

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

Appeal No. 94 of 2019

Mandeep Kaur Sodhi resident of House No. 613,  
Sarvhitkari Society, Sector-48 A, Chandigarh 160047.

....Appellant

**Versus**

M/s Janta Land Promoters Pvt. Ltd., SCO No. 39-42,  
Sector-82, Mohali.

....Respondent

**Present:** Mr. Suresh Kumar, Advocate for the appellant.

**QUORUM:** JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

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**JUDGMENT:** (*Mahesh Grover (J) (Retd)*): (oral)

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The appellant is aggrieved of the order dated 16.08.2019, passed by the Real Estate Regulatory Authority, Punjab. While raising multiple grievances he had on an earlier occasion also approached this Tribunal and vide order dated 14.01.2019, the matter was remanded back to the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority) on account of procedural impropriety resulting from non-compliance of Rule 36 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 read with Form-N.



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The impugned order has now been passed consequent upon a reappraisal by the Authority and following extract is the conclusion of the Authority: -

*Based on the merits of the case and the facts as discussed above, the following is ordered: -*

1. *As provided in section 18(1) para two and Section 2za(ii) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 the respondent shall pay interest for the delayed period w.e.f. 16.09.2017 to 30.08.2018 (the date on which possession was taken by the complainant) as per State Bank of India highest marginal cost of landing rate + 2% till the date of this order. This amount shall be paid within 60 days of this order.*
2. *The complainant was liable for the payment of GST or any other taxes as applicable, at the time of taking possession, on the balance amount. Hence, the respondent is not liable to refund GST or other applicable taxes, if charged in accordance with law, from time to time.*
3. *Since the respondent has not charged insurance charges from the complainant, respondent is not liable to refund the same;*
4. *Respondent shall not be liable to refund any differential in the cost of flat based on calculation of the Carpet Area as well as Super Area mentioned at the allotment of flat, as the total cost of the flat was fixed at 48,00,000/- as per Para 2.2 of the allotment letter. As per Para 2.4 reproduced below of the allotment letter, the price was tentative & subject to variation: -*



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*"The above price is tentative and subject to variation with reference to the mutual measurement of the allotted Apartment and balance if any is to be deposited within 30 days of demand."*

*Hence the differential amount for increased area, if any, is payable by the complainant.*

5. *The respondent submitted that one time club membership was not part of the price of the apartment and the same was to be paid on demand which has so far not been raised. Hence, the respondent alleged that the complainant has not paid one time club membership so far and the same shall be demanded only after provision of the club. Hence, no refund towards the club membership fee is made out.*

It has been argued by learned counsel for the

appellant while assailing the aforesaid conclusion that the interest ought to have been granted with effect from 01.05.2017, whereas it has been awarded with effect from 16.09.2017. That apart a grievance has been raised that if the residential unit had been allotted within the stipulated time i.e. 01.05.2017, the complainant would have been spared of his liability under the GST, which was introduced in July, 2017. A grievance has also been made about the super area pegged as 1345 sq. ft. as it is perceived by the appellant that something described as a 'skydeck' was an inherent feature of the project but



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was erroneously incorporated towards the super area while the carpet area of the flat at the time of possession is merely 880 sq. ft.

My attention has been drawn to the schedule of the construction unit plan, wherein item No. 9 against the term offer of possession, date ascribed is 01.05.2017. Simultaneously my attention has also been drawn to clause 2.23 which states that the residential apartment is likely to be completed within a period of 36 months from the date of issuance of allotment letter and possession would be delivered after obtaining occupation certificate from the competent authority. This clause sufficiently explains that the construction of the unit was to be completed within 36 months and if the date of allotment letter is construed as 27.05.2014, it would imply ready construction upto May, 2017. In this background if the interest has been awarded to the appellant with effect from September, 2017, it does not seem that there has been any gross error committed by the Authority in awarding interest from this date.

The second grievance regarding the payment of GST is also not worthy of acceptance in view of the justification given by the Authority itself, with which I do not find any infirmity. Even otherwise what changes occur in legislative field in the



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unforeseeable future can never be recognized as a principle to dislodge a liability particularly if the liability is created through a valid legislation unless contingencies are stipulated in the law itself. Likewise the appellant has been unable to explain either before the Authority or this Tribunal that the super area allocated to the appellant was in any way erroneously inflated by including the area of the sky deck. In fact the record shows that the appellant was clearly on notice through a communication addressed to him on 14.03.2018, indicating that a super area of 1345 sq. yard was offered to him right from the beginning.

The Authority had directed the respondent to pay interest for the delayed period within 60 days of the order. I make it clear that there is no variation in this clause and the respondent would be bound to comply with it within the stipulated time. He would also release the occupation certificate to the appellant subject to his compliance of his all the requisites.

In view of the above, the appeal is dismissed.

sd/-

JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

November 7, 2019

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Certified To Be True Copy

*Sudhakar*  
Registrar

