

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

Subject: -

APPLICATION NO.25 OF 2022
AND APPEAL NO.18 OF 2022
M/S BHANU INFRABUILD PVT. LTD.
VERSUS
ASHOK KUMAR BANSAL AND ANOTHER

Memo No. R.E.A.T./2022/144

To,

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

Whereas appeals 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 appeals 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 01st
day of April, 2022.

[Handwritten Signature]
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



5

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 18 of 2021

MEMO OF PARTIES

M/s Bhanu Infrabuild Pvt. Ltd., India Trade Towers Ist Floor, Baddi-Kurali Road, New Chandigarh, Mullanpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab through its Authorized Representative namely Deepanjit Singh son of Sh. Satwant Singh.

...Appellant

Versus

1. Ashok Kumar Bansal son of Sh. Satya Nand Bansal
2. Neelam Bansal wife of Sh. Ashok Kumar Bansal

Both residents of Flat No. 3072, Blood Donors Coop Housing Building Society, Sector-50D, Chandigarh.

...Respondents

Place: Chandigarh.

Dated: 28.12.2021




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

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPLICATION NO.25 OF 2022

AND APPEAL NO. 18 OF 2022

M/S BHANU INFRABUILD PVT. LTD.

VERSUS

ASHOK KUMAR BANSAL AND ANOTHER

Present: - Mr. Munish Gupta, Advocate for the appellant.
Mr. R.S. Bhatia, Advocate for the respondents.

This appeal is directed against the order dated 18.05.2021 passed by the Adjudicating Officer, 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 Adjudicating Officer would have no jurisdiction to entertain and decide issues relating to refund and interest, even though he is specifically empowered under the Act to deal with the issues of 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.



The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.

Accordingly, we deem it appropriate to dispose of the appeal 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 time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise.



APPEAL NO.18 OF 2022

3

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 11.04.2022. Files be consigned to record room.

The amount deposited by the appellant/promoter under Section 43(5) of the Act be disbursed to the appellant/promoter after proper identification and due verification in accordance with law.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

March 17, 2022



Certified To Be True Copy
Onanend Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

04/04/2022

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 18 of 2022

M/s Bhanu Infrabuild Pvt. Ltd., India Trade Tower Ist Floor, Baddi-Kurali Road, New Chandigarh, Mullanpur, District Sahibzada Ajit Singh Nagar (Mohali) Punjab through its Authorized Representative namely Deepanjit Singh son of Sh. Satwant Singh.

.....Appellant

Versus

1. Ashok Kumar Bansal son of Sh. Satya Nand Bansal
2. Neelam Bansal wife of Sh. Ashok Kumar Bansal

Both residents of Flat No. 3072, Blood Donors Coop Housing Building Society, Sector-50D, Chandigarh.

.....Respondents

Present: Mr. Munish Gupta, Advocate for the appellant.
Mr. R.S. Bhatia, 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.))

(MINORITY VIEW)



By this order, I will dispose off above mentioned appeal bearing Appeal No. 18 of 2022 (**Bhanu Infrabuild Pvt. Ltd. versus Ashok Kumar Bansal & another**) against order dated 18.05.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AO*) of the Real Estate Regulatory Authority

Punjab (*hereinafter referred to as the Authority*) in the complaint bearing AdC No. 1524 of 2020 filed by the respondents against the appellant.

2. The said complaint has been accepted by the AO to the following extent and heads:-

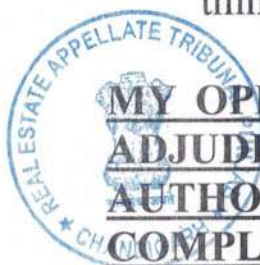
1.	Principal amount	Rs.31,78,020/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on today) plus 2% on the above said amount from the date of payment(s) till realization
3.	On account of mental agony and litigation expenses	Rs.1,25,000/-

The appellant has been directed to pay the above said amount to the complainants within sixty days from the date of the impugned order; and it has also been ordered that the amount of compensation paid on account of delay in delivery of possession to the complainants by the appellant in this case shall stand disposed off against the above amount.

3. The respondents filed the complaint bearing AdC No. 1524 of 2020 dated 14.01.2020 in Form 'N' before the Adjudicating Officer under section 31 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*) claiming refund of total amount of Rs.31,78,020.24/- paid by the complainants along with interest @ 12% p.a. from the date of payment till refund besides payment of Rs.5,00,000/- on account of mental agony and harassment and Rs.1,10,000/- for the cost of litigation.



4. Aggrieved by the above said order dated 18.05.2021 of the Adjudicating Officer, the appellant filed appeal dated 30.12.2021, bearing Appeal No. 18 of 2022, before this Tribunal and prayed to set aside the impugned order.
5. The appellant has inter alia contended in the grounds of the appeal (i) that the agreement in question was executed prior to coming into force of the Act; (ii) that arbitration clause existed; (iii) that the Adjudicating Officer does not have jurisdiction to order refund of the deposited amount; (iv) that the addendum to the agreement provided payment of assured returns to the complainants till offer of possession; (v) that clause 4 of the allotment letter/agreement clearly provides that the allotment of area was tentative in nature and the final area was to be determined at the time of offering possession after complete development; (vi) that an amount of Rs.14,68,112/-, paid by the appellant to the respondents towards assured returns @ 11% per annum from November 2010 till the date of offer of possession in January 2018 in terms of addendum to the agreement, ought to have been set off from the amount to be refunded, as the respondents can not be allowed to take dual benefit; and (v) that the "allotment letter" is primarily the same thing as an agreement.



MY OPINION IN THE MATTER OF JURISDICTION OF THE ADJUDICATING OFFICER OF REAL ESTATE REGULATORY AUTHORITY PUNJAB FOR ADJUDICATION OF COMPLAINTS MADE IN COMPOSITE APPLICATION INVOLVING REFUND/RETURN OF AMOUNT DEPOSITED BY THE ALLOTTEE, INTEREST THEREON AND COMPENSATION:

6. I have expressed my opinion in detail while disposing off Appeal No. 277 of 2020 (EMAAR India Ltd. (formerly EMAAR MGF

Land Limited) versus Sandeep Bansal) vide order dated 24.02.2022 and further updated it while disposing off cross appeals bearing Appeal No. 268 of 2020 (**Vijay Mohan Goyal & Anr. versus Real Estate Regulatory Authority Punjab & Ors.**) and Appeal No. 6 of 2021 (**PDA Patiala versus Vijay Mohan & Ors.**) vide order 03.03.2022, as per which, I am of the view that the appeals, against the orders passed by the Adjudicating Officer in the complaints involving composite claim of refund, interest thereon and compensation, need not be remanded by this Tribunal to the Authority but should be decided by this Tribunal on merit, provided that such orders have been passed by the Adjudicating Officer pursuant to the directions imparted by the Authority in this regard vide its circular No. RERA/Pb./ENF-17 dated 19.03.2019 in view of the judgment dated 27.02.2019 of this Tribunal in Appeal No. 53 of 2018 or vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority but before (in both the cases) the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.

MY OPINION IN THE PRESENT APPEAL

7. Most of the contentions of the appellant in the appeal have already been adjudicated upon by the Adjudicating Officer and I generally don't see any merit in those contentions to interfere in the findings of the Adjudicating Officer, except on certain issue as detailed hereinafter.

8. It has been contended by the appellant that the Adjudicating Officer does not have the jurisdiction to deal with and decide matters involving refund and interest. This contention of the appellant has been repelled by the Adjudicating Officer vide



paragraphs 9 to 10 of the impugned order dated 18.05.2021, whereby the Adjudicating Officer referred to circular dated 05.03.2021 issued by the Authority. Earlier taking notice of reference of this circular dated 05.03.2021 and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2021 titled 'M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc and connected matters', I had arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 120 & 116 (in this sequence) of the aforesaid judgment read with section 81 of the Act, that the delegation of its power of "refund of the amount and interest thereon" by the Authority vide aforementioned circular dated 05.03.2021, to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed, is in accordance with the mandate of law viz section 81 of the Act and hence, the so empowered/directed Adjudicating Officer has the jurisdiction to deal all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation). Accordingly, during the proceedings held on 10.01.2022 in a bunch of other appeals bearing Appeal No. 128 of 2021 to Appeal No. 130 of 2021, I expressed my aforementioned opinion, which has also been expressed by me as minority view in the judgments/orders of this Tribunal in the appeals mentioned under paragraph 6 above and some more appeals disposed off thereafter. Because aforesaid circular dated 05.03.2021 has been amended by the Authority vide its circular dated 06.12.2021 i.e. after the date of the impugned order dated



18.05.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing the impugned order dated 18.05.2021 to deal with complaints/applications involving refund of the amount deposited, interest thereon and compensation etc.

9. The appellant has inter alia contended that an amount of Rs.14,68,112/-, paid by the appellant to the respondents towards assured returns @ 11% per annum from November 2010 till the date of offer of possession in January 2018 in terms of addendum to the agreement, ought to have been set off from the amount to be refunded, as the respondents can not be allowed to take dual benefit.
10. The issue of assured returns has been taken note of and adjudicated upon by the Adjudicating Officer under paragraphs 1, 2, 6 & 16 to 18 of the impugned order dated 18.05.2021. I agree with the Adjudicating Officer that the perusal of clause 1 of the the addendum to the allotment letter shows that assured return was to be paid to the respondents-complainants till the date of intimation towards offer of possession of the unit or up to 30 months period (*which ever is later*).
11. However, in my opinion, there appears to a logic to some extent in the contention of the appellant mentioned under paragraph 9 above, though this contention may not be acceptable even to me in its entirety or in the manner as sought by the appellant.
12. I am of the view that we should not loose sight of the fact that the appellant-promoter, who has already borne the liability of assured return @ 11% per annum, may be only on the part of the payments



received from the complainants as well as may be for the part of the period for which the Adjudicating Officer under paragraph 22 of the impugned order has held the appellant liable to pay interest on the amount to be refunded because of the appellant getting benefit of interest accrued upon the amount deposited by the complainants with the appellant, should not again be made liable to pay interest on such part of the amount deposited for such part of the period.

13. The appellant has preferred not to place on record before this Tribunal any of the Annexures A/1 to A/8 of the complaint dated 14.01.2020 and Annexures R/2 to R/4 of its reply dated 18.03.2020. Therefore, my views expressed hereinafter are subject to review if any thing substantially contrary to such views is there in aforementioned Annexures.

14. The complainants have inter alia mentioned in their complaint dated 14.01.2020 that (i) for the allotted office space, the basic price was Rs.32,14,903.23 along with location charges of Rs.65,610.27 & other costs which bring the total cost to Rs.36,96,786.50; (ii) that they opted for the plan for payments where they would pay 50% immediately and 50% in installments and receive assured return @ 11% p.a. till possession; (iii) that they deposited Rs.18,80,518.64 plus ST of Rs.48,423.36 with the appellant on 25.11.2010 and Rs.12,49,078.24 (Rs.12,06,444.55 along with ST of Rs.42,633.69) in installments up to December 2016; & (iv) that the appellant stopped paying monthly interest since January 2018.



15. On the other hand, the appellant, in its reply dated 18.03.2020 to the aforesaid complaint dated 14.01.2020, has inter alia contended as under:-

“However, later vide addendum dated October 31, 2011, the afore- mentioned clause was superseded and it was agreed between the parties that the Respondent would pay the Complainants a monthly compensation of Rs.16,937.00/- till the date of intimation of offer of possession and in return of the said compensation, the Complainants would neither claim any amount from the Respondent qua delay in construction nor qua delay in offering the possession. It is apposite to note here that in pursuance to the terms of the afore-mentioned addendum, the Complainants have received huge amount of Rs.14,68,112/- for the period from November 01, 2010 to January 21, 2018, towards delay, if any, and, as such, it does not lie in the mouth of Complainants to allege that there has been delay in offering the possession. In case the Complainants still opt to rescind from the agreement then apart from attracting the forfeiture charges, as per the allotment letter, the Complainants would also be liable to refund the afore-mentioned compensation amount of Rs.14,68,112/- with interest. Copies of the allotment letter dated December 20, 2011, and addendum letter dated October 31, 2011, are annexed hereto as Annexure R/2 and Annexure R/3.” [Emphasis laid]

16. Thus,, the complainants have inter alia claimed in their complaint that (a) the total cost of the office space measuring 662.73 square feet allotted to them vide allotment letter dated 20.12.2010 is Rs.36,96,786.50; (b) that they opted for the plan for payments where they would pay 50% immediately and 50% in installments and receive assured return @ 11% p.a. till possession; and (c) that they deposited Rs.19,28,942/- with the appellant on 25.11.2010 (received by the appellant 29.11.2010 as mentioned in the “CALCULATION SHEET” placed on record by the appellant before this Tribunal in support of the quantum of pre-deposit in



*compliance to the proviso under section 43(5) of the Act). The appellant inter alia contended in its reply and appeal that (i) it was agreed between the parties that the appellant would pay the complainants a monthly compensation of Rs.16,937.00/- till the date of intimation of offer of possession; and (ii) that in pursuance to the terms of the addendum dated 31.10.2011, the complainants have received Rs.14,68,112/- for the period from November 01, 2010 to January 21, 2018 towards assured returns @11%. From these contentions of the parties it emerges that a monthly compensation/simple interest of Rs.16,937/-, @ 11% per annum on an amount of **Rs.18,47,673/-** (*this amount has been hereby arrived at by reverse calculations*), has already been paid by the appellant to the complainants for the period from 01.11.2010 till 21.01.2018, which is as agreed by the parties and is also comparable with the interest admissible on refund as per provisions of the Act and the Rules. Therefore, I am of the view that the appellant should not be made liable to again pay interest even on aforesaid amount of Rs.18,47,673/- for the period from 25/29.11.2010 to 21.01.2018.*

17. Another contention of the appellant in the appeal is that (i) the Adjudicating Officer erred in observing that in the case in hand, there is no agreement inter se the parties; (ii) that the terminology used i.e. "allotment letter" is primarily the same thing, as an agreement; (iii) that the Act came into being much later than the transaction/contract inter se the parties, and thus, misreading of terminology used, despite the fact that there was no such issue raised by the complainants, is de hors illegal.

18. Perusal of the material placed by the appellant before this Tribunal reveals that though the complainants had not raised the issue



before the Adjudicating Officer that there is no agreement inter se the parties, but the appellant itself had contended under paragraph 7 of its reply dated 18.03.2020 to the complaint that (i) no 'Agreement for Sale' as laid down in Annexure 'A' (nomenclature of Annexure 'A' stands amended, with effect from 08.10.2020, to Form 'Q') under the Rules has been executed between the appellant and the complainants; (ii) that the Agreement that has been referred to for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the Allotment Letter executed much prior to coming into force of the Act; (iii) that the adjudication of the complaint for refund along with interest and compensation, as provided under sections 18 and 19 of the Act, if any, has to be in reference to the Agreement for Sale executed in terms of the Act and the Rules and no other Agreement.

19. Regarding afore-mentioned contentions of the appellant under paragraph 7 of its reply dated 18.03.2020, the Adjudicating Officer has given his findings under paragraph 11 to 14 of the impugned order, thereby rightly holding that the appellant has certainly violated the provisions of the Punjab Apartment and Property Regulation Act, 1995 as well as those of the Act and by doing so the appellant indulged in unfair trade practice. Such a violation attracts punitive action against the appellant as per provisions of the Act.



20. In view of above, I accept the appeal only to the extent that interest at the SBI highest marginal cost of lending rate plus 2% on the above said amount of Rs.18,47,673/- (out of Rs.19,28,942/- deposited/received on 25/29.11.2010) is payable by the appellant to the respondents-complainants from 21.01.2018 (and not from

Appeals No. 18 of 2022

14

25/29.11.2010) till realization; and on all other payments aggregating to Rs.13,30,347/-, interest is payable from their respective dates of payment till realization as already ordered in the impugned order dated 18.05.2021. The amount of interest payable accordingly and refund of principal amount of Rs.31,78,020/- be paid by the appellant to the complainants within sixty days from the date of this order.

- 21.** The appeal is accordingly disposed off. File be consigned to record room and 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 the Adjudicating officer.

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

March 17, 2022



Certified To Be True Copy
J. Hanu Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

04/04/2022