

Memo No. /REAT/2021/403

Appeal No. 17 of 2021

MEMO OF PARTIES

M/s Omaxe Chandigarh Extension Developers Pvt. Ltd., through its Authorized Representative namely Sh. Deepanjit Singh, Corporate Office : 10, L.S.C., Kalkaji, New Delhi-110019.

At present : India Trade Tower, Ist Floor, Baddi-Kurali Road, Mullanpur, District Mohali

...Appellant

Versus

Nagendra Kumar, Village & Post Office Mullanpur Garibdass, Near Police Station, Mohali, Punjab.

...Respondent/Complainant

Place: Chandigarh.
Dated: 07.04.2021

(MUNISH GUPTA)
P-515/2005
ADVOCATE
COUNSEL FOR APPELLANT



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 17 OF 2021

M/S OMAXE NEW CHANDIGARH EXTENSION PVT. LTD
VERSUS
NAGENDRA KUMAR

Present: - Mr. Maninder Kumar, Advocate for Mr. Munish Gupta, Advocate for the appellant.

This is an appeal directed against the order dated 03.03.2020, passed by the Chairperson, Real Estate Regulatory Authority, Punjab.

Learned counsel for the appellant at the outset places reliance on the recent judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." and refers to Para 83 and 86, to contend that the Chairperson, Real Estate Regulatory Authority, Punjab would have no jurisdiction to entertain and decide issues relating to compensation, which has also been approvingly observed by the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC." He thus prays that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned orders need to be set aside.

We have heard learned counsel for the appellant.

The Hon'ble Supreme Court of India has held in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT.



LTD. VERSUS STATE OF UP & ORS.ETC. ", Para No. 83 & 86

as below.

- "83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.
86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question



of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

The proviso to Section 18(1) of the Act envisages a situation, where the allottee does not intend to withdraw, in which eventuality the promoter, for all his defaults shall be liable to pay interest for every month of delay in handing over of the possession. Sub Clause (2) of this very Section provides for compensation for any defective title of the land while Sub Clause (3) provides for grant of compensation to the allottee in the event of any violation of the terms and conditions of the agreement for sale. Perusal of the reliefs claimed by the complainant leaves no manner of doubt that it is couched in a language that can at best we understood to mean grant of compensation for which the jurisdiction would be solely with



APPEAL NO. 17 OF 2021

4

the Adjudicating Officer. The prayer made in the complaint before the Authority was as follows:-

“Despite the fact that after March 2013 i.e. after two years of booking respondent company was failed to deliver possession. Respondent may be directed to immediately give the possession of the above mentioned flat. With a further prayer that as in the allotment letter issued by respondent company to investors, it is clearly mentioned therein in Para No.23(h) that in case of delay in construction of the said unit attributable of Company subject to Clause (b) & (c) herein above resulting in inability of the company to offer possession within 24 months as detailed in clause (b), the company would pay to the allottee(s) a sum of Rs.10/- per sq. ft. per months for the super area for the period of delay and more than four years have expired, yet the project has still not be completed. Respondent may be directed to pay, for delay in construction as per allotment letters a sum of Rs.10/- per sq. ft. per months for the super area for the period of delay period which will become from March 2013, approximately 1725 X 10 X 67 i.e. Rs.14,43,440/- upto March 2019 to the applicant along with interest as per Rule 16 of the Rules i.e. highest marginal cost of lending rate plus 2%. Further prayed that respondent may kindly be directed to pay Rs.55,000/- as mental agony and litigation expenses to the applicant. Or any other relief which this Hon'ble court deems fit in the above circumstances, in the interest of justice.”



In the instant case the Chairperson, Real Estate Regulatory Authority, Punjab decided the prayer for

compensation, which to our minds is contrary to the observations made by the Hon'ble Supreme Court in this regard as noticed above.

Having regard to the above, we deem it appropriate to dispose of the appeals with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/Adjudicating Officer.

In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/Adjudicating Officer as the case may be in accordance with law.

We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in appearance before the Authority/Adjudicating Officer as the case may be. Which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The Authority in this manner would have the benefit of providing a



APPEAL NO. 17 OF 2021

6

time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise. The Authority/Adjudicating Officer shall then proceed to determine the matter in accordance with law.

Parties are directed to appear before the Real Estate Regulatory Authority on 21.12.2021.

The amount deposited under Section 43(5) of the Act by the appellant be refunded back to the appellant.

Sd/-

JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-

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

Sd/-

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

November 30, 2021

AN



Certified To Be True Copy

[Signature]
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
20-12-2021