

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

Subject: -

**APPEAL NO. 114 OF 2019**

Raj Kumar Chaudhary S/o Sh. Sukhdev Raj R/o House No.  
250, New Dashmesh Nagar, Rama Mandi, District Jalandhar  
(Punjab).

...Appellant

Versus

Geetu Constructions Private Limited, SCO No. 219, 2<sup>nd</sup> Floor,  
Sector 37-C, Chandigarh through its Authorized  
Signatory/Director/Managing Director.

....Respondent

Memo No. R.E.A.T./2023/ 103

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup> 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 01<sup>st</sup> day of March, 2023.

*Shamendra Kumar*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

**IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB**

**Appeal No. 114 of 2019**

**MEMO OF PARTIES**

Raj Kumar Chaudhary son of Sh. Sukhdev Raj, resident of House No. 250, New Dashmesh Nagar, Rama Mandi, District Jalandhar (Punjab)

...Appellant

Versus

Geetu Constructions Private Limited, SCO No. 219, 2nd Floor, Sector 37-C, Chandigarh through its Authorised Signatory/Director/Managing Director.

...Respondent



Place: Chandigarh.  
Dated: .11.2019

(MUNISH GUPTA)  
P-515/2005  
ADVOCATE  
COUNSEL FOR APPELLANT

1A

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 114 OF 2019

RAJ KUMAR CHAUDHARY

Versus

GEETU CONSTRUCTION PVT. LTD.

The office has pointed out an error in date of decision on the opening page of the order which is ordered to be corrected, and, hence, instead 'date of decision' on opening page written as 05.04.2022, it shall now be read as 18.04.2022, the date on which pronouncement of the order was done.

Sdr  
JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

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

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

February 16, 2023  
DS



Certified To Be True Copy

*Shamsher Kaur*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

01/03/2023



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

**Date of Decision: 05.04.2022**

**Appeal No.114 of 2019**

Raj Kumar Chaudhary son of Sh. Sukhdev Raj, resident of House No.250, New Dashmesh Nagar, Rama Mandi, District Jalandhar (Punjab).

....Appellant

**Versus**

Geetu Constructions Private Limited, SCO No.219, 2<sup>nd</sup> Floor, Sector 37-C, Chandigarh through its Authorized Signatory/Director/Managing Director.

....Respondent

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**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN  
SH. S.K GARG DISTRICT AND SESSIONS JUDGE (RETD.)  
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER  
(ADMINISTRATIVE/TECHNICAL)**

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**Argued by:** - Mr. Munish Gupta, Advocate for the appellant.  
None for the respondent.

**JUDGMENT:** (*Justice Mahesh Grover (Retd.)*)

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1. Order dated 14.10.2019 passed by Member, Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) has been impugned before us in the present appeal.

## APPEAL NO.114 OF 2019

2. The appellant confronted with the delayed possession of the dwelling unit, regarding which, he had paid an amount of Rs.6,50,000/- in the year 2012, filed a complaint before the Authority seeking refund and interest in terms of Section 18(1) of the Real Estate(Regulation and Development) Act, 2016 (hereinafter known as the Act).
3. The respondent pleaded default on the part of the appellant in not depositing the installments of the amounts due.
4. The Authority upon evaluation of the matter concluded that both the parties were at fault, with the appellant failing to deposit the amounts and the respondent failing to sign an agreement and deliver the possession of the unit. While disposing of the complaint, it concluded that no case is made out for refund of amount deposited by the appellant as he failed to fulfill his obligations with regard to the payment of balance amount for a period of last 7 years.
5. It is pertinent to mention that respondent also took up the plea of the complaint being barred by limitation but the Authority concluded that provisions of the





## APPEAL NO.114 OF 2019

Limitation Act are not applicable to the special enactment, such as Real Estate (Regulation and Development) Act, 2016.

6. In appeal, before us learned counsel for the appellant contended that it would be grossly unjust to permit the impugned order to stand, as it deprives the appellant of the amount of Rs.6,50,000/-, that he paid by way of initial deposit on the promise of delivery of a dwelling unit in time. Since the respondent failed to deliver the residential unit, it was his right to seek withdrawal from the project, as is envisaged in the Act and this legal remedy cannot be negated on the ground of delay or his failure to deposit the remaining amount.
7. The respondent did not put in appearance and was proceeded ex parte.
8. Clause 7.5 of the prescribed agreement for sale provides for forfeiture of 10%, where the allottee proposes to cancel/withdraw from the project but this aspect cannot be delinked from the default of the promoter. For the purpose of reference Clause 7.5 is extracted hereinbelow: -



## APPEAL NO.114 OF 2019

*"7.5 Cancellation by Allottee.- 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 herein is entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation."*

9. Evidently, if the promoter is not at fault and yet the allottee proposes to cancel/withdraw from the project, then in such an eventuality, forfeiture of 10% of the total amount of the sale consideration, interest and other dues is permissible.
10. If this clause is to be resorted then an allottee has to specifically plead the fault of the promoter and establish so. We notice from the pleadings that the appellant has pleaded default of the promoter in not





## APPEAL NO.114 OF 2019

bringing up construction, which prompted him to withhold the balance amount of consideration. In such an eventuality assuming the promoter was at fault but the appellant's default also manifests itself, considering that he did not raise any issue with the promoter for as long as 7 to 8 years and did not make any payment.

11. Hence, it is not an open and shut case but a matter where the equities have to be balanced finely.
12. In conclusion, we have to hold that the Authority was right in observing that no Limitation Act is prescribed under the Act for initiation of proceedings but that does not given a free passage to a litigant to agitate against a developer/promoter at a time of his choosing and seek unhindered access to the benefits of the Act.
13. For any grievance to be raised, a reasonable time limit has to be prescribed particularly, when the Act is silent in this regard. We also have to understand that the RERA Act is a beneficial piece of legislation intended to regulate and check malpractices in the real estate sector by all the players, be it the promoter, allottee or the real estate agent.





## APPEAL NO.114 OF 2019

14. Therefore, to our minds it would be safe to conclude that the period of limitation for initiating a suit i.e. 3 years should be the outer limit to raise the grievance under the Act. Even, while saying so, we do not intend to bind the process in a watertight compartment to discard a complaint initiated after a lapse of three years but rather, feel that a more appropriate course to be adopted by the Authority should be to mould the relief appropriately, so as to balance equities and ensure that the delay in invoking the proceedings does not result in unnecessary windfall to the allottee or any of the parties.
15. Keeping in view the above, we deem it appropriate to accept the appeal in part and hold the appellant entitled to a sum of Rs.5,85,000/- after deduction of 10% (Rs.6,50,000/ minus Rs.65000/-) along with interest at the prescribed statutory rate envisaged in the Act and the Rules but looking at the delay of 7 years in initiating a complaint, we deem it appropriate to limit the amount of interest to a period of 36 months from the date of deposit of the principle amount.



## APPEAL NO.114 OF 2019

16. Appeal disposed of. File be consigned to record room and a copy of this order be communicated to the parties as well as to the Real Estate Regulatory Authority, Punjab.

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

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

*Please see my view that follows hereinafter.*  
**ER. ASHOK KUMAR GARG, C.E. (RETD.)**  
**MEMBER (ADMINISTRATIVE/ TECHNICAL)**



18  
**April 18, 2022**  
**AN** *kg...*

**Certified To Be True Copy**  
*Manoj Kumar*  
 Registrar  
 Real Estate Appellate Tribunal Punjab  
 Chandigarh

*01/03/2023*



**Appeals No. 114 of 2019**

8

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

**Appeal No. 114 of 2019**

Raj Kumar Chaudhari son of Sh. Sukhdev Raj, resident of House No.  
250, New Dashmesh Nagar, Rama Mandi, District Jalandhar (Punjab)

.....Appellant

Versus

Geetu Constructions Private Limited, SCO No. 219, 2nd Floor, Sector  
37-C, Chandigarh through its Authorised Signatory/Director/Managing  
Director.

.....Respondent

**Present:** Mr. Munish Gupta, Advocate for the appellant.  
Respondent ex-parte

**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.))

**(MINORITY VIEW)**

1. By this order, I will dispose off above mentioned appeal bearing Appeal No. 114 of 2019 (**Raj Kumar Chaudhari versus Geetu Constructions Private Limited**) against order dated 14.10.2019 passed by Sh. Sanjiv Gupta, Member (*hereinafter also referred to as the Single Member Bench*) of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing GC No. 11292018 filed on 06.01.2019.





2. The appellant-complainant filed the complaint bearing GC No. 11292018 on 06.01.2019 in Form 'M' before the Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 36(1) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*) claiming return of an amount of Rs.6.5 Lakh, deposited by the complainant with the respondent, with thereon from the respective dates of deposits and suitable compensation and litigation expenses for mental agony & harassment.
3. The appellant-complainant has alleged in his complaint dated 06.01.2019 that (i) he booked 3BHK apartment for total sale consideration of Rs. 37,50,000/- in the respondent's project by paying an initial sum of Rs.1 lakh on 10.09.2012; (ii) that as per demands raised telephonically, the complainant deposited Rs. 4 lakh vide RTGS on 21.11.2012 and paid another sum of Rs. 1,50,000/- on 11.03.2013 vide HDFC Bank transaction; (iii) that despite receipt of Rs. 6.5 lakh, neither allotment letter has been issued, nor any agreement has been executed; (iv) that the builder has not responded to repeated requests of the appellant-complainant regarding allotment letter, agreement and status of the project and even to his legal notice dated 23.07.2018, seeking refund of the amount deposited with interest thereon.
4. In the aforementioned legal notice dated 23.07.2018, it has inter alia been mentioned that (i) as per the scheme, the respondent had promised to deliver the flats by December, 2015; (ii) that the appellant-complainant kept on visiting the site of the proposed





## Appeals No. 114 of 2019

10

housing project but no construction was being carried out and therefore the appellant-complainant stopped paying the installments demanded by the respondent; (iii) that therefore, the appellant asked the respondent to refund the amount Rs. 6,50,000/- along with interest @ 18% per annum within 21 days from the date of receipt of the said legal notice and also claimed Rs.5,00,000/- as damages on account of mental tension, undue harassment and financial loss.

5. The respondent, in its written statement 17.05.2019 to aforesaid complaint, raised preliminary objections that (i) the complaint is time barred and is beyond the statutory period of limitation of 3 years as per provisions of the article 113 of the Limitation Act; (ii) that cause of action arose in the years 2012 and 2013 and the complainant approached the Authority after seven years; (iii) that the complainant failed to deposit the remaining amount and enter into any agreement with the respondent despite frequent reminders.
6. While replying the complaint on merits, the respondent has admitted the sale consideration of the unit to be Rs. 37,50,000/- and receipt of the payments aggregating to Rs. 6.5 lakh as claimed by the appellant-complainant; but has denied that the complainant had visited the respondent's office several times regarding the allotment letter, buyer agreement and the status of project. The respondent has thereby alleged that (i) a legal notice was served upon the complainant by the respondent on 15.05.2014 to either come and execute an agreement along with other formalities within a month, failing which the amount deposited by the complainant would stand forfeited; (ii) that no complaint has been filed by the





## Appeals No. 114 of 2019

11

complainant in the state consumer disputes commission or any other court and no complaint has been filed in the police; (iii) that the respondent offers the complainant an alternate independent 3 BHK floor (ready to move), out of few purchased by the respondent in Sector 113, Mohali, at the same price and the appellant-complainant can deposit the balance amount of Rs.31,00,000/-.

7. In the aforementioned alleged notice dated 15.05.2014 on behalf of the respondent to the complainant, which is not accompanied with any proof of its delivery/service to the appellant, it has been alleged that the complainant failed to pay even entire booking amount of Rs.7,50,000/- (20% of the total consideration of Rs.37,50,000/-) and the complainant deposited only Rs.6,50,000/- in three tranches but did not deposit even the balance booking amount of Rs.1,00,000/-, even after this notice. However, the complainant, in his rejoinder dated 10.07.2019, has denied its receipt/service

8. The said complaint/case has been dismissed by the Single Member Bench of the Authority, vide impugned order dated 14.10.2019, as the complainant has failed to fulfill his obligations in regards to the payment of balance amount for a period of last 7 years since the deposit of the initial amount.

9. During the arguments before the Single Member Bench of the Authority, inter alia (i) the counsel for the complainant could not give any satisfactory reply as to why he failed to deposit the remaining balance amount as per the installments initially verbally





## Appeals No. 114 of 2019

12

agreed upon at the time of initial acceptance of the offer of the apartment; & (ii) the counsel for the complainant expressed his inability to deposit the balance amount on account of shortage of funds and did not consent to the respondent's offer of alternate apartment.

**10.** The Single Member Bench of the Authority has observed in the impugned order that (i) the alleged contraventions both on the part of the complainant as well as the respondent are continuing in nature till date; (ii) that the objections raised by the respondent in regards to the complaint being barred by period of limitation and the application of sections 113 and 137 of the Limitation Act is not made out; and (iii) that by virtue of section 29 of Limitation Act, a period of limitation as assigned under the Limitation Act is not applicable on the Act which is a special enactment.

**11.** Aggrieved by the above said order dated 14.10.2019 of the Single Member Bench of the Authority, the appellant-complainant filed appeal dated 20.11.2019, bearing Appeal No. 114 of 2019, before this Tribunal and prayed to set aside the impugned order dated 14.10.2019 and to allow the present appeal.

**12.** The appellant has inter alia contended in the grounds of the appeal that (i) the plea taken by the respondent regarding non-payment of balance by the complainant, is without any basis and no documentary proof to prove the same that any amount was ever demanded from the complainant, has been placed on record; (ii) that the respondent has not even placed on any document to show that as to under which construction plan, it was duty of the





## Appeals No. 114 of 2019

13

appellant to make payment of amounts; (iii) that the deposit of the amount and utilization, without even laying a brick on the ground, gives a continued cause of action and demand of the said amount, can not be said to be belated; (iv) the respondent is in continuous violation of section 6 of the Punjab Apartment and Property Regulation Act, 1995 (*hereinafter referred to as the PAPRA*) and section 13 of the Act, as no agreement has been executed inter se the parties, despite the fact that 20% amount has been received by the builder and therefore the appellant has a right under section 12 of the PAPRA and under section 18 of the Act, to seek refund of the deposited amount along with compensation.

**13.** Under the above mentioned peculiar circumstances of this case, I agree with the Single Member of the Bench of the Authority that the alleged contraventions, both on the parts of the complainant as well as the respondent, are continuing till date.

**14.** If we, believe the version of the appellant-complainant as mentioned in his rejoinder dated 10.07.2019 that alleged notice dated 15.05.2014 of the respondent is not genuine but had been procured/manipulated and is not accompanied with any postal proof and if we believe the legal notice dated 23.07.2018 of the appellant to the respondent to be valid one, then the respondent is liable to refund the entire amount deposited by the appellant with the respondent along with interest as per Section 18(1) of the Act.

**15.** However, if we believe the version of the respondent that the respondent even failed to deposit the full booking amount of Rs.7,50,000/- (20% of the sale consideration of Rs.37,50,000/- of





the apartment) despite issue of aforesaid legal notice dated 15.05.2014, even then the respondent cannot usurp the entire amount of Rs.6,50,000/- deposited by the complainant towards the booking amount because in such an eventuality he could have forfeited only a part of it, either as agreed between the parties at the time of booking or otherwise, if any or by citing provisions of any prevalent law regarding such deductions, if any.

- 16.** Clause 7.5 of the prescribed agreement for sale (Form 'Q' of the Rules) provides as under:-

*“7.5 Cancellation by Allottee.- 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 herein is entitled to forfeit ten percent of the total amount of the consideration money, interest and other dues payable for the allotment. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation.”*



- 17.** It is pertinent to mention here that the Government agency, like Punjab Urban Planning & Development Authority, generally prescribe in its brochure etc. that in case of refusal to accept the allotment offer within 30 days from such allotment offer, 10% of earnest money (which in turn is prescribed by such Govt. agency to be 10% of the total basic sale price of the unit) shall be forfeited; and if such refusal is received after a period of 30 days from the allotment offer, entire earnest money deposited shall be forfeited.



Thus, the forfeiture works out to be 1% or 10% of the total sale price of the unit depending upon whether refusal to accept the allotment offer is given within or after 30 days from such allotment offer. Because, in the present case, no allotment letter had been issued, therefore, in my opinion, no forfeiture is liable to be made and the respondent was liable to refund to the appellant the entire amount deposited by him with the respondent.

**18.** In the impugned order, the Single member Bench of the Authority had inter alia held that that by virtue of section 29 of Limitation Act, a period of limitation as assigned under the Limitation Act is not applicable on the Act which is a special enactment.

**19.** Section 29(2) of the Limitation Act, 1963, provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule to the Limitation Act, the provisions of section 3 of the Limitation Act, shall apply as if such period were the period prescribed by the said Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 of Limitation Act, shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

**20.** Section 29 of the Limitation Act, 1963 reads as under:-

*29. Savings.—*

*(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).*





## Appeals No. 114 of 2019

16

- (2) *Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.*
- (3) *Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.*
- (4) *Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.*

**21.** Perusal of the above reveals that Section 29(2) of the Act, does not bar the application of Limitation Act to the Act (i.e. Real Estate (Regulation and Development) Act, 2016), though may not be called for in the present case. However, section 29(2) of the Limitation Act, certainly comes into picture in respect of Sections

## Appeals No. 114 of 2019

17

18(2), 44(2) etc. of the Act, where the limitation period, different from those prescribed in the Limitation Act, 1963, is prescribed.

22. Therefore, I am of the view that the interest on the refund, if any, payable to the appellant, has to be considered from 23.10.2018 i.e. 3 months after the date of his legal notice dated 23.07.2018 seeking refund of the amount deposited by him with the respondent.
23. In view of the above, I deem it appropriate that the entire amount of Rs.6,50,000/- deposited by the complainant with the respondent should be refunded to the appellant by the respondent, along with interest thereon as prescribed in the Rule 16 of the Rules from 23.10.2018 till realization.
24. The appeal is accordingly disposed off. File be consigned to record room and a copy of this order be filed in the file of the appeal and also be communicated to the parties as well as to the Authority and the Adjudicating officer.



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

April 18, 2022

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

01/03/2023