

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

Subject: -

APPEAL NO. 88 OF 2022

Greater Mohali Area Development Authority, PUDA Bhawan, Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062.

....Appellant

Versus

Sudha Jain W/o Sh. Anand Parkash Jain, R/o House No. G-9, Hauz Khas, New Delhi.

....Respondent

APPEAL NO. 89 OF 2022

Greater Mohali Area Development Authority, PUDA Bhawan, Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062.

....Appellant

Versus

Shipra Jain W/o Abhishek Jain, R/o House No. G-9, Hauz Khas, New Delhi.

....Respondent

Memo No. R.E.A.T./2022/ 640

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 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 20th day of December, 2022.

Dhanraj Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE CHAIRMAN, REAL ESTATE
APPELLATE, TRIBUNAL, PUNJAB, SECTOR-17
CHANDIGARH

Appeal No. 88 of 2022

MEMO OF PARTIES

Greater Mohali Area Development Authority, PUDA
Bhawan, Sector 62, Sahibzada Ajit Singh Nagar
(Mohali), Punjab-160062.

..... Appellant

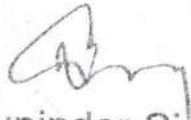
Versus.

Sudha Jain wife of Sh. Anand Parkash Jain, resident of
House No. G-9, Hauz Khas, New Delhi-110016.

...Respondent

Place: SAJ Nagar

Date: 26.05.2022


(Bhupinder Singh)
Advocate

Counsel for the Appellant



BEFORE THE CHAIRMAN, REAL ESTATE
APPELLATE, TRIBUNAL, PUNJAB, SECTOR-17
CHANDIGARH

Appeal No. 89 2022

Greater Mohali Area Development Authority, PUDA
Bhawan, Sector 62, Sahibzada Ajit Singh Nagar
(Mohali), Punjab-160062 ...Appellant

VERSUS

Shipra Jain.

...Respondent


MEMO OF PARTIES

Greater Mohali Area Development Authority, PUDA
Bhawan, Sector 62, Sahibzada Ajit Singh Nagar
(Mohali), Punjab-160062. ... Appellant

Versus.

Shipra Jain wife of Abhishek Jain, resident of House
No. G-9, Hauz Khas, New Delhi-110016. ...Responder




(Bhupinder Singh)
Advocate
Counsel for the Appellant

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

APPEAL NO. 88 OF 2022

Greater Mohali Area Development Authority, PUDA Bhawan, Sector
62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062.

....Appellant

Versus

Sudha Jain W/o Sh. Anand Parkash Jain, R/o House No. G-9,
Hauz Khas, New Delhi.

....Respondent

APPEAL NO. 89 OF 2022

Greater Mohali Area Development Authority, PUDA Bhawan, Sector
62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062.

....Appellant

Versus

Shipra Jain W/o Abhishek Jain, R/o House No. G-9, Hauz Khas,
New Delhi.

....Respondent

Present:

Mr. Balwinder Singh and Mr. Bhupinder Singh, Advocates
for the appellant.

Mr. Aayush Goyal, Advocate for the respondents



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.)**

(MAJORITY VIEW)

JUDGMENT:

(JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

APPEAL NO. 88 OF 2022 AND APPEAL NO. 89 OF 2022

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APPLICATION NO. 147 OF 2022 IN APPEAL NO. 88 OF 2022

APPLICATION NO. 148 OF 2022 IN APPEAL NO. 89 OF 2022

1. After hearing learned counsel for the parties and looking at the reasons given in the applications for condonation of delay we deem it appropriate to condone the same particularly when we notice that on merits the order has been passed by the Adjudicating Officer who would have no jurisdiction to decide the issues of refund etc in terms of the judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.". Consequently, the applications for condonation of the delay are allowed.
2. Applications disposed of.

MAIN ORDER IN APPEALS NO. 88 OF 2022 AND 89 OF 2022 :

1. Both the appeals are directed against the order dated 21.06.2021, 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 cases as well.
4. Accordingly, we deem it appropriate to dispose of the appeals with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/ Adjudicating Officer.
5. In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/ Adjudicating Officer as the case may be in accordance with law.
6. We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in appearance before the Authority/Adjudicating Officer as the case may be, which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The Authority in this manner would have the benefit of providing a time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise. The Authority/ Adjudicating Officer shall then proceed to determine the matter in accordance with law.
7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on 02.01.2023.



APPEAL NO. 88 OF 2022 AND APPEAL NO. 89 OF 2022

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8. Since the appeals are being remanded back we hereby direct that the amount deposited by the appellant (developer) as a pre-requisite to the filing of the appeal under Section 43(5) of the Act be released to the appellant (developer) forthwith along with interest that have accrued thereon after due verification and by following proper procedural law.

Files be consigned to record room.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

December 15, 2022
DS

Certified To Be True Copy
Shamsher Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

20/12/2022

REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

Appeal No. 88 of 2022

Greater Mohali Area Development Authority, PUDA Bhawan,
Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062.

.....Appellant

Versus

Sudha Jain wife of Sh. Anand Parkash Jain, resident of House No.
G-9, Hauz Khan, New Delhi-110016.

.....Respondent

Appeal No. 89 of 2022

Greater Mohali Area Development Authority, PUDA Bhawan,
Sector 62, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160062.

.....Appellant

Versus

Shipra Jain wife of Sh. Abhishek Jain, resident of House No. G-9,
Hauz Khan, New Delhi-110016.

.....Respondent

Present: Mr. Balwinder Singh and Mr. Bhupinder Singh,
Advocates for the appellant
Mr. Aayush 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 of above mentioned two appeals filed against separate orders, both dated 21.06.2021 and passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the*

Adjudicating Officer or the AO) of Real Estate Regulatory Authority Punjab (hereinafter referred to as the Authority).

2. The complaints have been accepted by the Adjudicating Officer to the following extent:-

1.	Appeal No.	88/2022	89/2022
2.	Complainant	Sudha Jain	Shipra Jain
3.	Complaint AdC No.	17162020	17152020
4.	Complaint filed on	17.09.2020	17.09.2020
5.	AO's order dated	21.06.2021	21.06.2021
6.	Principal amount	Rs.6,25,000/-	Rs.1,00,000/-
7.	Simple interest	At the rate of 9% per annum on the above said amount from 10.08.2019 till realization	

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

3. The facts have been extracted from Appeal No. 88 of 2022 (Greater Mohali Area Development Authority versus Sudha Jain).

4. The complaint bearing AdC No. 17162020 has been filed before the Adjudicating Officer by Ms. Sudha Jain (the respondent, hereinafter may also be referred to as the complainant) against Greater Mohali Area Development Authority (the appellant, hereinafter may also be referred to as the GMADA, promoter or developer), in form 'N' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) read with its section 71 and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules) praying inter alia for (i) refund of an amount of Rs. 6,25,000/-, allegedly illegally forfeited and retained by the Appellant (hereinafter also referred to as the promoter), along with interest @ 18% per annum from the date the



same was deposited with the appellant till it is refunded; (ii) imposing exemplary costs on the appellant for committing the above said alleged illegality and payment of litigation costs; and (iii) payment of compensation for the torture, suffering, harassment and embarrassment caused to the complainant, etc.

5. Aggrieved by the above said order dated 21.06.2021 of the Adjudicating Officer, the appellant filed Review Application No. AO/03/2022 in the complaint bearing AdC No. 17162020 before the Adjudicating Officer, contending that the Adjudicating Officer had no jurisdiction to decide the relief of refund and interest in view of the judgment passed by Hon'ble Supreme Court on 11.11.2021 in Civil Appeal Nos.6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Limited versus State of UP and others**. The review application was dismissed by the Adjudicating officer vide his order dated 01.04.2022, mentioning therein that his decision can be challenged by filing an appeal before the appellate authority.
6. Therefore, the appellant filed on 27.05.2022 its present appeal dated 26.05.2022 bearing Appeal No. 88 of 2022 before this Tribunal against aforesaid order dated 21.06.2021 of the Adjudicating Officer and prayed to set it aside and dismiss the complaint.
7. The appellant has also filed a miscellaneous application dated 26.05.2022 bearing Application No. 147 of 2022 in the appeal praying for condonation of delay of 188 days in filing the present appeal due to impact of the corona virus as well as due to filing of above mentioned Review Application No. AO/03/2022. In the application for condoning the delay, the applicant-appellant has inter alia contended that as per the order dated 10.01.2022 passed



by Hon'ble Supreme Court in Suo Moto Writ Petition No. 3 of 2020 and M.A. No. 665 of 2021, where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In view of these submissions of the appellant, I deem it appropriate to condone the delay and accept the application.

8. In the grounds of the aforesaid appeal, it has inter alia been contended (i) that the project in question is not registered with the Authority; (ii) that as per aforesaid judgment dated 11.11.2021 passed by Hon'ble Supreme Court, the Adjudicating Officer has no jurisdiction to adjudicate upon the matters pertaining to refund of amount and interest; (iii) that the respondent does not fall within the definition of "allottee" as given under section 2(d) of the Act; (iv) that the respondent, after issuance of letter of intent (LOI) on 30.10.2018, requested vide her letter dated 17.11.2018 to surrender the plot; and therefore refund of Rs. 6,25,000/- was given in accordance with the terms and conditions of allotment as given in the brochure; and (v) that the respondent has admitted that she had mistakeably applied for allotment of a plot in the preferential/reserved category for which she was not eligible.

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:

9. 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

10. One of the contentions of the appellant is that as per aforesaid judgment dated 11.11.2021 passed by Hon'ble Supreme Court, the Adjudicating Officer has no jurisdiction to adjudicate upon the matters pertaining to refund of amount and interest.

11. In this regard, it is mentioned that taking notice of reference of circular dated 05.03.2021 of the Authority in another order dated 15.04.2021 of the Adjudicating Officer in Appeal No. 130 of 2021 (Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others) and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-



6749 of 2021 titled 'M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP & Ors. etc and connected matters', I arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 120 & 116 (in this sequence) of the aforementioned judgment dated 11.11.2021 and section 81 of the Act, that the delegation of its power of "refund of the amount and interest thereon" by the Authority vide aforementioned circular dated 05.03.2021 to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed is in accordance with the mandate of law viz section 81 of the Act and hence, the so empowered/directed Adjudicating Officer has the jurisdiction to deal all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation). Accordingly, during the proceedings held on 10.01.2022 in the afore-mentioned Appeal No. 130 of 2021, I expressed my aforementioned opinion, which has also been expressed by me as my view in the judgments/orders of this Tribunal in the appeals mentioned under paragraph 8 above and in some more appeals disposed of 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 21.06.2021, therefore, I hereby hold that the Adjudicating Officer was having jurisdiction at the time of passing the impugned order dated 21.06.2021 to deal with the complaints/applications involving refund of the amount deposited, interest thereon and compensation etc.

12. Hon'ble High Court of Punjab and Haryana, in the judgment dated 17.08.2022 passed by it in CWP No. 7738 of 2022 (M/s



International Land Developers Private Limited versus Aditi Chauhan and others) and connected matters, while inter alia deciding the issues raised with regard to the manner of execution of the orders impugned in CWP No. 9942 of 2022 (one of the said connected matters), has held as under:-

"99. Again it is to be noticed that though learned senior counsel for the petitioner argued that the office order dated 16.03.2022 passed by the Authority, thereby delegating its powers upon the Adjudicating Officer to hear an execution application filed by respondent no.3 herein (complainant), is beyond the jurisdiction of the Authority and consequently the order passed by the AO in such execution proceedings on 30.03.2022 is also without jurisdiction; yet, we agree with learned counsel for the respondent Authority that with Section 81 of the Act empowering the Authority to delegate any of its powers and functions, other than the power to frame regulations under Section 85, to any member or officer of the Authority (or any other person), subject to any condition specified in the order, such delegation vide the said order dated 16.03.2022 (Annexure P-26) cannot be held to be beyond such power conferred upon the Authority.

It is to be observed that execution of orders is a function that can be effectively carried out by the Adjudicating Officer, especially with Section 71 of the Act stipulating that such officer would be a person who is or has been a District Judge. Thus, very obviously such Adjudicating Officer would be completely familiar with the manner of execution of a decree issued or order passed in civil proceedings; and consequently would be the appropriate person to execute his own orders as also those of the Tribunal/Authority under the Act." [Emphasis laid]



13. So far as the issue regarding the applicability of the Act to the unregistered projects is concerned, this Tribunal, in its common judgment dated 25.04.2022 passed in Appeal No. 60 of 2022 titled as "**Aman Sethi and Another versus M/s Dara Buildtech & Developers Limited and others**" and connected matters, has set aside the orders of the Authority and Adjudicating Officer wherein the Authority and Adjudicating Officer have declared that the complaints against the projects that are not registered with the Authority are not maintainable; and this Tribunal has remitted the matter pertaining to those appeals back to the Authority to decide

the complaints in accordance with law and in light of the observations made in aforesaid order dated 25.04.2022 of this Tribunal.

14. It has inter alia been claimed/alleged by the respondent in her complaint dated 17.09.2020 that (i) the appellant invited applications for allotment of 753 residential plots at IT City Mohali; (ii) that inadvertently the respondent missed the relevant clause in the brochure wherein she was not eligible at all being a resident of Delhi and not of Punjab as required by the appellant; (iii) that the respondent applied for the allotment of a plot and submitted a sum of Rs. 12,51,000/- as required; (iv) that even in the application form it has clearly been stated by the respondent that she is a resident of New Delhi and having seen that the appellant ought to have rejected the form and returned the entire earnest money; (v) that the appellant instead processed the same and the respondent was allowed to participate in the draw of lots for allotment of a plot; (vi) that the respondent was successful in the draw of lots held on 14.06.2018; (vi) that the respondent was surprised as to how she has been held eligible even though she is not a resident of Punjab; (vii) that accordingly upon enquiring from the appellant, she was guided to submit all her documents for rejection of her application; (viii) that she was also told that on scrutiny of her documents, she will not be issued any LOI and her amount shall be refunded; (ix) that she accordingly submitted all the documents including PAN Card and Aadhar Card showing her to be a resident of Delhi; (x) that thereafter she was surprised to receive a letter of allotment dated 31.10.2018 wherein she was held eligible and the appellant asked the respondent to deposit the balance amount in terms of its payment schedule; (xi) that in case



the respondent would have proceeded she could have been prosecuted as well even though she was not at fault; (xii) that she again approached the authorities to inquire about the same and even the authorities were surprised as to how they had missed the said fact of the respondent not eligible and therefore wrongly issued the letter of allotment; (xiii) that accordingly the appellant asked the respondent to surrender the plot for refund of entire earnest money; (xiv) that left with no choice and to avoid any prosecution, though she was not at fault, she sent a letter as well as email to the appellant requesting for cancellation of allotment; (xv) that in spite of this, she received a letter dated 03.01.2019 from the appellant that 5% of total price of the plot (Rs.1,25,00,000/-) is deducted on account of the applicant having surrendered the plot and only a sum of Rs. 6,25,000/- was ordered to be forfeited and the balance amount recommended to be refunded; (xvi) that the appellant instead of rejecting the application in the first instance itself and refunding entire amount, illegally entertained the application, retained the earnest money to earn interest.

15. The respondent has prayed in her complaint to (i) direct the respondent to refund allegedly illegally forfeited amount of Rs. 6,25,000/- along with interest @ 18% per annum from the date of its deposit till its refund; (ii) impose exemplary costs on the appellant and also award litigation costs; and (iii) to pay her for the torture, suffering, harassment and embarrassment etc. caused to her and penalty for the said unfair trade practice and deficiency in service.

16. The above mentioned alleged facts of the case as mentioned in the complaint arose my curiosity to verify the said facts from the



Annexures C-1 to C-9 annexed to support submissions made by the respondent in her complaint, before proceeding further.

17. Annexure C-1 is the brochure of the appellant's scheme inviting applications for the allotment of 753 residential plots at IT City Mohali. As per this brochure, the scheme opened on 14.04.2018 and closed on 16.05.2018. The list of important events and dates, appended in the very beginning of the brochure inter alia mentions that (i) the applicants' data shall be uploaded on gmada.gov.in for verification by the applicants; and (ii) that objections/corrections are to be intimated by 06.06.2018 (by the applicants for the plots).
18. First few terms and conditions of the brochure at its page 1 to 6, which to my mind are most relevant in the context of the complaint, read as under (the parts thereof, which are not relevant in this context, have been masked '-----XXXXX-----' thus for the sake of brevity and enhanced visibility of the relevant matter some of which is reproduced in **bold and underlined** to lay emphasis):-

"ELIGIBILITY

The applicant must be a resident of India (except for category No. 9 i.e. "persons settled abroad") and must be at least 18 years old as on the last date of submission of the application.

For the applicant of all categories including reserved categories, first preference in allotment shall be given to senior citizens (possessing age of 60 years for male and female as on the date of submission of application) who do not possess any plot/house anywhere in country, then to women who do not possess any plot/house anywhere in country and only when their list will be exhausted then others will be considered for allotment against the plots.

FOR RESERVE CATEGORIES

The applicants applying for allotment under the reserved categories (categories at Sr. No. 1 to 11 as



below excluding 50% General category) should belong to the state of Punjab and they or their spouse/dependents should not possess any plot/house anywhere in the country.

The applicants who remain successful for the allotment of plots under the preferential or reserved categories shall not be permitted to transfer/sell the same for a period of 05 years from the date of issuance of Letter of Intent (LoI).

Where sufficient number of applicants are not received against SC category of other reserved Categories such as Defence, Freedom Fighter, Riot Affected and Terrorist Affected etc. then available plots/houses of these categories shall be considered in SC Category (Others).

In case the above said plots are still available due to non-availability of applicants of such categories then these shall be considered in General Category.

ELIGIBILITY CRITERIA/DOCUMENTS REQUIRED FOR RESERVE CATEGORIES

Sr. No.	Category	Eligibility criteria / documents required
1	Schedule Caste/Schedule Tribe	-----XXXXXX-----
2	Defence and Paramilitary forces i) -----XXXXXX----- ii) -----XXXXXX-----	-----XXXXXX-----
3	Gallantry Award Winners from Defence Services/ ----- XXXXXX-----	-----XXXXXX-----
4	Legal Heirs (including War Widows of Army/ ----- XXXXXX-----	-----XXXXXX-----
5	Riot affected and Terrorist affected families	-----XXXXXX-----
6	Freedom Fighters	-----XXXXXX-----
7	Specified Disabilities: -----XXXXXX-----	-----XXXXXX-----
8	Sports person	-----XXXXXX-----
9	Persons settled abroad	-----XXXXXX-----
10	Government Employees	-----XXXXXX-----
11	PUDA Employees	-----XXXXXX-----

The following order of preference in Riot Affected and terrorist Affected -----XXXXXX-----



Note: Those families -----XXXXXX-----.

PRICING AND EARNEST MONEY TO BE PAID WITH THE APPLICATION

1. Application Money (To be deposited alongwith application form) and earnest money shall be payable either in the shape of Demand Draft in favour of Estate officer, GMADA, Payable at the stations mentioned in this brochure or shall be paid through online gateway/RTGS/NEFT mentioned on the GMADA's website.
2. In case, applicant seeks refund of his earnest money before draw of lots, the same shall be refunded with deduction of Rs. 10,000/- from the earnest money from the earnest money. However, no interest on the deposited amount shall be paid.
3. In case, applicant seeks refund of his earnest money after draw of lots but before issuance of Letter of Intent (LoI), the same shall be refunded with deduction of 1% amount of the total cost of the plot. However, no interest on the deposited amount shall be paid.
4. In case, applicant seeks refund of his earnest money after issuance of Letter of Intent (LoI) but within 30 days from the date of issuance of Letter of Intent (LoI), the same shall be refunded with deduction of 5% amount of the total cost of the plot. However, no interest on the deposited amount shall be paid.
5. In case, applicant seeks refund of his earnest money after 30 days from the date of issuance of Letter of Intent (LoI), action for refund of amount shall be taken after cancelling the allotment and forfeiting the 10% amount of the total consideration money of plot etc. as per the provisions of Section 45(3) of the Punjab Regional Planning and Development Act, 1995.
6. -----XXXXXXXXXXXXXXXXXXXX-----
7. -----XXXXXXXXXXXXXXXXXXXX-----
8. -----XXXXXXXXXXXXXXXXXXXX-----
9. -----XXXXXXXXXXXXXXXXXXXX-----



10. -----XXXXXXXXXXXXXXXXXXXX-----”

19. Conjoint perusal of the above mentioned first three terms and conditions of the brochure inter alia unambiguously reveal that a female resident of India, who does not belong to the State of Punjab, could apply under 50% General Category and also could also apply under ‘woman preferential’ category within the said 50% General Category for allotment of a plot provided she does not possess any plot/house anywhere in country; and she shall not be permitted to transfer/sell the plot for a period of five years from the date of issuance of LOI.

20. The respondent (Mrs. Sudha Jain wife of Anand Parkash Jain, address for correspondence G-9, Hauz Khas, New Delhi, date of birth 04.11.1953), vide her application No. ITD010375 submitted on 06.05.2018 (Annexure C-2), applied for a plot of size 500 square yard by paying an amount of Rs. 12,51,000/- (Rs. 1,000/- towards non-refundable application money and Rs. 12,50,000/- towards earnest money against tentative price of Rs. 1,25,00,000/- plus 2% cancer cess for a 500 square yards size plot). She provided following information/options under ‘Applied for Category’ part of her said application:-



“Applied for Category	
Select Plot size	500 Sq. Yard(4.18.0 Sq. Meter)
Select Category Code below in which applying	General
Whether applicant belongs to General or SC	General
Gender	FEMALE
Whether applicant is applying under Senior citizen preferential	YES
Whether applicant is applying under Women preferential	YES
Amount (in Rs.)	12501000.00
Payment Mode	NEFT/RTGS

21. The complainant, vide her letter dated 12.10.2018 (Annexure C-4), apprised the appellant (i) that she was successful in draw of lots held on 14.06.2018; (ii) that she had submitted all proofs in the appellant's office on 05.07.2018; (iii) that she had not received any communication from the appellant since 05.07.2018 after the submission of relevant documents; and requested the appellant to communicate latest status of her allotment. *[It is worth mentioning here that the complainant, vide her letter dated 05.07.2018, which has been placed on record rather by the appellant as Annexure-R/3 of its reply, upon being successful in draw of lots held on 14.06.2018, had submitted her documents of ID proof and requested the appellant to issue her LOI of the plot.]*
22. The appellant issued her letter of intent dated 31.10.2018 (Annexure C-5), expressing therein its intention to allot a plot, subject to certain conditions which inter alia included payment of an additional sum of Rs. 18,75,000/- by 24.11.2018 along with 2% Cancer Cess amounting to Rs. 2,50,000/-; and in case of failure to do so even within extendable stipulated period of 180 days with surcharge and penalty prescribed in the LOI after expiry of 30 days of the issuance of LOI, the LOI was liable to be cancelled and 10% of the total amount of the plot was liable to be forfeited and in that case offer of allotment was also liable to be cancelled; and as per clause 12 of the said LOI, in case of refusal of the said offer of allotment, such refusal was to be conveyed in writing within 30 days from the date of the LOI and in that event 5% of total price was liable to be forfeited and in case such refusal is received by the appellant after a period of 30 days from the issue of LOI, 10% of the total consideration price was liable to be forfeited.



23. The respondent, vide her email dated 19.11.2018 (Annexure C-6), requested the appellant to cancel her allotment immediately due to delay in issuance of LOI, which was required to be dispatched by 07.08.2018 but has been received by the respondent on 03.11.2018 and requested to remit her earnest money of Rs. 12,50,000/-.
24. The complainant, vide her letter dated 22.11.2018 (Annexure C-6, '42242/22.11.18' is appended in the left hand margin on it), informed the appellant that she specifically but mistakably applied in the preferential/reserved category where it was required that the applicant should belong to the state of Punjab, which she has claimed to have learnt after reading the brochure after the issuance of the said LOI; alleged therein that issuance of the LOI in general category is also apparently a mistake at the level of the appellant; and in such a situation, she requested the appellant for withdrawal of her application and rescission of the LOI and also for refund of her earnest money.
25. The appellant, vide its letter dated 04.12.2018 (Annexure C-7) issued with reference to Diary No. 42727 dated 27.11.2018 (not placed on record) and in the context of request made by the respondent to surrender the Form, has directed the respondent to submit original LOI in its office so that further action could be taken to issue refund.
26. In response to it, the respondent submitted the LOI in original vide its letter dated 12.12.2018 and requested to process the refund of Rs.12,50,000/-, as is evident from her email dated 14.12.2018 (Annexure C-8).
27. The appellant, vide its office order dated 03.01.2019 (Annexure C-9), cancelled the LOI; and out of earnest money amounting to Rs.



12,50,000/- deposited in accordance with clause 4 of the brochure, after forfeiting an amount of Rs. 6,25,000/-, being 5% of the total consideration of the plot i.e. Rs. 1,25,00,000/-, accorded sanction to refund the remaining amount to the respondent.

28. In its reply dated 17.11.2020 (Annexure A-2 of the appeal) to the complaint, the appellant has inter alia contented that (i) as per relevant condition of the brochure, in case, an applicant seeks refund of the earnest money after issuance of LOI, the same shall be refunded with deduction of 5% amount of the total cost of the plot and no interest on the deposited amount shall be paid; (ii) that clause 12 of LOI, as corrected through a public notice published in various newspapers (appeared in The Tribune dated 26.12.2018, Annexure R-4), also stipulates that in case of refusal of offer of allotment, such refusal shall be conveyed in writing within 30 days from the date of issuance of the LOI, in which event 5% of the total cost of the plot shall be forfeited and no interest on the deposited amount shall be paid; (iii) that the amount of refund (Rs. 6,25,000/-), vide cheque dated 08.02.2019, had been accepted by respondent; and (iv) that the respondent's legal notice dated 08.07.2019 was suitably replied by the appellant vide letter dated 18.10.2019. The appellant also placed on record the respondents request dated 05.07.2018 (Annexure-R/3), vide which she submitted her documents of ID proof to the appellant on being successful in the draw of lots held on 14.06.2018 and requested to issue LOI.

29. The complainant, in her complaint, has leveled unfounded allegations against the appellant without placing on record any evidence to substantiate the same. Such allegations have been denied by the appellant in its reply to the complaint. Rather it is



evident from the material placed on record that the complainant has levelled such unfounded allegations in her complaint to get back the amount of earnest money forfeited by the appellant as per terms and conditions of the brochure. Had the respondent really felt that she mistakenly applied under 'women preferential' category, she should have at least first got confirmed her such apprehension from the appellant in writing, before withdrawal on this count. The Adjudicating Officer also fell into the well-knit trap laid by the respondent accentuated by improper rather no defence on behalf of the appellant regarding the eligibility of a female resident of India, even if she does not belong to the State of Punjab, to apply for a plot in the scheme in question under 'Women preferential' category under General Category in terms of the brochure of the scheme in question.

30. In view of the above, the impugned order dated 21.06.2021, passed by the Adjudicating Officer in the complaint bearing AdC No. 17162020, is liable to be set aside and the complaint is liable to be dismissed with costs.

31. The matter in Appeal No. 89 of 2022 (**Greater Mohali Area Development Authority versus Shipra Jain**), arising out of another order dated 21.06.2021 passed by the Adjudicating Officer in complaint bearing AdC No. 17152020, being similar to the one in Appeal No. 88 of 2022, deserves similar treatment. In this case, the respondent also applied on 06.05.2018 itself in the same scheme but for a plot of size 400 square yards of tentative price of Rs. 1,00,00,000/- plus 2% Cancer Cess by depositing an amount of Rs. 10,01,000/- (Rs. 10,00,000/- towards earnest money and Rs. 1,000/- towards non-refundable application money). The information/options provided by her under 'Applied for Category'



part of her application form are similar. She too applied under 'Women preferential' category under General Category but did not apply under 'Senior Citizen preferential' category as wrongly claimed in her complaint dated 17.09.2020. Perusal of her 'Nominee Details' part of her application viz-a-viz that of Mrs. Sudha Jain indicates that she (Mrs. Shipra Jain) is daughter in law of Mrs. Sudha Jain. The respondent in this case (Mrs. Shipra Jain), vide its letter dated 03.07.2018 (Annexure C-3 of her complaint), expressed to the appellant that she wanted to surrender the plot and requested for the refund of her earnest money. As she surrendered the plot before issue of LOI by the appellant to her, the appellant, vide its office order dated 10.08.2018 (Annexure C-4 of her complaint), ordered to refund an amount of Rs. 9,00,000/- out of Rs. 10,00,000/- deposited by the respondent as earnest money, after forfeiture of an amount of Rs. 1,00,000/- @ 1% of the total price of the plot viz Rs. 1,00,00,000/- in terms of clause 3 of the brochure. The respondent, vide her letter dated 04.10.2018 (Annexure C-5 of her complaint), while acknowledging the receipt of the appellant's aforesaid letter/office order dated 10.08.2018, requested the appellant to expedite refund and credit in her bank account. However, later vide her letters dated 30.11.2018, 02.01.2019 and 12.02.2019 (Annexure C-6 collectively of her complaint), while acknowledging the remission of a cheque for Rs. 9,00,000/- vide the appellant's memo dated 02.11.2018, she too informed the appellant that she too specifically but mistakably applied in the preferential/reserved category and requested to refund the forfeited 1% earnest money amounting to Rs. 1,00,000/-. The appellant, vide its letters dated 12.03.2019 and 30.08.2019 (Annexures C-7 and C-8 of her complaint), replied the respondent



that the deduction/forfeiture has been made in terms of provisions in the brochure.

32. Hence, I deem it appropriate to accept both the appeals and to set aside both the impugned orders and dismiss both the complaints with costs of Rs. 1,00,000/- (Rupees One Lakh only) each to be paid by each of the respondents to the appellant in each appeal within 90 days of this order.

33. The appeals are accordingly disposed of. 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.



December 15th, 2022

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

Certified To Be True Copy
Shanwar Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
20/12/2022