

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

Subject: -

APPEAL NO. 83 OF 2022

Omaxe New Chandigarh Developers Pvt. Ltd (previously known as M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.), Corporate Office 10, LSC, Kalkaji, New Delhi-110019 through its Authorized Representative/Signatory Sh. Deepanjit Singh.

...Appellant

Versus

Satwant Boparai W/o Shri Swarn Singh Boparai, House No.67, Sector-9 A, Chandigarh.

....Respondent-Complainant

Memo No. R.E.A.T./2022/ 578

To,

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

Whereas appeal 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 appeal 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 23rd
day of November, 2022.



Dhanraj Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 83 of 2022

MEMO OF PARTIES

Omaxe New Chandigarh Developers Pvt. Ltd (previously known as M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.), Corporate Office 10, LSC, Kalkaji, New Delhi-110019 through its Authorized Representative/ Signatory Sh. Deepanjit Singh.


...Appellant

—
Versus

Satwant Boparai wife of Shri Swaran Singh Boparai, House No. 67, Sector 9-A, Chandigarh.

...Respondent-Complainant

Place: Chandigarh
Dated: 20.05.2022


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



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

APPEAL NO. 83 OF 2022

Omaxe New Chandigarh Developers Pvt. Ltd (previously known as M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.), Corporate Office 10, LSC, Kalkaji, New Delhi-110019 through its Authorized Representative/Signatory Sh. Deepanjit Singh.

...Appellant

Versus

Satwant Boparai W/o Shri Swarn Singh Boparai, House No.67, Sector-9 A, Chandigarh.

....Respondent-Complainant

Present: Mr. Manjinder Kumar and Mr. Ankit, Advocates for the appellant.
Mr. Vipul Joshi, Advocate for RERA, Punjab.
Mr. Jaspal Singh Khara, Assistant Legal Manager, RERA, Punjab

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)

1. This appeal by the developer is against the order dated 07.04.2021 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. While answering a complaint of an allottee regarding grant of interest on account of delayed possession the Authority directed payment of interest on the amount paid by the complainant at the rate of 9.30% per annum being the highest MCLR rate of 7.30% plus 2% from 25.06.2015 till 30.09.2019.
3. The grievance of the appellant is that even though the offer of possession was made on 30.07.2019 yet the interest has been awarded till 30.09.2019 i.e. two months after the date of offer of possession. Besides this, it has been argued that provisions of the Act would not apply considering that partial completion certificate had been obtained by the appellant in the year 2017 prior to the enforcement of certain provisions of the Real Estate Regulatory Act (hereinafter known as the Act).
4. We may notice that the allottee is not in appeal before us. Evidently he is satisfied with the impugned order of the Authority and the reason for this is not far to seek if the reliefs claimed in the complaint are to be seen. Be that as it may the appellant's grievance with regard to the grant of interest for a period of two months over and above the



date of offer of possession also seems to be misplaced. The Authority has noticed that the possession was to be handed over by 25.06.2015 but the offer of possession was made only on 30.07.2019. The Authority has in its discretion moulded and granted the relief of interest till 30.09.2019. Such an approach can hardly be termed to be perverse considering that the allottee has been awaiting possession since 2015. Since the approach of the Authority is not grossly perverse, there would be no reason to interfere with the impugned order on this count particularly in view of the entitlement of the allottee to such a benefit under the Act and for the reason that 4 years of delay cannot be overlooked.

5. We had during the course of hearing of the appeal in our order dated 30.05.2022 noticed the facts of the case broadly and referred to our decision rendered in **Appeal No. 60 of 2022 (Aman Sethi and Another Versus M/s Dara Buildtech & Developers Limited and Ors.)** to observe that where a developer takes up a plea that the provisions of the Act shall not apply on account of obtaining a completion/partial completion certificate prior to the commencement of the Act, it shall be the bounden duty of the Authority to looking into such a plea and not to accept it on its face value.



6. The reason for this was duly explained by us in the order rendered in **Appeal No. 60 of 2022 (Aman Sethi and Another Versus M/s Dara Buildtech & Developers Limited and Ors.)**. If the impugned order is seen, evidently the Authority discarded the plea of non-applicability of the Act on the premise of there being a partial completion certificate with the appellant before the commencement of the Act but what seems to have escaped the notice of the Authority is the essence of our orders that such a plea has to be tested by verification of facts on the ground. It would not be essential to hold a developer to the sword of the procedure under Section 59 but certainly a proactive approach as we had suggested in our earlier orders would demand that such a plea is verified, lest an unscrupulous developer succeed in evading the consequences of the Act. There possibly may be some issues that can emerge from an enquiry of the ground situation that may suggest alternate consequences other than those of Section 59 against the erring developer but such a course can only be adopted if there is a fact finding enquiry in this regard.



7. The fact that possession was offered almost after four years of the promised date of possession was enough of a wake-up call for the Authority to understand the

insignificance of a plea of partial completion certificate to evade the consequences of the Act altogether.

8. The impugned order suggests a dichotomy or a contradiction inherent to it. The plea of non-applicability of the Act has to be taken as rejected, when the statutory benefits are granted to the allottee, and if that be so then all other provisions of the Act are also available for application but, the counsel for the Authority has pleaded helplessness to say that the partial completion certificate's veracity cannot be looked into by the Authority.
9. We do not agree with this plea. Once the provisions of the Act were applied as in the present case, then the Authority was well within its rights to embark upon a probing course, to assess the ground situation when a glaring fact of an inordinate delay of 4 years in handing over possession stared at it in its face. Applicability of the Act is a natural corollary to the rejection of a plea of a partial completion certificate/completion certificate taken by a developer and if so, then all other courses available with the Authority under the Act would also be open to be followed.
10. We are thus of the opinion that even though the order of the Authority was just in affording the relief to the



allottee yet it would do well to verify the ground situation whenever such a plea of non-applicability of the Act on the premise of a completion/partial completion certificate is raised.

11. Appeal is dismissed as above.

File be consigned to the record room.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

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

November 15, 2022
DS

Certified To Be True Copy
[Signature]
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
23/11/2022