

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

Subject: -

APPEAL NO. 86 OF 2022

Gurpal Singh S/o Sh. Budh Singh R/o Haripur Basti,
Bhawanigarh, Tehsil & District Sangrur; Punjab-148206.

...Appellant-Complainant

Versus

Sushma Buildtech Limited, B-107, 1st Floor, Business Complex,
Elante Mall, Industrial Area, Phase-1, Chandigarh-160030 through
its Authorized Signatory/Representative.

....Respondent

Memo No. R.E.A.T./2023/ 201

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
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 16th
day of May, 2023.

Manoj Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



(1)

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 86 of 2022

MEMO OF PARTIES

Gurpal Singh son of Sh. Budh Singh resident of Haripur Basti,
Bhawanigarh, Tehsil & District Sangrur, Punjab-148026.

...Appellant-Complainant


Versus

Sushma Buildtech Limited, B-107, 1st Floor, Business Complex,
Elante Mall, Industrial Area, Phase-1, Chandigarh-160030
through its Authorized Signatory/Representative

...Respondent



Place: Chandigarh
Dated: 28.04.2022


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

Appeal No. 86 of 2022

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

APPEAL NO. 86 OF 2022

Gurpal Singh son of Sh. Budh Singh resident of Haripur Basti,
Bhawanigarh, Tehsil & District Sangrur, Punjab-148026.

.....Appellant-Complainant

Versus

Sushma Buildtech Limited, B-107, 1st Floor, Business Complex, Elante
Mall, Industrial Area, Phase-1, Chandigarh-160030 through its Authorized
Signatory/Representative

..... Respondent

Present: Mr. Munish Gupta, Advocate for the appellant
Mr. Sanjeev Sharma, Advocate for the respondent

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.)**

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

By this order, we will dispose of above mentioned appeal, bearing
Appeals No. 86 of 2022 (**Gurpal Singh versus Sushma Buildtech
Limited**) filed against the order dated 29.03.2022 passed by the Real
Estate Regulatory Authority, Punjab (*hereinafter referred to as the
Authority*) in the complaint bearing AdC No. 17502020 originally
filed on 15.09.2020 before the Authority 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*).



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2. The appellant-complainant, in his complaint, has inter alia claimed/alleged that (i) upon payment of Rs. 22,50,000/-, Office Space No. 11 was allotted to him and allotment letter dated 25.03.2013 was issued; (ii) that as per clause 9 of the agreement dated 25.03.2013 executed, possession of the developed unit was to be handed over within 42 months or within grace period of 6 months i.e. by 25.03.2017; (iii) that he paid the entire amount under "Down Payment Plan"; (iv) that as the possession of the unit was not been given, he issued legal notice dated 18.08.2020 seeking possession within 15 days and apprised the respondent that failing which he would seek legal remedies; (v) that as needful was not done by the respondent, therefore, he has prayed for refund of the paid amounts with interest. It has also been mentioned in the complaint that assured return @ Rs. 16,416/- has been paid to him only till February 2020.
3. The respondent, in its reply dated 08.06.2020 (*ostensibly should have been 08.06.2021*) to the complaint, has inter alia contended before the authority that (i) possession of the unit was offered on 03.11.2020; (ii) that the unit has been completed and even partial completion certificate/occupation certificate as well as full completion certificate has been granted to the project in question on 15.12.2017 and 25.07.2019 respectively; (iii) that the respondent stands committed to remit/clear the unpaid amount of assured returned, if any; (iv) that in case of seeking refund after offer of possession, the earnest money is liable to be forfeited in terms of clause 8 of the agreement dated 25.03.2013 and the complainant is liable to refund the money received by/paid to him under the assured return plan (Rs. 15,18,038/-) along with interest.
4. The appellant, in his rejoinder dated July 2021, has inter alia contended that the project is incomplete and occupation certificate



has not been obtained and thus, the respondent had still not offered legal/valid possession.

5. Based on oral as well as written submissions of the parties, the Authority passed aforesaid order dated 29.03.2022, thereby dismissing the complaint allegedly being devoid of merits, after recording its findings, which are being reproduced hereunder:-

"G. FINDINGS

9. Based on oral as well as the written submissions, following are the findings:-

I. The complainant booked a office space No.11, on the 10th Floor, on 25.03.2013 after paying the entire sale consideration of Rs 22,50,000/- A buyers agreement was also executed on the same date.

II. The promised date of possession was 25.3.2017.

III. The respondent received a PCC for 16 showrooms, in the project Sushma Infinium, on 15.12.2017.

IV. The respondent received Completion Certificate/Occupancy Certificate on 25.7.2019.

V. The respondent offered possession to the complainant on 3.11.2020.

VI. The assured returns were paid from the date of execution of the assured return agreement on 26.03.2013 till March, 2020 i.e. for a period of 7 years. It was paid @ Rs.40.83 per sq. ft., per month, amounting to Rs.15,18,038/-. The last payment of Rs.50,616/- was made on 24.07.2020. The return comes to 9.61% per annum, on the amount paid, from the date of payment.

VII. The complaint was filed online on 15.9.2020 after discontinuance of the assured returns.

VIII. Between 25.3.2017 and 15.09.2020, no complaint was filed seeking refund of the amount paid by the complainant, on account of delay in offering possession, as the complainant was regularly receiving assured returns. No justification for delay in seeking refund could be given by the complainant. The refund has been sought more than 1 year subsequent to the grant of completion/occupancy certificate to the respondent.



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IX. The conduct of the complainant clearly shows that he had no cause for seeking any relief till he was being paid the assured returns. The same were discontinued, after offer of possession, in terms of Clause 2 of the assured return agreement executed on 26.03.2013. If the complainant was not satisfied with timely delivery of possession, he could have sought the refund immediately after the expiry of promised date of 25.03.2017 but he did not do so. Even in the complaint, he has alleged that he has not been paid assured returns after February, 2020 which implies that he would have been satisfied with the delayed possession if the respondent had continued to pay him the assured returns. The complainant had been adequately compensated for the delay by paying the assured returns 9.61% per annum which is much higher than the rate of interest paid by way of orders by this Authority as provided under Rule 16 of the Punjab State Real Estate (Regulation & Development) Rules, 2017. Hence, the relief of refund sought by the complainant, at this belated stage, is not made out."

6. Aggrieved by the order of the Authority, the appellant has challenged the same before this Tribunal inter alia on the following grounds:- (i) That the Authority has dismissed the complaint despite observing that admittedly there is delay of more than 3 years on the part of the respondent in offering possession, as possession was to be handed over on or before 25.03.2017; (ii) That even in the judgment passed by Hon'ble Apex Court in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Others**, it has been observed that no allottee can be made to wait endlessly for development of the project and handing over of the possession; (iii) That if the respondent had received alleged partial completion certificate and completion certificate in the year 2017 and 2019 respectively, what stopped the respondent from offering possession in the year 2019 itself instead of offering the possession on 03.11.2020.

7. The appellant, vide his application dated 07/13.12.2022, bearing Application No. 327 of 2022, has placed on record before this



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Tribunal his calculation sheet, as per which even after setting off an amount of Rs. 15,18,038/- received as assured return, an additional amount of Rs. 30,01,377/- was payable by that time along with interest for the period thereafter.

8. To controvert the appellant's aforesaid calculations, the respondent has placed on record before this Tribunal its own calculation sheet dated 27/31.03.2023, wherein out of an amount of Rs. 22,50,000/- received on 25.03.2013, the 'amount paid' has been deducted for each of a large number of slots of time period between 25.03.2013 to 24.07.2020 for arriving at the opening balance for each subsequent slot, but without adding the interest accrued; and its such a patently wrong approach has even led to reduction of the principal amount from Rs. 22,50,000/- received on 25.03.2013 to only Rs. 7,28,256/- as on 20.12.2020 as well as led to wrong calculation of interest amount payable for each slot only on the wrongly reduced amount. Even after such a patently wrong methodology adopted by the respondent, an amount of Rs. 21,15,265/- has been admitted to be outstanding as on 31.03.2023, out of which an amount of Rs. 7,28,256/- is towards wrongly reduced principal amount and the balance is towards wrongly calculated interest up to 31.03.2023.
9. We have perused the material placed before us and for the reasons mentioned hereinafter, we are of the opinion that the Authority has erred in dismissing the complaint.
10. The appellant paid an amount of Rs. 22,50,000/- towards the entire consideration of the unit at the time of booking on 25.03.2013. The promised date of possession was 25.03.2017. After waiting further for more than three years for offer of possession of the unit, the appellant, vide his complaint originally filed on 15.09.2020, opted to withdraw from the project and sought refund and interest in terms of



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section 18 of the Act, which he is rightly entitled to as per provisions under section 18(1) of the Act.

11. Possession of the unit has been offered by the respondent vide offer of possession demand letter dated 03.11.2020 and the respondent has claimed that the unit had been completed and even partial completion certificate/occupation certificate as well as full completion certificate has been granted to the project in question on 15.12.2017 and 25.07.2019 respectively. If the unit in question had really been completed as claimed, then what prevented the respondent from offering its possession immediately after 15.12.2017/25.07.2019. This point is baffling, especially when the respondent admittedly continued to bear its liability of payment of assured return till 2020, even though as per assured return plan agreement dated 26.03.2019, the respondent was to provide the appellant the assured return only till the offer of possession. These facts speak volumes about the veracity of the said certificates dated 15.12.2017 and 25.07.2019 (**Annexures R-7 and R-8**) relied upon by the respondent.



12. As per the assured-return-plan-agreement dated 26.03.2019, the respondent was liable to pay to the appellant an amount of Rs. 18,240/- per month as assured return (super area 446.73 square feet multiplied by the assured return rate of Rs. 40.83 per square foot per month) till the offer of possession; and as a part of the deal between the respondent and the appellant, such assured return would have been payable, even if had the possession of the unit been offered by the respondent on or before the promised date.

13. Therefore, the appellant is entitled to refund of the amount paid by him to the respondent and is also entitled to interest thereon as per provisions of the Act. Hence, in terms of section 18(1) of the Act read with its section 2(za), the respondent is liable to return the

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amount of Rs. 22,50,000/- received by it on 25.03.2013 along with interest thereon from 25.03.2013 till the same as well as the said interest thereon is refunded/paid, the rate of interest being the one as prescribed under Rule 16 of the Rules. However, to avoid unjust enrichment of the appellant, the amount already received by the appellant as assured return needs to be set off against the amount of interest payable by the respondent to the appellant in terms of the aforesaid provisions of the Act but such set off be limited to the extent of such interest payable.

14. Ordered accordingly, thereby accepting the appeal to that extent. The order dated 29.03.2022 passed by the Authority in the complaint bearing AdC No. 17502020 is hereby set aside. The amount payable by the respondent to the appellant in terms of this order be paid within two months from the date of this order.

15. 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.



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

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

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

15-16
May 2023

Sd/-

Certified To Be True Copy

Registrar
16-5-2023
Real Estate Appellate Tribunal Punjab
Chandigarh