

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

Subject: -

Appeal No. 95 of 2022

Punjab Urban Planning and Development Authority, PUDA
Bhawan, Secto-62, Sahibzada Ajit Singh Nagar (Mohali)
through its Estate Officer.

....Appellant

Versus

1. Manoj Ahuja, R/o 1428, Phase 3B-2, Sector-62, Sahibzada Ajit Singh Nagar (Mohali).
2. Adjudicating Officer, Real Estate Regulatory Authority, Punjab First Floor, Plot No. 03, Block-B, Madhya Marg, Sector-18 A, Chandigarh (160018).

.....Respondents

Memo No. R.E.A.T./2022/ 600

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 06th
day of December, 2022.

[Handwritten Signature]

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



IN THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT
CHANDIGARH

MEMO OF PARTIES

Punjab Urban Planning and Development Authority, PUDA Bhawan,
Sector -62, Sahibzada Ajit Singh Nagar (Mohali) through its Estate
Officer

...Appellant


Versus

- 1. Manoj Ahuja, resident of 1428, Phase 3-B-2, Sector -62, Sahibzada Ajit Singh Nagar (Mohali).
- 2. Adjudicating Officer, Real Estate Regulatory Authority Punjab, First Floor, Plot No.3, Block-B, Madhya Marg, Sector-18-A, Chandigarh-160018

...Respondents

Chandigarh.

Dated 23.05.2022


 Ashish Grover
 Advocate
 Counsel for the appellant



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

Appeal No. 95 of 2022

Punjab Urban Planning and Development Authority, PUDA
Bhawan, Secto-62, Sahibzada Ajit Singh Nagar (Mohali)
through its Estate Officer.

....Appellant

Versus

1. Manoj Ahuja, R/o 1428, Phase 3B-2, Sector-62, Sahibzada Ajit Singh Nagar (Mohali).
2. Adjudicating Officer, Real Estate Regulatory Authority, Punjab First Floor, Plot No. 03, Block-B, Madhya Marg, Sector-18 A, Chandigarh (160018).

.....Respondents

Present: Mr. Ashish Grover, Advocate for the appellant.
Mr. Vinod Verma, Advocate for the respondent no.1.
None for respondent no.2

CORAM:

**JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE
(RETD.), MEMBER (JUDICIAL)**

**ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./ TECH.)**

(MAJORITY VIEW)

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

1. This appeal is directed against the order dated 17.05.2021, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab.



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2. Learned counsel for the appellant at the outset places reliance on the recent judgment of the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.", refers to Para 83 and 86, to contend that the Adjudicating Officer would have no jurisdiction to entertain and decide issues relating to refund and interest, even though he is specifically empowered under the Act to deal with the issues of compensation, which has also been approvingly observed by the Hon'ble Supreme Court in "M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.". He thus prays that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the impugned orders need to be set aside.
3. The ratio of our order passed in "Appeal No.277 of 2020", would be attracted to the facts of the present case as well.
4. Accordingly, we deem it appropriate to dispose of the appeal with a liberty to the complainants to move an appropriate application in Form M seeking refund & interest and Form N seeking compensation before the competent Authority/ Adjudicating Officer.
5. In case, such applications are moved, the same shall be decided expeditiously by the Competent Authority/ Adjudicating Officer as the case may be in accordance with law.
6. We are of the opinion, that in order to ensure expeditious disposal of the matter, the parties should put in appearance before the Authority/Adjudicating Officer as the case may be, which in turn shall pass appropriate orders either for allocating the proceedings to the appropriate Authority/Adjudicating



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Officer or for return of the complaint with a permission to the complainant to file appropriate proceedings in Form-M or Form-N as the case may be. The Authority in this manner would have the benefit of providing a time-frame for the entire process as both the parties would be before it and the necessity of affecting service etc. may not arise. The Authority/ Adjudicating Officer shall then proceed to determine the matter in accordance with law.

7. Parties are directed to appear before the Real Estate Regulatory Authority, Punjab on 15.12.2022.
8. Since the appeal is being remanded back we hereby direct that the amount deposited by the appellant (developer) as a pre-requisite to the filing of the appeal under Section 43(5) of the Act be released to the appellant (developer) forthwith along with interest that have accrued thereon after due verification and by following proper procedural law.

File be consigned to record room.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

November 24, 2022
DS

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

06/12/2022

REAL ESTATE APPELLATE TRIBUNAL PUNJAB AT CHANDIGARH

Appeal No. 95 of 2022

Punjab Urban Planning and Development Authority, PUDA Bhawan, Sector -62, Sahibzada Ajit Singh Nagar (Mohali) through its Estate Officer

.....Appellant

Versus

1. **Manoj Ahuja**, resident of 1428, Phase 3-B-2, Sector -62, Sahibzada Ajit Singh Nagar (Mohali).
2. Adjudicating Officer, Real Estate Regulatory Authority Punjab, First Floor, Plot No.3, Block-B, Madhya Marg, Sector-18-A, Chandigarh-160018

.....Respondents

Present: Mr. Ashish Grover, Advocate for the appellant
Mr. Vinod Verma, Advocate for the respondent No. 1

QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.), MEMBER (JUDICIAL)

ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./ TECH.)



JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER (RETD.), MEMBER (ADMN./TECH.) – HIS VIEW)

1. By this order, I will dispose of above mentioned appeal dated 23.05.2022 (Diary No. 348 dated 24.05.2022 and re-diary No. 403 dated 06.06.2022) bearing Appeals No. 95 of 2022 (**Punjab Urban Planning and Development Authority versus Manoj Ahuja and another**) filed against the order dated 17.05.2021 passed by Sh. Balbir Singh, Adjudicating Officer (*hereinafter referred to as the Adjudicating Officer or the AO*) of the Real Estate

Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing AdC Nos. 12482019 filed on 23.06.2019.

2. The complaint has been accepted by the Adjudicating Officer vide his aforesaid order dated 17.05.2021 to the following extent:-

1.	Principal amount	Rs.18,08,512/-
2.	Simple interest	At the SBI highest marginal cost of lending rate plus 2% on the principal amount from the date of respective payments till realization
3.	On account of mental agony and litigation expenses	Rs. 75,000/-

The appellant (*hereinafter may also be referred to as the promoter or the developer*) has been directed vide aforesaid order to pay the above said amount to the respondent No. 1 (*hereinafter may also be referred to as the complainant or the allottee or the buyer*) within sixty days from the date of the said order; and it has also been ordered that if any amount has been received by the complainant from the appellant by way of refund or compensation on the amount paid to the appellant way of sale consideration of property unit in question, the same shall be adjusted from the total amount awarded to the complainant in the said order dated 17.05.2021

3. The complaint has been filed before the Adjudicating Officer of the Authority (*the respondent No. 2 in this appeal*), in form 'N' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) read with its section 71 and Rule 37(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).

4. The complainant, in his complaint dated 23.06.2019, has inter alia claimed/alleged that (i) a 331 square yard plot was allotted vide letter of intent (LOI) dated 26.05.2015; (ii) that an amount of Rs.



6,95,100/-, finance by PNB, was paid as earnest money, being 10% of tentative price of the plot @ Rs. 21,000/- per square yard; (iii) that the complainant deposited a sum of Rs. 11,81,670/- (Rs. 10,42,650/- towards 15% of the tentative price of the plot and Rs. 1,39,020/- towards 2% cancer cess as detailed in the LOI) vide DD dated 26.06.2015; (iv) that the possession of the plot was to be handed over to the allottee after completion of the development works at site or 18 months from the date of issuance of the allotment letter (dated 26.08.2016), whichever is earlier; (v) that the complainant was not informed of the actual location of the plot either by public circular or by providing site map with the allotment letter; (vi) that the appellant marked the plot numbers on the site in January 2018 with temporary markings; (vii) that the complainant found that he was allotted plot in the bed of seasonal Nullah/rivulet (Patiala ki Rao), which always gets filled with water in all seasons and effluent of nearby industries also flows in it; (viii) that the appellant uploaded the list of allottees, whose plots has been found non-feasible, on the website of GMADA, in which plot No. 625 is at Sr. No. 6, which is in/on the seasonal Nullah/rivulet, which always gets filled with water in all seasons and effluent of nearby industries also flows in it, making the site unfit for any residential construction or living; (ix) that the complainant demanded the refund of the entire amount vide representation dated 05.03.2018 (diary dated 12.03.2018) or to provide alternate plot and further dated 21.05.2018, stating that he has not paid further installments due to defective/non-feasible plot location; (x) that the complainant requested not to charge any interest or penalty for remaining amount till decision is taken by the appellant for allotment of an alternative plot, or to refund the deposited amount without any deductions; (xi) that the



complainant had already refused to take any alternative plot in lieu of the allotted plot No. 625 of 331.66 square yards, after making so many representations and seeking the refund of the entire amount along with interest, still the appellant included his name for another draw held on 29.10.2018 and offered him plot number 658 of 300 square yards; (xii) that the complainant, vide his said representation stated that the appellant has issued him a letter dated 21.11.2018 stating that the complainant was reallocated an alternative plot of 300 square yard without any consent or fresh application from the complainant that too was not found fit for residence purpose and were from plots surrendered by other applicants due to inhabitable conditions (in slum area/near rivulet bed and high tension wires going around across entire sector); (xiii) that original allotment letter has been deposited with the appellant; (xiv) that the appellant has now issued a letter dated 02.04.2019 stating that the amount will be refunded subject to 10% deduction, plus interest other dues payable, not paid till date; (xv) that the appellant did not give any notice or hearing before imposing penalty; (xvi) that the complainant had filed a consumer complaint before the State Commission, Punjab before any amount was ordered to be refunded and the same was dismissed as premature as the appellant had not decided the representation after the deposit of the original allotment letter etc.

5. The complainant has prayed in his said complaint inter alia for directions to the appellant to (i) refund the deposited amount of Rs. 18,80,512/-, along with interest @ 18% per annum for the delay period w.e.f. 26.05.2015 till the disbursement of the amount, as the allotment letter of the alternative plots were never issued or accepted by the complainant; (ii) to declare the order/letter dated



02.04.2019 illegal as no opportunity to hear or notice had been given before its issuance; (iii) to pay Rs. 2,00,000/- for causing inconvenience, mental pain, agony, facing financial hardship etc. and Rs.1,00,000/- as costs of litigation charges etc;

6. The appellant, in its reply dated 10.10.2019 to the complaint, has inter alia contended that (i) the part of the project, in which the plot in question is located, has been completed prior to coming into force of the provisions of the Act and a partial completion certificate has already been issued qua the project on 28.04.2017 and thus the Authority does not have jurisdiction to entertain the complaint; (ii) that the complainant has not deposited the amount as per terms and conditions of the allotment letter and did not pay any amount towards the balance 75% of the price of the plot; (iii) that in response to the complainant's request dated 12.03.2018 regarding non-feasibility of plot allotted to the complainant, the appellant decided to hold a draw of lots for providing alternative plots to such applicants on 29.10.2018 and in this draw, the complainant was allotted plot number 658 of the same size and in the same sector as requested by him in his request dated 12.03.2018 and intimation in this regard was given to him vide letter dated 21.11.2018; (iv) that the complainant requested for refund and accordingly, refund order dated 02.04.2019 has been issued and sanction for payment of the refund amount was issued vide order dated 08.08.2019, which was handed over on 26.09.2019 to his sister whom the complainant has authorized vide his letter dated 23.09.2019.
7. The complainant, vide his rejoinder to the complaint, has inter alia submitted that (i) there was no completion certificate on the date of coming into force of the Act; (ii) that alternate plot is also not



feasible and fit for building house and was of size 300 square yards; (iii) that refund order (dated 02.04.2019) was issued after deduction of 10% of the amount of consideration, interest and other dues without giving any calculations to that effect and without giving any opportunity to the complainant as per provisions of the Punjab Regional and Town Planning and Development Act, 1995 (*hereinafter referred to as the PRTPD Act*); (iv) that no interest on the amount and compensation was given from the date of initial deposit.

8. After considering written and oral submissions of the parties, the Adjudicating Officer passed aforesaid order dated 17.05.2021, wherein it has inter alia been concluded as under and the appellant has been directed to pay Rs. 18,08,512/- to the complainant along with interest and compensation (after adjusting the amount of refund or compensation already paid) as detailed above:-

*"11. In view of above provisions of the Act, the respondent was duty bound to offer the possession of the plot in question and on account of non-delivery of possession **despite having received the due installments**, the complainant is entitled to the refund of the amount paid by the complainant to the respondent. As far as the submission made on behalf of the respondent that the amount was refunded after making deduction of 10% of the total amount of consideration, however, the allotted plot being non-feasible, its possession was not possible and as such **the complainant was not at fault in stopping further instalments** and in these circumstances no deduction could be made from the amount paid by the complainant. Hence, the respondent is liable to refund the full amount of Rs. 18,08,512/- to the complainant."*
[Emphasis laid]



9. Aggrieved by the above said order dated 17.05.2021 of the Adjudicating Officer, the appellant has filed its present appeal

before this Tribunal and has prayed to quash and set aside aforesaid order dated 17.05.2021 of the Adjudicating Officer and to dismiss the complaint.

10. The appellant also filed along with its appeal an application dated 23.05.2022 bearing Application No. 156 of 2022 for condonation of delay of 309 days in filing the present appeal, which has been opposed by the respondent vide his reply dated 17.10.2022 to the said application. However, I deem it appropriate to condone the delay, specifically keeping in view the order dated 10.01.2022 passed by Hon'ble Supreme Court in miscellaneous application No. 21 of 2022 in miscellaneous application No. 665 of 2021 in SMWP (Civil) No. 3 of 2020.

11. In the grounds of the appeal, it has inter alia been contended that (i) as per judgment dated 11.11.2021 passed by Hon'ble Supreme Court in Civil Appeals No. 6745-6749 of 2021 titled as **Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others** and connected matters, the complaints against the projects, which are not registered under the provisions of the Act, are not maintainable; (ii) that the Adjudicating Officer does not have jurisdiction to order refund of the deposited amount; (iii) that no evidence was led by the complainant regarding non-feasibility of the re-allotted plot; (iv) that the complainant was defaulter as he had not paid any amount after the payment of 25% of the price of the plot; (v) that no reason for awarding Rs. 75,000/- on account of mental agony and litigation expenses has been given;

MY OPINION IN THE MATTER OF JURISDICTION OF THE ADJUDICATING OFFICER OF REAL ESTATE REGULATORY AUTHORITY PUNJAB FOR ADJUDICATION OF COMPLAINTS MADE IN COMPOSITE APPLICATION INVOLVING REFUND/RETURN OF AMOUNT DEPOSITED BY



THE ALLOTTEE, INTEREST THEREON AND COMPENSATION:

12. I have expressed my opinion in detail while disposing off Appeal No. 277 of 2020 (EMAAR India Ltd. (formerly EMAAR MGF Land Limited) versus Sandeep Bansal) vide order dated 24.02.2022 and further updated it while disposing off cross appeals bearing Appeal No. 268 of 2020 (Vijay Mohan Goyal &Anr. versus Real Estate Regulatory Authority Punjab &Ors.) and Appeal No. 6 of 2021 (PDA Patiala versus Vijay Mohan &Ors.) vide order dated 03.03.2022, as per which, I am of the view that the appeals, against the orders passed by the Adjudicating Officer in the complaints involving composite claim of refund, interest thereon and compensation, need not be remanded by this Tribunal to the Authority but should be decided by this Tribunal on merit, provided that such orders have been passed by the Adjudicating Officer pursuant to the directions imparted by the Authority in this regard vide its circular No. RERA/Pb./ENF-17 dated 19.03.2019 in view of the judgment dated 27.02.2019 of this Tribunal in Appeal No. 53 of 2018 or vide circular No. RERA/PB/LEGAL/24 dated 05.03.2021 of the Authority but before (in both the cases) the decision of the Authority circulated vide its circular No. RERA/LEGAL/2021/8950 dated 06.12.2021.

MY OPINION IN THE PRESENT APPEAL

13. One of the grounds taken by the appellant in his appeal for challenging the aforesaid order dated 17.05.2021 of the Adjudicating Officer is that as per aforesaid judgment dated 11.11.2021 passed by Hon'ble Supreme Court, the Adjudicating Officer has no jurisdiction to adjudicate upon the matters pertaining to refund of amount.



14. In this regard, it is mentioned that taking notice of reference of circular dated 05.03.2021 of the Authority in another order dated 15.04.2021 of the Adjudicating Officer in Appeal No. 130 of 2021 (**Country Colonisers Pvt. Ltd. versus Rupinder Kaur Narang and others**) and then perusing, with specific reference to aforesaid circular dated 05.03.2021, the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India in Civil Appeal No(s). 6745-6749 of 2021 titled 'M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP &Ors. etc and connected matters', I arrived at the conclusion, specifically by conjoint reading of paragraphs 86, 120 & 116 (in this sequence) of the aforementioned judgment dated 11.11.2021 and section 81 of the Act, that the delegation of its power of "refund of the amount and interest thereon" by the Authority vide aforementioned circular dated 05.03.2021 to its Adjudicating Officer in the cases in which compensation (including payment of interest as compensation) is additionally claimed is in accordance with the mandate of law viz section 81 of the Act and hence, the so empowered/directed Adjudicating Officer has the jurisdiction to deal all cases where the claim is for the return of amount deposited by the allottee, interest thereon and in addition compensation (including payment of interest as compensation). Accordingly, during the proceedings held on 10.01.2022 in the afore-mentioned Appeal No. 130 of 2021, I expressed my aforementioned opinion, which has also been expressed by me as my view in the judgments/orders of this Tribunal in the appeals mentioned under paragraph 12 above and in some more appeals disposed of thereafter. Because aforesaid circular dated 05.03.2021 has been amended by the Authority vide its circular dated 06.12.2021 i.e. after the date of the impugned order dated 17.05.2021, therefore, I hereby hold that the



Adjudicating Officer was having jurisdiction at the time of passing the impugned order dated 17.05.2021 to deal with the complaints/ applications involving refund of the amount deposited, interest thereon and compensation etc.

15. Hon'ble High Court of Punjab and Haryana, in the judgment dated 17.08.2022 passed by it in CWP No. 7738 of 2022 (M/s International Land Developers Private Limited versus Aditi Chauhan and others) and connected matters, while inter alia deciding the issues raised with regard to the manner of execution of the orders impugned in CWP No. 9942 of 2022 (one of the said connected matters), has held as under:-

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

It is to be observed that execution of orders is a function that can be effectively carried out by the Adjudicating Officer, especially with Section 71 of the Act stipulating that such officer would be a person who is or has been a District Judge. Thus, very obviously such Adjudicating Officer would be completely familiar with the manner of execution of a decree issued or order passed in civil proceedings; and



consequently would be the appropriate person to execute his own orders as also those of the Tribunal/Authority under the Act.” [Emphasis laid]

16. Another ground taken by the appellant to impugn the aforesaid order dated 17.05.2021 is that as per judgment dated 11.11.2021 passed by Hon'ble Supreme Court in Civil Appeals No. 6745-6749 of 2021 titled as **Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others** and connected matters, the complaints against the projects, which are not registered under the provisions of the Act, are not maintainable.
17. This ground too does not hold much water as it has inter alia been held by this Tribunal vide order dated 25.04.2022 passed in Appeal No. 60 of 2022 (**Aman Sethi and another versus Dara Buildtech & Developers Limited and others**) and connected matters that “28. -----XXXXX----- *to establish a fact, whether a project is ongoing or complete to resultantly liberate the promoter of the consequences of the Act are matters of fact to be determined during the course of proceedings initiated by an aggrieved person. The non-applicability of the Act cannot be a presumption to be derived from a fact simplicitor of a project not being registered.*”.
18. The Adjudicating Officer has inter alia held in aforesaid order dated 17.05.2021 that “5. -----XXXXX----- *The argument however lacks merit as the Letter of Intent in this case is dated 26.05.2015, whereas the allotment letter has been issued on 26.08.2016 i.e. one year three months after issuance of letter of intent. Possession of the plot was to be delivered within 18 months from the date of allotment letter i.e. upto 26.02.2018. If the part of the project in which the plot of the complainant falls was complete by 28.04.2017 as is being claimed by the respondent on the basis of partial completion certificate Annexure R1, then what was the hitch for the*



respondent to issue offer of possession letter with demand of remaining amount, is not known as it is neither the case of the respondent that they have issued any such offer of possession letter nor they have ever cancelled the allotment. In these circumstances, how the complainant could come to know about the alleged completion of the project and as such he was justified in further stopping the payments. As such, the fault lies with the respondent in not intimating the complainant regarding the status of the project and further in not making offer of possession, which they have not done till date. In such a situation, it could not be said that the project of the case in hand was complete prior to coming into force of the Act. It was an ongoing project and the plot in question was not fit for delivery to the complainant. In these circumstances, the present project was ongoing and had not been completed; -----XXXXXX-----.” and has also held that “6. Further, as per the own list issued by the respondent alongwith a public notice Annexure C4, leaves no doubt that the plot No.625 shown at Sr.No.6 of said list was non-feasible as declared by the respondents themselves and in these circumstances, how the project could be said to be partially complete. -----XXXXX-----.”.

19. Yet another ground taken by the appellant to impugn the aforesaid order dated 17.05.2021 is that no evidence was led by the complainant regarding non-feasibility of the re-allotted plot.

20. In this regard, the Adjudicating Officer has held in his aforesaid order dated 17.05.2021 that “6. -----XXXXX-----”. In the complaint and during arguments it was submitted that the re-allotted plot was also defective being near the rivulet bed and high tension wires and on that score having been surrendered by other allottee. This version of the complainant has not been specifically



denied by the respondent and in these circumstances, how the complainant could be forced to take possession of a plot which was not fit for construction or residence.”.

21. Nevertheless, the re-allotted plot No. 658 is not included in the list of non-feasible plots (Annexure C-4).
22. Yet another contention taken by the appellant in his appeal is that the complainant was defaulter as he had not paid any amount after the payment of 25% of the price of the plot.
23. In this regard, as per clauses 3(I) and 3(II) of the allotment letter dated 26.08.2016, vide which plot No. 625 measuring 331.66 square yards was allotted to the complainant, payment of Rs. 3,645/- towards the balance 25% amount for the for an excess area of 0.66 square yards and Rs. 277/- towards 2% cancer cess for such excess area was to be deposited by the complainant; and as per calculation sheet filed by the appellant along with his present appeal, besides payment of Rs. 6,95,100/- on 15.01.2015 towards earnest money and Rs. 10,42,650/- on 26.06.2015 towards 15% of the price of a plot of 331 square yards applied for along with an amount of Rs. 1,39,020/- towards 2% cancer cess, the complainant paid Rs. 3,465/- and Rs. 277/- on 01.11.2016, ostensibly towards the balance 25% amount for an excess area of 0.66 square yards and towards 2% cancer cess for such excess area, of course with a delay of 37 days.
24. As per said LOI date 26.05.2015 and allotment letter dated 26.08.2016, the balance 75% of the price of the plot could be paid either in lump sum without interest (but with a rebate @ 5% thereon) in 60 days from the issuance of the allotment letter or in six equated half-yearly installments along with interest @ 12% per



annum, with the first installment becoming due after one year from the date of issue of allotment letter; and possession of the plot was to be handed over to the allottee after completion of development works at site or 18 months from the date of issuance of the allotment letter whichever happened to be earlier.

25. Thus, the payment of first installment amounting to Rs. 14,97,445/- had fallen due on 29.08.2017 whereas possession was to be handed over by 26.02.2018. It is also worth mentioning here that the payment of second installment amounting to Rs. 11,31,194/- had also fallen due on 28.02.2018, besides penalty for delay (rather non-payment) of the first installment in time as per provisions in the LOI and the allotment letter.
26. Thus, the allottee has defaulted even before the due/promised date of possession in making the timely payment towards the balance 75% of the price of the plot as per agreed terms. Since the allottee has never paid even a single penny towards the balance 75% of the price of the plot and applicable penalty/interest for delay in payments, the default on the part of the allottee is continuing since 29.08.2017 i.e. since the times before the due/promised date of possession viz 26.02.2018.
27. The complainant, in his complaint dated 23.06.2019, has inter alia stated that (i) the complainant was not informed of the actual location of the plot either by public circulation nor any site map was provided with allotment letter to know the actual location of plot; (ii) that the complainant visit PUDA (the appellant) multiple times to get the site map to know the actual location of the plot; (iii) that the appellant marked the plot numbers on site in January 2018 with temporary markings; (iv) that the complainant found that he was allotted plot in the bed of seasonal rivulet; (v) that the



complainant made representation dated 05.03.2018 requesting for a refund of invested money or provide alternative plot. These statements of the complainant imply that the complainant came to know about the actual location of plot No. 625 some where between January 2018 to 05.03.2018. This means that the complainant defaulted in making the payment of first installment amounting to Rs. 14,97,445/- due on 29.08.2017 and penal interest thereon even before he came to know about the actual location of the plot No. 625. Hence, the statement of the complainant in his letter dated 21.05.2018 and in his complaint dated 23.06.2019 that he has not paid further installments due to defective plot location is only a farce.

28. Thus, it is the allottee who has squarely defaulted first since 29.08.2017, not only even before the due date of possession by 26.02.2018 but also even before he came to know about the actual location of the plot No. 625 somewhere between January 2018 to 05.03.2018 and has thus violated the provisions of section 19(6) of the Act.
29. As per clause 7.3 of the Form 'Q' (i.e. the 'agreement for sale' prescribed in terms of section 13(2) of the Act read with Rule 8(1) of the Rules) appended to the Rules, on failure of allottee to pay the installment as per schedule given in allotment letter, apart from paying the interest on the delayed amount, the possession of the plot/apartment shall be extended to the extent of period of delay in paying the defaulted amount.
30. As the allottee was continuously under default since 29.08.2017 for non-payment of installments and penalty/interest for delayed payment thereof, possession of the plot continued to be extended, in terms of the aforementioned provisions of clause 7.3 of the



aforesaid Form 'Q', to the extent of period of delay in paying the defaulted amount.

31. As per clause 7.5 of the aforesaid Form 'Q', the allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act, provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter is entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment.
32. Despite being fully aware of at least the provisions of the LOI dated 26.05.2015 and the allotment letter dated 26.08.2016 to the effect of resumption of the plot and forfeiture of an amount not exceeding 10% of the total amount of the consideration money, interest and other fees payable in respect of the plot in case of non-payment of any amount due together with the penalty, the allottee continued with his default ever since 29.08.2017 in non-payment of any amount towards the balance 75% of the price of the plot and penalty/interest for the delayed payment, and the said default is continuing since the time before the due/promised date of possession as well as before the complainant came to know about the actual location of the plot No. 625 and therefore about its non-feasibility.
33. The complainant cannot be rewarded for his own default of non-payment of even the first of the six installments of the balance 75% of the price of the plot.
34. The complainant has stated in his complaint dated 23.06.2019 that the complainant had filed a consumer complaint before the State Commission, Punjab before any amount was ordered to be



refunded and the same was dismissed as pre-mature as the appellant had not decided the representation after the deposit of the original allotment letter etc. However, no evidence has been placed on record in this regard.

35. In view of above, in my opinion, the respondent No. 1 is not entitled to refund of any additional amount than what has been ordered by the competent statutory authority of the appellant after forfeiture of 10% of the total amount of consideration money, interest and other dues payable as ordered vide its order dated 02.04.2019 (Annexure C-8).
36. Hence, I deem it appropriate to set aside the impugned order dated 17.05.2021 passed by the Adjudicating Officer in the complaint bearing AdC No. 12482019 and to dismiss the complaint.
37. Ordered accordingly.
38. 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)

November 24th, 2022

Certified To Be True Copy

Manendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

06/12/2022.

