltd**, # 1309, sector 15 B, Chandigarh-160015; Email [punjabempires1309@gmail.com](mailto:punjabempires1309@gmail.com)
2. Rahul Mehra, # 1115, sector 15 B, Chandigarh- 160015  
Email [daraestates@hotmail.com](mailto:daraestates@hotmail.com)
3. Dara estates Pvt. Ltd, SCO: 3-4, surya Enclave Adj. Yes Bank, Sector 115, Kharar-Landran road, Mohali, Sahibjada Ajit Singh Nagar (Mohali), Punjab – 140301  
Email: [daraestates@hotmail.com](mailto:daraestates@hotmail.com)

.....Respondent



Mr. Subhash Chander Basu, the appellant in person.  
Ms. Manju Goyal, Advocate for the respondents.

**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. 152 of 2022 (**Subhash Chandra Basu versus Punjab Empires Private Limited**), filed against the order dated 05.07.2022 passed by the Bench of Sh. Ajay Pal Singh, Member of

the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in the complaint bearing AdC No. 15362020 instituted on 22.01.2020.

2. A complaint was filed before the Authority by Subhash Chandra Basu (*the appellant, hereinafter may also be referred to as the complainant or the allottee*) against Punjab Empires Private Limited and Rahul Mehra (*the respondents No. 1 and 2; and M/s Dara Estates Private Limited was impleaded as respondent No. 3 vide order dated 08.07.2020 passed by the Adjudicating Officer of the Authority, all the three respondents hereinafter may also be referred to as the promoters or the developers or the company*) in form 'N' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) read with its section 71 and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*), praying therein for refund of Rs.5.25 lakh, which was paid to the company of Rahul Mehra (Dara Group) from 08.11.2016 to 24.12.2017, along with interest, damages and harassments.



3. It has inter alia been stated in aforesaid complaint dated 22.01.2020 (i) that two commercial plots (costing Rs. 4.95 and 6 lakh) were booked (*on 05.11.2016*) by the complainant and his brother Sharat Chandra Basu in the Gulmohar Valley-1 (Lalru) with the Dara Group; (ii) that a total of Rs. 5.25 lakh was paid by 24.12.2017; (iii) that in spite of full payment for one plot, the company failed to make available even one plot and refused to refund the amount; (iv) that the complainant visited Dara Group office at Kharar-Landran road on 14.04.2018 and same day wrote as to what transpired in the office; (v) that on 17.04.2018, the complainant received a letter dated 14.04.2018 vide which the



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Dara Group demanded an amount of Rs. 6.00 lakh as standing due; (vi) that on 18.04.2018, the complainant replied it; (vii) that the complainant and his brother came to know that the respondents were trapping them only for the money and are not having any property in reality and it became more clear from reply given by Mr. Rahul Mehra to the Authority in response to notice under section 59 that there is no such project namely 'Gulmohar Valley-I' at Lalru under M/s Dara Estates Private Limited; (viii) that they also came to know that booked commercial plot for booth is not the project of Mr. Rahul Mehra but is of Punjab Empire Private Limited; (ix) that the complainant visited the latter's office on 27.12.2019 whereby its personnel said that Dara Group also sell its project and the complainant's payment was not received by it; (x) that on 07.01.2020, the complainant sent a communication by speed post which it refused to receive, after receipt back of which as underdelivered, the complainant emailed the same at [punjabempire1309@gmail.com](mailto:punjabempire1309@gmail.com) on 19.01.2020; (xi) that on 20.01.2020, the complainant received a phone call of Mr. Vinod who asked the complainant to get the registration deed of the plot executed but the complainant insisted for the refund, which was not agreed to; (xii) that many FIRs were registered at the Police Station Kharar, Sadar against Mr. Rahul Mehra, who is using the name of the Company (Dara Group) to cheat and confiscate money from the customers like the complainant.



The complainant has attached with his complaint copies of booking form and slip of advertisement, bank statement of payment to Dara Group, all communication with Rahul Mehra (Dara Group), reply filed by Dara Group with the Authority and letter emailed to the respondent No. 1 and tracking report of the speed post.



4. The respondents No. 2 & 3, in their reply dated nil to the complaint, have inter alia contended that (i) the complainant has not made payment as per payment schedule given in the **agreement** and later on due to failure to arrange money, asked the respondent to merge all the payments made into one single plot; (ii) that the complainant has not made his brother and Dara Buildtech Private Limited (to whom the payments were made) parties; (iii) that there is no project in the name of 'Gulmohar Valley-1' registered by them; (iv) that the complainant has registered an FIR against them which is pending adjudication before the Court and the respondent stated in his statement given to police officials on 13.03.2020 that he is still ready to refund the amount to the complainants in instalments.

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

5. The complainant, vide their rejoinder dated 11.02.2021, have inter alia contended (i) that alleged payment schedule were not provided; (ii) that the complainant denied the purchasing of the plot at Banur, which Dara Group was forcefully selling to him, against the booking at Gulmohar Valley-1; (iii) that as per terms and conditions of the booking form payment was to be made to either Dara Estate Private Limited or Dara Buildtech & Developers Limited; (iv) that the complainant and his younger brother Sharat Chandra Basu are in joint family living with their parents, so his brother is not freely available to visit the Authority but can appear before it whenever the Authority directs; (v) that present complaint is a civil case, whereas many FIRs registered against Mr. Rahul Mehra (Dara Group) at police station Kharar Sadar are criminal cases under sections 420 and 426 of Cr.P.C.



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6. The complainant has also placed on record his evidence dated 18.06.2020 and his additional request dated 15.06.2021.
7. The Authority, in its aforesaid order dated 05.07.2022, has decided as under:-

"4. Arguments in this case were heard from the complainant and counsel for the respondents No.2 and 3 on 05.05.2022. I have perused the facts in the matter. The complainant has placed on record photocopies of two booking forms in his name and that of his brother Sharat Chandra Basu. As per said forms on record, the complainant has booked one flat in the project "Gulmohar Valley-I" by paying a sum of Rs.51,000/- by cheque dated 08.11.2016, in the name of Dara Buildtech and Developers Pvt Ltd, from his account with IDBI bank. The second application is in the name of Sharat Chandra Basu, wherein also booking amount of Rs.21,000/- has been paid from the complainant's account with SBI, to M/s Dara Buildtech and Developers Pvt Ltd. It is, therefore, clear that both the booking amounts have been paid by the complainant. The application in the name of Sharat Chandra Basu does not mention any name of the project. Subsequent to the booking amount of Rs.51,000/- and Rs.21,000/-, the following payments have been made to M/s Dara Buildtech and Developers Pvt Ltd:

Date	Amount
02.12.2016	Rs.50,000/-
03.12.2016	Rs.30,000/-
03.01.2017	Rs.50,000/-
30.01.2017	Rs.21,000/-
07.02.2017	Rs.21,000/-
15.03.2017	Rs.20,000/-
11.04.2017	Rs.50,000/-
05.12.2017	Rs.51,000/-
23.12.2017	Rs.50,000/-
24.12.2017	Rs.1,10,000/-

All the above payments have been made by cheque or by NEFT. It is the version of the complainant that respondents No.2 and 3 i.e. Rahul Mehra and M/s Dara Estates Pvt Ltd have received these amounts, even though they were not owners of the project "Gulmohar Valley-1".

On perusal of the details available with this Authority, it is seen that the project by the name of Gulmohar Valley





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and Gulmohar-II, Located in Kauli Majra, Dera Bassi, have been promoted by M/s Punjab Empires Pvt Ltd. The two directors of this company are mentioned as Sh. Rahul Mehra and Sh. Randhir Sood. In addition to that project, projects with the titled Gulmohar Valley has also been registered by M/s Dara Estates Ltd, in the name and style of "The D Homes Gulmohar Residency", in Sector 116, SAS Nagar (Mohali). Sh. Ashok Kumar and Sh. Rahul Mehra have been shown as directors of M/s Dara Estates Pvt Ltd. On further search of the registered projects, it is seen that M/s Dara buildtech Pvt Ltd has also promoted one project by the name of "Dara Gardens" in SAS Nagar, Punjab. Once again Rahul Mehra is given as director of this company. The name of Rahul Mehra also appears as director in the company M/s Dara Buildtech Developers Ltd, even though there is no project registered in the name of this company. It is, therefore, clear that Rahul Mehra is the common entity in all the above mentioned three companies i.e. M/s Dara Estates Private Ltd, M/s Dara Buildtech and Developers Pvt Ltd and M/s Punjab Empires Pvt Ltd. In their reply, respondent Rahul Mehra has not denied having received Rs.5,25,000/- from the complainant, even though the cheques have been made out in the name of M/s Dara Buildtech and Developers Pvt Ltd. In fact, the Adjudicating Officer has noted in his order dated 12.12.2021 that respondent No.2 i.e. Rahul Mehra has filed an application, alongwith copy of the demand drafts for the sum of Rs.5,25,000/-, in the name of the complainant, to show his genuineness for settling the matter between the parties. This application is placed on record and is dated 06.12.2021; the demand draft has been drawn up for Rs.5,25,000/- in the name of Subhash Chander Basu i.e. the complainant and is dated 15.11.2021, purchased by Dara Buildtech and Developers Ltd. Further, as noted supra, the respondents No.2 and 3 have also admitted before the police authorities that they were willing to refund the sum of Rs.5,25,000/- received from the complainant. The complainant has also placed on record, the application for bail of Rahul Mehra dated 25.03.2019, wherein, it has been noted as follows:-

"That the land was previously purchased by Punjab Empires Pvt Ltd, in which Rahul Mehra was one of the Director and to save the investment of Rahul Mehra, Punjab Empires Pvt Ltd made a GPA in favour of Dara Estates Pvt Ltd through its Director Rahul Mehra".

The above facts clearly show that Rahul Mehra has taken the money from the complainant for booking of property





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*in the project Gulmohar Valley-1, being promoted by Punjab Empires Pvt Ltd, in which he is also a director. In the circumstances, I have no hesitation in holding that a refund is due to the complainant, for the amounts deposited by him for his application, as more than three years have elapsed since the deposits and the respondents have failed to either allot or give possession of any plot to the complainant. In fact, on several occasions, respondents No.2 and 3 have admitted to returning the funds of the complainants; both before the police authorities and before the Adjudicating Officer. In the circumstances, respondents No. 1, 2 and 3 are jointly held responsible for refunding the due amount deposited by the complainant. Before issuing the refund to the complainant, the respondents should obtain an NOC from the complainants brother, Sh Sharat Chander Basu. However, no interest under section 18 would be payable on the refundable amount, as there is no agreement to sell on record.*

*In the result, the complaint is partly accepted in above terms. File be consigned to record room and copy of the order be provided to the parties free of cost."*

8. Aggrieved by the above said order dated 05.07.2022 of the Authority, the allottee has impugned the same before this Tribunal by filing his appeal dated 10.08.2022. The appellant, in his appeal, has inter alia prayed for the following reliefs:- (i) To set aside the order, qua denial of the interest of the amount to the complainant; (ii) To grant interest of 18% on the amount since the date on which the payments were made to the respondents by the appellant; (iii) To grant the cost of legal proceedings before the Authority and before this Tribunal.

9. During the proceedings in respect of the present appeal before this Tribunal, on 05.01.2023, (i) Efforts at settlement were made; (ii) The respondent brought a draft of Rs.5,25,000/-; (iii) In addition an amount of Rs.58,600/- ("interest", as mentioned in draft settlement deed dated 05.01.2023 which is signed only on behalf of the respondents) and Rs.95,000/- in cash were offered to the appellant besides to Rs.60,000/- which stands already paid ("as compensation on 31.10.2022", as mentioned in the said draft



*settlement deed*); (iv) However, the appellant did not agree to this course and prayed that his appeal be heard on merits. Consequently, this Tribunal adjourned the matter for arguments and amount brought by the respondent by way of settlement was ordered to be retained by them, in view of the categorical rejection of the offer of settlement. That day, this Tribunal on its own also made strenuous efforts to resolve the issue but the efforts of settlement could not fructify.

10. On 20.02.2023, it has come to notice of this Tribunal upon reading the complaint that (i) some proceedings under section 59 of the Act were initiated against the developer; (ii) that there is also an inference that no such project existed. Therefore, it was ordered that before this Tribunal comments on this aspect any further, this Tribunal would like to have the benefit of the record of the Authority in the matter so as to enlighten this Tribunal itself about the factual aspect regarding the project in question. Accordingly, the Authority was requested to submit the record pertaining to the present appeal.



11. The appellant has filed written arguments dated 01.08.2023, whereby it has inter alia been contended by him that the respondents received more than 85% amount of sale consideration of the plot from the appellant without executing agreement and violated the provisions of section 13 of the Act.

12. During the proceedings held on 03.08.2023 before this Tribunal, I asked the counsel for the respondents, whether the respondent No. 3 (Dara Estates Private Limited) is registered with the Authority as a real estate agent of the respondent No. 1 (Punjab Empires Private Limited), to which she replied in negative.



**MY FINDINGS:**

13. The Authority, vide his order dated 05.07.2022, has though allowed refund but has denied interest thereon under section 18 of the Act, because there is no agreement to sell. In my opinion, deprivation of interest admissible along with refund as per provisions under section 18 of Act to an allottee, just because there is no agreement to sell, is nothing but rewarding the promoter for violation of section 13(1) of the Act which mandates a promoter not to accept a sum more than 10% of the cost of the plot without first entering into a written agreement for sale and registering the said agreement for sale under any law for the time being in force. Rather penal provisions are attracted against such a promoter for violation of the provisions of section 13 of the Act.
14. A reference, in the aforesaid order dated 05.07.2022 passed by the Authority, of order dated 12.12.2021 passed by the Adjudicating Officer; and a mention, in the aforesaid draft settlement dated 05.01.2023, of payment of Rs.60,000/- on 31.10.2022 as "compensation" made me curious to know about the final order passed by the Adjudicating Officer in this complaint bearing AdC No. 15362020. As final order passed by the Adjudicating Officer has not been placed on record before this Tribunal, the same (dated 08.08.2022) was downloaded from the website of the Authority and a copy of the same has been placed in the file of this appeal. Its perusal inter alia reveals that the Adjudicating Officer, after noticing that the Authority has not awarded any interest on the amount of refund, awarded interest on the deposited amount @ 9% per annum from the date of deposit till realization as compensation for loss of interest apart from a compensation of Rs.60,000/- on account of mental agony and has directed the respondents to pay the said compensation within sixty days from the date of that order





dated 08.08.2022, failing which the respondents have been held liable to pay interest on the principal amount of Rs.60,000/- @ 9.80% per annum (that day's highest MCLR rate of 7.80% plus 2%) from that order till realization. The said order dated 08.08.2022 has not been challenged by either the complainant or the respondents. Therefore, no interference therein is called for.

15. The appellant's application for booking a commercial plot/shop in the project namely 'Gulmohar Valley-1' by paying Rs.51,000/- on the format of the Dara Group and conditions No. 2 and 9 of the terms and conditions thereof state that "*Cheque/DD in favour of Dara Estates Pvt. Ltd./Dara Buildtech & Developers Ltd.*" and "*In the event of Dara Estates Pvt. Ltd./Dara Buildtech & Developers Ltd. accepts my/our application then I/we agree to pay all further installments of the BSP/net Price and all other dues stipulated in Payment plan.*" respectively. The respondents No. 2 & 3 have inter alia stated in their reply to the complaint "*that there is no project in the name of "Gulmohar Valley-1" registered by the answering respondents.*". The respondent No. 1 in has application dated 07.09.2017 for registration of its project "Gulmohar Valley 1 & 2"/"Gulmohar Valley and Gulmohar Valley 2" has inter alia disclosed that Dara Estate (P) LTD, SCF. 30, Level II, Sector 16-D, Chandigarh is one of the three Real Estate Agents of the promoter Punjab Empire Private Limited. During the proceedings held on 03.08.2023 before this Tribunal, I asked the counsel for the respondents, whether the respondent No. 3 (Dara Estates Private Limited) is registered with the Authority as a real estate agent of the respondent No. 1 (Punjab Empires Private Limited), to which she replied in negative. Thus, the respondent No. 3 has indulged in unfair trade practices as well as has violated the provisions of section 9(1) of the Act, which mandates that "*No real estate agent*



*shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.”; and therefore, the penal provisions are attracted against the respondent No. 3 for this violation of section 9(1) of the Act.*

16. Perusal of the record, submitted by the Authority pursuant to request made to it on 20.02.2023 by this Tribunal, reveals that (i) ‘Gulmohar Valley 1’ and ‘Gulmohar Valley’ appear to be two interchangeable terms for the same colony, used by the promoter M/s Punjab Empires Private Limited in his application dated 07.09.2017 for registration of its project in compliance of section 3 of the Act, for the same colony; (ii) that as per copy of the certificate dated 09.01.2014 for regularization of the unauthorized colony “GULMOHAR VALLEY 2”, out of 409 No. saleable plots 392 No. are residential and 17 No. are commercial. The detailed findings in this regard are being ordered to be sent separately only to the Authority.



17. The use of the said interchangeable terms namely ‘Gulmohar Valley 1’ and ‘Gulmohar Valley’ for the same colony has already created confusion and such confusion also mislead the Authority to issue revised registration letter dated 22.03.2022 in supersession of original registration letter dated 20.04.2018 to primarily change the project name. The differences in the two registration letters inter alia are as follows:-

Description	In registration letter dated 20.04.2018	In registration letter dated 22.03.2022	Remarks
Project title	Gulmohar Valley 1 & 2	Gulmohar Valley and Gulmohar Valley 2	See para 16(i) above
Total area	12.99% Acres	27.97 Acres	
Numbers of Residential Plots	326 (Gulmohar Valley 1) 392 (Gulmohar Valley 2)	326 (Gulmohar Valley) 409 (Gulmohar Valley 2)	1. See para 16(i) above 2. Out of 409 saleable plots in Gulmohar Valley 2, 17 are commercial plots/shops.

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18. In order to arrest further spread of such confusion, the name of the project registered against aforesaid application dated 07.09.2017, along with number/type of plots, needs to be appropriately clarified by the Authority after thorough scrutiny of the record.



Contd.-P21



**MY DECISION:**

19. In view of above, I deem it appropriate to partially accept the appeal to the extent that the directions, imparted by the Authority under paragraph 4 of order dated 05.07.2022 passed by it in the complaint bearing AdC No. 15362020, are ordered to be modified to the extent that the respondents shall refund the amount deposited by the complainant with interest thereon at the rate prescribed under Rule 16 of the Rules minus 9% (*the rate at which interest, as a compensation under one of the two heads, has been awarded vide aforesaid order dated 08.08.2022 passed by the Adjudicating Officer*) from the respective dates of payments till realization. The entire amount including interest shall be paid by the respondents within 90 days from the date of this order.

20. The Authority is hereby requested to (i) initiate penal action as per provisions of the Act against the respective respondents for violation of sections 13(1) and 9(1) of the Act; and (ii) to look into paragraphs 16 to 18 above and to take appropriate action after taking into account any other material available on record of the Authority in this regard.

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 (along with aforesaid separate details) and thereafter the files be consigned to the record room.

August 28<sup>th</sup>, 2023

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

Certified To Be True Copy

*Tonanshu*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

29/08/2023