

**202/5 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**(i) RERA-APPL-24-2020 (O&M)
Date of Decision: 29.10.2020**

M/s Country Colonisers Pvt. Ltd.Appellant

Versus

Chaman ChandelRespondent

(ii) RERA-APPL-25-2020 (O&M)

M/s Country Colonisers Pvt. Ltd.Appellant

Versus

Manjeet Singh and anotherRespondents

(iii) RERA-APPL-26-2020 (O&M)

M/s Country Colonisers Pvt. Ltd.Appellant

Versus

Prem DattRespondent

(iv) RERA-APPL-27-2020 (O&M)

M/s Country Colonisers Pvt. Ltd.Appellant

Versus

Vivek Jaggi Respondent

(v) RERA-APPL-28-2020 (O&M)

M/s Country Colonisers Pvt. Ltd.Appellant

Versus

Narinder Kumar ThakurRespondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Tejeshwar Singh, Advocate
for the appellant(s).

Mr. Rajeev Anand, Advocate
for the respondent(s).

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TEJINDER SINGH DHINDSA.J (ORAL)

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

This order shall dispose of RERA Appeal No.24 of 2020 (M/s Country Colonisers Pvt. Ltd. vs. Chaman Chandel), RERA Appeal No.25 of 2020 (M/s Country Colonisers Pvt. Ltd. Vs. Manjeet Singh and others), RERA Appeal No.26 of 2020 (M/s Country Colonisers Pvt. Ltd. Vs. Prem Datt), RERA Appeal No.27 of 2020 (M/s Country Colonisers Pvt. Ltd. Vs. Vivek Jaggi) and RERA Appeal No.28 of 2020 (M/s Country Colonisers Pvt. Ltd. vs. Narinder Kumar Thakur) as the issue involved in these connected appeals is identical.

For the sake of convenience, the facts are being taken from the lead appeal i.e. RERA Appeal No.24 of 2020.

Suffice it to notice that the instant appeal under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred to as “the RERA Act”) is directed against the Order dated 06.11.2019 passed by the RERA Authority, Punjab as also the Order dated 24.02.2020 passed by the Real Estate Appellate Tribunal, Punjab.

Minute details/facts of the case need not be gone into as one of the grounds raised in the instant RERA Appeal as also the four other connected appeals is that the orders passed by the authority as also the Tribunal lack jurisdiction inasmuch as the orders have been passed by a Single Member

Bench of the Authority as also the Tribunal and which is contrary to Section 21 and Section 43(3) of the RERA Act.

Section 21 of the RERA Act, specifically states that “***The authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government***”.

Likewise, Section 43(3) of the RERA Act mandates that “***Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative (or) Technical Member***”.

Counsel for the parties are *ad idem* that the basic issue noticed here-in-above is no longer *res integra* as the matter already stands adjudicated upon by a Division Bench of this Court in a bunch of Writ Petitions including ***CWP No. 8548 of 2020 (Janta Land Promoters Private Limited Vs. Union of India and others)*** decided on 16.10.2020.

The issues that arose for consideration before the Division Bench in ***Janta Land Promoters Private Limited (supra)*** were culled out in the following terms:-

- “(a) *Can a Single Member of the Authority validly pass orders on a complaint under the Act? Are Regulations 7 and 8 of the Punjab RERA Procedure Regulations ultra vires the Act?*
- (b) *Can a Single Member of the Appellate Tribunal validly pass orders in the appeals before it?*
- (c) *Should all the complaints under the Act be entertained in the first instance by the AO under Section 71 of the Act and in that context is the Circular dated 21st November, 2018 issued by the Authority valid?*
- (d) *Is the appointment of Mr. Sanjiv Gupta as Member of the Authority valid?*
- (e) *Are the Appellate Tribunal’s orders declining to waive the requirement of pre-deposit valid? Should*

this Court in exercise of its jurisdiction under Article 226 of the Constitution direct the Appellate Tribunal to entertain the appeals without the pre-deposit?

The Division Bench held in the following terms:-

“87. The conclusions in this judgment may be summarized thus:

- (a) A Single Member of the Authority cannot validly pass orders on a complaint under the Act. Regulations 7 and 8 of the Punjab RERA Procedure Regulations are struck down as being ultra vires the Act.*
- (b) A Single Member of the Appellate Tribunal cannot validly pass orders in the appeals before it.*
- (c) The orders passed by the Single Member Appellate Tribunal, which form subject matter of the RERA appeals in this Court, are hereby set aside only on that ground viz., for want of jurisdiction and not on any other ground.*
- (d) The orders of the Single Member of the Authority forming the subject matter of the appeals before the Single Member of the Appellate Tribunal and which also are challenged in the present RERA appeals, are also set aside. The result would be that the complaints would stand remanded to the Authority to be disposed of in accordance with law.*
- (e) Where the relief sought in a complaint under the Act is for refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Authority which has the power to examine and determine the outcome of such complaint. When it comes to the question of seeking the relief of compensation or interest by way of compensation, the AO alone has the power to determine it on a collective reading of Sections 71*

and 72 of the Act.

- (f) The order passed by the Appellate Tribunal, Punjab in Sandeep Mann's case (supra) is affirmed. The Authority is directed to issue a fresh Circular, in substitution of the Circular dated 21st November 2018, containing instructions consistent with the decision of Appellate Tribunal in Sandeep Mann's case (supra) as well as the present judgment of this Court.*
- (g) The challenge to the validity of the appointment of Mr. Sanjiv Gupta as Member of the Authority is rejected.*
- (h) The orders of the Appellate Tribunal declining to waive the predeposit are upheld. No case is made out for a direction to the Appellate Tribunal to entertain the appeal without insisting on the pre-deposit.*
- (i) Given the nature of the reliefs sought in the complaints filed in these cases, it cannot be said that the orders of the Authority are without jurisdiction and no case is made for interference therewith under Article 226 of the Constitution.*
- (j) Even where according to the party aggrieved the Authority lacked jurisdiction to decide the complaint, it would be for the Appellate Tribunal to decide that issue in light of the legal position explained in this judgment on the respective adjudicatory powers of the Authority and the AO. In such event too, for the purposes of the appeal before the Appellate Tribunal the making of the pre-deposit in terms of the Act would be mandatory."*

Mr. Rajeev Anand, counsel for the respondents in these five connected RERA Appeals fairly concedes that in the light of the dictum laid down by the Division Bench in ***Janta Land Promoters Private Limited (Supra)***, the impugned orders passed by the RERA Authority as also by the

RERA Tribunal cannot sustain.

By following the dictum laid down in *Janta Land Promoters Private Limited (Supra)*, the common order dated 06.11.2019 passed by the RERA Authority in these five connected appeals as also the order dated 24.02.2020, passed by the Single Member of the RERA Tribunal are set aside.

The matter is remanded back to the RERA Authority for deciding of the matter afresh.

As a direct consequence of the setting aside of the order dated 24.02.2020 passed by the RERA Tribunal, the pre-deposit amount, deposited by the appellant, herein, (varying amounts) in the light of proviso of Section 43 (5) of the RERA Act and which in turn stood released to the private respondents by virtue of the order dated 24.02.2020 passed by the RERA Tribunal and which has now been set aside, would be refunded back to the appellant within a period of two weeks from today.

Appeals are disposed of.

It is, however, made clear that the present appeals have been allowed and the common orders passed by the RERA Authority as also RERA Tribunal have been set aside only on account of the jurisdictional error and this Court has not opined on the merits of the case.

Pending applications, if any, shall also be disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

October 29, 2020

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |