

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

Subject: -

APPEAL NO. 281 OF 2021

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

...Appellant

Versus

1. Ramphal Mahla, R/o #1509, Phase-10 Mohali, Punjab-160062.
2. Real Estate Regulatory Authority, Punjab, 1st Floor, Plot No. 03, Block B, Madhya Marg, Sector-18 A, Chandigarh (160018)

....Respondents

APPEAL NO. 21 OF 2021

The Chief Administrator, Greater Mohali Area Development
Authority, PUDA Bhawan, Sector-62, Mohali, Punjab-160062.

...Appellant

Versus

1. Dr. Asmita Mahla Bhambri, House No. 1509, Phase-10, Mohali, Punjab (160062)
2. Real Estate Regulatory Authority, Punjab, 1st Floor, Plot No. 03, Block B, Madhya Marg, Sector-18 A, Chandigarh (160018)

....Respondents



Memo No. R.E.A.T./2022/ 637

To,

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

Whereas appeals titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44 (4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeals 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 15th day of December, 2022.

Dhanraj Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



BEFORE THE CHAIRMAN, REAL ESTATE
APPELLATE, TRIBUNAL, PUNJAB, FOREST
COMPLEX, SECTOR 68, SAS NAGAR-160062

Civil Appeal No. 281 of 2021

MEMO OF PARTIES

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

..... Appellant


Versus

1. Ramphal Mahla House No. 1509, Phase 10, Mohali,
Punjab 160062.

2. Real Estate Regulatory Authority Punjab, Plot No. 3,
Block-B, Madhya Marg, Sector-18 A Chandigarh-
160018

... Respondents




(Bhupinder Singh)
Advocate
Counsel for the Appellant

BEFORE THE CHAIRMAN, REAL ESTATE
APPELLATE, TRIBUNAL, PUNJAB, SECTOR-17,
CHANDIGARH-160017

Appeal No. 21 of 2021

MEMO OF PARTIES

The Chief Administrator, Greater Mohali Area
Development Authority, PUDA Bhawan, Sector 62,
Mohali, Punjab-160062

..... Appellant


Versus

1. Dr. Asmita Mahla Bhambri, House No. 1509,
Phase 10, Mohali, Punjab 160062.

2. Real Estate Regulatory Authority Punjab, Plot No. 3,
Block-B, Madhya Marg, Sector-18 A Chandigarh-
160018

... Respondents




(Bhupinder Singh)
Advocate
Counsel for the Appellant

17/05/2021

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

APPEAL NO. 281 OF 2021

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

...Appellant

Versus

1. Ramphal Mahla, R/o #1509, Phase-10 Mohali, Punjab-
160062.
2. Real Estate Regulatory Authority, Punjab, 1st Floor, Plot No.
03, Block B, Madhya Marg, Sector-18 A, Chandigarh (160018)
....Respondents

APPEAL NO. 21 OF 2021

The Chief Administrator, Greater Mohali Area Development
Authority, PUDA Bhawan, Sector-62, Mohali, Punjab-160062.

...Appellant

Versus



1. Dr. Asmita Mahla Bhambri, House No. 1509, Phase-10,
Mohali, Punjab (160062)

2. Real Estate Regulatory Authority, Punjab, 1st Floor, Plot No.
03, Block B, Madhya Marg, Sector-18 A, Chandigarh (160018)
....Respondents

Present: Mr. Balwinder Singh and Mr. Bhupinder
Singh, Advocates for the appellants.
Mr. Sanchit Punia, Advocates for respondents.
Ms. Supriya Sharma, Executive (Legal), RERA,
Punjab

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE
(RETD.), MEMBER (JUDICIAL)
ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./ TECH.)

JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

Appeal No. 281 of 2021

1. This appeal is directed against the order dated 03.03.2020 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. The respondent filed a complaint seeking multiple reliefs i.e. to develop the project and hand over possession; to pay interest at the rate of 18% per annum on the amount deposited for the period of delay in delivering possession; to refund interest and penal interest charged by the appellant and that no interest should be charged by the complainant till possession of the plot is handed over.



3. The complainant (hereinafter known as the allottee) had applied for a plot measuring 256.66 sq yards in the project being developed by the present appellant (hereinafter known as the developer). The application was made in the year 2016 and the promised date of possession according to the letter of intent was in the year 2017. The allottee had deposited a sum of Rs.51.36lacs but despite this the promised date of

possession did not materialize leading to the filing of the complaint.

4. The developer who contested the complaint shifted the blame squarely upon the allottee to say that he had not deposited the installments in time. It was averred that allottee had a choice of either paying the price of the plot in lump-sum or in installments with interest at the rate of 12% per annum. But installments were never paid in time and as a consequence penal interest was also required to be charged. It was further averred that in the present case the allottee was not even the original allottee and the plot was transferred subsequently in his name. Even the original allottee defaulted in the initial deposit of 30% of the total price. In short the lapse in delayed possession was attributed to the allottee who did not pay the installments in time.



5. The Authority looked into the grievance and observed that both the parties were at fault and in this manner it burdened the allottee with the payment of installments with interest on the deficit amount against payment of the plot and similarly burdened the developer to pay the interest at the rates prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 for the period of delay. Interestingly, before arriving at this

conclusion the Authority granted a grace period of one year to the developer and directed that the interest component would commence from 01.05.2020 till the actual date of handing over of possession.

6. Although, we are not satisfied with the grant of one year as a grace period to the developer while arriving at a conclusion in favour of the allottee, since this is completely without any justification and on the face of it arbitrary, but the allottees are not in appeal against this direction of the Authority. We would therefore not comment upon it any further but, suffice it to say that the impugned order has otherwise balanced the equities well to settle the claims of the allottee as against the liability of the developer. For the delayed installments the allottees have been burdened with interest on the installments due, and likewise for delaying possession the developer has been burdened with the statutory interest till the time actual possession is given to the allottee.
7. For the aforesaid reasons we did not find any reason to interfere with the impugned order.
8. Appeal is accordingly dismissed.
9. Since the appeal is being dismissed we hereby direct that the amount deposited by the appellant (developer) as a



pre-requisite to the filing of the appeal under Section 43(5) of the Act be released to the respondent forthwith along with interest that has accrued thereon after due verification and by following proper procedure of law.

Appeal No. 21 of 2021

10. The case of the present allottee i.e. Dr. Asmita Mahla Bhambri is identical to that of Mr. Ramphal Mahla. However the learned counsel for the appellant has stated that there is distinction as the plot of this allottee fell in the area qua which the partial completion certificate had already been obtained which would imply that the provisions of the Real Estate (Regulation and Development) Act, 2016 would not apply. With regard to this reference has been to Para 6 of the reply submitted by them before the Authority which we choose to extract here below :-



*“6. That a part of the project in question has been completed prior to coming into force of the provisions of the Act, 2016 and a partial completion certificate has already been issued qua the project on 28.04.2017 and as such this part of the project has not been registered with this Hon’ble Authority. Thus as per the provisions of the Act, this Hon’ble Authority does not have the jurisdiction to entertain the present complaint and the said complaint is liable to be dismissed on this ground alone. A copy of partial completion certificate dated 28.04.2017 is annexed herewith as **ANNEXURE R-1**”*

Perusal of Annexure R-1 shows that partial completion certificate has been granted qua some of the projects mentioned in the certificate. The same is also extracted herebelow :-

"Partial completion of the following projects is hereby accorded in reference to the report submitted by the Inspection Committee comprising of DE (Civil), DE (PH), DE (Electrical), DE (Horticulture) and DTP, GMADA:-

1. Sector 76 to 80, SAS Nagar- 880 acres out of 916.95 acres

2. Aerocity, SAS Nagar- 1046.50 acres out of 1060 acres

3. IT City, SAS Nagar- 1253.71 acres out of 1672.71 acres

4. Eco City Phase 1, New Chandigarh- 365 acres out of 404.17 acres

5. Urban Estate Shri Anandpur Sahib- 24.8 acres out of 25.49 acres

Date: 28.04.2017

Ravi Bhagat, IAS
Chief Administrator,
GMADA

Endst. No. GMADA/CE/2017/136-50 Dated: 28.04.2017"

11. We do not agree with this contention of learned counsel for the appellant for the following reasons. Firstly, if we see the averment made in their reply as extracted above, it does not even remotely connect the plot of the allottee with the area qua which the completion certificate had been granted. It was for the appellant to prove this fact before the Authority by referring to the layout plan or any other material to substantiate such a plea. No such attempt was made. In fact it seems that this point was never even argued since the impugned order is silent in this regard. There is nothing on record to suggest that the appellant agitated this issue before the Authority. Even in the grounds of appeal taken before us this plea has not been raised. We are thus of the opinion that



the appellant has raised this plea rather half-heartedly and no attempt has been made to establish it by placing cogent material on record. By merely making a prayer to place on record the layout plan without raising a plea of non-applicability of the Act in the pleadings on the premise of a partial completion certificate would not satisfy the requirements of law. The plea of the appellant in this regard is thus declined.

12. No ground to interfere. Appeal dismissed as above.
13. Since the appeal is being dismissed we hereby direct that the amount deposited by the appellant (developer) as a pre-requisite to the filing of the appeal under Section 43(5) of the Act be released to the respondent along with interest that has accrued thereon after due verification and by following proper procedure of law.

File be consigned to the record room.



sdh
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

sdh
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

Also see my view in paragraph 11 above as a/judge
ER. ASHOK KUMAR GARG, C.E. (RETD.), on behalf of
MEMBER (ADMINISTRATIVE/TECHNICAL) *sent 15/12/22*

November 24, 2022
DS

Chandigarh
Certified to Be True Copy
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
15-12-2022

VIEW OF ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./TECH.) IN PARAGRAPH 11 OF THIS JUDGMENT RELATING TO APPEAL NO. 21 OF 2021.

14. With due regard to the observations of Hon'ble Chairperson and learned Member (Judicial) of this Tribunal under paragraph 11 of this judgment, I deem it appropriate to differ to these observations under said paragraph 11 of this judgment to the following extent:-

a) The appellant has filed an application dated 04/05.04.2021, accompanied with affidavit of Mr. Mankanwal Singh Chahal, Estate Officer GMADA, bearing Application No. 79 of 2022 in Appeal No. 21 of 2021 for placing on record a copy of Layout Cum Numbering Plan of I.T. City S.A.S. Nagar (*Drawing No. D.T.P.(S.A.S. NAGAR)2315/18 dated 10.01.2018, Annexure-A/4*) to support its contention raised in the reply to the complaint to the effect that part of project in question has been completed prior to coming into force of the provisions of the Act and partial completion certificate has been issued qua the project on 28.04.2017 due to which the project has not been registered with the Authority.



b) It has inter alia been contended in said Application No. 79 of 2022 that said Layout Plan of I.T. City shows that (i) area marked with dark pink colour is not a part of partial completion certificate and only this area is registered with the Authority; (ii) that rest of area falls under the partial completion certificate and is not registered with the Authority; and (iii) that plot No. 1756 measuring 500 square yards allotted to the respondent No. 1 marked with yellow color on highlighted portion of the same plan falls in the area which is not registered with Authority.

c) Perusal of the said Application No. 79 of 2021 and the said Layout plan (Annexure-A/4) leaves no doubt, at least in my mind, to believe as contended by the appellant that plot No. 1756, of size 50'x90' i.e. 500 square yard, allotted to the respondent No. 1 vide allotment letter dated 01.12.2019 (Annexure-R/2) is covered under the partial completion certificate dated 28.04.2017 (Annexure-R/1).

15. However, even this is of no help to the appellant because if the development of the part of the project, in which the plot allotted to the respondent No. 1 is located, was actually complete on or before 28.04.2017 i.e. the date of the said partial completion certificate as claimed by the appellant, then what prevented the appellant to offer possession of the said plot to the respondent till 01.12.2019 (the date of allotment letter, vide which plot No. 1756 was allotted and the respondent No. 1 was directed to take physical possession of the site within 90 days of its issuance) to fulfil the appellant's obligation under clause 15 of the letter of intent (LOI) dated 22.06.2017 to hand over physical possession of the plot within one year from the issuance of the said LOI.

16. Therefore, I too find no grounds to interfere and I am also otherwise one with the Hon'ble Chairperson and learned Member (Judicial) of this Tribunal to dismiss even aforesaid Appeal No. 21 of 2021.

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

November 24th, 2022

Certified To Be True Copy

Dhanendra Kumar

Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

15-12-2022