

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

**Appeal No. 65 of 2019**

Estate Officer, PUDA, PUDA Complex, Bhagu Road, Bathinda.

....Appellant

**Versus**

1. Real Estate Regulatory Authority, Punjab, through its adjudicating officer, Plot No. 3, Block-B, 1<sup>st</sup> Floor, Sector-59, Chandigarh.
2. Gursimran Kaur wife of Jagtar Singh, resident of Village Aklia Tehsil and District Mansa C/o Jagtar Singh, Advocate, Chamber No. 41, District Courts Mansa (Punjab).

....Respondents

**Present:** Mr. Ashish Grover, Advocate for the appellant.  
Mr. Jagtar Singh Dhaliwal, Advocate for  
respondent No.2.

**QUORUM: JUSTICE ARUN CHAUDHARI, (RETD), CHAIRMAN  
S.K. SHARMA, IPS (RETD.), MEMBER**

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**JUDGMENT: (Arun Chaudhari (J) (Retd): (oral)**

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This appeal has been taken up for final disposal with the  
consent of the counsel for the parties.

The Adjudicating Officer, Real Estate Regulatory  
Authority, Punjab had passed order on 25.06.2018 awarding, inter-



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alia, compensation on account of mental agony and litigation expenses in the sum of Rs. 25,000/-, by stating that the factors enumerated in Section 72 of the Real Estate (Regulation and Development) Act, 2016 were considered. The said order dated 25.06.2018, was put to challenge in appeal No. 24 of 2018, before this Appellate Tribunal. In so far as the part awarding compensation to Ms. Gursimran Kaur is concerned this Tribunal faltered the finding recorded by the Adjudicating Officer by framing a legal question and then answering the same with reference to Section 72 of the Act.

It would be appropriate to quote the relevant portion from the said appellate order which reads as follows: -

*“ The question that remains is the legality of part of the order awarding compensation?*

*Section 72 of the Act prescribes factors to be considered by the Adjudicating Officer, while adjudging compensation and reads as follows: -*

*“72. Factors to be taken into account by the adjudicating officer: -*

*While adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regard to the following factors namely: -*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.*





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- (b) *the amount of loss caused as a result of the default;*
- (c) *the repetitive nature of the default;*
- (d) *such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

*A perusal of Section 72 reveals that sub sections (a) to (d) set out four different factors that are required to be considered by the Adjudicating Officer while adjudging compensation or interest, as the case may be. Section 72(a) to (c) refer to specific factors whereas Section 72 (d), confers power on the Adjudicating Officer to consider " such other factors as he may consider necessary in furtherance of justice", thereby clearly postulating that Section 72 is not exhaustive but merely illustrative of the factors that an Adjudicating Officer may take into consideration while adjudging compensation.*

*A person praying for compensation shall be required to adduce relevant material to satisfy factors set out in Section 72 of the Act. A promoter may also adduce material to rebut the claim for compensation. The Adjudicating Officer shall thereafter consider the material on record in the context of the factors enumerated in Section 72 and only after assigning reasons proceed to allow or disallow a prayer for compensation. The factors or facts that may be relevant for adjudging a claim for compensation cannot be placed in a straight jacket, as they would vary from project to project, locality to locality and city to city. It is true that adjudging compensation is not an exact science and may involve a degree of guess work but the opinion*

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so recorded must be founded upon a perceptible process of reasoning, based upon relevant facts/material/factors. An Adjudicating Officer, exercising power under Section 72 as already held, is duty bound to assign reasons refer to factors and the material on record while arriving at a figures of compensation.

The part of the order awarding compensation reads as follows: -

Since the complainant has not received the possession of the plot within the stipulated period and she has to seek the remedy under the existing law and for that obviously, she has to suffer mental agony and had to incur expenses on litigation to pursue her claim. I have considered all the factors as enunciated in Section 72 of the Act and though, no exact amount can be assessed on this count, but, by applying some guess-work in the light of the factors, I am of the considered view that the complainant is also held entitled for compensation under all the heads i.e. mental agony and litigation expenses to the extent of Rs. 25,000/-.

A perusal of the aforesaid extract reveals that the Adjudicating Officer has indeed, recorded that factors enumerated in Section 72 of the RERA Act, have been considered but without referring to any particular factor or fact or assigning any cogent reason has awarded compensation. The absence of a reference to any particular





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*factor/relevant fact or any clear and cogent reasons, renders the award of compensation illegal. "*

Perusal of the above Appellate finding, clearly shows that reliance has been placed on Section 72 of the Act, in the matter of the factors to be taken into account for deciding the quantum of compensation. It has also been held that the factors mentioned in the list under Section 72 of the Act are not exhaustive. This Appellate Tribunal, therefore, found that in the absence of any particular factor/ relevant fact or clear and cogent reasons, no compensation could be awarded.

Thus the matter was remitted to the Adjudicating Officer to decide the matter afresh after granting an opportunity to the parties to adduce relevant material/evidence. After remand, the impugned order has been passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab, by which the amount of compensation in the sum of Rs. 25,000/- on account of mental agony has been maintained in addition to this litigation expenses in the sum of Rs. 25,000/- has been awarded, making total of Rs. 50,000/- towards both. The Adjudicating Officer interestingly recorded the following reasons in the impugned order: -

*" The compensation has not been defined under this Act, however, the compensation has been defined under some other statute, such*



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*like Workman Compensation Act, Land Acquisition Act etc. etc. To settle the claim under the Motor Vehicle Act, this term compensation is being used invariably and compensation is awarded accordingly. "*

In so far as the claim for compensation towards mental agony is concerned, again the Adjudicating Officer recorded the following reasons: -

*" Though no exact amount can be assessed on this count, but, in the light of the above factors and the documents brought on record by the complainant qua payment of fee to her representative and from the material place on record by the complainant, the extent of mental agony and harassment can also be gauged , I am of the considered view that the complainant is held entitled for compensation under following heads: -*

01.	<i>Compensation on account of mental agony</i>	<i>Rs. 25,000/-</i>
02.	<i>Compensation on account of litigation expenses</i>	<i>Rs. 25,000/-</i>
	<i>Total</i>	<i>Rs. 50,000/-</i>

We have carefully considered the submissions made by the learned counsel for the rival parties. We do not consider it fit to make another order of remand, looking to the amounts involved and hence we have ourselves decided to hear the matter and dispose of it finally.

This Appellate Tribunal had clearly interpreted Section 72 of the Real Estate (Regulation and Development) Act 2016, while



delivering the judgment of remand on 26.10.2018 and we have quoted the relevant portion therefrom (supra).

In the impugned order however, the Adjudicating Officer has taken into consideration the scheme of Workman Compensation Act, Motor Vehicle Act and the Land Acquisition Act for settling the claim. We are afraid, we cannot agree with the said line of reasoning and the obvious reasons are that the objects and reasons in the matter of award of claims under those Acts have absolutely no connection even remotely with award of compensation under the present Act i.e. Real Estate (Regulation and Development) Act, 2016. To draw a corollary from these enactments for considering the award of compensation would be wrong and illegal.

Another reason is that Section 72 of the Act is a self contained code for consideration of the factors to be taken into account while deciding the quantum of compensation and as held the list stated therein is not exhaustive. We, therefore set aside the said finding recorded by the Adjudicating Officer.

Now coming to the award of compensation for mental agony, we have repeatedly asked the counsel for the respondent/complainant to show any pleadings and material placed on record for award of compensation on account of mental agony. In our opinion award of mental agony and harassment could well have



been demonstrated by the respondent by proper and specific pleadings and evidence rather than making a bald statement. To say in other words there should have been some material on record to grant compensation on account of mental agony. The learned counsel for respondent No.2 could not point out any material on record but digressed and argued that the complainant suffered loss of interest as the loan was taken from the bank and therefore on that score the compensation could have been granted. We find from the record that no such compensation for loss of interest etc. was set out before the Adjudicating Officer and therefore we are unable to consider such a stand.

It is well settled legal position that when a power is to be exercised in a particular manner/mode (in this case in accordance with Section 72 of the Act), it cannot be exercised in any other manner. See 2003(2) SCC 111 (para 40).

In addition, the counsel for respondent No.2 has fairly agreed to forego the sum of Rs. 25,000/- awarded on account of mental agony and he has accordingly given consent to quash that part of the award.

In so far as the award of compensation in the sum of Rs. 25,000/- towards litigation expenses is concerned, we do not think that any fault can be found with the said part of the award. We,

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therefore maintain the said part of the award. In the result we make the following order: -

**ORDER**

- (i) Appeal No. 65 of 2019 is partly allowed.
- (ii) The impugned order passed by the Adjudicating Officer dated 31.01.2019 is partly set aside and the award of compensation in the sum of Rs. 25,000/- on account of mental agony is quashed.
- (iii) Rest of the order is upheld. The amount of Rs. 25,000/- shall be paid to respondent No.2 within four weeks from today, failing which appellant shall pay Rs. 100/- per day of default.
- (iv) No order as to costs.

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JUSTICE ARUN CHAUDHARI (RETD.)

CHAIRMAN

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SH. S.K SHARMA, IPS (RETD.)

MEMBER

01.07.2019

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