

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

Subject: -

Appeal No. 68 of 2023

1. Lt Col Vijay Singh Sandhu (Retd.) son of Lt Col GMS Sandhu, aged 69 years, resident of House Number 1113, Sector 36-C, Chandigarh.
2. Rajbir Kaur Sandhu, wife of Lt Col Vijay Singh Sandhu (Retd.), aged 66 years, resident of House Number 1113, Sector 36-C, Chandigarh.
3. Karan Singh Sandhu, son of Lt Col Vijay Singh Sandhu (Retd.) aged 38 years, resident of House Number 1113, Sector 36-C, Chandigarh.

...Appellants

Versus

1. M/s Omaxe Chandigarh Extension Developers Pvt. Ltd, India Trade Tower, First Floor, Madhya Marg Extension Road, Omaxe New Chandigarh, Mullanpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab 140901.
2. PNB Housing Finance Limited, SCO 323-324, First Floor, Sector 35-B, Chandigarh.

....Respondents



Memo No. R.E.A.T./2024/ 42

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 (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 6th

day of February, 2024.



Shamendra Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 68 of 2023

MEMO OF PARTIES

1. Lt Col Vijay Singh Sandhu (Retd.) son of Lt Col GMS Sandhu, aged 69 years, resident of House Number 1113, Sector 36-C, Chandigarh.
2. Rajbir Kaur Sandhu, wife of Lt Col Vijay Singh Sandhu (Retd.), aged 66 years, resident of House Number 1113, Sector 36-C, Chandigarh.
3. Karan Singh Sandhu, son of Lt Col Vijay Singh Sandhu (Retd.) aged 38 years, resident of House Number 1113, Sector 36-C, Chandigarh.

.... Appellants

Versus

1. M/S Omaxe Chandigarh Extension Developers Pvt Ltd, India Trade Tower, First Floor, Madhya Marg Extension Road, Omaxe New Chandigarh, Mullanpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab 140901.
2. PNB Housing Finance Limited, SCO 323-324, First Floor, Sector 35-B, Chandigarh.

.....Respondents

Chandigarh

Dated: 27.10.2023

Karan Sandhu

(Karan Singh Sandhu)

Advocate

P/1664/2008

PH222564

Counsel for Appellants No.1-3

3
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO.68 OF 2023

LT COL VIJAY SINGH SANDHU & OTHERS
VERSUS
M/S OMAXE CHANDIGARH EXTENSION DEVELOPERS PVT. LTD. &
ANOTHER

Present: - Mr. Karan Singh Sandhu, Advocate for the appellant
Mr. Arjun Sharma, Advocate for respondent.

This appeal by the allottee is directed against the Order dated 03.08.2023 passed by the Real Estate Regulatory Authority (hereinafter known as Authority).

While dealing with complaint under Section 31 of the allottee with a grievance of delayed possession the Authority decided in his favour, to grant statutory interest under Section 18(1) of the Act. For the purposes of clarity the directions issued by the Authority while disposing of the complaint are extracted

here below:-

"i. As provided under Section 18(1) of the Act read with Rule 16 of the Rules, the respondent shall pay interest as per State Bank of India's highest marginal cost of lending rate (as of today), plus 2% w.e.f. 03.03.2019 till the date of delivery of legal and valid possession on the amount Rs.34,50,849/-, paid by the complainants from their own pocket.

ii. The amount paid by the respondent No.1 i.e. Rs.60,83,030/- on account of interest to respondent No.2, PNB Housing Finance Limited, shall be set off against the interest to be paid to the



complainants by respondent No.1 under Section 18 of the Act.

iii. That the complainants would be bound to pay any outstanding amounts as per the allotment letter before taking possession of the unit in question. The interest to be paid by the complainants for any delay in payment would also be the State Bank of India's highest marginal cost of lending rate (as on today) plus 2%."

In the present appeal the cause of grievance to the appellant is limited to Clause (ii) extracted above.

We have heard the learned counsel for the parties in light of the grievances expressed by the appellant.

The facts are not in dispute. The appellant had applied for a residential unit being developed by the respondent and as per Clause 40 of the Allotment Letter dated 04.09.2015 possession was to be given within a period of 42 months i.e. by 03.03.2019, which however did not fructify, leading to the complaint under Section 31 as mentioned above. It is also not in dispute that there was a Tripartite Agreement between the appellant, the developer and the Punjab National Bank, according to which the appellant was required to deposit a certain amount whereafter the bank was also under an obligation to make the payment to the developer but the interest component regarding the amount deposited by the bank was to



be borne by the developer till the time possession was handed over.

This being the crux of the subvention scheme, the appellant deposited a sum of Rs.34,50,849/- whereas the bank deposited Rs.92,00,780/-.

The learned counsel for the appellant has contended that his prayer is limited to the grant of interest as amount deposited by him is Rs.34,50,849/- but the Authority has gone wrong while recording direction No.(ii) according to which the amount paid by the developer on account of interest paid to the Punjab National Bank would be set off against the interest paid to the allottee. This is erroneous as it would mean denial of the statutory benefits to him.

The learned counsel for the respondent on the other hand justified the order of the Authority.

After hearing the learned counsel for the parties we are of the opinion that direction No.(ii) is unsustainable. The Tripartite Agreement would envisage an Agreement between the bank and the developer which would bind them to different sets of conditions whereas the appellant would also be bound by another set of conditions existing between him, the developer and the bank. Undisputably, the appellant has deposited a sum of Rs.34,50,849/-. Statutory interest has rightly been awarded to him on this amount but by imposing direction No.(ii) the benefit given by one hand has been taken away by the other. The



deposit of amount by the bank and the interest thereon would be an issue between the developer and the bank but insofar as the allottee is concerned he is governed by the terms of the agreement. The statute in turn envisages that in the event of possession not being handed over within stipulated time it would entitle the allottee to the benefit under Section 18(1) of the Act. No other condition can be permitted to infiltrate or an interpretation placed to deprive an allottee of his statutory rights.

In view of the above, we are of the opinion that the appeal deserves to be accepted and the impugned Order dated 03.08.2023 has to be modified by striking off the direction No.(ii), with no alteration in the remaining portion of the impugned order.



Sd/-
JUSTICE MAHESH GROVER (RETD.)

CHAIRMAN

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

MEMBER JUDICIAL)

January 25, 2024
SR

Certified To Be True Copy

T. Chandra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

06/02/2024