

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

Subject: -

Appeal No. 84 of 2022

M/s Bhanu Infra Build Pvt. Ltd., SCO No. 143-144, 1st Floor,
Sector-8 C, Chandigarh.

Though its Authorized Representatives namely Deepanjit
Singh son of Sh. Satwant Singh, M/s Bhanu Infra Build Pvt.
Ltd, 10, Local Shopping Complex, Kalkaji, New Delhi.

....Appellant

Versus

1. Dev Raj Sharma son of Sh. Lokha Ram Sharma, Resident of
House No. 827, Sector 12, Panchkula.
2. Anshul Jain son of Sh. Manohar Lal Jain, Resident of House
No. 1057, Sector 4, Panchkula.

.....Respondents

Memo No. R.E.A.T./2022/ 439

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 06th
day of September, 2022.

T. Dharampal Singh
6-9-2022

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 84 of 2022

MEMO OF PARTIES

M/s Bhanu Infra Build Pvt. Ltd., SCO No. 143-144, 1st Floor,
Sector 8-C, Chandigarh

Through its Authorized Representative namely Deepanjit Singh
son of Sh. Satwant Singh, M/s Bhanu Infra Build Pvt. Ltd., 10,
Local Shopping Complex, Kalkaji, New Delhi.

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB...Appellant

Versus

Appeal No. 84 of 2022

1. Dev Raj Sharma son of Sh. Lohka Ram Sharma, Resident
of House No. 827, Sector 12, Panchkula.

2. Anshul Jain son of Sh. Manohar Lal Jain, Resident of House
No. 1057, Sector-4, Panchkula.

Through its Authorized Representative namely Deepanjit Singh
son of Sh. Satwant Singh, M/s Bhanu Infra Build Pvt. Ltd., 10,
Local Shopping Complex, Kalkaji, New Delhi.

.....Respondents

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB...Appellant

Versus

Dev Raj Sharma son of Sh. Lohka Ram Sharma, Resident
of House No. 827, Sector 12, Panchkula.

Place: Chandigarh.
Dated: 02.05.2022

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

.....Respondents



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

Appeal No. 84 of 2022

M/s Bhanu Infra Build Pvt. Ltd., SCO No. 143-144, 1st Floor,
Sector-8 C, Chandigarh.

Though its Authorized Representatives namely Deepanjit
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2. Anshul Jain son of Sh. Manohar Lal Jain, Resident of House
No. 1057, Sector 4, Panchkula.

.....Respondents

Present: Mr. Munish Gupta, Advocate for the appellant.

Ms. Manju Goyal, Advocate for the respondents.

....Appellant

Versus

**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)

Present: Mr. Munish Gupta, Advocate for the appellant.

Ms. Manju Goyal, Advocate for the respondents.

**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE
(RETD.), MEMBER (JUDICIAL)**

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1. This appeal is directed against the order dated 14.07.2021, 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.
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 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.



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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. 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 15.09.2022. Files be consigned to record room.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on 15/09/2022. Files be consigned to record room.

August 25, 2022

AN



Certified To Be True Copy

Thomas
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

06/09/2022

JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

Appeals No. 84 of 2022

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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

Appeal No. 84 of 2022

M/s Bhanu Infra Build Pvt. Ltd., SCO No. 143-144, 1st Floor, Sector 8-C, Chandigarh

Through its Authorized Representative namely Deepanjit Singh son of Sh. Satwant Singh, M/s Bhanu Infra Build Pvt. Ltd., 10, Local Shopping Complex, Kalkaji, New Delhi.

.....Appellant

Versus

1. Dev Raj Sharma son of Sh. Lokha Ram Sharma, Resident of House No. 827, Sector 12, Panchkula.
2. Anshul Jain son of Sh. Manohar Lal Jain, Resident of House No. 1057, Sector-4, Panchkula.

M/s Bhanu Infra Build Pvt. Ltd., SCO No. 143-144, 1st Floor, Sector 8-C, Chandigarh

.....Respondents

Present: Mr. Munish Gupta, Advocate for the appellant
Ms. Manju Goyal, 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.) - HIS VIEW)

1. By this order, I will dispose off above mentioned appeal bearing Appeal No. 84 of 2021 (**Bhanu Infra Build Pvt. Ltd. versus Dev Raj Sharma & Anr.**) against order dated 14.07.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter also referred to as the Adjudicating Officer or the AO*) of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the*



Authority), in the complaint bearing AdC No. 12272019 filed on 28.06.2019.

2. The respondents'-complainants' complaint has been accepted by the Adjudicating Officer to the following extent:-

1.	Principal amount	Rs.52,70,725/-
2.	Simple interest	At the SBI highest marginal cost of lending rate (as on the date of the order i.e. 14.07.2021) plus 2% on the above said amount from the date of respective payments 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 respondents-complainants within sixty days from the date of the impugned order and it has also been ordered that the amount if any already paid by the appellant to the respondents-complainants on account of compensation for delay in delivery of possession shall be set off against above said amount.

3. The complaint in Form 'N' was filed by the respondents-complainants before the Adjudicating Officer on 28.06.2019 under section 31 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 from the appellant (i) refund of the amount deposited by the complainants along with interest as per provisions of the Act; (ii) pending compensation amount as stated in the Addendum Letter from December 2017 onwards till the offer of possession.



The complaint in Form 'N' was filed by the respondents-complainants before the Adjudicating Officer on 28.06.2019 under section 31 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

4. Aggrieved by the above said order dated 14.07.2021 of the Adjudicating Officer, the appellants filed appeal dated 02.05.2022 (diary dated 16.05.2022), bearing Appeal No. 84 of 2022, before this Tribunal and prayed to set aside the impugned order dated 14.07.2021.

5. The appellant has inter alia contended in the grounds of the appeal (i) that the Adjudicating Officer was not having jurisdiction to entertain the complaint as the agreement in question was executed prior to commencement of the Act; (ii) that the existence of arbitration clause makes it mandatory to refer the matter for arbitration; (iii) that the Adjudicating Officer was not within its powers to order refund; (iv) that complaint qua the same cause of action and for the same relief filed by the complainants before the State Commission, Punjab has been dismissed vide order dated 11.04.2019; (v) that the project was already complete and partial completion certificate qua the same has been received on 29.08.2018 and thereafter possession was offered on 28.11.2019; (vi) that the addendum to the provided payment of compensation to the complainant @ Rs.27,212/- per month till offer of possession and thus paid an amount of Rs.22,86,716/- till November 2017 (which ought to have been ordered to be set off from the amount refunded) but the same has not been paid beyond November 2017 since the complainant defaulted in making payment of installments.



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 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

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 issues as detailed hereinafter.



8. One of the contentions of the appellant is that the Adjudicating Officer was not within its powers to order refund.
9. 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 aforesaid 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 6 above and additionally, it 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



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 14.07.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing the impugned order dated 14.07.2021 to deal with the complaints/applications involving refund of the amount deposited, interest thereon and compensation etc.

10. In the grounds for setting aside the impugned order, it has also been contended that the payment of compensation to the complainant @ Rs.27,212/- per month till November 2017, aggregating to an amount of Rs.22,86,716/- *{for 84 months & 1 day}*, ought to have been ordered to be set off from the amount refunded.

11. During the proceedings before this Tribunal on 30.05.2022 and 21.07.2022, I have orally ordered and reminded learned counsel for the appellant to place on record a legible copy of the addendum dated 24.01.2011 (Annexure C/II), but the said orders were not comply with. Therefore, the provisions under Section 64 of the Act could be attracted against the appellant.

The said addendum dated 24.01.2011 to the allotment letter dated 24.12.2010, which is duly accepted by the respondents-complainants, inter alia provides as under:

21. During *"That through the captioned Allotment Letter you have and opted for payment Plan Combo Plan whereby it is agreed between us that upon receipt of a sum of Rs.2968624.91 (Rupees Twenty Nine Lac Sixty Eight Thousand Six Hundred Twenty Four & Paise Ninety*



One Only) as 55% of the BSP and 50% of all additional charges including PLC, if any, of the said Unit in lumpsum to the Company, we shall pay you a compensation of Rs. 27212.40 per month(minus applicable tax) Unit subject to following terms and conditions:

1. That the said return shall be paid to you till the date of intimation towards offer of possession of the said Unit for limited purpose for carrying out temporary fit-out in the said Unit or upto 30 months whichever is later."

12. In the impugned order dated 14.07.2021, it has also been ordered that the amount if any already paid by the appellant to the respondents-complainants on account of compensation for delay in delivery of possession shall be set off against the amount of interest payable by the appellant to the respondents-complainants in terms of paragraph 22 of the impugned order dated 14.07.2021.

13. The payment of compensation in terms of the addendum dated 24.01.2011 @ Rs.27,212.40 per month (minus applicable tax), specifically after the promised/due date of possession i.e. 23.12.2013, is ostensibly a payment on account of compensation for delay in delivery in terms of the paragraph 22 of the impugned order dated 14.07.2021.

14. In my opinion, the legislative intent of Section 18(1) of the Act and Rule 16 of the Rules is to provide reasonable return on the amount deposited/paid by the allottee with the promoter in case the allottee opts to withdraw from the project and seeks refund and interest thereon besides compensation.

15. Therefore, the compensation paid in terms of the addendum dated 24.01.2011 @ Rs.27,212.40 per month, even before the delay in delivery in terms of the paragraph 22 of the impugned order dated 14.07.2021.



promised/due date of possession i.e. 23.12.2013, should also be set off against the amount of interest payable by the appellant to the respondents-complainants in terms of paragraph 22 of the impugned order dated 14.07.2021.

16. Section 18(1) of the Act inter alia provides that if a promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, he shall be liable **on demand** to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under the Act.

17. In view of above, the present appeal is partly accepted only to the extent that the compensation paid in terms of the addendum dated 24.01.2011 @ Rs.27,212.40 per month (minus applicable tax), not only for the period after the promised/due date of possession but also for the period even before the promised/due date of possession, should be set off against the amount of interest payable by the appellant to the respondents-complainants in terms of paragraph 22 of the impugned order dated 14.07.2021.



18. 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.

August 25, 2022

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

Certified To Be True Copy
[Signature]
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

06/09/2022