

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

Subject: -

APPEAL NO. 69 OF 2022

Rajni Aggarwal aged about 60 years W/o Dr. Viveka Nand Aggarwal R/o House No. 956, Sector-7, Urban Estate, Ambala City, Haryana-134003

...Appellant

Versus

Janta Land Promoters Limited, SCO No. 39-42, Sector-82, SAS Nagar, Mohali, Punjab-140306.

....Respondent

Memo No. R.E.A.T./2023/ 129

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 07th day of March, 2023.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL
PUNJAB AT CHANDIGARH

Appeal No. 69 of 2022

MEMO OF PARTIES

Between:

Rajni Aggarwal aged about 60 Years Wife of Dr. Viveka Nand Aggarwal, Resident of House No. 956, Sector-7, Urban Estate, Ambala City, Haryana – 134003.

AND



Janta Land Promoters Limited, SCO No. 39-42, Sector-82, SAS Nagar, Mohali, Punjab – 140306. Email Id: janta94@jantahousing.com, janta@jantahousing.com

Through Counsel
[Signature]
Shubham Aggarwal
Adv.

Appeal No. 69 of 2022

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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

Appeal No. 69 of 2022

Rajni Aggarwal aged about 60 Years Wife of Dr. Viveka Nand Aggarwal, Resident of House No. 956, Sector-7, Urban Estate, Ambala City, Haryana – 134003.

.....Appellant

Versus

Janta Land Promoters Private Limited, SCO No. 39-42, Sector-82, SAS Nagar, Mohali, Punjab – 140306. Email ID: janta94@jantahousing.com, janta@jantahousing.com

.....Respondent

Present: Mr. Pawan Mutneja, Sr. Advocate with Mr. Shubham Aggarwal and Mrs. Suksham Aggarwal, Advocates for the appellant.

Mr. Ranjit Singh Kalra, Advocate for the respondent.

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.))

1. By this order, we will dispose of above mentioned appeal dated 20.04.2022 (Diary No. 273 dated 02.05.2022) bearing Appeals No. 69 of 2022 (**Rajni Aggarwal versus Janta Land Promoters Private Limited**) filed against the order dated 24.02.2022 passed by Sh. Ajay Pal Singh, Member, the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in the complaint bearing GC No. 01962021 instituted on 12.05.2021. The appeal is accompanied with an application dated 20.04.2022, bearing Application No. 102 of 2022, praying for stay etc.



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2. The prayers of the complainant have been declined by the Authority vide its aforesaid order dated 24.02.2022 and the complaint has been dismissed.
3. The complaint has been filed by the appellant (*hereinafter may also be referred to as the complainant, the allottee or the buyer*) against the respondent (*hereinafter may also be referred to as the promoter or the developer or the seller or the company*) before the Authority in form 'M' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).
4. The complainant, in their complaint dated 12.05.2021, has inter alia claimed/alleged that (i) the complainant and her husband booked a 200 square yards plot in the respondent's Mega-II project at Sec-94 Mohali @ Rs. 11,500/- per square yard and paid Rs. 6,20,000/- vide DD dated 03.12.2005 as booking amount, acknowledged vide receipt of 27.12.2005; (ii) that the project was to be launched within 3 years from booking and possession was to be delivered within 1 year (approx.) after allotment of plot; (iii) that the project was delayed and was launched only in 2013; (iv) that the respondent issued allotment letter dated 30.07.2013, thereby allotting plot No. 144 of 250 square yards instead of booked one of 200 square yards and charging price for extra 50 square yard @ Rs. 27,000/- per square yard without any fair justification; (v) that on asking by the complainant by immediately visiting the respondent about these two discrepancies in the size and rate, the respondent replied that there were few plots of 200 square yards available and the complainant was allotted 250 square



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yards plot in draw thus held; (v) that upon complainant's request to either allot her 200 square yard plot only or to change price of entire plot at same rate, the respondent told to deposit some more amount in cash against her allotment and agreed for charging total price @ Rs. 11,500/- per square yard and assured to confirm through mail; (vi) that accordingly, Rs. 9,00,000/- was deposited in cash by taking loan from OBC Bank, Lalru, Punjab; (vii) that the respondent kept issuing letters for depositing exorbitant amount with interest and kept delaying the letter for settling the issue of 50 square yards plot price; (viii) that vide letter dated 18.09.2020, the respondent agreed to charge price for total 250 square yards @ Rs. 11,500/- per square yards; (ix) that the respondent concealed the cash payment of Rs. 9,00,000/- paid in the year 2013; (x) that the respondent has neither delivered possession of the plot nor executed any agreement with the complainant despite the project being registered with the Authority; (xi) that the project got ready in the year 2019, in violation of clause 7 of the allotment letter; (xii) that on 21.09.2020, the complainant went to the respondent with a cheque for the balance payment and requested to execute agreement and deliver possession which was not accepted; (xiii) that in a statement (*of interest annexed as Annexure C-10*), payment of Rs. 9,00,000/- was concealed and exorbitant rates of interest were charged; (xiv) that since the delay was on the part of the respondent in issuing the letter for settling the price for the plot and in completion of project against the terms of allotment and the Rules, thus no interest should be charged from the complainant; (xv) that the respondent has violated the terms of allotment and is liable under sections 12, 13, 14 and 18 of the Act; (xvi) that the respondent has already taken more than 50% of the price of the plot and till date has not executed the agreement and are rather



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threatening to cancel the allotment upon their illegal demand; (xvii) that the complainant again visited the respondent to settle the issue as the complainant had been waiting for more than 15 years to get her plot, the respondent after getting the payment verified said that as per records, Rs. 8,80,000/- is deposited in cash standing in their accounts since 2013; (xviii) that the complainant has got sufficient electronic evidence to prove the fact that the respondent and its representatives have themselves conveyed the actual amount deposited in cash by the complainant as per the respondent's demand against allotment of plot; (xix) that the respondent is not paying any heed to the requests and is blindly issuing letters demanding exorbitant amount and are threatening to cancel allotment.

5. The complainant, in her said complaint, has prayed for (i) quashing the demand of Rs. 22,55,000/- made vide letter dated 01.04.2021; (ii) for payment of interest to the complainant on Rs. 15,20,000/- paid to the respondent from the date of deposit till the period of delay in completion of project; (iii) for charging originally agreed sale consideration @ Rs. 11,500/- per square yard from the complainant; (iv) for delivering the possession of the plot with all the promised amenities within 3 months from the date of order, upon payment of balance consideration if the same is more than the interest payable to her on her deposits; (v) for imposing penalties as per the provisions of section 60 and 61 of the Act for contravention of sections 4, 12 and 13 of the Act.

6. The complainant has also prayed in her complaint for interim relief of direction to the respondent not to initiate proceedings against the complainant for cancellation of allotment as mentioned in the letter dated 01.04.2021. This prayer was considered by the full bench of



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the Authority and was declined vide its order dated 22.09.2021, which was produced before this Tribunal during the arguments on 23.01.2023.

7. The respondent, in its reply dated 15.09.2021 to the complaint, has inter alia contended that (i) the respondent was willing to hand over the possession of the plot but due to failure on the part of the complainant to deposit the remaining amount, as nothing except the down payment was ever paid by the complainant, the plot could not be allotted; (ii) that resultantly, the respondent vide letter dated 01.01.2013 (**Annexure R-1**) intended to allot the plot to the complainant, and requested her to deposit the remaining consideration for the plot measuring 200 square yards within 10 days failing which it will be presumed that the complainant is no longer interested in allotment of the plot and the amount will be refunded with interest; (iii) that as the complainant did not pay any heed to the respondent's request, vide letter dated 19.01.2013 (**Annexure R-2**), the amount deposited by the complainant with 18% rate of interest accrued up to 15.01.2013, to the tune of Rs. 13,23,080/- was refunded by sending cheque dated 17.01.2013 to the complainant; (iv) that subsequently, the complainant requested the respondent not to cancel the booking and to allot her the plot; (v) that it was communicated at that juncture that no plot measuring 200 square yards is available; (vi) that the respondent, however, communicated that plot measuring 250 square yards is available; (vii) that on 16.07.2013, the complainant communicated telephonically and gave her consent for allotment of plot measuring 250 square yards with the request that the payment shall be made in installments; (viii) that resultantly, allotment letter dated 30.07.2013 for the plot No. 144 measuring 250 square yards



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was allotted to the complainant, whereby additional 50 square yards being a fresh allotment, the complainant was asked to pay the price prevalent in the market, to which the complainant had agreed; (ix) that vide letters/show cause notice dated 14.02.2014, 17.04.2014 and 11.06.2014 (**Annexures R-3, R-4 and R-5**), the complainant was requested to deposit the overdue amount; (x) that in terms of the allotment letter, the physical possession was intended to be handed over to the complainant vide letter dated 06.12.2014 (**Annexure R-6**) subject to payments long over due; (xi) that vide letter dated 03.01.2015 (**Annexure R-7**), the complainant was requested to pay the due amount within 15 days and take over the possession of the plot; (xii) that due to non-communication on the part of the complainant, the respondent sent 26 reminders on various dates from 28.02.2015 to 14.11.2018 (**Annexure R-8 Colly.**) requesting the appellant to deposit the amount due towards her for handing over of physical possession of the plot; (xiii) that the respondent, vide letter dated 03.01.2019 (**Annexure R-9**), intimated the complainant regarding change of the respondent's address; (xiv) that the respondent issued a show cause notice dated 11.07.2019 (**Annexure R-10**), mentioning therein 32 communications/reminders sent to her, requesting her to deposit the amount within 15 days failing which cancellation of plot will be made; (xv) that thereafter, the complainant requested that the price of the plot be revised to @ Rs. 11,500/- even for extra/additional 50 square yard, which was accepted by the respondent vide letter dated 18.09.2020 (**Annexure R-11**); (xvi) that even then, the complainant did not pay a single penny, resulting into issue of show cause notice dated 01.04.2021 (**Annexure R-12**); (xvii) that due to no reply to it, the respondent, vide its letter dated 13.05.2021 (**Annexure R-13, posted by**



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registered post on 18.05.2021 as per Annexure R-15 i.e. after the appellant had filed a complaint with the Authority on 12.05.2021 but was received back undelivered on 24.05.2021 as per aforesaid Annexure R-15 and was also sent through Whatsapp Annexure R-14), granted personal hearing to the appellant on account of non-deposit of the amount; (xviii) that on 28.05.2021, Mr. Shubham Aggarwal, a son of the complainant duly authorized by her (Annexure R-16), attended the hearing; (xix) that after false promises made by the said representative to deposit the amount within a week and receiving no amount from the appellant, the plot allotted stood cancelled vide letter dated 15.06.2021 (Annexure R-17) and was published in two newspapers on 15.07.2021 (Annexure R-18); (xx) that the notice in the complaint has been issued on 14.07.2021; (xxi) that thereafter, the agreement of sale dated 01.09.2021 was entered by the respondent (Annexure C-20 placed on record rather by the appellant with her rejoinder to this reply, with a third party) and the plot stands sold.

8. The complainant, vide her rejoinder dated 06.10.2021, has reiterated its contentions and has inter alia submitted that (i) when the complainant asked for rescheduling the payment, it came to her notice that cash amount paid/deposited in 2013 was not accounted for; (ii) that when the M.D. (of the respondent company) was confronted on phone and in turn asked concerned person in accounts, he had to admit that Rs. 8,80,000/- was received instead of Rs. 9 lakh (Annexure C-13 and C-14); (iii) that when the appellant went to the office of the respondent, they asked to pay interest of Rs. 26,44,095/- on 21.09.2020 along with principal due against the allotment, without acknowledging the amount in cash paid to them in July 2013 after withdrawal from the loan account



of the complainant's husband with OBC Bank, Lalroo (**Annexure C-15**); (iv) that the respondent's project was completed only on 31.12.2018 as per information available on the website of the Authority; (v) that the respondent must be put to strict proof of the approvals, clearances and completion certificate; (vi) that when the matter of excess amount was settled only on 18.09.2020, there was no question of asking for deposit of the remaining amount; (vii) that the respondent's project was approved vide letter dated 17.05.2013 and therefore respondent's letter dated 01.01.2013 (**Annexure R-1**) was created afterwards; (viii) that the respondent's contentions, that it offered refund along with 18% interest up to 15.01.2013 by cheque dated 17.01.2013 for Rs. 13,23,080/- vide its alleged letter dated 19.01.2013 (**Annexure R-2**) and that on 16.07.2013 the complainant communicated on phone and gave consent for allotment of 250 square yards plot, are cooked up; (ix) that the falsity of the respondent's contention, that the market price of the plot at the time of allotment in the year 2013 was Rs. 27,000/- per square yard, can be well established from the agreement to sell dated 01.09.2021 (**Annexure C-20**) wherein the rate is Rs. 15,000/- for the same plot alleged to have been allotted to a third party during the pendency of the present complaint; (xiii) that the complainant never delayed the payment of installment due against the plot; (xiv) that rather the respondent did not execute the agreement to sell despite receiving an amount of Rs. 15,20,000/- and the project was also incomplete till December 2018 as per information available on the official website of the respondent (**Annexure C-16**); (xv) that the respondent was offering possession on 06.12.2014 when the respondent was not even having consent to establish NOC from Punjab Pollution Control Board (a copy of certificate issued on 01.07.2021 to the



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respondent is annexed as **Annexure C-18**); (xvi) that as there were no roads, sewerage, electricity and infrastructure at the site, the letter dated 03.01.2015 (**Annexure R-7**) was only to extort money from the complainant; (xvii) that at the most, the respondent can demand interest from 18.09.2020 when letter of revised price was issued; (xviii) that on 28.05.2021, the representative of the complainant duly put up her version to the respondent and requested again for correction of its records and accept cheque for actual balance due vide email dated 29.05.2021 (**Annexure C-19**); (xix) that it is wrong and denied that the representative of the complainant made any promise at the time of hearing to deposit the amount arbitrarily raised by the respondent; (xx) that the letter dated 29.05.2021 sent by the complainant has been concealed; (xxi) that despite knowledge of the pendency of the case before the Authority and despite request of the complainant through email dated 29.05.2021 for considering her genuine request of accepting the actual due against the allotment, the respondent cancelled the allotment of the plot; (xxii) that since the date of issue of amendment to clause 2 of the allotment letter vide letter dated 18.09.2020, the complainant is requesting the respondent to accept the balance of price due and has visited its office numerous times along with cheque (dated 21.09.2020) for Rs. 13,55,000/- (**Annexure C-11**), however the respondent is demanding interest @ 18% from the year 2013 while the delay in re-scheduling the rate of the plot was only on the part of the respondent and gave her the interest statement dated 21.09.2020 (**Annexure C-10**) without any basis.

9. The complainant, vide her email dated 11.02.2022 (**Annexure A-4**), has placed on record before the Authority sale deed dated



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14.01.2022 of the plot in the name Smt. Vijay Chawla w/o Devinder Kumar Chawla after transfer (*in this sale deed, the segment circle rate has been mentioned as Rs. 14,000/- per square yard*).

10. The appellant, in her written submissions (**Annexure A-5**) before the Authority, has inter alia additionally contended that as per clause 6(viii) of the agreement dated 30.05.2012 (**Annexure C-21**), the respondent was not eligible to collect deposit or even advertise the project till 30.05.2012.
11. After considering written and oral submissions of the parties, the Authority passed aforesaid order dated 24.02.2022, thereby dismissing the complaint.
12. Aggrieved by the above said order, the appellant has filed its present appeal before this Tribunal.
13. There is no new material contention taken by the appellant in the grounds of its appeal except that it has inter alia been contended therein that (i) the Authority, in its findings, did not even touch the transcripts of telephonic conversation dated 21.04.2021 with senior official of the respondent (**Annexures C-13 and C-14**), wherein he specifically admitted the receipt of Rs. 8.80 lakh in cash; (ii) that the appellant wrote several messages and emails and visited the respondent (**Annexure R-16** which is an authorization letter 28.05.2021, **Annexure C-17** which is Whatsapp conversation dated 24.08.2020 to 07.04.2021 between the complainant's son and the respondent's representative and **Annexure C-19** which is an email 29.05.2021) requesting to accept the balance payment due but the respondent insisted for payment of penal interest; (iii) that the respondent accepted money against the project in the year



2005, the land in question was acquired by the respondent in the year 2012 and the project got completed after the year 2018; (iv) that there is delay of more than 15 year during which the respondent retained booking amount of Rs. 6,20,000/- without payment of interest thereon.

FINDINGS OF THIS TRIBUNAL

14. As is evident from the receipt No. 2431 dated 27.12.2005 (**Annexure C-1**), the appellant booked a 200 square yards residential plot in 'Mega II Mohali' @ Rs. 11,500/- per square yard by paying Rs. 6,20,000/- (i.e. 27% of the total sale price of the plot) vide DD dated 03.12.2005 as booking amount.
15. No material has been placed on record by any of the parties, pertaining to the period of seven years commencing from aforesaid booking in December 2005 till 01.01.2013, the date of the alleged letter placed on record by the respondent as **Annexure R-1** vide which the respondent has claimed to have (i) informed the appellant that the matter regarding allotment of residential plot is under consideration of the company; (ii) requested her to deposit the "balance" amount within 10 days from the date of its issue before her "application bearing No. 2431" is considered for allotment of 200 square yards plot in Sector 94, Mohali (*no such application has been placed on record but the receipt dated 27.12.2005, bearing number "2431", has been placed on record by the complainant as Annexure C-1*); (iii) that in case the balance payment is not received within stipulated period then it will be presumed that the appellant is no longer interested for the allotment and her deposited amount will be refunded along with 18% interest per annum till date.



16. The respondent in its reply to the complaint has also placed on record its alleged registered letter dated 19.01.2013 (**Annexure R-2**) addressed to the appellant, wherein referring to aforesaid letter dated 01.01.2013, a cheque dated 17.01.2013 for Rs. 13,23,080/- on account of refund of the appellant's deposit along with interest @ 18% per annum accrued up to 15.01.2013 is stated to be being sent as the appellant has neither deposited the asked for amount nor tendered any reason/reply therefore within stipulated period that expired on 11.01.2013.
17. The respondent in its reply to the complaint has inter alia claimed that (i) subsequently, the appellant requested by appearing in the respondent's office not to cancel the booking, whereby non-availability of any plot measuring 200 square yards but availability of plot measuring 250 square yards were communicated; (ii) that on 16.07.2013, the appellant telephonically gave her consent for allotment of plot measuring 250 square yards with the request to make payment in installments; (iii) that resultantly, allotment letter dated 30.07.2013 (**Annexure C-2**) for plot No. 144 measuring 250 square yard was allotted whereby after adjusting the already deposited amount of Rs. 6,20,000/-, the respond was requested to pay the balance amount of Rs. 30,30,000/- in three installments of Rs. 10,50,000/-, Rs. 14,30,000/- and Rs. 5,50,000/- with their due dates being 05.09.2013, 28.10.2013 and at the time of possession respectively, with price prevalent in the market (@ Rs. 27,000/- per square yard) for additional area (of 50 square yards), being a fresh allotment, to which the appellant has agreed.
18. The appellant, in her rejoinder, has inter alia alleged/claimed that (i) after more than 7 years after booking in December 2005, the respondent allotted 250 square yard plot on 30.07.2013 instead of



booked one of 200 square yards and demanded Rs. 27,000/- per square yards for additional 50 square yards, which was rectified to Rs. 11,500/- after to Rs. 11,500/- vide letter dated 18.09.2020 (**Annexure C-9 or R-11**); (ii) that the respondent's project was approved vide letter dated 17.05.2013 and therefore respondent's letter dated 01.01.2013 (**Annexure R-1**) was false and created after thought; (iii) that the respondent never offered alleged refund along with 18% interest up to 15.01.2013 vide cheque dated 17.01.2013 for Rs. 13,23,080/- vide its letter dated 19.01.2013 and that the respondent's averments, that on 16.07.2013 the complainant communicated on phone and gave consent for allotment of 250 square yards plot, is also cooked up; (iv) that the falsity of the respondent's contention, that the market price of the plot at the time of allotment in the year 2013 was Rs. 27,000/- per square yard, can be well established from the agreement dated 01.09.2021 (**Annexure C-20**) to sell the plot in question to a third party after cancellation during the pendency of the present complaint.

19. In her complaint, the appellant has inter alia contended that (i) the project was launched in 2013; (ii) that immediately after issue of allotment letter dated 30.07.2013, the appellant visited the respondent to inquire about allotment of higher sized plot than the booked one, that too with additional 50 square yard area @ Rs. 27,000/- instead of agreed rate of Rs. 11,500/- per square yard, whereby the respondent told the appellant to deposit some more amount in cash against her allotment and agreed for charging total area @ Rs. 11,500/- per square yard and accordingly the appellant deposited in the year 2013 (*in July 2013 as mentioned by the appellant in her rejoinder*) an amount of Rs. 9,00,000/- in cash by taking loan from OBC Bank, Lalru, Punjab.



20. Both the alleged registered letters dated 01.01.2013 and 19.01.2013 (**Annexures R-1 and R-2**) claimed by the respondent to have been sent to the appellant, have been denied by the appellant and no proof of their delivery has been placed on record by the respondent. Even if it is presumed for the time being that these two letters were issued, then the moot question arises what prompted the respondent to send, vide its alleged registered letter dated 19.01.2013, alleged cheque dated 17.01.2013 for Rs. 13,23,080/- on account of refund of the appellant's deposit along with interest accrued up to 15.01.2013 at a rate as high as 18% per annum within few days of the respondent's alleged registered letter dated 01.01.2013, especially when the respondent itself, vide its said alleged registered letter dated 01.01.2013 has given a period of 10 days to the appellant to deposit the "balance" amount, particularly when (i) there was no communication before 01.01.2013 for long period of almost 7 years after the booking in December 2005 after receiving 27% price of the booked plot without entering into an agreement for sale, thus contravening the provisions of the Punjab Apartment and Property Regulation Act, 1995 (*hereinafter referred to as the PAPRA*); (ii) when as per clause 6(viii) of the agreement dated 30.05.2012 (**Annexure C-21**), which is also referred to in clause 19 of the allotment letter dated 30.07.2013, project could not to be advertised/launched and no money could be collected from general public for allotment of land/plot etc till clearance of layout plans/zoning plans and issuance of exemption by the Government under section 44 of PAPRA; (iii) when the respondent's project was approved vide letter dated 17.05.2013; (iv) when there were no agreed terms and conditions even in respect of payment schedule and cancellation; (v) when no offer or even readiness of possession was



communicated but the "balance" amount was demanded vide alleged letter dated 01.01.2013 within 10 days of issuance thereof; (vi) when the respondent has claimed to have refunded the amount deposited along with interest @ 18%, whereas as per clause 7 of the allotment letter dated 30.07.2013, even in case of failure of on the part of the respondent to deliver the possession of the plot after completion of development within stipulated period of 1 year from the date of allotment, the allottee is entitled only for "refund of the deposited amount along with 10% interest"; (vii) when the respondent has not followed the proper procedure or even the one stipulated under clause 17 of the allotment letter dated 30.07.2013 which inter alia provides for issuance of show cause notice of 30 days before resorting to cancellation/resumption of the plot and which even provides for forfeiture of up to 10% of the price of the plot whereas the respondent has claimed to have refunded the amount deposited by the appellant along with interest @ 18% per annum.

21. In view of the contents of the foregoing paragraph, we are not inclined to accept that the aforesaid alleged letters dated 01.01.2013 and 19.01.2013 (**Annexures R-1 and R-2**) were ever sent to the appellant.

22. Coming to charging the additional 50 square yards @ Rs. 27,000/- per square yard in the allotment letter dated 30.07.2013 (**Annexure C-2**) instead of the agreed rate of Rs. 11,500/- per square yard originally agreed to at the time of booking of 200 square yard plot as evidenced from the receipt dated 27.12.2005 (**Annexure C-1**), following observations are hereby made:-

- a) The complainant, in her complaint, has inter alia contended that (i) the respondent, vide allotment letter dated



30.07.2013, allotted plot of 250 square yards instead of booked one of 200 square yards with price of extra 50 square yards @ Rs. 27,000/- per square yard without any fair justification; (ii) that during the visit of the appellant immediately thereafter in this regard to the respondent, whereby the appellant requested the respondent to either allot her 200 square yards or charge the price of entire plot at the same rate, the respondent agreed for charging total plot price @ Rs. 11,500/- per square yard, which was confirmed by the respondent after a considerable delay by way of issuance of letter dated 18.09.2020 (Annexure C-9)

- b) The respondent, in its reply, has inter alia contended in this regard that (i) the respondent was willing to hand over possession of the plot but due to failure on the part of the appellant to deposit the remaining amount, the plot could not be allotted; (ii) that resultantly, the respondent vide letter dated 01.01.2013 (Annexure R-1) intended to allot the plot to the complainant, and requested her to deposit the "remaining" consideration for the plot measuring 200 square yards within 10 days and allegedly failing which the respondent, vide letter dated 19.01.2013 (Annexure R-2), refunded the amount deposited by the complainant with 18% rate of interest; (iii) that subsequently, on the complainant's request not to cancel the booking and to allot her the plot, it was communicated that no plot measuring 200 square yards is available and that plot measuring 250 square yards is available; (iv) that on 16.07.2013, the complainant communicated telephonically and "gave her consent for allotment of plot measuring 250 square yards"; (v) that resultantly, allotment letter dated 30.07.2013 for the plot No.



144 measuring 250 square yards was allotted to the complainant, whereby additional 50 square yards being a fresh allotment, the complainant was asked to pay the price prevalent in the market, to which the complainant had agreed (however, in the said allotment letter dated 30.07.2013 issued by the respondent and addressed to the appellant, it has *inter alia* been mentioned that "You have consented for allotment of plot of 250 sq yds and accepting your request you are being allotted Plot No. 144 of 250 sq yds in -----" and there is no mention about any consent of the appellant regarding higher rate of Rs. 27,000/- per square yard for additional 50 square yards); (vi) that vide letters/show cause notice dated 14.02.2014, 17.04.2014 and 11.06.2014 (Annexures R-3, R-4 and R-5 or C-3), the complainant was requested to deposit the overdue amount; (vii) that in terms of the allotment letter, the physical possession was intended to be handed over to the complainant vide letter dated 06.12.2014 (Annexure R-6 or C-4) subject to payments long over due; (viii) that vide letter dated 03.01.2015 (Annexure R-7), the complainant was requested to pay the due amount within 15 days and take over the possession of the plot; (ix) that due to non-communication on the part of the complainant, the respondent sent 26 reminders on various dates from 28.02.2015 to 14.11.2018. (Annexure R-8 Colly., out of which, the ones dated 17.12.2015 and 14.11.2018 also filed by the complainant as Annexures C-5 and C-6 of the complaint) requesting the appellant to deposit the amount due towards her for handing over of physical possession of the plot; (x) that the respondent issued a show cause notice dated 11.07.2019 (Annexure R-10 or C-8) requesting the appellant



to deposit the amount within 15 days failing which cancellation of plot will be made; (xi) that thereafter, the complainant requested that the price of the plot be revised to @ Rs. 11,500/- even for extra/additional 50 square yard, which was accepted by the respondent vide letter dated 18.09.2020 (Annexure R-11 or C-9). (xii) that even then, the complainant did not pay a single penny, resulting into issue of show cause notice dated 01.04.2021 (Annexure R-12 or C-12) and letter dated 13.05.2021 (Annexure R-13, which was posted by registered post on 18.05.2021 as per Annexure R-15 i.e. after filing of the complaint on 12.05.2021 and was also sent through Whatsapp, Annexure R-14) granting personal hearing to the petitioner on account of non-deposit of the amount; (xiii) that on 28.05.2021, Mr. Shubham Aggarwal, son of the complainant duly authorized by her (Annexure R-16), attended the hearing; (xiv) that after false promises made by the said representative to deposit the amount within a week and receiving no amount from the petitioner, the plot allotted stood cancelled vide letter dated 15.06.2021 (Annexure R-17) and was published in two newspapers on 15.07.2021 (Annexure R-18); (xv) that the notice in the complaint has been issued on 14.07.2021; (xvi) that thereafter, the agreement of sale dated 01.09.2021 (Annexure C-20 placed on record rather by the appellant vide her rejoinder) was entered by the respondent and the plot stands sold (i.e. the plot in question to one Sh. Pankaj Shahi @ Rs. 15,000/- per square yard by accepting a deposit of Rs. 20,00,000/- through RTGS dated 27.08.2021, during the pendency of the proceedings of the present complaint filed on 12.06.2021 and even before passing of the



interim order dated 22.09.2021 by the full bench of the Authority whereby the interim relief sought by the complainant in his complaint was declined and wherein there is no mention/declaration regarding aforesaid resale of the plot in question, though on 01.09.2021 the complainant filed an application for advancing the hearing from 15.09.2021 and for restraining the respondent from selling, alienating or in any manner transferring the plot and accordingly ad interim injunction was granted on 10.09.2021 in her favour to the effect that if the conveyance deed in favour of a third party had not been executed by respondent the same would not be done till 22.09.2021).

- c) As per clause 17 of the allotment letter dated 30.07.2013, the respondent can resort to cancellation/resumption of the plot after giving show cause notice of 30 days and in case of any dispute, the allottee can get his/her grievance redressed under the provisions of Arbitration Act 1996. The respondent did issue the show cause notice date 01.04.2021 (**Annexure C-12 or R-12**) to the appellant, thereby requesting her to deposit the balance over due payment of Rs. 22,55,000/- up to 30.04.2021 along with interest and it was also informed *ibid* that failing which, the respondent will be left with no other alternative but to initiate proceedings against the appellant for cancellation of allotment of the plot.
- d) Thereafter, the appellant filed the complaint before the Authority on 12.05.2021 seeking reliefs *inter alia* of (i) quashing the demand of Rs. 22,55,000/- made by the respondent vide its aforesaid show cause notice dated 01.04.2021; (ii) payment of interest by the respondent to the



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appellant on Rs. 15,20,000/- (Rs. 6,20,000/- paid in December 2005 and Rs. 9,00,000/- claimed to have been paid in cash in July 2013 as desired by the respondent during the visit of the appellant to the respondent's office immediately after receipt of the allotment letter dated 30.07.2013) and adjust the amount of such interest towards the balance principal amount due towards her;

- e) The respondent, vide its aforementioned letter dated 13.05.2021 (Annexure R-13), afforded the appellant final hearing of being heard on 28.05.2021 before proceeding for cancellation of the allotment of the plot.
- f) Vide email dated 29.05.2021 (Annexure C-19 placed on record by the appellant vide his rejoinder), it has inter alia been informed by the appellant to the respondent that during the hearing granted by the respondent on 28.05.2021 at the respondent's office, when the appellant offered a cheque dated 28.05.2021 for Rs. 13,55,000/- to the respondent towards the balance due (ostensibly after reducing the total price of the plot i.e. Rs. 28,75,000/- by Rs. 6,20,000/- paid at the time of booking in December 2005 and by Rs. 9,00,000/- claimed by the appellant to have been paid in July 2013 after issue of the allotment letter dated 30.07.2013), the respondent again asked the appellant to pay the amount of interest along with the actual/principal sum due, though there has not been any delay in making the payment on the part of the appellant. In the said email dated 29.05.2021, the appellant has requested the respondent to provide her the bank details for making payment of the said amount of Rs. 13,55,000/-.



g) The respondent, vide its letter dated 15.06.2021 (**Annexure R-17**), without mentioning therein anything about the aforesaid email dated 29.05.2021, cancelled the allotment of the plot and demanded from the appellant an amount of Rs. 26,43,584/-, even after forfeiture of the appellant's deposited amount of Rs. 6,20,000/- out of a claimed amount of Rs. 32,63,584/- (= Rs. 2,87,500/- being 10% of the allotment price + Rs. 29,24,334/- being the interest on delayed payments up to 31.05.2021 in terms of clause 4 of the allotment letter + Rs. 51,750/- being the GST @ 18% on aforesaid cancellation charges of Rs. 2,87,500/-).

23. The contents of the foregoing paragraph 22, coupled with the contents of paragraphs 20 and 21 above reveal that (i) the respondent has made a vain attempt to charge for the additional 50 square yard of plot No. 144 allotted to appellant vide its allotment letter dated 30.07.2013 @ Rs. 27,000/- per square yard instead of the rate of Rs. 11,500/- per square yard agreed at the time of booking for a plot 200 square yard which the respondent failed to allot to the appellant; and has rectified the rate vide its letter dated 18.09.2020 i.e. after a delay of more than 7 years; (ii) that the cancellation of the plot along with deductions amounting to Rs. 32,63,584/- vide aforesaid letter dated 15.06.2021 (i.e just within almost a month after the complaint whereas the respondent took seven years to issue allotment letter and another more than seven years to rectify it) and the resale of the plot in question on or before 27.08.2021, during the pendency of the proceedings before the Authority in the complaint filed on 12.05.2021, are illegal.

24. As per sub-section (5) of section 11 of the Act, the promoter may cancel the allotment only in terms of the agreement for sale



(however the respondent has not entered into an agreement with the appellant in the prescribed format), provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

25. Regarding the claim of the appellant of having paid an amount of Rs. 9,00,000/- to the respondent, the contentions of the parties are as under:-

- a) The appellant in her complaint has inter alia contended that (i) immediately after the respondent issued allotment letter dated 30.07.2013, the appellant visited the respondent's office whereby the respondent inter alia told the appellant to deposit some more amount in cash against her allotment and accordingly an amount of Rs. 9,00,000/- was deposited in cash the appellant by taking loan from OBC Bank, Lalru, Punjab; (ii) that the said cash payment of Rs. 9,00,000/- was concealed (i.e. not accounted for) in the allotment amendment letter dated 18.09.2020 (Annexure C-9) and in the statement (of interest dated 21.09.2020 annexed as Annexure C-10) (iii) that when the complainant again went to the MD of the respondent to settle the issue, the MD after getting the payment verified said that as per records, Rs. 8,80,000/- is deposited in cash standing in their accounts since 2013; (xviii) that the complainant has got sufficient electronic evidence to prove the fact that the respondent and its representatives have themselves conveyed the actual amount deposited in cash by the complainant as per the respondent's demand against allotment of plot;



- b) The respondent, in its reply to the complaint, has inter alia contended that (i) the respondent, vide its letters/notices dated 14.02.2014, 17.04.2014, 11.06.2014, 06.12.2014, 28.02.2015, 11.03.2105, 14.04.2015, 23.05.2015, 28.07.2015, 31.08.2015, 18.09.2015, 14.10.2015, 06.11.2015, 17.12.2015, 30.01.2016, 12.02.2016, 18.03.2016, 13.04.2016, 21.05.2016, 27.06.2016, 20.08.2016, 14.10.2016, 06.04.2017, 18.05.2017, 14.07.2017, 08.12.2017, 02.02.2018, 26.04.2018, 05.07.2018, 14.11.2018, 11.07.2019, 01.04.2021, 13.05.2021 (**Annexures R-3 to R-7, R-8 Colly, R-10, R-12 and R-13**) out of which letters/notices dated 11.06.2014, 06.12.2014, 17.12.2015, 14.11.2018, 11.07.2019 and 01.04.2021 (**Annexures C-3 to C-6, C-8 and C-12**) have been annexed by the appellant with her complaint, requested the complainant to deposit the due/overdue amount (*though the due/overdue amounts mentioned in these notices were without adjustment of an amount of Rs. 9,00,000/- claimed by the appellant to have been paid by her in July 2013 after issuance of allotment letter dated 30.07.2013, even then no written communication made by the appellant with the respondents has been placed by her on record*); (ii) that the claim of the appellant of having paid Rs. 9,00,000/- in cash, in addition to Rs. 6,20,200/- for which receipt has been appended with the complaint, is false and frivolous.
- c) The complainant, in her rejoinder, has inter alia additionally placed on record a copy of the relevant excerpts from the conversions with the M.D. (of the respondent company) on phone and in turn asked concerned person in accounts, whereby he had to admit that Rs. 8,80,000/- was received instead of Rs. 9 lakh as **Annexure C-13 and C-14** (which are



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stated to be the relevant extracts of transcript 1st and 2nd audio call conversations dated 21.04.2021 between the complainant's husband and Mr. Paramjeet Bhamra of the respondent company); and additionally contended that (i) when the appellant went to the office of the respondent, they asked to pay interest of Rs. 26,44,095/- on 21.09.2020 along with principal due against the allotment, without acknowledging the amount in cash paid to them in July 2013 after withdrawal from the loan account of the complainant's husband with OBC Bank Lalroo (a copy of bank statement is attached as Annexure C-15); (ii) that as communicated vide her dated 29.05.2021 (Annexure C-19) to the respondent, the representative of the complainant on 28.05.2021 duly put up her version to the respondent and requested again for correction of its records and accept cheque for Rs. 13,55,000/- as full and final payment due towards the appellant i.e. after adjusting the amounts of Rs. 6,20,000/- paid at the time of booking and Rs. 9,00,000/- claimed to have been paid in July 2013 after issuance of the allotment letter dated 30.07.2013, out of the total sale price of Rs. 28,75,000/- for the 250 square yards plot @ Rs. 11,500/-.



26. Perusal of aforesaid extracts of conversations dated 21.04.2021 (Annexures C-13 and C-14) does not lead to confirmation of deposit of Rs. 8,80,000/-.
27. However, perusal of the "Customer Account Ledger Report from 30-07-2013 to 03-12-2020" dated 30.09.2021 of Oriental Bank of Commerce (P.N.B. wef 01.04.2020) in respect of account No. 06226010000230 of Vivekanand Aggarwal (Annexure C-15) (i) shows an opening balance of Rs. 8,82,255/- Dr; (ii) shows no

disbursal of any loan amount during the said statement period from 30.07.2013 till the last entry of closure of the account on 11.09.2017.

28. Perusal of the email dated 29.05.2021 of the appellant's representative to the respondent (Annexure C-19) reveals nothing more, in this context, than that the appellant is claiming to have made some payment even in the year 2013.
29. It is not on record as to what restrained the appellant to write to the respondent about the alleged payment of Rs. 9,00,000/-, that is now being claimed by the appellant of having been made in July 2013 after issuance of allotment letter 30.07.2013, despite raising of demand without accounting for the said alleged payment, by the respondent repeatedly vide numerous letters/notices issued from time to time as mentioned under paragraph 25(b) above.
30. Thus, the appellant has failed to establish, by placing any concrete evidence on record, her claim of having paid an amount of Rs. 9,00,000/- to the respondent in July 2013 after issuance of the allotment letter dated 30.07.2013.
31. Coming to the contention of the respondent regarding non-payment of installments, it is reiterated that as per allotment letter dated 30.07.2013 (Annexure C-2) for the plot measuring 250 square yard was allotted whereby after adjusting the already deposited amount of Rs. 6,20,000/-, the respondent was requested to pay the balance amount of Rs. 30,30,000/- in three installments of Rs. 10,50,000/-, Rs. 14,30,000/- and Rs. 5,50,000/- with their due dates being 05.09.2013, 28.10.2013 and at the time of possession respectively, wherein additional/extra area of 50 square yards was charged @ Rs. 27,000/- instead of Rs. 11,500/ per square yard,



thus leading to a difference of Rs. 7,75,000/- in the total price of the allotted price.

32. Besides demanding the due/overdue installments as per payment schedule incorporated in the allotment letter dated 30.07.2013 vide the respondent's letters/notices dated 14.02.2014 (Annexure R-3), 17.04.2014 (Annexure R-4) and 11.06.2014 (Annexure R-5 or C-3), the respondent, vide its letter dated 06.12.2014 (Annexure R-6 or C-4), also informed the appellant about the readiness of possession of the plot. These letters/notices were followed by 27 letters/notices issued by the appellant from time to time during the period 03.01.2015 to 14.11.2018 (Annexure R-7 and Annexure R-8) out of which the ones dated 17.12.2015 and 14.11.2018 have also been annexed by the appellant with her complaint as Annexures C-5 and C-6). Thereafter, the respondent, vide its notice dated 11.07.2019 (Annexure R-10 or C-8), requested the appellant to deposit the due/overdue payment along with interest within 15 days, failing which the company will initiate proceedings for cancellation of the allotment of the plot.

33. It is surprising that the appellant has neither placed on record any written response to any of the 33 letters/notices mentioned in the foregoing paragraph issued by the respondent to her from time to time during the period 14.02.2014 to 11.07.2019 nor made the payment of even the principal amount of the due/overdue amount even after deducting the excess charged amount of Rs. 7,75,000/- for additional 50 square yards to take over the possession, the readiness of which was intimated to her vide the respondent's letter dated 06.12.2014.

34. Even after reduction/correction of the rate for additional 50 square yard from Rs. 27,000/- to Rs. 11,500/- per square yard vide letter



dated 18.09.2020 (Annexure R-11 or C-9), no payment has been made by the appellant to the respondent despite issue of show cause notice dated 01.04.2021 by the respondent to the appellant (Annexure R-12 or C-12), though the appellant has claimed to have offered an amount of Rs. 13,55,000/- vide cheque dated 21.09.2020 (Annexure C-11) subject to the condition of not charging any penal interest for delay in making the payments; and vide email dated 29.05.2021 (Annexure C-19) has offered the said amount of Rs. 13,55,000/- vide cheque dated 28.05.2021.

35. Though the respondent, vide its letter dated 06.12.2014 (Annexure R-6 or C-4), has informed the respondent that the possession of the plot is ready to deliver and has since then been requesting the appellant to deposit the dues before issue of letter regarding delivery of physical possession, but till filing of the complaint on 12.05.2021 neither any money has ever been paid by the appellant to the respondent except payment of Rs. 6,20,000/- in December 2005 at the time of booking, nor any objection has been raised in this regard. However, after a period of more than 15 years from the date of booking and more than 6 years from the intimation regarding readiness of possession, the appellant has raised many objections including the ones regarding delay in completion of the project.
36. Thus, the appellant has defaulted in making the payment due/over due and is liable to pay interest from the due dates stipulated in the allotment letter dated 30.07.2013.
37. As per clause 7 of the allotment letter dated 30.07.2013, the possession of the plot is to delivered within a year from the date of allotment i.e. by 30.07.2014. The respondent, vide its letter dated 06.12.2014 (Annexure R-6 or C-4), has informed the appellant



that possession of the plot is ready to deliver. Thus, there was some delay in offering the possession.

38. From the above discussion, it emerges that both the parties are at fault. The respondent has (i) accepted more amount than the prescribed limit without entry into an agreement of sale in violation of provisions of the PAPRA and the Act, that too almost 7 years before entering into agreement dated 30.05.2012 (Annexure C-21) in violation of its clause 6(viii); (ii) has attempted in vain to charge a higher rate for additional 50 square yards which was corrected after more than seven years; (iii) has made a slight delay in offering the possession of the plot; and (iv) has cancelled the allotment of the plot, resold it and executed the sale deed after further transfer, all during the pendency of the proceedings before the Authority in the complaint filed on 12.05.2021. On the other hand, the respondent has not made any payment even towards the undisputed outstanding amount of Rs. 22,55,000/- towards the price of the plot allotted to her.

DECISION:

39. In view of above findings, we partly accept the appeal and hereby order as follows:-

- a) The respondent's letter dated 15.06.2021 (Annexure R-17) and the orders dated 22.09.2021 and 24.02.2022 passed by the Authority in the complaint are set aside.
- b) The respondent shall offer a 200 to 250 square yards plot in its Mega Residential Project, Sector 94, SAS Nagar (Mohali) to the appellant within three months from the date of this order, in lieu of plot No. 144, earlier allotted to the appellant



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vide allotment letter dated 30.07.2013, that has been sold by the respondent to a third party.

- c) The appellant shall take possession of the aforesaid plot within one month of receipt of the respondent's offer for possession of the plot, after payment of its balance price calculated @ Rs. 11,500/- per square yard along with interest at the rate prescribed under the Act read with Rule 16 of the Rules for the periods beginning from 05.09.2013, 28.10.2013 and 06.01.2015 on each of the one third of the balance amount payable till payment of entire net amount.
- d) The respondent is liable to pay interest on Rs. 6,20,000/- for delay in delivery of possession at the rate prescribed under the Act read with Rule 16 of the Rules for the period from 30.07.2014 to 06.01.2015, which shall be adjusted while making the payment mentioned in the foregoing paragraph.

40. File be consigned to record room after filing a copy of this order in the file of this appeal and after sending a copy to each of the parties as well as to the Authority and the Adjudicating Officer.

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

(*differring*)
JUSTICE MAHESH GROVER (RETD.),
CHAIRPERSON

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

March 6, 2023

CONTD. 2-

Certified To Be True Copy

Ramande Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

07/03/2023

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

APPEAL NO. 69 OF 2022

Rajni Aggarwal aged about 60 years W/o Dr. Viveka Nand Aggarwal R/o House No. 956, Sector-7, Urban Estate, Ambala City, Haryana-134003

...Appellant

Versus

Janta Land Promoters Limited, SCO No. 39-42, Sector-82, SAS Nagar, Mohali, Punjab-140306.

....Respondent

Present: - Mr. Pawan Mutneja (Sr. Adv) with Mr. Shubham Aggarwal and Mrs. Suksham Aggarwal, Advocates for the appellant.

Mr. Ranjit Singh Kalra, Advocate for the respondent.

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)
(Differing)**



1. I have read the order written by Sh. Ashok Kumar Garg, esteemed Member on the Bench and I respectfully beg to differ.
2. Though the facts and pleadings have been set out therein, more than elaborately, yet for the sake for brevity as also for my divergent opinion I propose to write my own order which is as below.

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3. The pleadings need not be set out again as they have been extracted in the order of Sh. Ashok Kumar Garg and be read into this order as well.
4. Some of the facts which come out unscathed from the controversy can be summed up as below:-
 - i. That a plot of 200 sq. yards was booked in the year 2005, even when the project had yet to be formalized. The factum of booking of this plot is conceded as is also the rate of the plot i.e Rs.11,500/- per sq. yard. Concededly, nothing took place for as many as 7 years till the year 2012 when an allotment letter was issued qua plot No. 144 measuring 250 sq. yards instead of 200 sq. yards the allottee had aspired for and carried an enhanced rate with regard to the additional area of 50 sq. yards.
 - ii. This price of additional area was fixed at Rs.27,000/- per sq. yard thereby inflating the total price of the plot considerably.
 - iii. The installment schedule was prescribed as 05.09.2013, 28.10.2013 and the remaining at the time of possession.
 - iv. Delayed interest for not paying the installments by the allottee in time was at the rate of 12% for the



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first month of delay and 15% for the second month thereafter at the rate of 18% till cancellation.

- v. Possession was to be given within one year of the allotment letter failing which interest was payable by the developer at the rate of 10% per annum on the deposit made by the allottee.
- vi. The allottee protested against the additional area and the price assigned to it.
- vii. On 18.09.2020 the respondent agreed to reduce the price of additional 50 sq. yards area to Rs.11,500/- per sq. yard instead of Rs.27,000/- demanded earlier, thereby applying a uniform rate for the entire plot. According to this letter and after rescheduling the price the total sale consideration came to Rs.28,75,000/- out of which Rs.6,20,000/- already stood paid and the balance of Rs.22,55,000/- was payable in installments. No amount was paid by the appellant thereafter towards the sale price in terms of the allotment. The complaint was filed with a grievance of delayed possession and during its pendency the cancellation order was passed by the respondent.



5. Now to proceed analytically and answer the controversy we would have to revert back to the initial fact of the

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respondent making an offer of a plot of 200 sq. yards in the year 2005 when the project had not even been conceptualized or launched. There was no agreement to sell executed between the parties.

6. Hence even if one is to ignore this crucial aspect, the fact of accepting money by the developer from a prospective allottee without there being a concretized launch of a project, would be in clear violation of the provisions of the PAPRA Act and the respondent, being in breach of the provisions of the law ought to be proceeded against. Be that as it may, an agreement was entered into on 30.05.2012, when the respondent offered a 250 sq. yards plot instead of 200 sq. yards plot for which the appellant had aspired. The additional 50 sq. yards was never sought for by the appellant and thus to give this additional area to an unwilling buyer and demand a higher price for this extra 50 sq. yards was highly arbitrary.

7. The appellant therefore cannot be faulted with to deny any further payment to the respondent in this regard prior to 18.09.2020 because eventually, through a letter dated 18.09.2020 the respondent agreed to apply a uniform rate of Rs.11,500/- per sq. yard for the entire 250 sq. yards plot acceding to the grievance of the appellant.



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8. In fact the dispute inter se between the parties can be narrowed down to this date which can be considered as a starting point to determine the rights of the parties. It has to be kept in mind that this is a case demanding settlement of equities because of the peculiar facts. For more than 7 years the respondent retained an amount of Rs.6,20,000/- without offering any tangible benefits to the appellant and then offered a plot of higher dimension with an additional cost.
9. To my mind the respondent cannot hold the appellant responsible for not making the payments demanded by him in the year 2013 as the appellant was justified in contesting the price of the additional 50 sq. yards area. It is only after 18.09.2020, that such a default by the allottee can be considered. On the other hand the allottee stood deprived of both i.e. his money and a plot since 2005. To make matters worse when the complaint was filed, the respondent first cancelled the allotment of the appellant on this ground and then alienated it in favour of some other person thus, adding insult to injury.
10. An argument has been raised repeatedly during the course of hearing that the appellant has not questioned cancellation and hence the appeal be dismissed.
11. It is to be kept in mind that the parties were at 'lis' when the cancellation took place and nothing precludes the



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Court from taking cognizance of developments which take place during the pendency of a 'lis' before it and restore the parties to a status quo ante. It is evident that the respondent resorted to these tactics in order to frustrate the rights of the appellant and there is no hesitation to state that such an action needs to be deprecated. The cancellation necessarily has to be set aside and the parties restored to the status existing on the date when the complaint was filed.

12. Having said so, the question of relief now has to be answered which can be very simplistically put as below:-

(a) The respondent enjoyed the advantage of Rs.6,20,000/- since the year 2005 till date and therefore is accountable and liable to compensate the appellant by adjusting this amount along with the interest towards the price of the plot of 250 sq. yards offered by the respondent for which the starting point is 18.09.2020.

(b) The respondent shall immediately offer a 250 sq. yards plot in its Mega Residential Project Sector 94, Mohali within a period of three months from the date of this order in lieu of plot No.144 which though allotted to the appellant now stands sold to a third party. The appellant in turn shall take the possession of the plot after making the payment



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calculated at the rate of Rs.11,500/- per sq. yard along with the interest at the rate prescribed under the Act read with Rule 16 of the Rules commencing from 18.09.2020 when the respondent agreed to curtail the price of additional 50 sq. yards. The respondent is liable to pay interest on Rs.6,20,000/- for retaining the amount from 2005 till 2020 which shall carry an interest at the rate of 7.5% since we cannot bind the respondent to a statutory interest prescribed under the RERA Act which came into existence in the year 2016, besides 2020 has been taken by me as a starting point when the respondent applied a uniform rate of Rs.11,500/- per sq. yard to the plot in question. Prior to the year 2020 the appellant cannot be faulted with for not paying the installments despite the offer made to him, since there was no plot offered till 2013 and then when the offer was made it was with an unacceptable baggage of 50 sq. yards at the rate of Rs.27,000/- per sq. yard. The respondent could not justifiably foist this upon the appellant. The respondent is also liable to pay statutory rate of interest for the delayed possession w.e.f. 18.09.2020 till the time the possession is handed over.



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These two amounts so determined shall be mutually adjusted and the possession handed over to the appellant after these adjustments have been effected.

The plea of the appellant having paid an amount of Rs.9,00,000/- remains unsubstantiated and hence no interference is warranted on this account.

13. Appeal stands disposed of as above.

File be consigned to the record room.



sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

06-03-2023
, 2023

DS

sd/-

Certified To Be True Copy

Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

07/03/2023