

**BEFORE SHRI BALBIR SINGH, ADJUDICATING OFFICER,  
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB  
PLOT NO.3, BLOCK-B, FIRST FLOOR, SECTOR 18A,  
MADHYA MARG, CHANDIGARH.**

Complaint No. AdC 0050 of 2023 UR  
**Dated of Decision: 21.03.2024**

1. Jaswinder Singh, F-36, PDA Omaxe City, Patiala, District Patiala, Punjab.
2. Gurpreet Singh, House No.454/3, Khalsa Mohalla, Patiala, District Patiala, Punjab.

.....Complainants

Versus

Estate Officer, Patiala Urban Planning and Development Authority, Urban Estate-II, Patiala, District Patiala.

.....Respondent

Complaint under Section 31 of the Real Estate (Regulation and Development) Act 2016.

Present: Shri J.P. Singla, Advocate, representative for the complainants  
Shri Aashish Grover, Advocate, representative for respondent.

**ORDER**

Initially, a composite complaint was filed by the present complainants before this bench for seeking interest and compensation from the respondent because of wrongful retention of the amount received from the complainants in respect of purchase of the commercial site in the project of the respondent, for a period of almost two years. The said complaint along-with connected complaint titled Anil Arora etc. Vs. Estate Officer, PUDA were decided by the common judgment dated 17.05.2021. Subsequently, the respondent filed an appeal against the said decision before the Reat

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Estate Appellate Tribunal and the Appellate Tribunal on the basis of decision of the Hon'ble Apex Court in **Civil Appeals No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.** along-with connected appeals decided on 11.11.2021 was pleased to hold that qua the relief of interest the complaint was to be decided by the Regulating Authority and qua the relief of compensation the matter had to be dealt by the Adjudicating Officer and remand order was accordingly passed for fresh decision of the complaints. One set of the complaint was transferred to the Regulating Authority qua the relief of interest, while the other set of complaint was remained with this bench qua the relief of compensation and the said bifurcated complaint was dismissed by this bench vide order dated 27.04.2022 holding that the project was unregistered and therefore the complaint was not maintainable and reserving the right of complainants for filing of fresh complaint in accordance with law. However, subsequently the matter was taken up by the Real Estate Appellate Tribunal in relation to the fate of the maintainability of complaints of unregistered projects as per judgment of Hon'ble Apex Court in **Civil Appeals No.6745-6749 of 2021 titled M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others etc.(Supra)**, and vide order dated 25.04.2022 four connected appeal were decided by the Appellate Tribunal (RERA) holding that the complaints pertaining to unregistered projects were also maintainable and thereupon the present

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complainants filed the fresh complaint for seeking compensation.

2. The brief facts as enumerated in the complaint are that the respondent launched a commercial scheme known as PWD (Public Health) Fountain Chowk site scheme and through open auction site No.5 was auctioned in favour of complainants Jaswinder Singh and Gurpreet Singh for a sum of Rs.2,09,40,000/-. Complainants Jaswinder Singh and Gurpreet Singh deposited an amount of Rs.56,54,000/-. Thereafter on 12.07.2017 the respondent informed the complainants that they were unable to give possession of the site due to some reasons; and a proposal in respect of issuance of some other site was under consideration. Then on 12<sup>th</sup> November, 2018, the respondent informed the complainants that the site in question was declared as protected monument and the department decided to refund the amount paid by them. The respondent refunded the amount to complainants Jaswinder Singh and Gurpreet Singh through two demand drafts each of Rs.28,27,000/- respectively on 22.11.2018. The complainants requested a number of times to the respondents to pay interest on the amount mentioned above, which they retained for more than two years and even legal notices were served upon the respondent with request to pay interest to the complainants, but, to no effect. Hence, the complainants had to file the instant complaint.



3. Upon notice, the respondent filed reply to the complaint raising the plea that the Real Estate (Regulation and Development) Act 2016 (for short the Act) was applicable prospectively and not retrospectively and further the instant project had not been registered with the RERA Authority and therefore, the complaints were not maintainable; that the amount of Rs.56,54,000/- had already been refunded to the complainants, which they accepted without any objection and as such the legal notices got issued by them became meaningless, but, the same were duly replied by the respondent pleading that there was no agreement, letter of intent or allotment letter in these cases and there was only an offer of allotment which could not materialize and as such there was no question of violating terms and conditions of any agreement; that the refund of the amount deposited by the complainants was made as per decision of the Government; that the State Govt. with a view to utilize its resources for over all development of the State, framed a scheme known as Optimum Utilization of Vacant Govt. land and under this scheme, the Government transferred 8.49 acres of land belonging to PWD (Public Health) for development and the Town and Country Planning Department of the Government of Punjab prepared a master plan of the area in question in the year 2012 after inviting objections and suggestions from the General Public and other interested parties and use of this site had been described as public and semi-public use; that PUDA Patiala, offered commercial properties at the site in

question by way of auction held on 27.04.2016 and the complainants being the highest bidders for SCOs No.05 deposited 25% of the bid amount and that the issuance of allotment letters was under consideration, when CWP No.7956 of 2016 titled as Subhash Kapoor and others Vs. State of Punjab and Others was filed before the Hon'ble Punjab and Haryana High Court for quashing the transfer of the land and building situated at Fountain Chowk Patiala and on 12.05.2016 status quo was ordered to be maintained with regard to Kothi No.11-A situated in the Erstwhile Chief Engineer Public Health Office near Fountain Chowk, Mall Road, Patiala; that the department of Cultural Affairs Archaeology and Museums, Punjab, vide its order dated 04.05.2017 asked the office of the respondent not to carry out any type of development activity i.e. demolition, construction, reconstruction, alteration, re-alteration and cutting of trees in the Old PWD (Public Health) and all buildings near fountain chowk Patiala and the land apparent and surrounded there as the same was under consideration of protection under the Act 1964; that the Government of Punjab Department of Tourism and Cultural affairs vide notification dated 23.08.2018 declared the site of old public health building to be a protected monument under the Act of 1964 and consequently the Hon'ble Punjab and Haryana High Court had disposed of CWP No.7956 of 0216 on 01.10.2018; that the entire issue was considered by the Empowered Committee of the State of Punjab in its 48<sup>th</sup> meeting held on 19.06.2018

vide agenda item No.48.12 and in the meeting of Additional Chief Secretary (HUD) on 24.09.2018, it was decided that the amount paid by the bidders alongwith cancer cess be refunded and the amount was accordingly refunded to the complainants; that the respondent acted as per the above decision of the Government and as such the proceedings regarding agreement to sell and allotment letter could not materialize and it was beyond the control of the respondent; that as per Section 174 of the Punjab Regional and Town Planning and Development Act 1995, the order passed by the State Government or the Competent Authority was final and could not be questioned in any suit or other legal proceedings. Rest of the averments of the complaint were denied and prayer was for dismissal of the complaint.

4. Complainants filed rejoinder, wherein the averments of the written reply were denied and those of the complaint were reiterated.

5. The violations and contraventions as contained in the complaint were put to the representative for the respondent to which he denied and did not plead guilty and then the complaint was to be proceeded for further inquiry.

6. I have heard both the representatives for parties and have gone through the record of the case.

7. The admitted facts between the parties are that the respondent launched a commercial scheme known as PWD



(Public Health) Fountain Chowk Site scheme. The complainants took part in the open auction held by the respondent and SCO No.05 was allotted to the complainants and they deposited Rs.56,54,000/-. It is also a fact that the said scheme could not materialize, as the site in question was declared a protected monument by the Government of Punjab exercising its powers under Section 4(3) of the Punjab Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1964 (for short the Act 1964) vide notification dated 23<sup>rd</sup> day of August, 2018 Annexure R3 and Annexure R5. It is also a fact that the amount paid by the complainants was refunded to them.

8. The first objection taken on behalf of the respondent was that the transaction of the case in hand pertained to the year 2016 i.e. much prior to the coming into force of the provisions of the RERA Act and therefore the present complaint alleging violation of the provisions of the RERA Act was not maintainable. It may be that the transaction pertained to the year 2016 but the present project was ongoing and had not been completed. It is also settled law that the Act would certainly regulate the existing contracts, even though it is prospective in nature, but, is retroactive also to some extent. On this point, reliance may be placed on the law laid down by the Hon'ble Bombay High Court in case titled as **Neel Kamal Realtors Suburban Pvt. Ltd. and another Vs. Union of India and others** bearing

**Writ Petition No.2737 of 2017** decided on 6.12.2017 wherein it has been held that unilateral contracts of the prior period not being in accordance with the provisions of the Act are not enforceable to that extent and the provision of the Act would be applicable to cover the ongoing project.

9. Another objection taken on behalf of the respondent was that the project of the case in hand was unregistered and therefore the present complaint was not maintainable without first getting the project registered. The argument however is without merit inasmuch as Punjab State Real Estate Appellate Tribunal vide its order dated 25.04.2022 in Appeal No.60 and 61 of 2022 and Appeal No.64 and 65 of 2022 was pleased to hold as under:

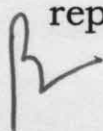
*“28. We are also of the opinion and observe at the cost of repetition that the Authority wrongly interpreted the judgment of the Hon’ble Supreme Court. The retroactive operation of the Act, as observed by the Hon’ble Supreme Court and as the language of the statute also suggests would protect a developer from registration and consequences of the Act, only in a situation, where the project stood completed with a completion certificate but 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.*

*29. The proceedings under Section 59 of the Act are a course available to the Authority in addition to the one that a determination of a complaint would warrant. It is not desirable to ask an allottee/complainant to file a separate complaint to invoke Section 59 of the Act. This is a provision empowering the Authority to penalize a defaulting promoter, once any complaint is filed on issues pointing out deficiencies and default of a promoter, the Authority after entering upon a complaint has to decide from itself, whether a course prescribed under Section 59 has to be resorted to. A separate complaint qua this aspect is not essential."*

The Appellate Tribunal after detailed discussing the impact of the authority of Hon'ble Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and others (Supra)** thus has specifically held that the complaints in respect of the project which are unregistered cannot be said to be not maintainable. The argument is accordingly repelled.



10. The main emphasis of the arguments on behalf of the respondent was that it was a case of force majeure i.e. the circumstances for not starting the project of the case in hand were beyond the control of the respondent and had to be shelved and consequently the amounts paid by both the complainants were refunded. Therefore, the complainants were not entitled to any compensation.

11. On the other hand, the argument on behalf of the complainants was that it was the sole responsibility of the respondent for obtaining all types of permissions from the competent authorities before conducting the auction of the commercial site of the project of the case in hand and in support of the arguments, reliance was placed on a case titled **Juliet V. Quadros vs. Malti Kumar and others**, decided by the National Consumer Disputes Redressal Commission on 07.12.2004. The learned representative then contended that the amount in the shape of 25% of the total sale consideration had been received by the respondent and the same had been unjustifiably withheld by the respondent for a period of two years and was refunded on 22.11.2018 and therefore, the respondent was to be squarely blamed and the complainants therefore, they were also entitled to compensation for causing the mental harassment and litigation expenses.

12. There is no dispute regarding the proposition of law laid down in **Juliet V. Quadros's case (supra)**, however, the said authority is distinguishable from the facts of the case in

hand. Admittedly, in the case in hand, State Government with a view to utilize its resources for over all development of the State framed a scheme known as Optimum Utilization of Vacant Govt. land and under this scheme, the Government transferred 8.49 acres of land belonging to PWD (Public Health) for development and the Town and Country Planning Department of the Government of Punjab prepared a master plan of the area in question in the year 2012, after inviting objections and suggestions from the General Public and other interested parties and use of this site had been described as public and semi-public use. PUDA Patiala, offered commercial sites at the site in question by way of auction held on 27.04.2016 and the complainants being the highest bidders for SCO No.5 deposited 25% of the bid amount. However, there was a subsequent development in the shape of filing of CWP No.7956 of 2016 titled as Subhash Kapoor and others Vs. State of Punjab and Others before the Hon'ble Punjab and Haryana High Court for quashing the transfer of the land and building situated at Fountain Chowk Patiala and on 12.05.2016 status quo was ordered to be maintained with regard to Kothi No.11-A situated in the Erstwhile Chief Engineer Public Health Office near Fountain Chowk, Mall Road, Patiala. There was then another development that the department of Cultural Affairs Archaeology and Museums, Punjab, vide its order dated 04.05.2017 Annexure R2 and Annexure R4 asked the office of the respondent not to carry out any type of development activity i.e. demolition,



construction, reconstruction, alteration, re-alteration and cutting of trees in the Old PWD (Public Health) all buildings near fountain chowk Patiala and the land apparent and surrounded there as the same was under consideration of protection under the Act 1964. Further, the Government of Punjab Department of Tourism and Cultural affairs vide notification dated 23.08.2018 Annexure R3/Annexure R5 declared the site of old public health building to be a protected monument under the Act of 1964 and on the basis of said developments, the Hon'ble High Court of Punjab and Haryana disposed of the above CWP vide order dated 01.10.2018 Annexure R4/Annexure R6. A close scrutiny of the aforesaid documents leaves no manner of doubt that the subsequent developments of the case in hand, after auctioning of the commercial site in the name of the complainant had taken place from the side of the Government Authorities and the directions were also issued by the Hon'ble High Court. The respondent authority cannot be expected to visualize the said future development before hand and, therefore, cannot be blamed for non-completing the project and rather the competent authorities of the Government preserved the heritage monument status of the existing structure and its surroundings because of which the project of the case in hand was to be shelved and said action of the Government had seal of the Hon'ble High Court vide order dated 01.10.2018 Annexure R4/Annexure R6. Therefore, another letter dated 12.07.2017 Annexure P4 was issued by

the respondent to the complainants intimating the inability of the respondent for delivering the possession of the proposed commercial site and also that the case of the complainant was under consideration of the allotment of alternative commercial site. It may be that no alternative site was ultimately allotted to the complainant and finally order dated 01.11.2018 Annexure R3 was passed for refunding the entire amount of the complainants.

13. In view of the above discussion, it can be safely concluded that no misconduct could be attributed on the part of the respondent in not completing the project of the case in hand, but it was the subsequent development in which the competent authority declared the site of the project of the case a heritage monument and protected site.

14. Be that as it may, the fact remains that the amount of the complainants Jaswinder Singh and Gurpreet Singh deposited Rs.20,94,000/- on 27.04.2016 and Rs.35,60,000/- on 30.11.2016 on the basis of successful bid in the auction for commercial site remained deposited in the account of the respondent, which were ultimately refunded on 22.11.2018. The respondent must have earned profit on the deposits till repayment.

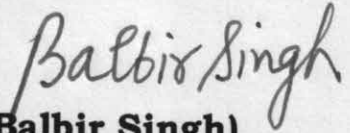
15. As far as the grant of compensation to the complainants is concerned, it has already been noticed that there was no mala-fide or default on the part of the

respondent in shelving the project and rather the same was beyond their control in view of above consequent developments in declaring the site in question as a protected heritage monument. However, as the complainants have to seek the relief of interest by way of filing the complaints for which they have to engage representative and have also to pursue the matter since December, 2018 when the amount was refunded to them by the respondent. In my opinion, in the instant case, the compensation can be granted under the heads pecuniary and non-pecuniary and Section 72(d) of the Act speaks about the factors to be taken into consideration while adjudicating the quantum of compensation. No exact amount can be assessed on this count, but keeping in view all the factors enunciated under Section 72(d) of the Act, in the instant case, the extent of mental agony and harassment can also be gauged in view of the fact that the complainants have been pursuing the matter since December, 2018 with the respondent and ultimately knocked the door of this Bench. Therefore, apparently the respondent retained the heavy amount of Rs.56,54,000/- of the complainants, obtained from them for purchase of commercial site in open auction for a considerable period of almost two years when finally refund order dated 22.11.2018 was made in favour of the complainants. The said amount must have been kept by the respondent in their account and utilized and they must have earned profit, as the respondent was involved in development of the commercial and residential real estate projects. Even,



the Regulating Authority in the connected complaint inter-parties for seeking interest on the amount was also pleased to uphold the said right of the present complainants and they were awarded statutory interest on the paid amount for the period of its retention by the respondent promoter and the said decision of the Regulating Authority was upheld by the Real Estate Appellate Tribunal. However, as the sequence of events would reveal that complainants had to initiate and undergo continued litigation successively before the Authority and before this bench and even up to the Real Estate Appellate Tribunal, they have spent time, energy and finances for legal advice and other miscellaneous expenses and also suffered mental agony and harassment for that duration and as such, they are entitled to lumpsum compensation to the tune of Rs.70,000/- (by approximation) from the respondent. The respondent is accordingly directed to pay the above said amount of compensation to the complainants within ninety days from the date of this order.

**Dated: 21.03.2024**

  
**(Balbir Singh)**  
**Adjudicating Officer**  
**RERA, Punjab**