

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

Subject: -

Appeal No. 62 of 2022

PUDA through Estate Officer, PUDA, PUDA Bhawan, Sector-62,
Sahibzada Ajit Singh Nagar (Mohali), Punjab.

.....Appellant

Versus

1. Kanta Singhal, D-61, FF, Pushpanjali Enclave, Pitampura, New Delhi,
Delhi and Anr.
2. Adjudicating Officer, Real Estate Regulatory Authority Punjab, First
Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18/A Chandigarh-
160018

.....Respondents

AND

Appeal No. 63 of 2022

PUDA through Estate Officer, PUDA, PUDA Bhawan, Sector-62,
Sahibzada Ajit Singh Nagar (Mohali), Punjab.

.....Appellant

Versus

1. Harish Jain, resident of # 500/6, Street No. 4, Shastri Nagar, Jagraon,
District Ludhiana, Punjab and Anr.
2. Adjudicating Officer, Real Estate Regulatory Authority Punjab, First
Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-
160018

.....Respondents

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

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 were 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 26th day of July, 2022.

T. Manendra Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE CHAIRMAN, REAL ESTATE
APPELLATE, TRIBUNAL, PUNJAB, CHANDIGARH

Appeal No. 62 of 2022

MEMO OF PARTIES

PUDA through Estate Officer, PUDA, PUDA Bhawan,
Sector- 62, Sahibzada Ajit Singh Nagar, (Mohali),
Punjab.

...Appellant

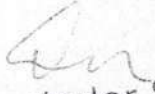
Versus

1. Kanta Singhal, D-61, FF, Pushpanjali Enclave,
Pitampura, New Delhi, Delhi and Anr.

2. Adjudicating Officer, Real Estate Regulatory
Authority Punjab, First Floor, Plot No.3, Block-B,
Madhya Marg, Sector-18/A, Chandigarh-160018.

...Respondents

Place: SAS Nagar
Date: 31.03.2022


(Bhupinder Singh)
Advocate
Counsel for the Appellant



BEFORE THE CHAIRMAN, REAL ESTATE
APPELLATE, TRIBUNAL, PUNJAB, CHANDIGARH

Appeal N. 63/2022

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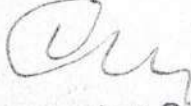
Versus

1. Harish Jain, resident of # 500/6, Street No. 4,
Shastri Nagar, Jagraon, District Ludhiana, Punjab and
Anr.

2. Adjudicating Officer, Real Estate Regulatory
Authority Punjab, First Floor, Plot No.3, Block-B,
Madhya Marg, Sector-18/A, Chandigarh-160018.

...Respondents

Place: SAS Nagar
Date: 21.02.2022


(Bhupinder Singh)
Advocate
Counsel for the Appellant



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

Appeal No. 62 of 2022

PUDA through Estate Officer, PUDA, PUDA Bhawan,
Sector-62, Sahibzada Ajit Singh Nagar (Mohali),
Punjab.

.....Appellant

Versus

1. Kanta Singhal, D-61, FF, Pushpanjali Enclave,
Pitampura, New Delhi, Delhi and Anr.
2. Adjudicating Officer, Real Estate Regulatory Authority
Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg,
Sector-18/A Chandigarh-160018

.....Respondents

Appeal No. 63 of 2022

PUDA through Estate Officer, PUDA, PUDA Bhawan,
Sector-62, Sahibzada Ajit Singh Nagar (Mohali),
Punjab.

.....Appellant

Versus

1. Harish Jain, resident of # 500/6, Street No. 4, Shastri
Nagar, Jagraon, District Ludhiana, Punjab and Anr.
2. Adjudicating Officer, Real Estate Regulatory Authority
Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg,
Sector-18 A Chandigarh-160018

.....Respondents

Present: Mr. Bhupinder Singh with Mr. Balwinder Singh,
Advocates for the appellant in both the appeals

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)
(MAJORITY VIEW)

1. These appeals are directed against the order dated 17.05.2021, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.
2. 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.", 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.



Appeal No. 62 of 2022 & Appeal No. 63 of 2022

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3. The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.
4. 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.
5. 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.
6. 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



Appeal No. 62 of 2022 & Appeal No. 63 of 2022

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necessity of affecting service etc. may not arise. The Authority/ Adjudicating Officer shall then proceed to determine the matter in accordance with law.

7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on **02.08.2022**. Files be consigned to record room.
8. 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, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

July 11, 2022
AN

Handwritten signature
Certified To Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
26-7-2022

REAL ESTATE APPELLATE TRIBUNAL PUNJAB (AT CHANDIGARH)

Appeal No. 62 of 2022

PUDA through Estate Officer, PUDA, PUDA Bhawan, Sector-62,
Sahibzada Ajit Singh Nagar (Mohali), Punjab.

.....Appellant

Versus

1. Kanta Singhal, D-61, FF, Pushpanjali Enclave, Pitampura, New Delhi, Delhi and Anr.
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.....Respondents

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2. Adjudicating Officer, Real Estate Regulatory Authority Punjab, First Floor, Plot No. 3, Block-B, Madhya Marg, Sector-18 A Chandigarh-160018

.....Respondents



Mr. Bhupinder Singh, Advocate for the appellant in both the appeals

None for respondent No. 1 in both the appeals

Mr. Jaspal Singh Khaira, Legal Assistant, RERA for the respondent No. 2 in both the appeals

**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)

1. By this order, I will dispose off above mentioned two appeals bearing No. Appeal No. 62 of 2022 (**PUDA through its Estate Officer versus Kanta Singhal and another**) and Appeal No. 63 of 2022 (**PUDA through its Estate Officer versus Harish Jain and another**) filed against a common order dated 17.05.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the AO*) of Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in complaints bearing AdC No. 14682019 and AdC No. 13862019 filed on 28.11.2019 and 20.10.2019 respectively.
2. The said complaints, being based on substantially similar facts, cause of action and against the same project of the same promoter, have been accepted by the Adjudicating Officer vide his aforesaid common order dated 17.05.2021 to the following extent and heads:-

1.	Appeal No.	62/2022	63/2022
2.	Complaint No.	AdC 14682019	AdC 13862019
3.	Principal amount	Rs.67,80,000/-	Rs.22,90,000/-
4.	Simple interest	At the SBI highest marginal cost of landing rate (as on today) plus 2% on the above amount from the date of payment(s) till realization.	
5.	On account of mental agony and litigation expenses	Rs.1,25,000/-	Rs.1,25,000/-



The appellant-respondent has been directed vide aforesaid order to pay the above said amounts to the respective complainants within sixty days from the date of the impugned order.

3. The facts have been extracted herein from Appeal No. 62 of 2022 (PUDA through its Estate Officer versus Kanta Singhal and another).
4. As indicated by the complainant-respondent No. 1 in her aforesaid complaint read with documents attached therewith, she applied for allotment of a plot measuring 400 square yards and being successful in draw held on 19.03.2015, letter of intent dated 01.07.2015 and subsequently allotment letter dated 01.08.2016 were issued by the appellant for allotment of plot No. 113 at Gateway City, Sector 118-119, SAS Nagar for tentative price of Rs.84,00,000/- after payment of 25% of the price of the plot i.e. Rs.21,00,000/- besides 2% cancer cess. The balance 75% of the price of the plot was to be paid either in lump sum without any interest and with a rebate of 5% on said 75% payment within 60 days of the issue of the allotment letter or in six equated half-yearly installments (with first installment falling due after one year from the date of issue of allotment letter) along with an interest @ 12% per annum as indicated in the schedule given in clause 3(II) of the allotment letter. As per the said payment schedule, the half-yearly installments were payable from 05.08.2017 till 05.02.2020. Had the installments been paid timely as per the said schedule, then an amount of Rs.17,01,000/- in aggregate as interest @ 12% per annum (payable with each installment on the outstanding amount) would have been paid besides the principal amount of Rs.63,00,000/- towards 75% of the price of the plot and thus, in



total Rs.1,02,69,000/- (Rs.84,00,000/- as principal, Rs.1,68,000/- as 2% cancer cess and Rs.17,01,000/- as interest) were payable by 05.02.2020.

5. It is further indicated in the complaint that as per clause 4(I) of the allotment letter dated 01.08.2016, the possession of the plot was to be handed over to the complainant after completion of the development works at site or 18 months from the date of issuance of the allotment letter whichever is earlier (i.e. latest by 01.02.2018); and that despite payment of Rs.67,80,000/- (which includes some penal interest for delay in payments) by 18.08.2018, she had not received physical possession of the plot and the high tension wire is going above area and basic facilities including roads, sewerage etc have not been provide and therefore, the complainant, vide her representation dated 10/11.06.2019, requested the appellant to refund her money.
6. Hence, present complaint bearing AdC No. 14682019 was filed by her on 28.11.2019 before the Adjudicating Officer, in form 'N' 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 Rs.67,80,000/- deposited by her with the appellant, along with interest @ 18% per annum w.e.f. 15.01.2015 (the date of depositing an amount of Rs.8,40,000/- as 10% at the time of applying for the plot) till the disbursement of the amount and payment of Rs.2,00,000/- as costs of litigation charges etc.



7. After considering the appellant's reply to the complaint etc, the Adjudicating Officer accepted the complaint, to the extent mentioned above, vide his order dated 17.05.2021.
8. Aggrieved by the above said order dated 17.05.2021 of the Adjudicating Officer, the appellant filed Appeal No. 62 of 2022 before this Tribunal and prayed for quashing and setting aside the impugned order dated 17.05.2021 & also for dismissing the complaint.
9. In the grounds of the aforesaid appeal bearing Appeal No. 62 of 2022, it has inter alia been contended (i) that part of the project involved in the present case has been completed prior to coming into force of the relevant provisions of the Act and a partial completion certificate for the same had already been issued by the competent authority on 28.04.2017 and hence, not being an ongoing project in terms of Rule 2(h) of the Rules, is not mandated to be got registered under the Act; (ii) that as per judgment passed by Hon'ble Supreme Court of India on 11.11.2021 in **M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others**, the complaints against the projects not registered under the provisions of the Act are not maintainable as the provisions of the Act are not applicable to the projects completed prior to commencement of the provisions of the Act and also not applicable to the projects not registered with the Authority; (iii) that the allotment of the plot in question is governed by the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*); (iv) that the complainant violated section 19(6) of the Act regarding timely payments; (v) that the issue of maintainability of the complaints



pertaining to the project in question is pending adjudication in RERA Appeals No. 31 to 38 and 40 of 2020 in which notice of motion and notice regarding stay for 07.04.2021 had already been issued by Hon'ble Punjab and Haryana High Court on 12.01.2021; (v) that Appeal No. RERA-APPL-22-2019 (Silver City (Main) Residents Welfare Association Regd. Zirakpur versus State of Punjab and others), filed against the order dated 24.07.2019 passed by this Tribunal in Appeal No. 49 of 2018 titled as **M/s Silver city Construction Ltd. versus State of Punjab and others**, is pending adjudication before Hon'ble Punjab and Haryana High Court; (vi) that vide order dated 11.11.2021 in **M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others**, Hon'ble Supreme Court of India has held that matters regarding refund of amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, are within the power of regulatory authority.

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:

10. 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 dated 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 APPEAL

11. 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.
12. One of the contentions of the appellant is that vide order dated 11.11.2021 in M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others, Hon'ble Supreme Court of India has held that matters regarding refund of amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, are within the power of regulatory authority.
13. In this regard, it is mentioned that taking notice of reference of circular dated 05.03.2021 of the Authority in the another order

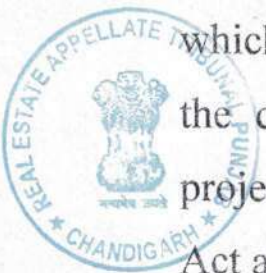


dated 15.04.2021 of the Adjudicating Officer in Appeal No. 130 of 2021 (**Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others**) and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in 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 arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 120 & 116 (in this sequence) of the aforementioned judgment dated 11.11.2021 and 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 the afore-mentioned 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 7 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 17.05.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing



the impugned order dated 17.05.2021 to deal with the complaints/ applications involving refund of the amount deposited, interest thereon and compensation etc.

14. Hence, in my opinion, there is no need on this account to set aside the part of the impugned order dealing with refund of the amount deposited and interest thereon and remand it to the Authority on the grounds of jurisdiction.
15. So far as the issue regarding the applicability of the Act to the unregistered projects is concerned, this Tribunal, in its common judgment dated 25.04.2022 passed in Appeal No. 60 of 2022 titled as "**Aman Sethi and Another versus M/s Dara Buildtech & Developers Limited and others**" and other connected appeals, has set aside the orders of the Authority and Adjudicating Officer wherein the Authority and Adjudicating Officer have declared that the complaints against the projects that are not registered with the Authority are not maintainable; and this Tribunal has remitted the matter pertaining to those appeals back to the Authority to decide the complaints in accordance with law and in light of the observations made in aforesaid order dated 25.04.2022 of this Tribunal.
16. In the grounds of the appeal, it has also been contended that part of the project involved in the present case has been completed prior to coming into force of the relevant provisions of the Act and for which a partial completion certificate had already been issued by the competent authority on 28.04.2017 and is not an ongoing project in terms of Rule 2(h) of the Rules. Hence, provisions of the Act are not applicable to such completed part of the project.



17. Aforementioned Rule 2(h) of the Rules reads as under:-

“2(h) “ongoing projects” means the Real Estate Projects which are ongoing in which development and development works as defined in clauses (s) and (t) of Section 2 of the Act are still under way, excluding the area of portion of the Real Estate Project for which partial completion or occupation certificate, as the case may be, has been obtained by the promoter of the project;”

18. This contention of the appellant has been dealt with and rejected by the Adjudicating Officer under paragraphs 9 to 13 of his aforesaid order dated 17.05.2021, wherein it has inter alia been pointed out (i) that allotment letters were issued to the complainants in August 2016 after more than an year of issuance of the letters of intent; (ii) the possession of the plots was to be handed over 01.02.2018 and 16.02.2018; (iii) that if the part of the project, in which the plots of the complainants fall, was complete by 28.04.2017 as is being claimed by the appellant on the basis of the partial completion certificate, then what was the hitch for the appellant to issue offer of possession letter with demand for remaining amount; (iv) that the appellant's has neither issued any offer of possession letter nor has ever cancelled the allotment till date; (v) that in these circumstances, the complainants could not come to know about the alleged completion of the project and as such they are justified in stopping further payments; (vi) that in such a situation, it could not be said that the project was complete prior to coming into force of the Act; (vii) that neither the factum of high tension electric wires around the site in question had been denied nor it was stated that the same had been got removed or would be removed therefrom within some stipulated period; and (viii) that it was an ongoing



project and the plots in question were not capable of delivery to the complainants.

19. Hon'ble High Court of Punjab and Haryana, in its judgment dated 20.04.2022 in CWP No. 7852 of 2022 titled as “**M/s Experion Developers Private. Limited versus State of Haryana and others**”, has inter alia decided as under:-

“As regards that factual aspect and specifically with regard to as to whether the petitioner was allowed to complete the project in different phases in terms of the licence granted to it, and therefore whether that occupancy certificate for any particular phase as has been completed (if so), is to be treated to be a completion certificate in terms of Section 2(q) of the Act, is left to the appellate authority under the Act to decide on merits, keeping in view of course the judgement of the Supreme Court in M/s Newtech Promoters and Developers (supra), and any other law laid down on the subject.”

20. Reverting to the merits of the case, it has been observed by the Adjudicating Officer in his aforesaid order dated 17.05.2021 that the appellant has failed to offer or deliver possession of the plots to the complainants till date. However, as per record placed before this Tribunal, the appellant, vide his letter dated 06.09.2019 (Annexure R/7 at page 74 of the paper-book, which is in response to the complainant's letters dated 14.06.2019 and 19.06.2019), has informed the complainant that as per appellant's field staff report the plot is feasible and that the complainant could take possession of the plot after payment of the outstanding amount of the installments due by that time along with penal interest thereon. But



this offer of possession is not only after the due date of possession of the plot viz 01.02.2018 but also after the complainant had request the appellant to refund her money vide her aforementioned letter dated 10/14.06.2019 of the complainant (page 46 of the paper-book).

21. Perusal of copies of the partial completion certificate dated 28.04.2017 issued by the Chief Administrator, GMADA, SAS Nagar, appellant's application dated 28.07.2017 for registration of remaining of 29.79 acres to be planned and developed out of 121.25 acre land (as partial completion certificate for an area of 91.46 acres had been obtained), the Zoning Plan dated 06.09.2018 and the Authority's letter dated 04.09.2017 may in the first instance suggest that the completion certificate for the part/phase of the appellant's project/LOBP Scheme in Sector 118-119, SAS Nagar, in which the complainant's plot falls, stood received by the promoter-appellant prior to 01.05.2017 on which Sections 3 to 9, 40, 59 to 70 and 79 to 80 of the Act also came into force. However, in the spirit of the aforementioned judgment dated 20.04.2022 passed by Hon'ble High Court of Punjab and Haryana, it needs to be decided, in the first instance by the Authority, as to whether the appellant was allowed to complete the project in different phases in terms of the licence granted to it, and therefore whether aforesaid partial completion certificate dated 28.04.2017 for 91.46 acre, is to be treated to be a completion certificate in terms of Section 2(q) of the Act, keeping in view of course the judgment of the Supreme Court in M/s Newtech Promoters and Developers (supra), and any other law laid down on the subject.



22. In case aforesaid partial completion certificate dated 28.04.2017 for 91.46 acre is found to be in order to be treated to be a completion certificate in terms of Section 2(q) of the Act, then it also needs to be decided as to whether even then the complainant, to whom possession was promised to be handed over latest by 01.02.2018 (i.e. after the Act came into force) in terms of clause 4(I) of the allotment letter dated 01.08.2016 but was not even offered till she opted to withdraw from the project and sought refund vide her aforesaid letter dated 10/14.06.2019, is entitled to refund along with interest and compensation, under Section 18(1) of the Act, as claimed by her through her complaint filed in Form 'N' on 28.11.2019.
23. The appellant is required to place on record the report of its field staff that has been referred to in its aforesaid letter dated 06.09.2019 (Annexure R/7) and its similar letter dated 05.12.2019 pertaining to Appeal No. 63 of 2022, especially because the complainants have alleged in their letters dated 10/14.06.2019 and 16/21.08.2019 that high tension/220 kV electric wires are laid near to the plot(s). Such high tension electric wires/lines have also been depicted in the aforesaid Zoning Plan dated 06.09.2018 (Annexure R/3). If aforesaid report of the appellant does not expressly indicate safe/unsafe clearances of said HT/220 kV electric wires/lines from the plots in question and from the buildings to be raised on those plots, then a report of a competent authority in this regard should also be obtained and placed on record.



24. It is also observed from the material on record of this Tribunal in Appeal No. 63 of 2022 that the complainant Mr. Harish Jain, after depositing Rs.22,90,000/- towards initial 25% of the price of the

plot of Rs.84,00,000/- including 2% Cancer Cess, did not pay any amount against the balance 75% of the price of the plot amounting to Rs.63,00,000/-, which was payable either in lumpsum without interest but with 5% rebate by 15.10.2016 or in six equated half-yearly installments along with interest @ 12% per annum (with first such installment including interest was due on 17.08.2017 for a total amount of Rs.18,06,000/- i.e. before the promised date of handing over of the possession of the plot). Hence, in my opinion, relevant provisions of the clause 7.3 of the Form 'Q' (i.e. prescribed agreement for sale) appended to the Rules are attracted against the complainant. This too needs to be looked into by the Authority.

25. In view of above, I deem it appropriate to remand the complaints to the Authority for doing the needful in terms of my observations and for passing fresh orders by the Authority in respect of relief of refunds and interest thereon and by the Adjudicating Officer in respect of the relief of compensation sought by the complainants in their aforesaid complaints dated 28.11.2019 and 20.10.2019.

26. The appeals are accordingly disposed off. Files be consigned to record room and a copy of this order be filed in the files of the appeals and also be communicated to the parties as well as to the Authority and the Adjudicating officer.



July 11, 2022

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

Certified To Be True Copy

T. Anand
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

26/7/2022