

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,  
SAS NAGAR (MOHALI)**

**Appeal No. 1 of 2018**

Emaar MGF Land Ltd, Office Address Shop No. 41, Central Plaza,  
Landra Banur Road, Mohali Hills, Sector-105, SAS Nagar (Mohali),  
Punjab.

....Appellants

**Versus**

1. Kamalroop Singh Sooch
2. Gurbax Kaur Sooch

Both residents of 83, Windsor Road, Gerrards Cross,  
Buckinghamshire, SL9 7NW, UK.

....Respondents

**Appeal No. 2 of 2018**

Emaar MGF Land Ltd

....Appellant

**Versus**

Harinder Singh Dhillon and others

....Respondents

**Appeal No. 3 of 2018**

Emaar MGF Land Ltd

....Appellant

**Versus**

Ranjeev Singh Rai and another

....Respondents

**Appeal No. 4 of 2018**

Emaar MGF Land Ltd

....Appellant

**Versus**

Parshotam Singh Dhillon and another

...Respondents

**Appeal No. 5 of 2018**

Emaar MGF Land Ltd

....Appellant

**Versus**

Sundeeep Singh Pawar and another

...Respondents

**Appeal No. 20 of 2018**

Emaar MGF Land Ltd	<b>Versus</b>	....Appellant
Narwar Singh Bhogal		...Respondents

**Present:** Sh. Aashish Chopra & Ms. Sumiti Arora,  
 Advocates for the appellant.  
 Sh. Sanjeev Sharma,  
 Advocate for the appellant  
 Sh. Gaurav Chopra & Ms. Kashika Kaur  
 Advocate for the respondents.  
 Sh. G.P.S Baweja, Legal Advisor o/o the Real  
 Estate of Regulatory Authority, Punjab.

**CORAM: JUSTICE RAJIVE BHALLA,(RETD), CHAIRMAN**

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**JUDGMENT: (Rajive Bhalla (J) (Retd):**

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Counsel for the parties agree that as common questions of fact and law arise for adjudication, appeal Nos. 1 to 5 and 20 of 2018 shall be decided by a common order.

For the sake of brevity and to avoid unnecessary repetition, facts are being taken from appeal No. 1 of 2018 titled as Emaar M.G.F Land Ltd. Versus Kamalroop Singh Sooch and another but if, necessary facts relating to other appeals shall be recorded.

The appellant offered apartments for purchase in a residential project called "The Views" at Mohali Hills, Sector-105, SAS Nagar, District Mohali. The respondents applied for allotment of an apartment and were issued allotment letter dated 30.03.2007. The

parties executed an Apartment buyer's agreement on 29.02.2008 for allotment of unit No. TVM-H3-F11-1104, in "The Views" Mohali Hills, Sector-105, SAS Nagar, District Mohali. The total sale consideration of the apartment was Rs.49,59,650/- @ Rs. 2900/- per sq. ft. of super area admeasuring 1550 sq. ft.

Admittedly the appellant opted for a construction linked instalment plan duly appended with the agreement and subject to other conditions of the apartment buyer's agreement the appellant was required to deliver possession of the unit so allotted within 36 months from 30.03.2007 with a grace period of 90 days for obtaining occupation certificate. Admittedly an amount of Rs. 42,71,510/- was paid by the respondents to the appellants upto 23.08.2012 but the appellants have not delivered possession. The respondents herein rescinded the contract on 01.02.2017. The appellant invoked the arbitration clause and appointed an Arbitrator. The respondent put in appearance before the Arbitrator and paid a part of the fee. The Real Estate Regulatory and Development Act 2016 (hereinafter referred to as RERA) came into force, after due notification by the State of Punjab on 01.05.2017 (the day from which provisions relevant for the present controversy came into force). The respondent appeared before the Ld. Arbitrator and filed an application raising a plea that they would not participate in arbitration proceedings as they proposed to seek refund, compensation and interest under



RERA. The application was dismissed by the Arbitrator but as submitted by counsel for the respondent they are not participating in proceedings before the Arbitrator nor have they filed a claim.

The respondents filed an application in form 'N' as prescribed by The Punjab State Real Estate (Regulation and Development) Rules, 2017 (herein referred to as the Rules) narrating the aforesaid facts, claiming refund of Rs. 42,71,510/-, compensation for failure of the appellant to allot the unit and interest on the aforesaid amounts.

The Adjudicating Officer issued a notice. The appellant put in appearance and filed a reply on 07.02.2018. The matter came up before the Adjudicating Officer, RERA on 05.04.2018. The Adjudicating Officer passed five separate orders on 05.04.2018 itself, purportedly under Rule 37. In the first of these orders the Adjudicating Officer briefly narrated the facts and after holding that proceedings before the Adjudicating Officer are summary in nature, held that as possession of the apartment has not been delivered, the principal amount has not been refunded, interest or compensation has not been paid and as the respondent "Wishes to withdraw from the project and seek the principal amount with interest and compensation" ordered as follows: -

*Hence, without expressing any opinion at this stage, on the merits of the main case and for the limited purpose to proceed with the enquiry in the matter, prima facie there appears to be violation and*

*contravention of the express provisions of Section 18 of the Act on the part of the respondent. Let notice be served upon the respondent seeking his plea and explanation in regard to the above violation accordingly.*

A perusal of the above extract reveals that the Adjudicating Officer has recorded that without expressing any opinion i.e. reasons to prima facie hold that the appellant has violated and contravened provisions of Section 18 of the Act, it is held that the appellant has violated Section 18 of the Act and therefore notice be served upon the respondent seeking his plea and explanation in regard to the above violation accordingly.

Another order on the same day i.e. 05.04.2018 (at page No.20 of the paperbook) titled as "Substance of contravention of the Provision of the Act/Rules" records that as the appellant has failed to deliver possession, it has violated Section 18 of the Real Estate Regulation and Development Act, 2016 and proceedings shall continue against the appellant.

The Adjudicating Officer then called upon DGM (Legal) authorized representative of the appellant to make a statement with respect to the following charges. The order reads as follows: -

*I, J.S. Khushdil, Adjudicating Officer Real Estate Regulatory Authority, SAS Nagar Mohali, hereby serve you EMAAR, MGF Land Limited, through your authorized representative/counsel Shri Subrat Kumar Pradhan, DGM (Legal) authorized representative for the promoter, the notice as follows: -*

*That you Emmar MGF Land Limited offered Unit No. TVM-H3-F11-1104 in the project The views at Mohali Hills, registered with this authority vide No. PBRERA-SAS81-PR0119 on 11.12.2017 for a total sale consideration of Rs. 49,50,650/-. You have received an amount of Rs. 42,71,510/- towards costs of apartment from the complainant. You were required to deliver the possession of the aforesaid unit/apartment on or before 23.08.2012 which you have failed to do. By doing so, you have made yourself liable to pay the interest and compensation on the amount so deposited with you towards the costs of the apartment and thereby you have violated/contravened the provisions of Section 18 of the Real Estate Regulation and Development Act 2016.*

*And I hereby direct that the proceedings would continue against you accordingly.*

*Dated: 05.04.2018*

*(J.S. KHUSHDIL)  
Adjudicating Officer,  
RERA*

The charges were put to the DGM (Legal) in question/answers form. The question and answer recorded on 05.04.2018 are as follows: -

*Q. Have you understood the contents of notice?*

*Ans. Yes*

*Q. Do you plead guilty or claim continuation of the further proceedings?*

*Ans. I do not plead guilty and claim continuation of further proceedings.*

*Q. What else explanation you want to offer?*

*Ans. I have not violated any provisions of law, rules or regulations. I want to contest the complaint.*



It also appears that arguments were heard on 05.04.2018 and the following order was passed:-

*Arguments on the point of alleged violation/contravention of the Act/Rules heard at length. For the reasons recorded in my separate detailed order of even date, prima facie, it appears that the respondent had violated the provisions of Section 18 of the Act. Let notice be served upon the authorized representative of the respondent.*

(J.S. KHUSHDIL)  
Adjudicating Officer,  
RERA, 05.04.2018

*Notice served upon the representative of the respondent, who has not pleaded guilty and wanted to contest the complaint. On the basis of the submissions and perusal of the documents alongwith explanation given by the representative of the respondent, I am satisfied that the explanation furnished by the respondent is not sufficient to culminate the proceedings at this stage. Therefore, I am of the view that there are grounds for further hearing into the complaint. As such, both the parties are directed to produce the documents or evidence in support of their respective claims on 26.04.2018 at 9.30 A.M.*

*Sd/- Adjudicating Officer,  
RERA, 05.04.2018*

At this stage it would be appropriate to point out that neither party is able to refer to any separate detailed order of even date as referred to in the above order but it appears that reference is being made to the first order passed on 05.04.2018 though in that order it is clearly recorded that the Adjudicating Officer is not expressing any opinion.

However, after addressing arguments for some time counsel for the parties agree that the impugned orders may be set

aside and the matter be remitted to the Adjudicating Officer for adjudication afresh, leaving all contentions including legality of the appointment of the Adjudicating Officer, the status and the rights of the respondent as an allottee under the Act, the applicability of proceedings under Rule 37 and Form N to a claim for refund, compensation and interest based upon principles set out in Sections 18 , 71 and 72 of the Act, in essence pleas and contentions raised before the Adjudicating Officer as well in the grounds of appeal including the jurisdiction of the Adjudicating Officer, which have not been answered, open for adjudication, while remitting the matter.

Mr. G.P.S. Baweja, Legal Advisor, o/o the Real Estate Regulatory Authority, Punjab has produced the entire record relating to appointment of the Adjudicating officer and states that appointment of the Adjudicating Officer is legal and valid. The record has been perused but as the matter is being remitted to the Adjudicating Officer, no opinion is being recorded at this stage.

I have duly considered the aforesaid statements, the provisions of the Act and Rules and while remitting the matter for adjudication afresh, proceed to delimit the rights and obligation of parties with respect to refund, compensation and interest and explain the extent and nature of jurisdiction conferred by Rule 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules).



Rule 37 of the Rules reads as follows: -

**37. Filing a complaint with the adjudicating officer and inquiry by the adjudicating officer.-**

- (1) *Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'N' which shall be accompanied by a fee of one thousand rupees in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favour of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated.*
- (3) *The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely :-*
  - (a) *upon receipt of the complaint the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;*
  - (b) *the respondent against whom such notice is issued under clause (a) of sub-rule (2), may file his reply in respect of the complaint within the period as specified in the notice;*
  - (c) *the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;*
  - (d) *on the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made there under and if the respondent,-*

- (i) *pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he thinks fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made there under; or*
  - (ii) *does not plead guilty and contests the complaint, the adjudicating officer shall demand an explanation from the respondent;*
- (e) *in case the adjudicating officer is satisfied on the basis of the submissions made that complaint does not require any further inquiry ,he may dismiss the complaint;*
- (f) *in case the adjudicating officer is satisfied on the basis of the submissions made that there is need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;*
- (g) *the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;*
- (h) *on the date so fixed, if the adjudicating officer, upon consideration of the evidence produced before him and other records and submissions, is satisfied that the respondent is,-*
  - (i) *liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 15 and such compensation, as he thinks fit, as the case may be, in accordance with the provisions*

*with of the Act or the rules and regulations made thereunder; or*

*(ii) not liable to any interest and compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;*

*(I) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.*

Rule 37 (1) of the Rules empowers a "person" aggrieved to file a complaint before the Adjudicating Officer for "interest and compensation" as provided under Sections 12, 14, 18 and 19, in form N along with fee etc. It would be necessary to emphasize that Rule 37 does not use the word refund. Rule 37 (3) requires the Adjudicating Officer to follow a summary procedure for enquiry while adjudging interest and compensation but as admittedly the process for assessing compensation and interest is an adjudicatory process wherein both parties raise opposing claims, the authority/officer will be required to consider the claims and defence put up by parties and only after recording an opinion preceded by a process of reasoning answer the points so raised. The expression "summary procedure" used in Rule 37 (3) of the Rules does not postulate that the procedure to be followed is administrative nor does it absolve the adjudicating officer



of his obligation to provide reasons. The Rule confers a quasi judicial power placing an obligation upon the Adjudicating Officer to record reasons for accepting or rejecting a plea whether raised in the claim or in the defence. The obligation so placed is integral to an adjudicatory process and the exercise of quasi judicial power, particularly where opposing interests are set up. The Adjudicating Officer is thus required to record reasons/howsoever brief while passing orders under Rule 37 (3) (d) of the Rules, onwards.

After completion of pleadings, the Adjudicating Officer is required by Rule 37 (3) (c) to serve a notice specifying a date and time for further hearing and on the date so fixed is required by Rule 37 (3) (d) to explain contraventions alleged by referring to the provisions of the Act or the Rules. The explanation must be in writing and supported by reasons, howsoever brief. The contravention so determined is to be placed before the builder, who shall be called upon to admit or deny his guilt. If he admits his guilt the Adjudicating Officer, shall under Rule 37 (3) (d) (i) summarily order payment of interest etc. and such compensation as he thinks fit in accordance with provisions of the Act and the Rules but, if a party does not plead guilty, Rule 37 (3) (d) (ii) requires the Adjudicating Officer to demand an explanation from the respondent and after due consideration of the explanation, the contentions and pleadings, pass an order under sub clause (e) holding that he is "satisfied on the basis

of submissions made" that further enquiry is not warranted but if he "is satisfied" on the basis of submissions made that the matter requires further hearing, he may in the exercise of power under sub clause (f) order production of documents or other evidence on a date and time fixed by him, thereby commencing an enquiry as envisaged by sub clause (g) & (h)(i)(ii) of the Rules.

The key to the exercise of power under Rule 37 (3) (d) (i) (ii) (e) & (f) is the recording of "satisfaction" i.e. reasons for rejecting the claim or deciding to proceed further. The satisfaction so envisaged must obviously be based upon pleadings and submissions and must be informed by reasons, howsoever brief.

I draw support for my opinion from Rule 37 (g) (h) and (i) which allow the authority to summon documents, allow parties to produce and rebut documents as well as adduce evidence. It would be necessary to record that the words "summary procedure" inheres an adjudication, devoid of unnecessary adjournments, unnecessary pleadings and detailed evidence but does not do away with the necessity of recording "satisfaction" i.e. reasons.

Taking into consideration the consent of parties and their counsel the appeals are allowed, the impugned orders are set aside and the matter is remitted to the Adjudicating Officer for adjudicating afresh from the stage after Rule 37 (3) but leaving it open to parties to address arguments on all questions raised herein or

questions that may already have been raised before the Adjudicating Officer.

Parties are directed to appear on the next date fixed before the Adjudicating Officer and requested to adjudicate the matter as expeditiously as possible preferably within 2 months.

September 20, 2018



JUSTICE RAJIVE BHALLA (RETD.)

CHAIRMAN