

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

Subject:

Appeal No. 102 of 2019

1. Suraj Parkash Baweja S/o Sh. Madan Mohan Baweja, R/o B-8/102, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab).
2. Amardeep Singh S/o Sh Hardip Singh Virk, R/o B-14/502 Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
3. Ramesh Kumar S/o Sh. Babu Ram R/o B-11/201, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
6. Anshul Aggarwal, S/o Sh. Hans Kumar R/o B-7/302 Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab).
9. Satish Chander S/o Late Sh. Ram Parshad R/o A-3/001, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
10. D.K. Bakshi S/o Sh. Tele Chand Bakshi R/o A-3/501, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
11. Balbir S/o Sh. Jai Karan R/o B-6/301, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
13. Anoop Kumar S/o Sh. Jagdish Ram R/o B-9/301, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
14. Desh Rattan S/o Sh. Manohar Lal R/o B-8/101, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
16. Dinesh Chandra Sharma S/o Late Sh. R.C. Sharma R/o C-3/001, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
18. Satish Kumar Negi S/o Sh. T.N Negi R/o B-10/402, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
19. Kanwal Preet Singh (died through LR Mrs. Sarabjeet Kaur) S/o Sh. Amrik Singh R/o A-3/702, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)



20. Surinder Kumar S/o Sh. Bakhshi Ram R/o B-5/702, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
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38. Ram Narain S/o Sh. Vir Bhan R/o B-6/602, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
43. Kailash Chander Dhillori S/o Sh. Harnam Dass R/o B-6/001, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
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54. Gurmail Singh S/o Sh. M.M Chhabra R/o B-7/002, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
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58. Gajinder Singh Nanda S/o Sh. Moti Singh R/o B-8/201, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
59. Dr. Vijay Kumar S/o Late Sh. Ram Manorath R/o B-7/501, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)



60. Simple Sharma W/o Sh. Mritunjaya Sharma R/o B-13/602, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
63. Ashok Kumar S/o Sh. Jhans Raj R/o B-13/201, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)

....Appellants

Versus

1. The Managing Director, Indian Railways Welfare Organization, Railways Office Complex, Shiva Bridge (Minto Bridge), New Delhi (110001).
2. The Director Technical, Indian Railways Welfare Organization, Railways Office Complex, Shiva Bridge (Minto Bridge), New Delhi (110001).
3. General Manager, Indian Railways Welfare Organization, Rail Vihar IRWO, At VIP Road, Zirakpur, District SAS Nagar (Punjab).

....Respondents

WITH

APPEAL NO. 109 OF 2019, APPEAL NO. 111 OF 2019
APPEAL NO. 140 OF 2020 TO APPEAL NO. 144 OF 2020
APPEAL NO. 146 OF 2020 TO APPEAL NO. 147 OF 2020
APPEAL NO. 149 OF 2020 TO APPEAL NO.151 OF 2020
APPEAL NO. 153 OF 2020, APPEAL NO. 157 OF 2020
APPEAL NO. 161 OF 2020 TO APPEAL NO. 166 OF 2020
APPEAL NO. 170 OF 2020 TO APPEAL NO. 171 OF 2020
APPEAL NO. 173 OF 2020 TO APPEAL NO. 177 OF 2020
APPEAL NO. 181 OF 2020 TO APPEAL NO. 194 OF 2020
APPEAL NO. 196 OF 2020 TO APPEAL NO. 202 OF 2020
APPEAL NO. 205 OF 2020 TO APPEAL NO. 206 OF 2020
APPEAL NO. 209 OF 2020 TO APPEAL NO. 213 OF 2020
APPEAL NO. 216 OF 2020 TO APPEAL NO. 218 OF 2020



Memo No. R.E.A.T./2022/ 552

To,

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

By order dated 15.09.2022 numerous appeals were decided by this Tribunal, the details of which are appended to the order as **Annexure-A**. However, there were certain applications filed during the pendency of these appeals where some of the applicants who were co-appellants with others in the main appeal chose to withdraw from the proceedings.

Separate orders in this regard were passed since the main appeals have been decided the information regarding those applicants who withdrew from the appeal would be essential for the Authority.

Consequently, the list of the applicants who have withdrawn from various appeals is being forwarded to the Authority as appended to this communication as **Annexure-B**.

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 28th day of October, 2022.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

Appeal No. 102 of 2019

- 1 ✓ Suraj Parkash Baweja S/o Sh. Madan Mohan Baweja, R/o B-8/102, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab).
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16. Dinesh Chandra Sharma S/o Late Sh. R.C. Sharma R/o C-3/001, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
18. Satish Kumar Negi S/o Sh. T.N Negi R/o B-10/402, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
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APPEAL NO. 102 OF 2019 (O&M)

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APPEAL NO. 102 OF 2019 (O&M)

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60. Simple Sharma W/o Sh. Mritunjaya Sharma R/o B-13/602, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)
63. Ashok Kumar S/o Sh. Jhans Raj R/o B-13/201, Rail Vihar IRWO, At VIP Road, Zirakpur District SAS Nagar (Punjab)

....Appellants

APPEAL NO. 102 OF 2019 **Versus** 2019

1. The Managing Director, Indian Railways Welfare Organization, Railways Office Complex, Shiva Bridge (Minto Bridge), New Delhi (110001).
2. The Director Technical, Indian Railways Welfare Organization, Railways Office Complex, Shiva Bridge (Minto Bridge), New Delhi (110001).
3. General Manager, Indian Railways Welfare Organization, Rail Vihar IRWO, At VIP Road, Zirakpur, District SAS Nagar (Punjab).

Versus

....Respondents

The Managing Director, Indian Railways Welfare Organization, Railways Office Complex, Shiva Bridge (Minto Bridge), New Delhi (110001)

WITH

The Director Technical, Indian Railways Welfare Organization, Railways Office Complex, Shiva Bridge (Minto Bridge), New Delhi (110001)

APPEAL NO. 109 OF 2019, APPEAL NO. 111 OF 2019
APPEAL NO. 140 OF 2020 TO APPEAL NO. 144 OF 2020
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APPEAL NO. 181 OF 2020 TO APPEAL NO. 194 OF 2020
APPEAL NO. 196 OF 2020 TO APPEAL NO. 202 OF 2020
APPEAL NO. 205 OF 2020 TO APPEAL NO. 206 OF 2020

WITH



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APPEAL NO. 209 OF 2020 TO APPEAL NO. 213 OF 2020
APPEAL NO. 216 OF 2020 TO APPEAL NO. 218 OF 2020

Present: - Mr. Rajeev Anand, Advocate for the appellant.
Mr. A.K. Tewari, Advocate for the respondent.
Mr. Gurdeep Singh, Project Engineer, IRWO,
Chandigarh.

APPEAL NO. 102 OF 2019
CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K GARG DISTRICT AND SESSIONS JUDGE (RETD.)
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER
(ADMINISTRATIVE/TECHNICAL)

-*-

JUDGMENT: (Sh. Mahesh Grover (Retd.), Chairman)
(oral)

1. By this order we will dispose of the numerous appeals the details of which are appended to this order as Annexure A. The impugned order was passed by the Adjudicating Officer, of the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) on 27.09.2019 and the concluding portion contained in Para 16 is extracted herein below : -



"16. As a sequel of the aforesaid discussion, I am of the considered opinion that the complaints suffer from legal defects as elaborated above and as such no relief as sought for by the complainants could be legally granted. All the complaints as such, are

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rejected. The parties are, however at liberty to invoke the jurisdiction of the appropriate forum in appropriate form if so advised by them in accordance with law. Legal branch is directed to place an attested copy of this order on the files of all the concerned complaints. A copy of this order be also supplied to parties under rules. File be consigned to record room after due compilation."

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The Complaint was preferred by the allottees with multiple prayers some of which came within the jurisdictional ambit of the Adjudicating Officer while remaining were within the jurisdiction of the Authority to be answered.

2. This is noticed in the order itself and in fact in Para 3 of the impugned order the Adjudicating Officer notices that the parties did not file separate applications in Form M or Form N in consonance with the statutory provisions enabling such grievances and rather a consolidated complaint was filed incorporating grievances which ordinarily should have been in separate forms i.e. Form M and N. The conclusion arrived at by the Adjudicating Officer is a culmination of the discussion in this regard.



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3. As a consequence the impugned order does not reflect upon any of the grievances of most of the allottees either in affirmation or negation and all the questions have been left open to be answered in appropriate proceedings, should such be initiated by the aggrieved.
4. During this interregnum between the passing of the impugned order and hearing of the appeal numerous applications were received by this Court seeking withdrawal from the appeal or the appeal itself which were allowed by the separate orders. This need not be elaborately set out here as such persons who sought release from the proceedings are now beyond the ambit of the present proceedings.
5. The Hon'ble Supreme Court in the meantime in the judgment of (M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.) observed in Para 83 and 86 about the powers that are to be exercised by the Authority and the Adjudicating Officer keeping in view the nature of the prayers and content of the complaint. The same is extracted hereinbelow:-



"83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that

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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



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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."

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6. Since the issue has now been conclusively decided and the impugned order did not decide the issues raised in the complaint on merits but rather interference was declined on issue of jurisdiction, we are of the opinion that the entire matter needs to be remanded back to be decided by the Authority or the Adjudicating Officer as the case may be for decision in terms of the order of the Hon'ble Supreme Court in New Tech's case (supra).
7. The complainant shall file the complaint with their grievances set out in Form M or N as the case may be which shall then be disposed of by the Authority or the Adjudicating Officer keeping in view the nature of prayer and the grievance set out in the complaint and dispose of the matters in accordance with law.



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8. Since the matter has been pending since 2019 before the Authority we are of the opinion that it would be in the interest of justice if all these issues are decided as expeditiously as possible preferably within a period of 6 months from the date, when the fresh complaints are initiated by the aggrieved allottees.
9. For some reason if there is a delay in constitution of the Authority, it shall be at liberty to approach this Tribunal by making an appropriate application for expansion of time.
- Files be consigned to the record room.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

my view is appended on subsequent page No. 1 A to 2/A
Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER (ADMINISTRATIVE/ TECHNICAL)

September 15, 2022
DS



Certified To Be True Copy

Thames & Faint
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

28/10/2022

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ANNEXURE A

Appeal No. 109 of 2019

Anant Kumar Kale, S/o Sh. Jayant Kumar Kale, R/o House No. 81/2, Anand Vihar Nanheda Road, Ambala Cantt (133001).

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No.111 of 2019

O.P. Grewal, son of Tek Ram, R/o House No.243/5-D, Railway Officers Enclave, Panchkuian Road, New Delhi-110001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 140 of 2020

Satish Kumar Aggarwal, R/o Quarter No. 713, Type III, DMW Railway Colony Patiala, Punjab-147003

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

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Appeal No. 141 of 2020

Surinder Mohan Mahajan, R/o House No. 179, Anand Vihar, Saproon, Solan Himachal Pradesh, Pin-173211.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 142 of 2020

Hitesh Kumar Jain, R/o House No. 303, Sector-16, Hisar, Haryana-125001

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 143 of 2020

Amneet Singh Sodhi, R/o Flat No. 934, Tower No. 03, Sector-56, Gurgaon, Haryana Pin-122011.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

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Appeal No. 144 of 2020

Birendra Mohan Singh Bisht, R/o House No. A 495,
Indra Nagar, Lucknow, Uttar Pradesh-226016.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 146 of 2020

Ritika Chaudhary, R/o House No. EIA Flat No. 201,
Samridhi Apartment, Sector-18 B, Dwarka, New Delhi-
110075.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 147 of 2020

Tanuj Kumar Aggarwal, R/o U-Block, 24 A/26, GF, Pink
Town House, DLF, Phase III, Gurgaon, Haryana Pin-
122010.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

15

Appeal No. 149 of 2020

Wg Cdr Mukesh Bhardwaj, R/o Station Adjutant, AF Station Tezpur, Salonibari Post, District Sanitpur, Assam, Pin-784104.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 150 of 2020

Kalyan Singh Rana, R/o House No. 23-Y, Nangal Township, District Roopnagar, Punjab, Pin-140124

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 151 of 2020

Surinder Kaur, R/o House No. 17-S F, Sant Inshwar Singh Nagar, Pakhowal Road, Ludhiana, Punjab, Pin-141002.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

16

Appeal No. 153 of 2020

Karnail Singh, R/o House No. 104/38, Silvar Oak (West),
DLF, Phase-1, Gurgaon, Haryana Pin-122002.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 157 of 2020

Onkar Singh Sachar, R/o Kohli Hospital, Puran Vihar,
Jagadhari, Yamunanagar, Haryana, Pin-135003

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 161 of 2020

Lt. Col Yash Chibber R/o House No. 848, Sector-8,
Panchkula, Haryana, Pin-130649

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

17

Appeal No. 162 of 2020

Brij Mohan, R/o House No. 21 CTO Complex, Near GPO,
Ambala Cantt, Ambala, Haryana Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 163 of 2020

Anita Chhabra, R/o House No. 92, Street No. 21,
Tripura, Patiala, Punjab Pin-147004.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 164 of 2020

Anuja Gagat, R/o House No. 1155FF, Behind Manav
Mangal School, Sector 11, Panchkula, Haryana Pin-
133112

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

18

Appeal No. 165 of 2020

Arun Kumar Manocha, R/o House No. 24 A, Railway Colony, S.P. Marg, Chanakyapuri, Railway colony, New Delhi, Pin-110021

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 166 of 2020

Som Nath Sehgal, R/o House No. 2297, Raja Park, Ranibagh, Shakur Basti, New Delhi, Pin-110034

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 170 of 2020

Neetu Tuteja, R/o Kothi No. 14, Bank Colony, Ferozpur City, Ferozpur, Punjab, Pin-152002

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

19

Appeal No. 171 of 2020

Dharampal Singh Kalra, R/o House No. A 218, Jaijawan
C D S, LTD, Sector-17, Vashi, Navi Mumbai,
Maharashtra, Pin-400703

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 173 of 2020

Pardeep Kumar Sharma, R/o House No. 1186, Sector-
17, HUDA, Jagadhari, Yamuna Nagar, Haryana, Pin-
135003

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 174 of 2020

Kathakali Das, R/o House No. D-8, Type IV, QTR. Rail
Vihar, Ambala Cantt, Ambala, Haryana, Pin-133001

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

20

Appeal No. 175 of 2020

Sawtantar Kumar, R/o Hardyal Nagar, Muktsar Road,
Jaitu, Punjab, Muktsar, Punjab, Pin-151202.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 176 of 2020

Dharam, R/o R-95, Railway Enclave, Partap Vihar,
Gaziabad, Uttar Pradesh, Pin-201009.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 177 of 2020

Sarjan Singh Negi, R/o Flat No. 514, Tower No. 07, Motia
Heights, K Area Road, Near Gurudwara Bouli Sahib,
Dhakoli Naz, Zirakpur.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

21

Appeal No. 181 of 2020

Rakesh Sharma, R/o House No. D-2, Block 173, Basant Lane, Rly. Colony, New Delhi, Pin-110055.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 182 of 2020

Sunil Kumar Jangra, R/o Dadri Gate, Shanti Nagar, Kaunt Road, Gali No. 11/3, Bhiwani, Haryana, Pin-127021.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 183 of 2020

Sham Lal, R/o QTR No. 517 C, Type II, Rail Coach Factory, Kapurthala, Punjab, Pin-144602.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

22

Appeal No. 184 of 2020

Tapeesh Datta, R/o House No. 2/105, Vikas Nagar, Patoli Road, Jammu, Jammu & Kashmir, Pin-180007.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 185 of 2020

Monika Nakra, R/o 6-1/B, Rail Vihar, Mansa Devi Complex, Sector-4, Panchkula, Haryana, Pin-134114.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 186 of 2020

Ashok Kumar, R/o House No. 132, Allembly Line, Near Anand Market, Ambala Cantt. Haryana, Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

23

Appeal No. 187 of 2020

Sudesh Kumar, R/o 06 Regiment, C/O 56 APO, New Delhi, Pin-110001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 188 of 2020

Sukhvinder Mohan Singh, R/o House No. 1, Virk House, Haryana, Cold Storage, Shahbad, Kurukshetra, Haryana, Pin-135136.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 189 of 2020

Joginder Parkash, R/o House No. 105, GH 77, Sector-20, Panchkula, Haryana, Pin-134116.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

24

Appeal No. 190 of 2020

Surender Singh Mann, R/o House No. 178, 1st Floor, Avenue 3, Gomes, Defence Colony, Vashali Nagar, Jaipur, Rajasthan, Pin-302021.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 191 of 2020

Kuldip Singh, R/o House No. 133- G-6, Rohini, Sector-XI, North West Delhi, Delhi, Pin-110085.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 192 of 2020

Harvinder Kuar, R/o 3148/256, Opp. Guru Hargobind Hospital, Basti Sheikh, Jalandhar, Punjab, Pin-144002.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

25

Appeal No. 193 of 2020

Anil Kumar, R/o QTR No. T-53 C, Type III, Old Railway Colony, Ambala Cantt., Ambala, Haryana, Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 194 of 2020

Kiran Sharma, R/o QTR No. 236 A, Railway Colony, Kalka, Panchkula, Haryana Pin-133302.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 196 of 2020

Hare Ram Prashad, R/o House No B-5/2 CONCOR Colony Tughlakbad, New Delhi, Pin-110044.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

26

Appeal No. 197 of 2020

Navdeep Singh, R/o House No.113, G-6, Sector-11,
Rohini, New Delhi. Pin-110085.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 198 of 2020

Om Parkash Bhatia, R/o House No.132, Ram Nagar,
Behind Hari Palace Ambala City, Haryana. Pin-134003.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent

Appeal No. 199 of 2020

Ginni Datta, R/o House No. M.K. Data Hospital, Cross
Road No.1, Ambala Cantt., Haryana. Pin-133001

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

27

Appeal No. 200 of 2020

Ramesh Chandra Thakur, R/o House No.3113, Sector 20-D, Chadigarh. Pin-160020.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 201 of 2020

Jintender Singh, R/o House No. 250 A, Railway Colony, Ambala Cantt., Ambala, Haryana, Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 202 of 2020

V Jayashree Nair, R/o House No. C-436, Panchvati Apartment, Vikas Puri, New Delhi, Pin-110018.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

28

Appeal No. 205 of 2020

Vipul Singla, R/o House No. B-12, A Cozihome, Palli Hills, 251, Nargis Dutt Road, Bandra (West), Mumbai (Maharashtra), Pin-400050.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 206 of 2020

Vijay Kumar Khtrapal, R/o House No. C-54, Sector-F, LDA Colony, Kanpur Road, Lucknow, Uttar Pradesh, Pin-226012.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 209 of 2020

Satish Kumar Gambhir, R/o House No. 30-C, C Block, Railway Complex, Amritsar, Punjab Pin-143001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

29

Appeal No. 210 of 2020

Krishan Kumar Berry, R/o House No. 03, Nehru Apartments, Kalkaji, New Delhi, Pin-110019.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 211 of 2020

Lt. Col Hartinder Singh Minhas, R/o K-II/17, 1st Floor, Lajpat Nagar, New Delhi, Pin-110024.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 212 of 2020

Jagjit Singh, R/o House No. 103-B, Gobind Nagar, Ambala Cantt., Ambala, Haryana Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

30

Appeal No. 213 of 2020

Neena Singhal, R/o House No. 112, Ekta Vihar, Ambala Cantt., Ambala, Haryana Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 216 of 2020

Harsimran Singh, R/o House No. 7C, Bock-7, Railway Officers Enclave, JK Pal Road, New Alipore, Kolkata, West Bengal, Pin-700038.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent

Appeal No. 217 of 2020

Raj Kumar Arora, R/o House No. E-35, HUDCO Place Extn. Andrewsganj, New Delhi, Pin-110049.

....Appellant

Versus

Indian Railways Welfare Organization through Managing Director Railway Office Complex, Behind Shankar Market, New Delhi (110001).

....Respondent



APPEAL NO. 102 OF 2019 (O&M)

31

Appeal No. 218 of 2020

Jit Singh Sandhu, R/o D-29, Rail Vihar, DRM Complex,
Ambala Cantt., Ambala, Haryana Pin-133001.

....Appellant

Versus

Indian Railways Welfare Organization through Managing
Director Railway Office Complex, Behind Shankar
Market, New Delhi (110001).

....Respondent



REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

Appeal No. 102 of 2019

Suraj Parkash Baweja son of Sh. Madan Mohan Baweja,
Resident of B-8/102, Rail Vihar, IRWO, at VIP Road, Zirakpur
District SAS Nagar (Punjab);

and 41 others (out of 63 others/co-appellants excluding appellants
at serial numbers 4, 5, 7, 8, 12, 15, 17, 22, 25, 29, 33, 39 to 42, 46,
49, 50, 56, 61, 62 & 64 of the appeal filed in November 2019, who
have withdrawn during the proceedings before the Tribunal from
time to time as mentioned in various orders passed by this
Tribunal).

.....Appellants

Versus

1. **The Managing Director, Indian Railways Welfare Organization** Railways Office Complex, Behind Shanker Market, New Delhi-110001
2. **The Director Technical, Indian Railways Welfare Organization**, Railways Office Complex, Shiva Bridge (MINTO Bridge), New Delhi-110001
3. **General Manager, Indian Railways Welfare Organization**, Rail Vihar IRWO, at VIP Road, Zirakpur District SAS Nagar (Punjab)

.....Respondents

with

Appeals No. 109 & 111 of 2019 and Appeals No. 140 to 144, 146,
147, 149 to 151, 153, 157, 161 to 166, 170, 171, 173 to 177, 181 to
194, 196 to 202, 205, 206, 209 to 213 & 216 to 218 of 2020

Present: Mr. Rajiv Anand Advocate for the appellants
Mr. A. K. Tewari, Advocate for the Respondents
Mr. Gurdeep Singh, Project Engineer, IRWO,
Chandigarh.

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 appeals bearing Appeal No. 102 of 2019 (**Suraj Parkash Baweja and others versus The Managing Director, Indian Railways Welfare Organization and others**) with 58 connected matters bearing Appeals No. 109 & 111 of 2019; and Appeals No. 140 to 144, 146, 147, 149 to 151, 153, 157, 161 to 166, 170, 171, 173 to 177, 181 to 194, 196 to 202, 205, 206, 209 to 213 & 216 to 218 of 2020 that have been filed against a common order dated 27.09.2019 passed by Sh. J. S. Khusdil, Adjudicating Officer (*hereinafter referred to as the Adjudicating Officer or the AO*) of Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in 98 complaints bearing No. 54/74 of 2017 (TR/AO/11 of 2019) instituted on 18.11.2017/11.12.2017/14.12.2017 and ADC1104 to 1110, 1112 to 1118, 1121 to 1148, 1152 to 1204, 1206 & 1208 of 2019 instituted during the period from 27.04.2019 to 06.05.2019.
2. 22 appellants out of 64 appellants of the Appeal No. 102 of 2019 (arising out of complaint No. 54/74 of 2017 filed by 72 complainants/allottees) and the appellants of 24 appeals bearing Appeal No. 108 & 110 of 2019; and 139, 145, 148, 152, 154 to 156, 158 to 160, 167 to 169, 172, 178 to 180, 195, 203, 204, 214 & 215 of 2020 (in which the matter was similar and related to the same project) have withdrawn their appeals during the proceedings before this Tribunal from time to time, generally consequent upon their settlement with the respondents as stated by them at the time of their respective withdrawal.



3. All the above mentioned appeals, being similar and arising out of the aforesaid common order dated 27.09.2019 as stated by the learned counsel for the parties, are being disposed off by me by this common order. The facts and other material has been taken from Appeal No. 102 of 2019 (**Suraj Parkash Baweja and others versus The Managing Director, Indian Railways Welfare Organization and others**).
4. The operative part of the aforesaid common order dated 27.09.2019 reads as under:-

"As a sequel of the aforesaid discussion, I am of the considered opinion that the complaints suffer from legal defects as elaborated above and as such no relief as sought for by the complainants could be legally granted. All the complaints as such, are rejected. The parties are, however at liberty to invoke the jurisdiction of the appropriate forum in appropriate form if so advised by them in accordance with law. -----XXXXXX-----"

5. Aggrieved by the aforesaid common order dated 27.09.2019 of the Adjudicating Officer, the appellants in Appeal No. 102 of 2019 filed on 15.11.2019 their appeal dated 08.11.2019.
6. The grounds taken by the appellants in their appeal inter alia include (i) that being an "ongoing project", the respondents are obliged to comply with the provisions of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*); (ii) that the respondents have failed to receive environment clearance before initiating the project, which was granted to them in 2019; (iii) that till date no occupation or completion certificate has been issued for the project; (iv) that possession was handed



over to the appellants in 2015 without obtaining occupation or completion certificate from the competent authority; (v) that the respondents have been levying additional charges on the pretext of providing basic amenities, cost of EWS etc., in compliance of law; (vi) that no agreement for sale was ever executed by the respondents till date; (vii) that the terms and conditions with respect to payment and completion dates were never provided to the appellants; (viii) that once the possession of a dwelling unit has been handed over to an allottee, no further demand can be raised by the promoter on the pretext of providing basic amenities; (ix) that the Adjudicating Officer failed to comply with directions of adjudication upon certain specific issues pertaining to the project as given by this Tribunal vide order dated 03.12.2018; (x) that claim of refund of unilateral escalations along with compensation, was totally in realm of the Adjudicating Officer in view of the order dated 27.02.2019 passed by this Tribunal in Appeal No. 53 of 2018 titled as **Sandeep Mann and another versus Real Estate Regulatory Authority and another** and other connected matters; and (xi) that while dismissing the complaint, the Adjudicating Officer gave a complete forgo to the findings and conclusions of the Authority vide its decision dated 26.07.2018 regarding illegal enhancement of prices by the respondents.



7. The appellants, in their appeal, have sought that the respondents be directed to (i) **refund the unjustified escalation charges made unilaterally along with compensation @ 18% till the date of reimbursement**; and (ii) provide clear status of project along with all the disclosures of accounts, sanctioned approvals and building plans as well as documentation of other statutory compliances as and when made by the respondents till date.

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:

8. 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 FINDINGS IN THE PRESENT APPEALS

9. As per copy of the complaint placed on record before this Tribunal, the complaint dated 18.11.2017/11.12.2017/14.12.2017 and bearing No. 54/2017 has been filed by 72 complainants (out of



which 64 complainants have filed their appeal bearing Appeal No. 102 of 2019) under section 31 of the Act, thereby seeking the reliefs of (i) compensation as applicable from September 2015 for phase-1 and from January 2016 for phase-2 onwards up to the date of the grant of the occupation certificate and further compensation for misrepresentations regarding the sale price of the flat/apartment; (ii) return of the total amount deposited with the respondent promoter along with interest and compensation prescribed under the Act; and (iii) in the alternative, refund of all amounts of unilateral escalations and adequate compensation and to invoke the penal clauses against erring officials.

10. Perusal of the aforesaid common order dated 27.09.2019 of the Adjudicating Officer inter alia reveals that (i) the 72 complainants filed the main complaint bearing No. 54 of 2017 before the Authority, which was decided by the Bench of Shri Sanjiv Gupta, the then Member of the Authority, vide order dated 26.07.2018; (ii) against the said order, both sides preferred appeals bearing Appeal No. 22 of 2018 and Appeal No. 25 of 2018, which were decided on 03.12.2018, vis a vis the matter was remanded to the Authority for adjudication of all pleas raised in the affirmative or in defence by both sides; (iii) accordingly, the Bench of Sh. Sanjiv Gupta dealt with the case as per the specific directions of this Tribunal; (iv) however, on 12.03.2019, the matter was referred to the Adjudicating Officer on the ground that the relief of compensation including interest has also been sought by the complainants; (v) this order, apparently was passed in view of the order dated 27.02.2019 of this Tribunal in appeal No. 53 of 2018 (Supra).



11. The said order dated 26.07.2018 of the Bench of the Authority in the complaint No. 54/74 of 2017, reads as under:-

"The complaint was filed by 72 members of the Residents Welfare Association of Rail Vihar IRWO, VIP Road, Zirakpur, Distt. SAS Nagar, Punjab on 18.11.2017, alleging arbitrary and unjustified steep escalation in the cost of flats offered to the members, who applied for allotment of flats in Rail Vihar Group Housing Scheme, originally launched on 1.10.2008 at Zirakpur and re-launched and re-opened from 15.7.2010 to 30.09.2010.

The brief facts of the scheme are that the Indian Railways Welfare Organization was registered under the Society Registration Act, 1860 on 25.09.1989, with the object of promoting Social Welfare Schemes, such as help to Railway Personnel, their spouses and personnel of undertakings under the Ministry of Railway in procuring a house for residence. The prime activity of IRWO is procurement of land throughout the country and execution of housing projects at those sites, to cater to the housing needs of the members on "No Profit No Loss" basis. Its Headquarter is located in the Railway Offices Complex, Shivaji Bridge (Behind Shankar Market), New Delhi. The society launched a Group Housing Scheme on 01.10.2008 at Zirakpur, but due to high cost of the apartments, the scheme got a very poor response. Accordingly, as per the brochure of the Society, "on request from various members for reduction of prices of D.U.s, the scheme has been restructured and the cost of different units has come down considerably". The scheme was reopened from 15.7.2010 to 30.9.2010. The revised scheme envisaged construction of 3 types of Dwelling Units (DUs) i.e. Type II, III & IV. Type II DUs were G+2 storey construction while Type III & IV were multi-storeyed (G+5/G+7, with lift). The tentative cost of DUs were as follows:-

| Type | Approximately Super Area | Approximate Cost in Lakhs |
|-------|--------------------------|---------------------------|
| Z/II | 780 sq. ft. | 15.59 |
| Z/III | 1150 sq. ft. | 26.08 |
| Z/IV | 1413.84 sq. ft. | 32.36 |



The basic contention of the complainants is that they applied for allotment of DUs, only because the brochure of the scheme stated considerable reduction in the cost of the apartments, from the cost quoted at the time of its original launch in the year 2008.

Phase II of the scheme was subsequently launched from 15.7.2011 to 17.10.2011 but the prices quoted for the scheme were considerably enhanced from the prices of flats of Phase-I. The respondent, from time to time, revised and unilaterally enhanced the prices of the DUs, as per details given in the tables below:-

| PHASE-I | | | | | | |
|---------|--------------|--|----------------------------------|----------------------------------|---|-------------------------------------|
| Sr. No. | Type of Unit | Estimated Cost as per Brochure 2009 (in lakhs) | Revised Cost Dec.2012 (in Lakhs) | Revised cost May 2014 (in lakhs) | Percentage increase over the Original Price | Additional Cost Oct 2016 (in Lakhs) |
| 1. | II | 15.59 | 19.64 | 20.95 | 34.38% | 0.77 |
| 2. | III | 26.18 | 32.95 | 36.37 | 38.92% | 1.17 |
| 3. | IV | 32.36 | 40.43 | 44.62 | 37.88% | 1.42 |

| PHASE-II | | | | |
|----------|--------------|--|----------------------------------|-------------------------------------|
| Sr. No. | Type of Unit | Estimated Cost as per Brochure 2011 (in lakhs) | Revised cost May 2014 (in Lakhs) | Additional Cost Oct 2016 (in Lakhs) |
| 1. | II | 20.00 | 21.73 | 0.77 |
| 2. | III | 34.00 | 37.97 | 1.17 |
| 3. | IV | 42.00 | 46.56 | 1.14 |

A perusal of the above reveals that price in respect of DUs in Phase-I have been enhanced sharply while there was only marginal increase in respect of DUs in Phase-II. Out of total 72 Complainants, 33 Complainants belong to Phase-I and 39 Complainants to Phase-II. The respondents were offered allotment of their DUs in June, 2015 followed by handing over the possession in September, 2015. The complainants are in continuous possession/occupation of their respective apartments since 2015. Subsequent to handing over of possession, another demand for additional cost towards the cost of subsidy for the EWS component of the scheme was made in October, 2016. Aggrieved by the continuous demand for enhanced payments, the complainants filed CWP No. 6878 OF 2017 titled "Suraj Parkash Baweja



and others Vs. State of Punjab and others” with Hon'ble Punjab and Haryana High Court at Chandigarh. The CWP was disposed off on 03.04.2017 with the directions to Director, Town and Country Planning to exercise powers under The Punjab Apartment and Property Regulation Act, 1995 and decide the same by passing order. The office of the Regional Deputy Director, Urban Local Bodies, Patiala on 7.11.2017 held that the project comes under the provisions of the Real Estate (Regulation & Development) Act, 2016 and were advised to file a complaint with this Authority. Accordingly, the complainants filed complaint with the authority on 18.11.2017. The reliefs sought by the complainants are as follows:

- i. *Compensation as applicable from September, 2015 for Phase-I and January, 2016 for Phase-II onwards, upto the date of the grant of the Occupation Certificate and further compensation for malicious and illegal misrepresentations regarding the sale price of the flat/apartment.*
- ii. *Return of the total amount deposited with the Respondeat Promoter alongwith interest and compensation prescribed under Real Estate (Regulation and Development) Act, 2016 as the action of the respondents have failed in its obligations towards the Applicant/Allottee.*
- iii. *In the alternative, refund all amounts of escalation made unilaterally and for adequate compensation to the complainant allottees and the penal clauses be invoked against the erring officials.*

In response to the complaint, the respondent submitted their written statement on 03.02.2018 and listed out various reasons for enhancement of price quoted initially and also clarified various additional issues, in respect of mandatory approvals alleged to not have been obtained and issues in regard to less ground coverage/quality of material issued in construction in material used. The complainants, after due consideration of reply, filed objections/rejoinder on 23.02.2018, a copy of which was handed to the respondent. On 15.3.2018 the respondent filed rebuttal



cum written arguments copy of which was duly given to the complainants. Once again the complainants submitted written submissions on 2.4.2018. The matter was thoroughly argued and some additional information was sought by the authority on 19.06.2018 which was duly submitted by the respondent on 28.06.2018.

All the documents submitted by both the sides have been thoroughly examined. Based on the documents submitted and the detailed arguments from both sides the following conclusion can be drawn:-

- i. *A case for relief is made out in favour of complainants who had booked their flats solely on the basis of the claim made by the respondent in the brochure at the time of reopening of the scheme on 15.07.2010, whereby it was specifically mentioned that "on the request from various members for reduction of prices of DUs the scheme has been restructured and the cost of different units has come down considerably". They were lured by the reduced prices and responded to the scheme being opened for non railways employees in view of poor response to the earlier scheme launched in 2008. However, the respondent, despite being a welfare organization, repeatedly enhanced the cost of flats unilaterally in respect of Phase-I. The same was done without prior consent of the members and resulted in an escalation of 34-38% over the original price. The respondent has taken the plea that they provide houses, as a social welfare measure, on no profit no loss basis and hence had to pass on the increase in the cost of land as well as construction on account of certain un-foreseen circumstances. However, they failed to justify and explain the reasons for the quantum of increase in respect of 112 DUs falling in Phase-I as its construction was initiated on 7.6.2010. Hence, the steep enhancement in the cost of these flats is totally unjustified.*
- ii. *The complainants raised some points in regards to quality of construction, non-receipt of mandatory permissions/approvals, less ground coverage and*



installation of second lift in the multi-storeyed towers. The respondent could fully explain the same and minor variations, if any, do not have a material effect on the cost of the flats, contrary to the claim made by the complainants that cost increased on account of avoidable expenditure on additional lift etc as well as less ground coverage.

- iii. The complainants did not raise any objection to the additional payments asked for by the respondent in Dec, 2012 as well as May, 2014. Without contesting the same, they made the payments and took possession of their flats in 2015. They all have been continuously staying in their respective flats and enjoying their property. Principal of "Estoppel" shall apply in this case in respect of all payments made by the complainants before taking possession as they are in continuous possession of the same and enjoying their property for almost last 3 years.

Accordingly, the following is ordered

- A. No relief of refund/interest/compensation is made out to the extent of amount paid on or before taking possession of the DUs in year 2015.
- B. Since, the cost of flats of phase-I was unilaterally enhanced twice and Phase-II once before offering the possession, another demand for additional cost made in October, 2016, as follows, after handing over possession of flats in September, 2015, is totally unjustified:

| Sr. No. | Type of Unit | Additional Cost Oct 2016 (in Lakhs) |
|---------|--------------|--|
| 1. | H | 0.77 |
| 2. | III | 1.17 |
| 3. | IV | 1.42 |

Hence, the complainants, who were allotted DUs both in Phase-I and Phase-II shall not be liable for payment of additional cost, as demanded in October, 2016, if not paid already. In case the same has already been paid, no refund shall be made out in favour of such complainants.



The complaint is accordingly disposed off. File be consigned to record room and copy of order be provided, free of cost, to both the complainant and the respondent."

12. The order dated 03.12.2018 of this Tribunal in Appeal No. 22 of 2018 titled as **INDIAN RAILWAYS WEFARE ORGANISATION (IRWO, NEW DELHI) AND OTHERS VERSUS SURAJ PARKASH BAWEJA & OTHERS** and its cross appeal bearing Appeal No. 25 of 2018 titled as **SURAJ PARKASH BAWEJA & OTHERS VERSUS INDIAN RAILWAY WELFARE ORGANISATION (IRWO, NEW DELHI) AND OTHERS**, arising out of said order dated 26.07.2018 of the Bench of the Authority in the complaint No. 54/74 of 2017, inter alia reads as under:-

"Both parties have filed written arguments/synopsis, which are taken on record.

Counsel for the parties agree that the appeals may be allowed and the matters remitted for a detailed adjudication on the point of escalation, explanation for delay, by reference to detailed documents appended with the reply filed by the respondents and the details submitted by the claimants in opposition thereto. This apart it is also agreed that the question of complaints regarding quality of construction, non receipt of mandatory permissions/approvals etc. may also be reconsidered as well as the other claims partly allowed or denied to the appellants and the respondents.

Allowed as prayed for.

The parties would be free to pray for filing of additional affidavits/documents as may be appropriate in the opinion of the Authority. This order shall not be construed to be an expression of opinion on the rights of the parties or restrict the claim of the parties regarding any matter but shall require adjudication of all pleas raised in affirmative or in defence by both parties.



The parties are directed to appear before the Authority on 15.01.2019”

13. In compliance of aforementioned order dated 03.12.2018 of this Tribunal, initially the Bench of Shri Sanjiv Gupta dealt with the case, but in view of the order dated 27.02.2019 passed by this Tribunal in Appeal No. 53 of 2018 titled as **Sandeep Mann and another Vs. RERA and another and other connected appeals**, the matter was referred by him to the Adjudicating Officer on the grounds that the relief of compensation including interest has also been sought by the complainants. Thereafter, the Adjudicating Officer has decided the said complaint bearing No. 54/74 of 2017, along with 97 more similar complaints bearing No. ADC1104 to 1110, 1112 to 1118, 1121 to 1148, 1152 to 1204, 1206 & 1208 of 2019 instituted by the allottees of the same project before the Authority during the period from 27.04.2019 to 06.05.2019.
14. The Adjudicating Officer decided the above mentioned 98 complainants vide its order dated 27.09.2019, the concluding and operative part of which reads as under:-

“8. *I have heard the learned representatives for both the parties at considerable length and have also gone through the entire record with their able assistance.*

9. *Before proceeding further in the matter, it would be appropriate to mention here some admitted facts at the first instance. The allottees are the members of the Residents Welfare Association of Rail Vihar IRWO and the Dwelling Unit holders under this project. As per record, the CWP No.6878 of 2017 filed by Suraj Parkash and three other petitioners against State of Punjab and five other respondents before the Hon'ble High Court of Punjab and Haryana, Chandigarh was decided on 03.04.2017 with the direction to respondent No.2 (The Director, Town and Country Planning,*



Govt. of Punjab) to call for the records and/or entrust the matter to the Prescribed Authority. If any, who shall look into the grievances of the petitioner and decide the issues raised by them by way of a reasoned order and after hearing all the affected parties. It was further observed that it shall be appreciated if an appropriate decision is taken within a period of three months from the date of receiving a certified copy of the order. It was further observed that payment towards additional demand shall be made subject to final decision to be taken by the Authorities. The Regional Deputy Director, Local Government, Patiala, vide order dated 01.11.2017, advised the petitioners to approach the Real Estate Regulatory Authority, Punjab for the redressal of their grievances. Thereafter, the complainants opted to file complaint in form-M, which was decided by one of the Benches of this Authority on 26.07.2018 and both sides preferred two appeals before the Hon'ble Real Estate Appellate Tribunal, Punjab, which were disposed of vide order dated 03.12.2018 thereby remanding the matter to the Authority. The Bench of Shri Sanjiv Gupta, Member of this Authority, vide order dated 12.03.2019, has sent the main case file to this Bench in view of the decision dated 27.02.2019 of the Hon'ble Real Estate Appellate Tribunal, Punjab, as mentioned in the earlier part of this order.

10. It is also established on record that there is no agreement executed between the parties. The complainants have come to this Authority as the project is registered with this Authority against registration No.PBRERA-SAS79-PR0043.
11. RERA Act has come into force in May 2016 and Sections 2, 20 to 39, 41 to 58, 71 to 78 and Sections 81 to 92 came into force w.e.f. 01.05.2016 and Sections 3 to 19, 40, 59 to 70 and Sections 79 and 80 came into force w.e.f. 01.05.2017. The CWP preferred by Suraj Parkash Baweja and others was decided by the Hon'ble High Court of Punjab and Haryana, Chandigarh



on 03.04.2017. The instant scheme of group housing was launched by the respondent/IRWO on 01.10.2008 and re-launched in July 2010. The perusal of brochure Annexure C1/R1, shows that the scheme was reopened w.e.f. 15th July, 2010 to 30th September, 2010, (in the month of July, 2010), in which, various necessary details were given including tentative cost, mode of payment, technical specifications. The tentative details of Dwelling units is given under head 6 as under:

6. Tentative Details of Dwelling units:

6.1 Tentative area and approximate costs of different types of dwelling units are indicate in table-1 below:-

TABLE 1

Tentative details and costs of dwelling units

| Type | Configuration | Approx. super area | Accommodation | Approx cost (Rs. in lakh) (basic Cost + EC up to 3 rd instalment) |
|-------|----------------------------------|------------------------------|---|--|
| Z/II | Load bearing construction G+2 | 72.584 sqm (781 Sq.ft.) | Living-cum-Dining, two Bed Rooms, two toilets and kitchen | 15.59+0.65* |
| Z/III | Multi-storeyed G+7 | 106.877 sqm (1150 Sq.ft.) | Living-cum-Dining, three Bed Rooms, three toilets and kitchen | 26.18+1.28* |
| Z/IV | Multi-storeyed G+5/G+7 | 131.398 sqm (1413.84 Sq.ft.) | Living-cum-Dining, four Bed Rooms, four toilets and kitchen | 26.18+1.28* |

* Denotes equalization charges (EC)

NOTES:

- One open car parking is compulsory for each DU and would require payment of additional charges of Rs. 75,000/- Optional extra open parking spaces can be provided at additional charges of Rs. 75,000/-.
- The construction of various categories of dwelling units indicated above is subject to adequate demand.
- The cost given in the table above are purely tentative based on current price and may increase depending on escalation in labour and material cost, as well as alterations in design and specifications or any other unforeseen reasons. Actual cost would be payable by allottees. In addition Equalization charges have to be paid as per Annexure-III. Equalization charges are to bring you at par with those joined the scheme earlier.
- Super areas are tentative and subject to change on finalization of detailed drawings. No claims shall be entertained on account of such variation/change. The super area indicated above comprises covered area of dwelling units inclusive of verandah/ balconies, cantilevered cupboard space, proportional common areas etc.
- The cost does not include transfer and other charges such as stamp duty, registration charges etc. required under the local bye-laws at the time of transfer of land and dwelling unit. Any such charges will be payable extra by allottees.



6. *The above costs don't include the cost of geysers, cupboards/loft covers, fans, light fixtures, lamps etc. which will not be provided by IRWO.*
 7. *Any enhancement in cost of land/ development charges demanded by State Government/PUDA shall also be payable by the Allottees within the period as specified by the concerned authorities.*
 8. *If any houses are required to be constructed for economically weaker sections (EWS) or compensation is required to be paid to meet statutory requirements of State Govt/PUDA, additional cost on this account will be borne by allottees.*
12. *As mentioned above, there is no agreement of any kind, what to speak under the RERA Act and this fact has also been admitted by both sides during the course of arguments. Interestingly, there is no mention of any date of completion of the project, which is otherwise an important feature under the PAPRA Act 1995. Here, it would be appropriate to add that before coming into force of RERA Act, PAPRA Act 1995 was in force and is still in force and has not been repealed. It is also admitted fact that the allottees submitted application alongwith declaration duly signed by them whereby agreeing to the proposal of the respondent/ IRWO.*
13. *Factually, the complainants have sought various reliefs including interest, compensation, refund of the amount deposited by them on account of price of the dwelling units and allegedly paid on account of escalated price paid or demanded by the respondent. The RERA Act requires the registration of the projects under Section 3 of the Act, which otherwise attracts penal action under Section 59 of the Act. Admittedly, the project namely Rail Vihar is registered with this Authority as mentioned above. Both the parties have submitted themselves before this Authority. The RERA Act clearly defines and has demarcated the jurisdiction of the Authority as well as Adjudicating officer and this proposition has been settled by the Punjab Real Estate Appellate Tribunal, vide order dated 27.02.2019 in appeal titled as Sandeep Mann and another Vs RERA and another bearing No.53 of 2018 and other connected appeals and prior to that in another case titled as Estate Officer PUDA Vs. RERA and*



Gursimran Kaur bearing appeal No.24 of 2018 and Gursimran Kaur Vs. PUDA, Bathinda bearing appeal No.26 of 2018.

14. As noted above, initially the complainants filed then main complaint in Form-M and as per the ratio of order dated 27.02.2019 mentioned above, if an allottee wants to stay in the project and seeks interest on delayed possession, then he or she may file complaint in Form-M, to be dealt with by the Authority, but, if, he or she does not want to stay in the project, then he/she will file complaint in form-N seeking refund, interest and compensation as required under Section 18 of the Act. It is also an admitted fact that all the complainants are in settled/established possession of their respective dwelling units, meaning thereby, that they intend to stay in the project. However, now they are also claiming refund by filing the complaints. The complainants, are therefore, invoking jurisdiction of two forums under the RERA Act, one under the Authority and other that of Adjudicating Officer, which is not legally tenable. There may be a cause of action which may give two reliefs, but, from two different Forums. This scheme is also elaborated under the RERA Act. If an allottee has taken the possession of the dwelling unit, then, within five years from the date of possession, he may file a complaint for removal of such defects. As mentioned above, the allottees are already in specific possession of the dwelling units since long and it was pointed out during the course of arguments by the representative for the respondents that certain allottees have also rented out their dwelling units to some other person and are earning rental income therefrom. It was also argued that the maintenance charges are not being paid to the respondents by the complainants. It would be appropriate to add here that the RERA Act is not for any particular person and any aggrieved person though promoter, allottee or real estate agent may file a complaint under Section 31 of the



Act seeking redressal for such of grievances. [Emphasis laid]

15. *Apparently, the complainants have sought several reliefs which are either falling within the jurisdiction of the Authority or the Adjudicating Officer. The Authority has bigger role to play, whereas, the jurisdiction of the Adjudicating Officer is limited to Sections 12, 14, 18 and 19 of the Act as I have already mentioned in detail in case titled as Suman Mann and another Vs. JLPL bearing complaint No.AO/9/2017 and Nikhil Kawatra and another Vs. M/s JLPL bearing No.AO/20 of 2017. In these circumstances, it appears to this Bench that there is mis-joinder of causes of action and in this case it is very inconvenient for this Bench to give a clear-cut findings for specific reliefs claimed by the complainants. It would not be out of place to mention here that the first complaint comprising 72 complainants has been filed in individual capacity, but, on perusal of record, it appears that one Suraj Parkash Baweja, claims himself to be Coordinator Chairman of RWA Rail Vihar as is apparent from letter written by him to the learned Chairman of this Authority dated 17.01.2019 bearing diary No.232 dated 18.01.2019. Specific limitation has not been prescribed under this Act as is prescribed in the Consumer Courts Act. However, under Section 14(3) of the Act, the allottee may seek compensation in case of any structural defects or other defects in workmanship, quality or provision of services or any other obligations of the promoter within a period of five years from the date of handing over possession. Under the RERA Act, it is the promoter who declares the completion of the project, but, here there is no document on the file in that respect. Even, as observed earlier, there is no agreement executed between the parties in this case. However, it is admitted and noted fact that the project Rail Vihar is registered with this Authority and no completion certificate has been placed on record by either side. Further at the*



cost of repetition, it is mentioned here that the Hon'ble High Court directed the Director, Town and Country Planning, Punjab, to dispose of the matter, but, instead of deciding the same, the parties were asked to invoke the jurisdiction of this Authority under the Act. It appears to me that a few causes of actions have not accrued legally under the RERA Act. It is added here that the physical possession has to be delivered under Section 17 of the Act, but, in this case, the physical possession is already there with the allottees/complainants. Lawful possession has to be delivered after obtaining the completion certificate/occupation certificate from the competent authority. The complainants' side sought refund of the entire amount after retaining the possession for quite a long time and also sought interest thereon and also refund of the amount on account of escalated costs paid or demanded by the respondent. When the project has not yet been completed, it is not possible for the respondent to assess the total costs of the project and the apportionment of the each allottee towards cost/refund accordingly. The IRWO, as is being claimed by the respondent, is working on no profit no loss basis and in the given facts and circumstances, it can only make final assessment on completion of the project.

16. As a sequel of the aforesaid discussion, I am of the considered opinion that the complaints suffer from legal defects as elaborated above and as such no relief as sought for by the complainants could be legally granted. All the complaints as such, are rejected. The parties are however at liberty to invoke jurisdiction of the appropriate forum in appropriate form if so advised by them in accordance with law. Legal branch is directed to place an attested copy of this order on the files of all the connected complaints. A copy of this order be also supplied to parties under rules. File be consigned to record room after due compilation."



15. As mentioned above, the appellants through their complaint have sought the reliefs of (i) **compensation as applicable from September 2015 for phase-1 and from January 2016 for phase-2 onwards up to the date of the grant of the occupation certificate and further compensation for misrepresentations regarding the sale price of the flat/apartment;** (ii) **return of the total amount deposited with the respondent promoter along with interest and compensation prescribed under the Act;** and (iii) **in the alternative refund of all amounts of unilateral escalations and adequate compensation to the complainant allottees and to invoke the penal clauses against erring officials.**
16. However, the appellants, now in their appeal, have sought that the respondents be directed to (i) **refund the unjustified escalation charges made unilaterally along with compensation @ 18% till the date of reimbursement;** and (ii) provide clear status of project along with all the disclosures of accounts, sanctioned approvals and building plans as well as documentation of other statutory complainer as and when made by the respondents till date. This implies that they want to stay in the project (rather they are staying in the project since the year 2015).
17. The Adjudicating Officer, under paragraph 14 of his aforementioned order dated 27.09.2019, has inter alia rightly mentioned that *“as per the ratio of order dated 27.02.2019 mentioned above, if an allottee wants to stay in the project and seeks interest on delayed possession, then he or she may file complaint in Form-M, to be dealt with by the Authority”*. It has also inter alia been mentioned under paragraph 15 of his aforementioned order dated 27.09.2019 that *“In these circumstances, it appears to this Bench that there is mis-joinder of*



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causes of action and in this case it is very inconvenient for this Bench to give a clear-cut findings for specific reliefs claimed by the complainants.”. Under paragraph 16 of his aforementioned order dated 27.09.2019, the Adjudicating Officer has decided thus “I am of the considered opinion that the complaints suffer from legal defects as elaborated above and as such no relief as sought for by the complainants could be legally granted. All the complaints as such, are rejected. The parties are however at liberty to invoke jurisdiction of the appropriate forum in appropriate form if so advised by them in accordance with law.”.

18. As the appellants, who are staying in the project since long, now in their appeal, have sought main relief only of **refund of the escalation charges along with compensation/interest**, the Authority has jurisdiction to deal such a claim of relief.
19. Hence, I deem it appropriate to remand the case to the Authority.
20. 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.

September 15, 2022

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



Certified To Be True Copy

Anand Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

28/10/2022