

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,  
SAS NAGAR (MOHALI)**

**Date of Decision 27<sup>TH</sup> February 2019**

**Appeal No. 53 of 2018**

Sandeep Mann S/o Col. SS Mann aged 51 years, R/o 2426, Phase-10, Mohali, Punjab, 160062

....Appellant

**Versus**

1. Real Estate Regulatory Authority, Punjab through its Chairperson, First Floor, Block B, Plot No. 3, Sector 18A, (Near Govt. Press UT), Madhya Marg, Chandigarh. 160018
2. Omaxe Chandigarh Extension Developers Pvt. Ltd. through its Managing Director, India Trade Tower, First Floor, Madhya Marg Extension New Chandigarh (Mullanpur) District SAS Nagar, Mohali, Punjab 140901.

....Respondents

**Appeal No. 54 of 2018**

1. Sandeep Mann S/o Col. SS Mann aged 51 years, R/o 2426, Phase-10, Mohali, Punjab, 160062.
2. Dr. Tejinder Kaur, W/o Sandeep Mann aged 48 years, R/o 2426, Phase-10, Mohali, Punjab 160062.

....Appellant

**Versus**

1. Real Estate Regulatory Authority, Punjab through its Chairperson, First Floor, Block B, Plot No. 3, Sector 18A, (Near Govt. Press UT), Madhya Marg, Chandigarh. 160018
2. BhanuInfrabuild Pvt. Ltd. through its Managing Director, India Trade Tower, First Floor, Madhya Marg Extension New Chandigarh (Mullanpur), District SAS Nagar Mohali, Punjab 140901.

**Appeal No. 55 of 2018**

1. Manjit Mann w/o Col. SS Mann aged 80 years, R/o 2426, Phase-10, Mohali, Punjab,160062.

....Appellant

**Versus**

1. Real Estate Regulatory Authority, Punjab through its Chairperson, First Floor, Block B, Plot No. 3, Sector 18A, (Near Govt. Press UT), Madhya Marg, Chandigarh. 160018
2. BhanuInfrabuild Pvt. Ltd. through its Managing Director, India Trade Tower, First Floor, Madhya Marg Extension New Chandigarh (Mullanpur), District SAS Nagar Mohali, Punjab 140901.

**Appeal No. 56 of 2018**

1. Rupinder Mann D/o Col. SS Mann aged 47 years, R/o 2426, Phase-10, Mohali, Punjab,160062.

....Appellant

**Versus**

1. Real Estate Regulatory Authority, Punjab through its Chairperson, First Floor, Block B, Plot No. 3, Sector 18A, (Near Govt. Press UT), Madhya Marg, Chandigarh. 160018
2. Omaxe Chandigarh Extension Developers Pvt. Ltd. through its Managing Director, India Trade Tower, First Floor, Madhya Marg Extension New Chandigarh (Mullanpur) District SAS Nagar, Mohali, Punjab 140901.

**Appeal No. 44 of 2018**

1. Mohinder Jit Kaur aged 57 years, w/o Sh. Parminder Singh Bhatti, R/o 781-A, HIG Flats, Phase-9, S.A.S. Nagar, Mohali-160062.

....Appellant

**Versus**

1. Punjab Real Estate Regulatory Authority through its Chairperson, First Floor, Block-B, Plot No. 3, Sector-18A (Near Govt. Press UT), Madhya Marg, Chandigarh-160018.
2. Punjab Urban Planning and Development Authority (PUDA) through ESTATE OFFICER, PUDA Bhawan, Sector 62, S.A.S. Nagar, Mohali, Punjab-160062.

**Appeal No. 45 of 2018**

1. Arvind Sharma aged 43 years S/o Sh. Brij Bhushan Sharma
2. Ms. Manjeet Sharma aged 34 yrs W/o Arvind Sharma Both R/o of A-44, A Block, Pkt-00, Sector-2, Rohini, New Delhi-110085.  
....Appellant

**Versus**

1. Punjab Real Estate Regulatory Authority through its Chairperson, First Floor, Block-B, Plot No. 3, Sector-18A (Near Govt. Press UT), Madhya Marg, Chandigarh-160018.
2. M/s Country Colonizers Private Limited, Regd. Office P.O. Rayon & Silk Mills, Adjoining Coca Cola Depot, G.T. Road, Chheharta, Amritsar, Punjab, through its Director/Authorized Representative hereinafter referred to as 'WAVE'.
3. M/s Country Colonizers Private Limited, Regd. Sector 85, Mohali 140308 through it Director/Authorized Representative hereinafter referred to as 'WAVE'.

....Respondents

**Appeal No. 46 of 2018**

Parmod Mehta, aged 42, son of Shri Rampal Mehta, resident of House No. 14255-B, Sector-61, Chandigarh.

....Appellant

**Versus**

M/s Janta Land Promoters Limited through its Managing Director, SCO 39-42, Sector 8, SAS Nagar (Mohali), Punjab 140306

....Respondents

**Appeal No. 47 of 2018**

1. Ranjit Singh, aged 58 years, son of Sh. Harbhajan Singh resident of House No. 1064, Junction Drive, Manteca CA, USA-95337.
2. Sukhwinder Kaur, aged 48 years, wife of Ranjit Singh resident of House No. 704, Phase-4, SAS Nagar, Mohali (Punjab).

....Appellants

**Versus**

M/s Emaar MGF, Land Limited through its Managing Director, SCO 120-122, First Floor, Sector 17-C, Chandigarh.

....Respondents

**Appeal No. 48 of 2018**

1. Dr. Vinay Goyal, aged 39, son of Shri Jai Parkash Goyal resident of House No. C-7/14, Eldeco Estate, Near Babapur Mandi Nizampur, Panipat Haryana-132103.

....Appellant

**Versus**

M/s Omaxe Limited, New Delhi, through its Managing Director, registered office, Shop No. 19B, First Floor, Omaxe Celebration Mall, Sohna Road, Gurgaon, Haryana.

....Respondents

**Appeal No. 11 of 2018**

Sarjiwan Soni wife of Mr. Tirath Kumar Soni, Resident of 3F, 202, Category A, 2<sup>nd</sup> Floor, Maya Garden, Phase-III, VIP Road, Zirakpur, District SAS Nagar.

....Appellant

**Versus**

M/s Barnala Builders & Property Consultant, having its registered office SCO No. 1, Opposite Yes Bank, Zirakpur-Patiala, Road, Zirakpur, SAS Nagar through its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

**Appeal No. 12 of 2018**

Hem Lata Sharma wife of Mr. V.N. Sharma, Resident of 3F-203, 2<sup>nd</sup> Floor, Maya Garden Phase-III, VIP Road, Zirakpur, District SAS Nagar.

....Appellant

**Versus**

M/s Barnala Builders & Property Consultant, having its registered office SCO No. 1, Opposite Yes Bank, Zirakpur-Patiala, Road, Zirakpur, SAS Nagar through its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

**Appeal No. 13 of 2018**

Sanjay Bakshi son of Late Sh. Kanwal Nain Singh Bakshi, Resident of 3E-403, Category A, IVth Floor, Maya Garden, Phase-III, VIP Road, Zirakpur, District SAS Nagar.

....Appellant

**Versus**

M/s Barnala Builders & Property Consultant, having its registered office SCO No. 1, Opposite Yes Bank, Zirakpur-Patiala, Road, Zirakpur, SAS Nagar through its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

**Appeal No. 14 of 2018**

Rajinder Kumar Kalia son of Sh. Braham Dutt Kalia resident of House No. 403, Floor No. IV, Block 3-D, Maya Garden, Phase-III, VIP Road, Zirakpur (District SAS Nagar)

....Appellant

**Versus**

M/s Barnala Builders & Property Consultant, having its registered office SCO No. 1, Opposite Yes Bank, Zirakpur-Patiala, Road, Zirakpur, SAS Nagar through its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

**Appeal No. 15 of 2018**

Santosh Sambyal wife of Mr. Surjit Singh, Resident of 3D-302, 3<sup>rd</sup> Floor, Maya Garden Phase-III, VIP Road, Zirakpur, District SAS Nagar.

....Appellant

**Versus**

M/s Barnala Builders & Property Consultant, having its registered office SCO No. 1, Opposite Yes Bank, Zirakpur-Patiala, Road, Zirakpur, SAS Nagar through its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

**Appeal No. 21 of 2018**

1. Neelam Lakhanpal wife of Mr. Deepak Lakhanpal
2. Deepak Lakhanpal

Both residents of House No. 204-A, Floor No. II, Block-B, Maya Garden, Phase-III, VIP Road, Zirakpur (District SAS Nagar).

....Appellant

**Versus**

M/s Barnala Builders & Property Consultant, having its registered office SCO No. 1, Opposite Yes Bank, Zirakpur-Patiala, Road, Zirakpur, SAS Nagar through its Proprietor/Representative Sh. Satish Jindal son of Angrej Lal resident of House No. 288, Sector 10, Panchkula.

....Respondent

**Present:** - Mr. Amitabh Tewari, Advocate for the appellant (in Appeals No. 53, 54, 55 and 56 of 2019.)  
 Mr. Satish Mishra, Advocate for the appellant (in Appeal No. 44 and 45 of 2018.)  
 Ms. Manju Goyal, Advocate for the appellant (in Appeal No. 46, 47 and 48 of 2018.)

Mr. Arun Singla, Advocate for the appellant  
( in Appeal No. 11, 12, 13, 14, 15 and 21 of 2018.)

Mr. Aashish Chopra with Ms. Sumiti Arora and Swati Dayalan Advocates for respondents.  
(in Appeal No. 47 of 2018.)

Mr. Nihal Singh and Sh. N.S. Gill, Advocates for respondent No.2  
(in appeal No. 53, 54, 55 and 56 of 2019.)

Mr. Bhupender Singh, Advocate for the respondents  
( in Appeal No. 44 of 2018.)

Mr. Tejeshwar Singh, Advocate, for the respondent No.2 (in Appeal No. 45 of 2018.)

Mr. Abhinav Gupta and Vinay Pandey, Advocates for the respondents  
(in Appeal No. 46 of 2018.)

Mr. Munish Gupta, Advocate for the respondents  
(in Appeal No. 48 of 2018.)

Mr. Ambrish Sharma, Advocate for the respondents  
( in appeal No. 11, 12, 13, 14, 15 and 21 of 2018.)

Mr. G.P.S Baweja, Legal Advisor with Mr. Mohammad Sartaj Khan, Assistant Manager, o/o the Real Estate of Regulatory Authority, Punjab.

**QUORUM:** JUSTICE RAJIVE BHALLA, (RETD), CHAIRMAN  
S.K. SHARMA, IPS (RETD.), MEMBER

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**ORDER:** (*Rajive Bhalla (J) (Retd)*):

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By way of this order we shall decide a bunch of fifteen (15) appeals, as they raise a common question of law , namely the forum before which a person aggrieved by violations and contraventions enumerated in Sections, 11(5), 12, 14 (3), 18,

18 (1), 18(2), 18(3), 19 (4) and 19 (7), of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) or the agreement for sale, praying for reliefs of refund, return of investment including compensation, setting aside of order of cancellation of allotment, compensation, compensation and interest as well compensation or interest and interest as a separate relief may file a complaint i.e. before the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority) or the Adjudicating Officer?

A set of nine (9) appeals arising from separate orders, dated 29.10.2018, 30.10.2018, 31.10.2018, 02.11.2018 and 17.12.2018, passed by the Adjudicating Officer, dismissing complaints filed by the appellants alleging a violation of Section 18 of the Act and claiming relief of refund, interest and compensation, on the ground that circular No. RERA/Pb./ENF/14, dated 29.10.2018 and amended circular No. RERA/Pb./ENF/15, dated 21.11.2018, prohibits his jurisdiction to decide the complaints.

Another set of six appeals arise from a common order dated 12.04.2018 passed by the Authority, dismissing complaints filed on the basis of cause of action arising from



violations and contraventions of provisions of the Act, seeking refund, compensation and interest by holding that violations and contraventions have not been proved but granting liberty to file a petition before the Adjudicating Officer in form N i.e. for grant of compensation.

At this stage it would be appropriate to record that after the above order passed by the authority one of the complainants Naveen Gupta filed a complaint before the Adjudicating Officer, who dismissed the complaint by holding that as the Authority has already rejected the violation he has no jurisdiction to decide the matter. The orders were subject matters of appeal No. 30 of 2018 and 31 of 2018 which were allowed vide common order dated 15.02.2019 and shall be referred to in order to demonstrate the contradictions in the circulars.

The question, posed has arisen as the Authority has issued circular No. RERA/Pb./ENF/14, dated 29.10.2018 and amended circular No. RERA/Pb./ENF/15, dated 21.11.2018, declaring that complaints for compensation shall be filed before and adjudged by the Adjudicating Officer whereas all other complaints shall be filed before and adjudicated by the Authority.

Counsel for the appellants submit that the Authority has no jurisdiction to issue these circulars as complaints alleging violations and contraventions claiming reliefs of compensation and or interest or return of investment with interest and compensation refund of amounts deposited, with compensation, namely any relief which includes compensation can only be considered and decided by the Adjudicating Officer exercising power under Section 71 (1) to (3), read with Rules 36 and 37 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules), as it is the only forum empowered to award compensation, under the Act thereby postulating that all violations where reliefs are linked to compensation will be placed for adjudicating before the Adjudicating Officer.

The circulars declaring that the Adjudicating Officer shall assess compensation alone and all other matters shall be placed before and adjudicated by the Authority are thus contrary to the mandate of the Act. The circulars that confine the power of the Adjudicating officer to assessing compensation alone may lead to a situation where for the same alleged violation claiming the relief of refund and compensation, the complaint

would have to be placed before the Adjudicating Officer for determining of the violations awarding compensation or before the Authority for determining the violation but for awarding refund, a statute cannot be interpreted to permit two forums, to adjudicate the same violation as it may lead to recording of different orders in relation to the same violation or even a situation where the Authority rejects a violation and a relief but the Adjudicating Officer accepts the violation and grants relief.

Counsel for the appellants further submit that the Act refers to various reliefs like compensation, interest, refund, return of investment with compensation etc. but preceding each relief is the adjudication of a violation/contravention thereby rendering imperative the need to ensure that violations and contraventions are adjudicated by one forum namely the Adjudicating Officer. Counsel for the appellants also point out that Section 71(3) of the Act empowers an Adjudicating officer to award compensation or interest and Rule 37 to award compensation and interest, thereby fortifying the argument that the circular which prohibits the Adjudicating Officer from even awarding interest is contrary to the Act.

Counsel for the appellants further contends that adjudication of violations and contraventions are quasi judicial and therefore should be placed before the Adjudicating officer who is a retired Judicial Officer and if the contention that after violations are to be adjudged by the Authority the complaint will be placed before the Adjudicating Officer to assess compensation is accepted, it would render the need for the Judicial Officer as an Adjudicating Officer meaningless and ignore Section 71 and Rule 37 which specifically empowers the Adjudicating officer to hold an enquiry into violations and after determining the guilt of the defaulting party award relief of compensation and interest and any other relief linked thereto.

Counsel for the appellants also contend that fear that the Authority shall be divested of all its functions if the circulars are held to be contrary to the Act is unfounded as the Authority has numerous other powers and functions as is apparent from the Act and the Rules.

Counsel for the respondents who are promoters agree with these submissions and infact have addressed detailed arguments with their counsel and urge that as compensation and interest is to be awarded by the Adjudicating Officer, the enquiry

must also be conducted by the Adjudicating officer particularly where other reliefs like refund and return of investment are linked to compensation or include compensation or with interest or interest alone. Counsel for the respondents also submit that there is no ambiguity in the Act or the Rules as compensation and interest and all reliefs linked thereto are to be assessed by the Adjudicating officer after holding an enquiry into the violations and contraventions alleged and all other matters by the Authority.

Counsel for the Authority and counsel for M/s Country Colonizers Private Limited, contends that Section 71(1) clearly refers to appointment of an Adjudicating Officer for the purpose of adjudging compensation and to therefore include interest, refund, return of investment etc. within the powers of the Adjudicating Officer would be contrary to the Act and the Rules. The Act clearly and unambiguously delimits jurisdictions of the Authority and the Adjudicating Officer and therefore adding to or subtracting from the jurisdiction of either forum is not permissible. Counsel also contend that Rule 36 clearly provides that a complaint for any violation under the Act or the Rules and Regulations shall be filed before the Authority and has

clearly reserved adjudication for compensation by the Adjudicating Officer, thereby leaving no ambiguity as to the legislative intent that an Adjudicating Officer is appointed to adjudge and award compensation and for no other violation or relief. The use of the word interest in Section 71 (3) and Rule 37 of the Rules has to be read in conjunction with compensation and not as an independent relief as the Adjudicating Officer may grant compensation or and interest.

Before recording our opinion it would be appropriate to record that the Act, establishes an Authority to regulate and promote the real estate sector. The Authority is required to ensure an efficient and transparent system of sale of plots, apartments, buildings , projects, provide for registration of projects, their monitoring, measures to protect the interest of consumers etc and provide them adjudicating forums in the shape of the Authority and Adjudicating officers to redress grievances regarding violations and contraventions etc. The Act also provides for an Appellate Tribunal to hear appeals. The orders passed by the Appellate Tribunal are appealable before the Hon'ble High Court

The Act also enumerates the violations and contraventions of statutory provisions and the agreement giving rise to causes of action, followed by setting out reliefs that shall ensue from each violation or contravention and at some places sets out multiple reliefs for the same violation depending upon the choice of the allottee. The Act also empowers both the Adjudicating Officer and the Authority to hold enquiries into violations and contraventions of rights and obligations, statutory and or contractual, but does not specifically name the Authority or the Adjudicating Officer as the forum by which any particular violation or contravention shall be determined except for cancellation of allotment by a promoter which is specifically reserved for consideration by the Authority under Section 11(5) of the Act. Section 71 of the Act, refers to the appointment of an Adjudicating Officer, for the purpose of adjudging compensation and Section 71(3) for adjudging compensation or interest but only after holding an enquiry into violations enumerated in Sections 12, 14 18 and 19 of the Act. A perusal of Sections 11 (5), 12, 14 , 18 and 19, of the Act, the provisions that set out the violations, namely cancellation of an allotment, inducing deposits by furnishing incorrect information, failure to remove defects or

provide services etc and failure to deliver possession within time, defect in title and any other violation but do not identify the forum before which a complaint shall be filed for adjudication.

As already noted Section 71 (1) & (3) read with Rule 36 & 37 of the Rules, names the Adjudicating Officer as the only forum that shall hold an enquiry to ascertain whether the person has violated Sections 12, 14, 18 and 19 of the Act for the purposes of adjudging "compensation and or interest".

Section 31 however, records that an aggrieved person may file a complaint with the Authority or with the Adjudicating Officer, as the case may be for "any violation and contravention" of the provisions of this Act or the Rules and Regulations. Rule 36 also empowers an aggrieved person to file a complaint with the Authority for any violation save as those required to be adjudicated by the Adjudicating Officer. The absence of an identified forum to adjudicate actionable violations, except in the case of an order cancelling an allotment or in a case where relief of compensation and interest or compensation or interest is claimed, would require examination of relevant provisions of the Act & Rules and the provisions that set out violations which provide multiple reliefs so as to ascertain



the forum before which a cause of action arising from these violations shall be placed and the forum which shall award reliefs and whether the circulars that provide different forums for the same violation or cause of action can be sustained in law.

The question, as already recorded, that calls for an answer, is the forum before which a complaint shall be filed for adjudication of a cause of action arising from violation of a particular provision of the Act, the Rules, the regulations or the agreement for sale, namely the Authority or the Adjudicating Officer ?

At this stage it would be appropriate to once again record that the circulars emphatically exclude the Adjudicating Officer from adjudging any violation except violations that provide for award of compensation and it is for this reason that the Adjudicating Officer has dismissed complaints that claim refund and interest apart from compensation.

At the outset we shall refer to Sections 20, 21, 31 and 71 of the Act and Rules 36 and 37 of the Rules which read as follows: -

20. ***Establishment and incorporation of Real Estate Regulatory Authority:***

- (1) *The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:*

*Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:*

*Provided further that, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:*

*Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:*

*Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.*

- (2) *The Authority shall be a body corporate by the name aforesaid having perpetual succession*

*and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.*

**21. Composition of Authority: -**

*The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.*

Section 20 of the Act incorporates the Authority which consists of a Chairperson and not less than two whole time members to be appointed by the appropriate Government. The Authority so constituted is empowered to perform various functions assigned under the Act which include registration of projects, monitoring of projects , imposition of penalties, recommendation for prosecution but is not named in Sections 12, 14, 18 and 19 of the Act, which are relevant for the present appeals, as the forum which shall decide any violation/contravention, other than cancellation of an allotment but Sections 31, 71 of the Act and Rule 36, do appear to suggest the existence of such a power with the Authority.

Section 31 provides that all complaints are to be filed before the Adjudicating Officer or the Authority and reads as follows: -

**31. *Filing of complaints with the Authority or the adjudicating Officer: -***

- (1) *Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made there under against any promoter allottee or real estate agent, as the case may be.*

*Explanation. – For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*

- (2) *The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.*

Section 31 empowers an aggrieved person to file complaints before the Authority or the Adjudicating Officer as the case may be for any violation or contravention of the provisions of this Act or Rules or Regulations thereby providing that an Adjudicating Officer can also entertain a complaint and hold an enquiry into a violation and award relief, but as per the circular can only award compensation.

Section 71 of the Act, empowers the Authority to appoint an Adjudicating Officer for adjudging compensation namely to adjudicate violations which, if proved would lead to award of a relief of compensation and as we shall shortly demonstrate, compensation or and interest and other reliefs linked to the relief of compensation arising from the same cause of action or violations and reads as follows:-

**71. Power to adjudicate: -**

- (1) *For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:*

*Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.*

- (2) *The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:*

*Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.*

- (3) *While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.*

A due consideration of Section 71(1), of the Act reveals that the Authority may, for the purpose of adjudging compensation under Sections 12, 14, 18 and 19, in consultation with the appropriate government appoint one or more Judicial

Officer who is or has been a District Judge to be an Adjudicating Officer for holding an enquiry. Section 71(2) sets out the time for deciding a complaint/application. Section 71(3), which may help us in answering the question posed, enumerates the procedure to be adopted by the adjudicating officer while holding an enquiry and there after records that if the Adjudicating Officer is satisfied that the person has failed to comply with provisions of any of the sections specified in sub- section (1) , i.e. Sections 12,14, 18 and 19 of the Act, shall direct such person to pay such compensation or interest as he thinks fit in accordance with the provisions of any of those sections, leaving no ambiguity that apart from compensation, the Adjudicating Officer can also grant interest but before grant of compensation and or interest the Adjudicating Officer shall hold an enquiry into the violations alleged ,namely violations of Sections 12, 14, 18, and 19 of the Act. Section 71 of the Act, shall however be referred to in detail a little later.

Rules 36 and 37 of Punjab State Real Estate (Regulation and Development Rules) 2017, (hereinafter referred to as the Rules) provide the procedure to be followed by the Authority and the Adjudicating Officer while adjudicating contraventions and violations but are also relevant for delimiting

violations, causes of action, jurisdictions, reliefs and read as follows: -

**36. Filing of complaint with the Authority and inquiry by the Authority.**

- (1) Any aggrieved person may file a complaint with the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'M' which shall be accompanied by a fee of one thousand in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favor of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated.
- (2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner, namely:
  - (a) upon receipt of the complaint, the Authority shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;
  - (b) the respondent against whom such notice is issued under clause (a) of sub-rule (2), may file his reply in respect of the complaint within the period as specified in the notice;
  - (c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;
  - (d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,



- (i) *pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder; or*
  - (ii) *does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;*
- (e) *in case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, it may dismiss the complaint;*
- (f) *in case the Authority is satisfied on the basis of the submissions made that there is need for further hearing into the complaint, it may order production of documents or other evidence on a date and time fixed by it;*
- (g) *the Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;*
- (h) *on the date so fixed, if the Authority, upon consideration of the evidence produced before it and other records and submissions, is satisfied that,*
  - (i) *the respondent is in contravention of the provisions of the Act or the rules and regulations made there under, it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made there under; or*
  - (ii) *the respondent is not in contravention of the provisions of the Act or the rules and regulations made there under the Authority may, by order in writing,*

*dismiss the complaint, with reasons to be recorded in writing;*

- (i) *if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.*

An appraisal of Rule 36 reveals that a person alleging any violation under the Act, the Rules or the regulations may file a complaint with the Authority in Form M except for violations reserved for adjudication by the Adjudicating Officer.

**37. Filing a complaint with the adjudicating officer and inquiry by the adjudicating officer.-**

- (1) *Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'N' which shall be accompanied by a fee of one thousand rupees in the form of a demand draft or a bankers cheque drawn on a scheduled bank in favour of the Authority and payable at the branch of that bank at the station where the seat of the Authority is situated.*
- (3) *The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely :-*
- (a) *upon receipt of the complaint the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;*
- (b) *the respondent against whom such notice is issued under clause (a) of sub-rule (2), may*

- file his reply in respect of the complaint within the period as specified in the notice;*
- (c) *the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;*
  - (d) *on the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made there under and if the respondent,-*
    - (i) *pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he thinks fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made there under; or*
    - (ii) *does not plead guilty and contests the complaint, the adjudicating officer shall demand an explanation from the respondent;*
  - (e) *in case the adjudicating officer is satisfied on the basis of the submissions made that complaint does not require any further inquiry ,he may dismiss the complaint;*
  - (f) *in case the adjudicating officer is satisfied on the basis of the submissions made that there is need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;*
  - (g) *the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;*
  - (h) *on the date so fixed, if the adjudicating officer, upon consideration of the evidence produced*

before him and other records and submissions, is satisfied that the respondent is,-

- (i) liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 15 and such compensation, as he thinks fit, as the case may be, in accordance with the provisions with of the Act or the rules and regulations made thereunder; or
  - (ii) not liable to any interest and compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;
- (I) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

Rule 37 entitles any person aggrieved to file a complaint before the Adjudicating Officer for interest and compensation, as provided in Sections 12,14, 18, and 19 of the Act.

A conjoint reading of Sections 31 and 71 of the Act, Rules 36 and 37 of the Rules, reveals (i) the Adjudicating officer is empowered to hold an enquiry into violations of Sections 12, 14, 18 and 19 for the purpose of adjudging

compensation. (ii) Section 71 (3) of the Act empowers the Adjudicating Officer to award compensation or interest. (iii) Rule 37 of the Rules empowers the Adjudicating Officer to award compensation and interest, thereby reserving adjudication of contraventions alleged in Sections 12, 14, 18 and 19, for the purpose of adjudging compensation and or interest, for exclusive consideration by the Adjudicating Officer. (iv) The Act or the Rules, do not reserve adjudication of any particular violation or grant of relief enumerated in these sections for consideration by the Authority but the words "that all matters other than those reserved for the Adjudicating officer" used in Rule 36 of the Rules, may appear to suggest that apart from compensation or interest / compensation and interest, as provided in Section 71(3) of the Act read with Rule 37, all other matters shall be placed before and adjudicated by the Authority, which is also the basis for the circular issued by the Authority. (v) An appraisal of Rules 36 and 37 of the Rules, and Section 71 of the Act, reveals that both the Authority and the Adjudicating Officer are empowered to conduct enquiries to first ascertain whether the respondent is guilty of any violation of any statutory or contractual obligation and then if the complaint is

before the Authority and the respondent is held guilty of the violations alleged "it shall pass such orders", including imposition of penalty as it thinks appropriate but if it is before the Adjudicating Officer, to award compensation and or interest.

The Adjudicating Officer, thus has the power to determine violations under Sections 12, 14, 18 and 19 of the Act for the purpose of awarding compensation and or interest whereas the Authority has specific power to levy penalties and set aside an order cancelling an allotment but is not "specifically" empowered by any provision to award any of the reliefs enumerated in these sections or is "specifically" referred to as the forum before which a particular complaint shall be filed. Rule 36 of the Rules, as already recorded, postulates that "all other violations" shall be placed before the Authority posing a degree of difficulty as neither Section 31 nor Sections 12, 14, 18 and 19, 71 of the Act or Rules 36 and 37 of the Rules refer to any of these "all other violations". These facts apart the circular notified by the Authority, requires that a violation that provides for multiple reliefs shall be placed, for the same violation or cause of action before the Adjudicating Officer for compensation and the other reliefs arising from the same violations and causes of action

namely return of investment, refund of amounts deposited and interest or any other reliefs, before the Authority.

Accepting for a moment that such a situation is permissible, it would lead to a position where for the same violation and the same cause of action, the matter would be placed before two different forums on the basis of relief or may we add would lead to situation where the Authority determines the violation and reliefs whereas the Adjudicating Officer determines compensation, a course that would disregard Section 71 of the Act and Rule 37 of the Rules that empower the Adjudicating Officer to hold an enquiry before awarding compensation and or interest and a basic principle of adjudication namely that the entire bundle of rights that constitute a cause of action, in these cases the violations along with the multiple reliefs must be placed before the one adjudicatory forum.

Both courses suggested by the circular and argued by the counsel for the Authority namely adjudication of the same violation or cause of action by two forums or partly by one and partly by the other on the basis of relief is fraught with the possibility of conflicting orders being passed by the Authority

and the Adjudicating Officer in relation to the same violation. It would therefore be necessary to deal with the provisions that enumerate the violations and the reliefs that set into motion the right of a party to approach the Authority or the Adjudicating Officer and only thereafter record our final opinion as to the question posed and determine whether there is any possibility of conflicting orders being passed by the Authority and the Adjudicating Officer, if the circular is upheld but before doing so it would be necessary to enumerate a few basic principles of law:-

- (i) A cause of action is a bundle of rights arising from an alleged violation of rights.
- (ii) A cause of action may entitle a party to multiple reliefs.
- (iii) A cause of action that gives rise to multiple reliefs shall be placed before the same forum for adjudication.

The violations namely, the causes of action and the reliefs are enumerated in Section 11(5), 12, 14(3), 18 (1), 18(2), 18(3) and 19(4) and 19(7) of the Act and depending upon proof of a violation may lead to award of (a) setting aside cancellation of



allotment (b) compensation (c) return of investment (d) interest (e) interest with compensation (f) return of the amount (g) refund and interest, (h) interest including compensation etc. At the same time these and other violations may invite penalty and prosecution which are not subject matter of the present appeals, but the power to impose penalty and recommend prosecution rests solely with the Authority.

The first such relevant provision that requires reference is Section 11(5) of the Act, which reads as follows: -

**11. Functions and duties of promoter: -**

(1) X X X X

(2) X X X X

(3) X X X X

(4) X X X X

(5) *The promoter may cancel the allotment only in terms of the agreement for sale:*

*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.*

Section 11 (5), does not pose any difficulty as it empowers a promoter to cancel an allotment in terms of the agreement for sale but the proviso empowers an allottee, aggrieved by such cancellation to approach " the Authority" for

relief, if such a cancellation is contrary to the terms of the agreement for sale, is unilateral and is without sufficient cause thus leaving no ambiguity that an allottee who seeks the setting aside of an order of cancellation of allotment has to approach "the Authority", which alone shall have the power to adjudicate a complaint/application alleging cancellation of an allotment.

A provision that sets out violations, causes of actions, remedies and reliefs, which as per the circular would require the violations to be placed for one relief before the Authority and for the other before the Adjudicating Officer and may be useful in unravelling the controversy and answering the questions posed is Section 12, which reads as follows: -

12. *Obligation of promoter regarding veracity of the advertisement or prospectus.*

*Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be,*

*intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.*

Section 12 of the Act is divided into two parts.

The violation and cause of action in both parts is the same, namely a person induced by incorrect and false information contained in an advertisement etc. to invest in a project leading to loss or damage by reason of such incorrect and false information but the reliefs are different. The first part provides for compensation whereas the second part allows for return of investment with interest, including compensation provided, the allottee intends to withdraw from the project.

The first part of the Section does not pose any difficulty as it entitles a person so affected to be compensated by the promoter "in the manner as provided under this Act" thereby referring to a complaint alleging a violation under the first part of Section 12 to be placed before the Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 37 of the Rules, in Form N.

The proviso to Section 12 however poses a degree of difficulty, in view of the circular. The proviso provides that if the allottee intends to withdraw from the project he shall be "returned his entire investment with interest at the rate prescribed and compensation as provided under the Act" thereby adding an element of return of investment and interest to the relief of compensation, i.e. different reliefs for the same cause of action and violation. The circular however provides that for the reliefs of return of investment and interest the matter shall be placed before the Authority and for compensation before the Adjudicating Officer thus providing two different forums for the same violation and cause of action, on the basis of relief.

Apart from the fact that the circular firstly ignores Section 71 (3) of the Act and Rule 37 of the Rules which empower the Adjudicating Officer to award compensation or interest and compensation and interest, the circular directs that relief of return of investment and interest shall be placed before the Authority thereby entailing that for the same violation and the same cause of action, complaints shall be filed before two different forums, on the basis of relief. The circular thus bifurcates the same cause of action and violation on the

basis of relief and compels a litigant to file two separate complaints one before the Authority to determine the violation and if the violation is proved to receive return of investment and the second before the Adjudicating officer to determine the same violation and if proved to receive compensation, a course that would not only be illegal in so far as it prohibits the Adjudicating Officer from granting interest but the fact that same violation would be placed before two separate forums on account of different reliefs provided by the same violation, may in our considered opinion lead to conflicting judgments being pronounced by these forums. A cause of action is a bundle of rights flowing from the same violation and therefore to have this bundle of rights and causes of action, adjudicated by two different forums cannot be countenanced.

An adjudicatory process must ensure that the entire dispute namely the bundle of rights that constitute the cause of action arising from the same violation or contravention are placed before the same forum but the circular has by declaring that the Authority shall deal with all matters except compensation created an anomalous situation where for the same violation, the same bundle of rights and the same cause of action,

the complainant would have to approach two different forums, a course fraught with the real possibility of the two Officers recording opposing and conflicting opinions regarding the same cause of action / violation, a result, best avoided in any system whether judicial or administrative.

At this stage it would also be necessary to record that proof of default precedes the relief and not the other way round and the mere fact that reliefs are dependent upon the exercise of option by the allottee to remain within or opt out of the project would be entirely irrelevant for proof of a violation or adjudication of the bundle of rights that constitute the cause of action.

An argument that in case the powers of the Adjudicating Officer are enhanced the powers of the Authority would be seriously curtailed as it would be denuded of all adjudicatory functions, in our considered opinion discloses a serious flaw in the understanding of the statutory provisions . As already recorded the Authority is also required to adjudicate disputes relating to penalties, prosecution, registration of projects, monitoring of progress of projects, filing of returns and a multitude of other important functions as detailed in the Act

and the Rules. The Adjudicating Officer merely has powers to adjudge compensation and interest and as already recorded other reliefs that are linked by the Act to adjudication of the defaults that lead to award of compensation and interest. The authority cannot on the premise that its work would be reduced appropriate the power of the Adjudicating Officer.

Thus if the violation and the cause of action are one, the mere fact that, multiple reliefs may arise and be awarded in relation to this cause of action cannot be a valid ground to justify placing the violation or the cause of action before different forums merely because the reliefs are different. The bifurcation of violations and causes of action on the basis of relief is not legally tenable. Furthermore if the relief of compensation is prescribed then whether compensation is to be awarded with return of investment and interest, the cause of action remains the same i.e. incorrect information leading to a loss to the allottee. The matter would therefore have to be placed before the same forum i. e. the Adjudicating Officer as he is the only officer empowered to award compensation. This apart the intention of the allottee to remain within the project or opt out cannot determine the forum but only the relief. The use of the

word "including compensation" after the words "returned his entire investment" would necessarily require the entire violation to be determined by one forum namely the Adjudicating Officer who is empowered to determine compensation. The circular in our considered opinion cannot be sustained, for reasons recorded hereinabove.

A provision that does not pose any problem, in the context of the question raised or the circular is Section 14 (3) of the Act, which reads as follows: -

14(3) *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.*

Section 14 (3) enables an allottee aggrieved by structural defects, defects in workmanship, quality or provisions of services or any other obligation of the promoter as provided in



the agreement for sale to approach a promoter who shall then rectify the defects etc. without further charge within 30 days of such a default etc. being brought to his notice but the outer limit for raising such a plea is five years from the date of handing over of possession. If the promoter does not rectify the defects etc. the person so aggrieved shall be entitled to compensation "in the manner as provided under this Act", thereby making a clear reference to the exercise of jurisdiction by Adjudicating Officer pursuant to power conferred by Section 71 of the Act and to record opinion on a petition filed under Rule 37 of the Rules read with form N whether the respondent has violated Section 14 of the Act.

Another set of violations, cause of actions and reliefs are enumerated in Section 18 of the Act, which reads as follows: -

**18. Return of amount and compensation:-**

- (1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –*
  - (a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
  - (b) *due to discontinuance of his business as a developer on account of suspension or*

*revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

- (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*
- (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*

Section 18 (1) of the Act provides a remedy against a promoter who fails to complete the project or is unable

to deliver possession of an apartment, plot or building for reasons recorded in sub Sections (a) and (b) and where the allottee wishes to withdraw from the project, he shall be entitled to return of the amounts paid by him, with interest at such rate as may be prescribed including compensation in the manner as provided under this Act. The proviso to Section 18(1), however, provides that if the allottee does not wish to withdraw from the project he shall be entitled to interest upto the delivery of possession.

The use of the expression "including compensation in the manner as provided under the Act", in Section 18 (1) necessarily refers to adjudication by the Adjudicating Officer, exercising power under Section 71 read with Rule 37 of the Rules and Form N , an adjudicatory jurisdiction that even the circular accepts but would he have power to award return of amounts received by the promoter, is the question posed. The circular would require that the matter regarding return of amount and interest be placed before the Authority and compensation before the Adjudicating Officer. While dealing with Section 12 of the Act we have already held that if the violation and the cause of action are the same

and one of the reliefs is compensation the entire matter should be placed before the Adjudicating Officer. The cause of action and the violation under Section 18(1) of the Act, being the same and compensation being one of the reliefs, the reliefs for refund and interest will also have to be placed before the Adjudicating Officer.

The proviso however, does not talk of award of compensation but of interest. Thus the matter arising under the proviso cannot be placed before the Adjudicating Officer but shall be placed entirely before the Authority. The aforesaid finding may appear to contradict, our earlier opinion but as the Act is loosely drafted we have no other option but to hold as above.

Section 18(2) of Act, empowers the allottee to claim compensation, "in the manner as provided under this Act", in case of any loss caused due to defective title of the land on which the project is developed or has been developed. Section 18 (3) is an omnibus clause that also provides that if the promoter fails to discharge " any other obligation" imposed by the Act, Rules or the Regulations or the agreement for sale he shall pay compensation to the allottee "in the manner provided under this Act". As Section 18 (2) and (3) talk of award of compensation the

complaint has to be filed before the Adjudicating Officer, alone, appointed and exercising power under Section 71 read with Rule 37, to hold an enquiry into the cause of action arising from the violation alleged and if the promoter is found guilty to adjudge and award compensation .

Section 19 (4) of Chapter 4 of the Act, titled as Right and Duties of the allottee entitles the allottee by Section 19 (4) to claim refund along with interest at such rate as may be prescribed and compensation "in the manner as provided under this Act" from the promoter, if the promoter is unable to complete the project, give possession of an apartment, plot or building, in accordance with the terms of agreement for sale etc. Section 19 (7) places an obligation on an allottee to pay interest at such rate as may be prescribed for any delay in payment towards any amount or charges to be paid under sub Section (6). Sections 19(4), (6) and & (7) of the Act read as follows: -

- 19(4)            *(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his*

*business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.*

- 19 (6) *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*
- (7) *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

Section 19 crystallises the rights of parties whether of the allottee or the promoter and has to be read into every provision conferring rights upon parties to file a petition/complaint seeking relief under Sections 11(5), 12, 14 (3), 18, 18 (1), 18(2), 18(3), 19 (4) and 19 (7) of the Act. The violations and reliefs under Section 19(4) will be placed before the Adjudicating Officer as they include a relief of compensation, whereas violation alleged under Section 19 (7) shall be placed before the Authority.

Before we sum up our opinion it would be necessary to refer to and record a few basic points namely that a reading of the statute reveals that rights to be enforced whether by the allottee or the promoter are based upon proof of a violation or contravention of a duty or obligation placed by the statute or an agreement for sale etc. giving rise to a cause of action and therefore cannot be adjudicated by two different forums merely because the violation provides for different reliefs based on the choice of an allottee. The complaint whether filed before the Adjudicating Officer or the Authority requires recording of findings preceded by a process of reasoning. The adjudication so envisaged must also take into consideration and record a reasoned opinion on the defence setup by the allottee or the promoter as the case may be and though most of the violations which lead to a claim for refund, interest and compensation etc. relate to the promoter, this alone does not deprive the promoter of his right to plead and urge that there is no actionable default on his part or even urge that the default so alleged may be the direct or indirect, consequence of an act of the allottee or facts/factors beyond his control. The adjudication must also reveal an application of mind followed by a process of

reasoning leading to an opinion for or against the complainant/applicant/the respondent, as held in , in Appeal No.1 of 2018 titled as *Emaar MGF Land Ltd. versus Kamalroop Singh Sooch and another* decided on 20.09.2018. The power to be exercised by the Authority and the Adjudicating Officer in these circumstances is quasi-judicial and not administrative.

To sum up our opinion it would be appropriate to record as follows: -

- (i) All violations and causes of action that give rise to multiple reliefs shall be placed before one forum for adjudication.
- (ii) Where the Act and or the Rules identify a particular forum as empowered to adjudicate a particular violation or a cause of action, the forum so named shall alone be empowered to decide the matter.
- (iii) A violation claiming relief of compensation can only be adjudicated by the Adjudicating Officer exercising power under Section 71 of the Act and Rule 37 of the Rules.



- (iv) Where the violation alleged leads to a relief of compensation or if compensation is a part of multiple reliefs like return of investment with interest and compensation or refund with interest including compensation, the complaint shall be placed before the Adjudicating Officer exercising power under Section 31 and 71(1) of the Act read with Rule 37 in form N.
- (v) All other matters whatever be the nature of the violation/cause of action and the reliefs flowing therefrom shall be placed before the Authority, like interest under the proviso to Section 18 and 19 (7) of the Act.
- (vi) All pending complaints/applications shall be forwarded by the Authority or the Adjudicating Officer to the appropriate forum as indicated above.
- (vii) The parties shall be at liberty to amend their applications/complaints if the need so arises.

(viii) This order shall not apply to any matter that has attained finality.

In view of what has been recorded herein above, the appeals are allowed in the aforesaid terms and the impugned orders are set aside.

Parties are directed to appear before the Adjudicating Officer on 11.03.2019.

No order as to costs.

A photostat copy of this order be placed on the file of each appeal.



**JUSTICE RAJIVE BHALLA (RETD.)**

**CHAIRMAN**



**S.K SHARMA, IPS (RETD.)**

**MEMBER**

**February 27, 2019**

**AN**