

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

Subject: -

**APPEAL NO.58 OF 2021**

Satwinder Singh, resident of Village Sahauran, SAS Nagar, Mohali,  
Punjab-140103.

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H. B. No.195, Sector  
92, SAS Nagar (Mohali)- 140308

...Respondent

**APPEAL NO.59 OF 2021**

Subhash Singh, resident of House No.176, Adarsh Colony, Sahibzada  
Ajit Singh Nagar (Mohali), 160055, Punjab.

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H. B. No.195, Sector  
92, SAS Nagar (Mohali)- 140308

....Respondent



**APPEAL NO.60 OF 2021**

Mohd. Isha, resident of #2730, Sector 55, Chandigarh-160055.

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H. B. No.195, Sector  
92, SAS Nagar (Mohali)- 140308

....Respondent

**APPEAL NO.61 OF 2021**

Sanjeev Sharma, resident of #160, Phase-3A, SAS Nagar(Mohali),  
Punjab-160055.

...Appellant

Versus

BBSB Enterprises, Mohali, Sukchain Singh, Hoshiar Singh, Village Chapparchiri Kalan, H. B. No.195, Sector 92, SAS Nagar (Mohali)-140308.

....Respondent

**APPEAL NO.62 OF 2021**

Archana Sharma, resident of #160, Phase-3A, SAS Nagar (Mohali), Punjab-160055.

...Appellant

Versus

BBSB Enterprises, Mohali, Sukchain Singh, Hoshiar Singh, Village Chapparchiri Kalan, H. B. No.195, Sector 92, SAS Nagar (Mohali)-140308.

....Respondent

**APPEAL NO.63 OF 2021**

Chandar Parkash, resident of D-197, Indl. Area, Phase-8B, SAS Nagar(Mohali), Punjab-160055.

...Appellant

Versus

BBSB Enterprises, Mohali, Sukchain Singh, Hoshiar Singh, Village Chapparchiri Kalan, H. B. No.195, Sector 92, SAS Nagar (Mohali)-140308.

....Respondent

**APPEAL NO.92 OF 2021**

Adip Manchanda, resident of House No.46, Air Force Enclave, Dhakoli, Sahibzada Ajit Singh Nagar(Mohali), Punjab-160104

...Appellant

Versus



Sukhchain Singh, Village Chapparchiri Kalan, H. B. No.195, Sector  
92, SAS Nagar (Mohali)- 140308

....Respondent

Memo No. R.E.A.T./2023/ 471

To,

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

Whereas appeals titled and numbered as above were 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 26<sup>th</sup> day  
of December, 2023.



*Dhanraj Kumar*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL AT  
CHANDIGARH

APPEAL NO. 58 OF 2021

MEMO OF PARTIES

Satwinder Singh, Residence of Village Sahauran, SAS Nagar  
Mohali, Punjab-140103. ...Appellant

VERSUS

Sukhchain Singh, Village Chapparchiri Kalan, H. B. No. 195, Sector 92,  
SAS Nagar (Mohali) - 140308 ... Respondent



CHANDIGARH

DATED: 17.08.2021

*H*  
(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)  
P/1190/2016 P/2651/2017 P/3230/2018  
ADVOCATES  
Counsels for the Appellant

IN THE REAL ESTATE APPELLATE TRIBUNAL AT  
CHANDIGARH

APPEAL NO. 60 OF 2021

MEMO OF PARTIES

Mohd. Isha, R/o # 2730, Sector 55, Chandigarh – 160055.

...Appellant

VERSUS

Sukhchain Singh, Village Chapparchiri Kalan, H. B. No. 195, Sector 92,  
SAS Nagar (Mohali) - 140308

... Respondent



CHANDIGARH

DATED: 17.08.2021

(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)  
P/1190/2016 P/2651/2017 P/3230/2018

ADVOCATES  
Counsels for the Appellant

IN THE REAL ESTATE APPELLATE TRIBUNAL AT  
CHANDIGARH

APPEAL NO. 59 OF 2021

MEMO OF PARTIES

Subhash Singh R/o House No 176 Adarsh Colony, Sahibzada  
Ajit Singh Nagar (Mohali), 160055, Punjab  
... Appellant

VERSUS

Sukhchain Singh, Village Chapparchiri Kalan, H. B. No. 195, Sector 92,  
SAS Nagar (Mohali) - 140308  
... Respondent



CHANDIGARH  
DATED: 17.08.2021

*HW*  
(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)  
P/1190/2016 P/2651/2017 P/3230/2018  
ADVOCATES  
Counsels for the Appellant

IN THE REAL ESTATE APPELLATE TRIBUNAL AT  
CHANDIGARH

APPEAL NO. 61 OF 2021

MEMO OF PARTIES

Sanjeev Sharma, Residence of #160, Phase-3A, SAS Nagar  
(Mohali), Punjab-160055,  
...Appellant

VERSUS

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshiar Singh, Village  
Chapparchiri Kalan, H. B. No. 195, Sector 92, SAS Nagar (Mohali) - 140308  
... Respondent

CHANDIGARH

DATED: 17.08.2021



(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)  
P/1190/2016 P/2651/2017 P/3230/2018  
ADVOCATES  
Counsels for the Appellant

IN THE REAL ESTATE APPELLATE TRIBUNAL AT  
CHANDIGARH

APPEAL NO. 62 OF 2021

MEMO OF PARTIES

Archana Sharma R/o #160, Phase-3A, SAS Nagar (Mohali)  
Punjab-160055.

... Appellant

VERSUS

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshier Singh, Vill  
Chapparchiri Kalan, H. B. No. 195, Sector 92, SAS Nagar (Mohali) - 14030

... Respondent

CHANDIGARH

DATED: 17.08.2021



*-W-*  
(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)  
P/1190/2016 P/2651/2017 P/3230/2018

ADVOCATES  
Counsels for the Appellant



IN THE REAL ESTATE APPELLATE TRIBUNAL AT  
CHANDIGARH

APPEAL NO. 63 OF 2021

MEMO OF PARTIES

Chander Parkash, R/o D-197, Indl. Area, Phase-8B, SAS  
Nagar (Mohali), Punjab-160055.  
...Appellant

VERSUS

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshiar Singh, Village  
Chapparchiri Kalan, H. B. No. 195, Sector 92, SAS Nagar (Mohali) - 140308.  
... Respondent



CHANDIGARH

DATED: 17.08.2021

(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)  
P/1190/2016 P/2651/2017 P/3230/2018  
ADVOCATES  
Counsel for the Appellant

AT CHANDIGARH

APPEAL NO **92** OF 2021

MEMO OF PARTIES

1. Adhip Manchanda R/o House No 46 Air Force Enclave  
Dhakoli, Sahibzada Ajit Singh Nagar (Mohali), Punjab-160104

...Appellant

VERSUS

1. Sukhchain Singh R/o # H.B. NO 195, Village Chapparchiri Kalan, Sector 92,  
Sahibzada Ajit Singh Nagar, Mohali, Punjab, 140308.

... Respondent



CHANDIGARH

DATED: 17.08.2021

(HIMANSHU GUPTA & YASEEN SETHI & NIKITA GARG)

P/1190/2016

P/2651/2017

P/3230/2018

ADVOCATES

Counselors for the Appellant

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

**APPEAL NO. 58 of 2021**

Satwinder Singh R/o Village Sahauran, SAS Nagar, Mohali,  
Punjab-140103.

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H.B. No.195,  
Sector 92, SAS Nagar (Mohali)-140308

....Respondent/Complainant

**Appeal No.59 of 2021**

Subhash Singh R/o #176, Adarsh Colony, SAS Nagar  
(Mohali)-160055

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H.B. No.195,  
Sector 92, SAS Nagar (Mohali)-140308

....Respondent/Complainant

**Appeal No.60 of 2021**

Mohd. Isha, R/o #2730, Sector 55, Chandigarh-160055

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H.B. No.195,  
Sector 92, SAS Nagar (Mohali)-140308

....Respondent/Complainant

**Appeal No.61 of 2021**

Sanjeev Sharma, R/o #160, Phase-3A, SAS Nagar (Mohali),  
Punjab-160055

...Appellant

Versus

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshiar Singh,  
Village Chapparchiri Kalan, H.B. No.195, Sector 92, SAS  
Nagar (Mohali)-140308

....Respondent/Complainant



**Appeal No.62 of 2021**

Archana Sharma, R/o #160, Phase-3A, SAS Nagar, Mohali,  
Punjab-160055

...Appellant

Versus

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshiar Singh,  
Village Chapparchiri Kalan, H.B. No.195, Sector 92, SAS  
Nagar (Mohali)-140308

....Respondent/Complainant

**Appeal No.63 of 2021**

Chander Parkash, R/o D-197, Industrial Area, Phase-8B, SAS  
Nagar (Mohali), Punjab-160055

...Appellant

Versus

BBSB Enterprises, Mohali, Sukhchain Singh, Hoshiar Singh,  
Village Chapparchiri Kalan, H.B. No.195, Sector 92, SAS  
Nagar (Mohali)-140308

....Respondent/Complainant

**Appeal No.92 of 2021**

Adhip Manchanda, R/o #46, Air Force Enclave, Dhakoli, SAS  
Nagar (Mohali) 160104

...Appellant

Versus

Sukhchain Singh, Village Chapparchiri Kalan, H.B. No.195,  
Sector-92, SAS Nagar (Mohali) 140308

....Respondent/Complainant

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**Present:** - Mr. Himanshu Gupta Advocate for the appellant  
Mr. Jasdeep Singh, Advocate for Mr. Vipul Monga,  
Advocate for the respondent.

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

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

**MEMBER (JUDICIAL)**



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

1. By this order we will dispose of seven appeals bearing Nos.58, 59, 60, 61, 62, 63 and 92 of 2021 titled Satwinder Singh Vs. Sukhchain Singh, Subash Singh Vs. Sukhchain Singh, Mohammad Isha Vs Sukhchain Singh, Sanjeev Sharma Vs Baba Banda Singh Bahadur Enterprises, Archana Sharma Vs Baba Singh Bahadur Enterprises Chander Parkash Vs. Baba Banda Singh Bahadur Enterprises and Adhip Manchanda Vs Sukhchain Singh as they have commonality of facts, involving similar controversy.
2. At the request of the learned counsel for the appellant the facts are being taken from Appeal No.60 of 2021.
3. The impugned order of the Authority dated 21.05.2021 answered all the complaints of the allottees by a common order. All the allottees involved in these cases had filed complaints before the Real Estate Regulatory Authority (hereinafter referred to as the Authority), with a very limited grievance, that they were applicants in a project by the name of 'Knowledge Park' being developed by M/s Baba Banda Singh Bahadur (BBSB) Enterprises. Almost 30% of the amount was deposited against the receipts but possession, as promised did not materialize for about 4 years. It was alleged in the complaint that the developer (respondent herein) had started developing another project by the name of "Posh City", a residential colony and M/s Sukhchain Singh (a partner in M/s BBSB Enterprises) sold land to ACME Builder without any information to them.



4. A prayer was thus made in the complaint that the Authority issue appropriate directions for giving the same plot as the one booked by the allottees and in the same location. The details of all the allottees and the amounts deposited by them are as below:-

Sr. No	Name of the complainant	Unit Details with Area	Rate @ per rate	Date of agreement	Period for completion	Date of Promised possession	Basic Sale Price	Amount paid by the complainant
1	Adhip Manchanda	Plot No. B-11 (250 Sq. Yards.)	9200/- per sq. yard	27.07.2015	3 years	26.07.2018	2300000	784000
2	Satwinder Singh	Plot No. B-9 (250 Sq. Yards)	9200/- per sq. yard	21.07.2015	3 years	20.07.2018	2300000	690000
3	Subhash Singh	Plot No. B-4 (250 Sq. Yards)	11000/- per sq. yard	07.01.2016	3 years	06.01.2018	2750000	945000
4	Mohd Isha	Plot No. C-4 (250 Sq. Yards)	10000/- per sq. yard	02.07.2015	3 years	01.07.2018	2500000	750000
5	Sajeev Sharma	Plot No. A-6 (500 Sq. Yards)	7500/- per sq. yard	06.08.2015	3 years	05.08.2018	3750000	1125000
6	Archana Sharma	Plot No. A-5 (500 Sq. Yards)	7500/- per sq. yard	20.03.2015	2 years	19.03.2017	3750000	1125000
7	Chander Prakash	Plot No. C-5 (250 Sq. Yards)	9200/- per sq. yard	16.01.2016	3 years	15.01.2019	2300000	925000



5. The developer (respondent herein) has explained the factual position. It was not denied that the appellants had applied for plots in the BBSB Knowledge Park, Sector 91-92 Mohali, but it was clarified to say that the respondent was a partnership firm which had entered into an agreement to sell after purchasing 15.56 Acres of land for development of Knowledge Park under the "Invest Punjab initiative" of Government of

Punjab for which the principal approval was granted by the Government of Punjab. The copy of the old master plan as existing at that point of time was appended to the reply. It was pleaded that subsequent to this, the respondent deposited various charges demanded by the Government of Punjab regarding which also the necessary receipts/documents were appended. The receipt of the payments from the allottees was also admitted. The Buyers Developer Agreement, on receipt of the amounts from the allottees was executed on 02.07.2015 which specified that the allotment was provisional and subject to directions, ruling, provisions, terms and conditions laid down in Invest Punjab Policy, 2013. It also bound the allottees to future approvals, letters, and rules that may be framed by the Government of Punjab with regard to the 'Invest Punjab Policy'. The agreement further envisaged that the project could be altered as per the Regulations of the Government of Punjab, Municipal Laws or other statutory Authorities.

6. The respondent went on to clarify further that the Government of Punjab in its meeting dated 30.04.2016 decided to alter the zoning of Sector 91 and 92, Mohali. A public notice was issued with regard to the change in the zoning plan that has been appended to the reply as Annexure R-12. As a consequence thereof the State of Punjab altered the institutional zone falling in Sector 92, Mohali to a residential one and a new Master Plan (2006 to 2031) came into effect. This also is on record as Annexure R-14.



7. Confronted with the situation the respondent was constrained to scrap the project of integrated knowledge park since institutional zone itself stood converted to a residential zone. All the allottees were asked to collect the amount alongwith 9% interest vide Letter dated 08.04.2017 appended to the reply as Annexure R-14. This was followed by a reminder dated 27.04.2017 but the present allottees failed to respond to this. It has been stated in the reply that some of the allottees availed of this offer and were granted alternate plots in the new project being undertaken. It was thus prayed that the complaints being frivolous ought to be dismissed.
8. An important fact that needs to be highlighted is that the respondent (developer) has consistently maintained that they are willing to return the amount to the allottees along with interest. This was stated so in the reply and even before us the same stand was reiterated.
9. The Authority went into the matter in detail and passed the impugned order dated 21.05.2021 with the majority of two is to one declining interference in the complaints. A dissent was recorded by one of its members. The majority view of the Authority was that in view of the change in master plan effected by the Government of Punjab scrapping the institutional zone in Sector 92 and converting it into a residential one rendered the contract between the allottees and the respondent in-executable. Applying the doctrine of frustration of contract and noticing the provisions of Section 18 (1) which envisaged such a contingency it was ordered that



the allottees be refunded the entire amount they had paid alongwith interest @9.30% per annum (today's highest MCLR rate of 7.30% plus 2%) from the dates on which the amounts were received. This was to be paid within 2 months from the date of the order.

10. Aggrieved of the above directions the allottees are in appeal.

The arguments raised by the learned counsel for the appellant are broadly based on the view of the dissenting member of the Authority. It was argued that the doctrine of frustration of contract could not be applied to the facts of the case and in fact the developer has resorted to manipulation to deprive the allottees of their entitlement. It was argued that in fact an agreement had been entered into between and one ACME Enterprises clandestinely to defeat the rights of the allottees. A Joint Development Agreement dated 09.01.2018 executed by Baba Banda Singh Bahadur Enterprises and M/s ACME Heights Infrastructure was shown to the Court and with reference to clauses of the agreement in particular Clause C it was submitted that the development rights of the land had been alienated in favour of this new entity ACME Heights with exclusive rights to construct and sell the units. It was alleged that these facts were neither brought to the notice of the Authority nor to the allottees and in this way the allottees interest have been seriously prejudiced.

11. We have noticed from the impugned order that a clarification was sought by the dissenting member on some aspects which



have been mentioned in Para 17 of his order and we choose to extract it here below:

17. *In response to the said order, the respondent has filed point-wise reply as follows:-*

- a. *The communication regarding the cancellation of their plots to the allottees had been delivered to the applicant/complainant. However, the evidence of delivery is not available in the record. It is important to state that the original had been served upon the complainant/applicant.*
- b. *The complainant (herein) has not yet filed the written statement in the civil suit so filed against them.*
- c. *The Integrated Knowledge Park was wound up after the change of land use by the PUDA, and subsequently, the Posh City project was established. The notification of PUDA is already on record.*
- d. *The persons Gurumukh Singh son of Late Gian Singh and Ram Singh son of Gurdass Singh had been refunded the amount and receipts of refund to Gurumukh Singh is annexed as Annexure R4 (Colly). Further Avtar Singh son of Ram Singh, Manjinder*



*Singh son of Avtar Singh have been provided with plots at new rates.*

*e. A Joint Development Agreement was entered into with M/s Acme Heights (P) Ltd. However, the legal notice has been served upon the M/s Acme Heights (P) Ltd. and the said joint development agreement has been cancelled as such no property stands transferred to M/s Acme Heights (P) Ltd. The joint development agreement is Annexure R5.*

12. We have consciously chosen to extract the above in order to lend clarity to our findings that we intend to record.

13. The learned counsel for the appellant finding strength from the dissenting view submitted that the developer has sold certain part of the project and 72 plots were alienated in favour of ACME Heights even prior to the registration of the Posh City under the provisions of RERA on 18.05.2018 which contravenes the provisions of Section 3 (1) of the Act.

14. The learned counsel for the developer has refuted all the submissions made by the learned counsel for the appellant and has relied extensively on the fact that the project could not be executed in view of the altered situation and that the bona fides of the developer were evident as they have always maintained that the allottees should collect their amount along with interest. In this regard notices were duly sent to the affected persons but the present allottees failed to



respond it. Even before the Authority this offer was made and to be correct to the record the same was repeated before us as well.

15. We have heard the learned counsel for the parties at some length. What needs to be set out at the outset is the sequence of facts along with dates.
16. There is no denial to the fact that the developer was desirous of setting up the knowledge park in Sector 92, Mohali in terms of the Punjab Initiative for investments regarding which he sought necessary approvals and submitted various charges etc. to the Government of Punjab.
17. Likewise the allottees application for plots and the amounts paid have not been denied.
18. What has been pleaded and established on basis of documents is the fact that the layout plan was changed by Government of Punjab after due procedure i.e. by issuing a public notice and inviting objections. The public notice is on record and has not been denied by the allottees. The layout plan was thus concededly changed to the knowledge of general public. The decision to alter the zoning of Sector 92, Mohali from the institutional to residential was initiated in a meeting dated 30.04.2016 and finally given effect to by a change in the zoning plan as is evident from Annexure R-13 dated 05.12.2016. These dates are important to understand the whole controversy because on 08.04.2017 barely 4 months after the change, the developer asked the allottees to collect the amount along with 9% interest expressing



helplessness in view of the Punjab Government's decision to scrap the project of knowledge park altogether. This was followed by another letter dated 27.04.2017.

19. In its dissent the Hon'ble Member of the Authority has proceeded on the assumption that no proof of delivery was produced when a clarification in this regard was sought by him.
20. We would not have ordinarily referred to the dissenting view but are constrained to do so as the arguments have broadly been advanced by the appellant on its basis. A perusal of the pleadings show that the developer has specifically pleaded this fact in his reply to the complaint along with copies of these communications to the allottees. No replication/rejoinder was filed by the allottees to refute this fact and assert that these notices were never received by them.
21. In the absence of any denial by them the fact would need to be treated as admitted and the appellant cannot contend that the onus of proving the receipt is also on the developer when this fact has not even being denied by him. Evidently the allottees did not care to avail off this offer which has been repeatedly given to them all throughout the proceedings. Even before us.
22. That apart the fact that an agreement was executed with Acme Heights or whether the project was registered as Posh City subsequently would not enhance the case of the allottees in any manner for the simple reason that these developments



took place in the year 2018 much later than the change in the development plan.

23. After the change in Zoning, the development plan by any developer, leave alone the respondent herein, would require it to be in conformity with the amended Zoning plan. The respondent thus had no choice. Insofar as the rights of the allottees or aspirants in 'Knowledge Park' are concerned their interest would be governed by Section 18(1) of the Act. And to be fair, the respondent is not shying away from it. He has accepted the impugned Order without a demur as the same largely conforms to his stand of refund with interest. Besides development agreement with Acme in 2018, cannot be of any avail to the allottees, since, a new development project, in tune with the amended zoning was not only the right of the developer but also a necessity for him. Apart from this, the appellants have appended numerous documents in their regard, which were never a part of the appellate record and we shall presume, not a part of record before the Authority as well. These have been brought forth in the shape of 'convenience compilation' and 'written submissions; and relate to facts that have not been specifically pleaded in the complaint. The complaint merely refers to it in passing, and the averment is not supported by any document. Not only this the prayer is limited only to the grant of same plot and no other prayer has been made regarding violation of provision of the Act.



24. Once the zoning plan was altered after due process and after a public notice, it has to be assumed that the appellants were also in the know of the change. Public notice is a notice to all and a person cannot plead ignorance on this count. These facts have not been denied by the appellants. Having said so, there can't be any other conclusion but to say that it is evident that the developer could have gone ahead with the development of the knowledge park only at the cost of being in conflict with law and the State Government.

25. It is obvious such a course was unavailable to the developer and consequently the Authority was right in noticing that the contract with the allottees could not have been taken further. Much has been argued that the developer had entered into an agreement with Acme Heights and alienated plots even before the Government took a decision to alter the zoning of Sector 91-92, Mohali. We cannot agree with this contention because the Joint Development Agreement containing the details of the land to be developed is dated 09.01.2018 i.e. much after the zoning was altered. To be fair to the appellants we would extract the relevant clause of the Joint Development Agreement with Acme Heights:

*C. As a part of the present deal it has been agreed and understood that first party being the owner of Parcel A has agreed to transfer/ vest with Second party the entire Development Rights for the land admeasuring 11838 sq. yards into*



*developed plots total numbering 72 plots and as a part of the said Development Rights, the entire responsibility of construction and sale thereupon shall be that of the Second party exclusively. However, the second party shall have no concern with rest of the land of the project i.e. land contained in Parcel B or any other land owned or possessed by first party. This agreement is exclusively for land measuring 11838 sq. yds. contained in Parcel A and not any other land except these 11838 sq. yds. whether the said land is part of this project or not. The second party shall not have any concern with other land owned or possessed by first party. The Parcel A is hereinafter referred to as "**the said property**" for the purpose of present Joint Development Agreement. The land under Parcel A and Parcel B has duly been marked on the Shizra plan which is annexed hereto as **Annexure C.***



26. All these developments are therefore post alteration by the State Government and cannot be taken to be an attempt to either conceal from the Government or the allottees to arrive at inference of an unfair practice. Section 18 of the Act also



takes into consideration a fact that if due to discontinuance of a business as a developer or an account of suspension or revocation of registration under the RERA Act or for any other reason the developer fails to complete or is unable to give possession of the apartment, plot or building then the only recourse available with the allottee is to seek refund or compensation, Section 18(1) is extracted herein below:

"18. (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.”

27. We would also like to state that assuming that there is grain of truth in what the allottees alleged before us, even then in the given circumstance it could either be a case for compensation which has to be established in appropriate proceedings or for the Authority to look into the violation of any provision of the Act. The allottees have neither initiated appropriate proceedings for compensation, nor they have given facts in detail in their complaint. To emphasize the solitary prayer made in the complaint is for a plot which they had applied for and nothing more than that. Even, otherwise it is for the Authority to look into any violation by a developer in view of complete mechanism provided in the Act.

28. A perusal of the complaint shows that no other fact was pleaded and for the purposes of clarity the complaint detailing facts and the relief claimed is extracted below:

**Complaint**

With due respect, I want to intimate that I have booked one plot (no C-4) Size (250 Sq. Yds) in the name of MOHAMMAD ISHA dated 02-07-2015 Knowledge Park developed by M/s Baba Banda Singh Bahadur(BBSB) Enterprises. I have already submitted 30% payment against booking of plot as per BBSB Enterprises condition and also have the agreement



*and the receipts of the payment made by us. But till date they have failed to give us possession of the plot, also asked any question regarding this they keep on giving us the dates from past 4 years and misleads and misguided us. Now on the same land that we have agreement for, they have developed another project in the name of POSH CITY of residential township and M/s Sukchain Singh sold a land to ACME BUILDER without any information given to us.*

**Relief**

*"I want the same plot and the same area as per the agreement"*

**Interim Stay**

*We request to that we want the same plot as the same location for which we have the agreement copy and the receipts as M/s Sukchain Singh and M/s Hosihar Singh has misguided us from last 4 years and had taken the money against the plot along with development charges.*



29. The filing of the complaint under Section 31 is in terms of Rule 36 of the Punjab State Real Estate Regulation and Development Rules 2007 (hereinafter known as the Rules) It envisages a complaint under Section 31 to be filed in Form-M

and prescribes an elaborate procedure to be followed by the Authority in holding a summary enquiry into the allegations made in the complaint. The Authority has the power to carry-out an enquiry into the complaint on the basis of documents and submissions to arrive at a conclusion whether the respondent is in violation of any provision of the act or has defaulted in its commitment prescribed by any agreement inter se between the parties. Nothing prevents the Authority from proceeding the matter even suo motu when it is apprised of any violation under the Act and it is at liberty to do so.

30. It would thus be necessary to see the complaint which the allottees filed to ascertain the grievance with which they approached the authority.
31. The extract of the complaint in the foregoing paragraphs is verbatim the grievance expressed by the complaints in their complaint before the Authority, as also the relief claimed. It is evident that their grievance is regarding the possession of the same plot as the one applied for in the abandoned project and they acknowledge in the same breath that they were aware of the residential town ship being set up by a name of "Posh City" as a replacement of the erstwhile project. It has to be kept in mind that they had applied for commercial units in the erstwhile project "knowledge park". The admission by the allottees of "Posh City" being a residential township has to be seen against dilemma placed upon the developer who, as the facts indicate, had to perforce abandon the project



"knowledge park" and convert it into a residential township in view of the changed zoning by the Government.

32. No other prayer except for grant of same plot as the one applied for was made before the Authority, to invite an enquiry broader than what the facts stated in the complaint, supported by the relief clause. Now if we evaluate, the relief claimed by the allottees obviously cannot be granted in the new project for the following reasons

1. They were applicants for commercial units in erstwhile project "knowledge park"
2. They admit that "knowledge park" has now been replaced by another project "Posh City" which is a residential township.
3. Their relief is restricted to the grant of same plot in the same area as per the agreement.
4. No other prayer has been claimed in the complaint.

33. Taken cumulatively the relief claimed by the allottees cannot be granted to them moreso, after a lapse of so many years and particularly when the government has changed the zoning, prohibiting the development of "Knowledge Park" and permitting only a residential township. It is thus clearly a case where the relief as claimed cannot be granted but the allottees certainly could have a built up a case for grant of compensation by pleading all these facts and establishing so before the Adjudicating Officer.

34. The fact that the project was rendered incapable of being executed is established beyond doubt and if that be so any inconvenience



cause to the appellants would entitle them to compensation for which they will have to make out a case which may include setting out and establishing their grievance in detail in terms of factors and the ingredients of Section 72 of the Act. With the aforesaid observations all the appeals stands dismissed.

35. In conclusion we would record that:

- a) The complaint is vague insofar as agreement with Acme and development of a new project is concerned.
- b) In the absence of any specific pleading and record, the majority view cannot be faulted with.
- c) The prayer in complaint is limited only to grant of same plot, which could not have been done in view of the changed zoning plan.
- d) The zoning and Master Plan was changed after following due process, and bound all i.e. the developer and general public.

36. We are thus of the opinion that the appeals are without merit. The developer has been forthright in his approach to offer refund along with interest which is exactly what the impugned order grants to the allottees. We would thus affirm the order of the Authority

*Sd/-*  
**JUSTICE MAHESH GROVER (RETD.)**  
**CHAIRMAN**

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

December 21, 2023  
SR *M*

Certified To Be True Copy

*Dhanendra Kumar*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh  
26/12/2023 *D*