

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

SCO No. 95-98, Bank Square, P.F.C Building, Sector-17-B, Chandigarh

Subject: -

Appeal No. 206 of 2022

Lt. Col. Rahul Jain, S/o Sh. Virender Kumar Jain, R/o House
No.12/8, Ashirwad Enclave, Dehradun, Uttarakhand, Pin Code-
2488001.

.....Appellant

Versus

1. ATS Estates Pvt. Ltd., Having its Registered office at 711/92, Deepali
Nehru Place, New Delhi, Pin Code-110019.
2. HDFC Bank, Having its Office at The Capital Court, OLOF Plame
Marg, Munarika, New Delhi, Pin Code-110067.

.....Respondents

Memo No. R.E.A.T./2024/ 345

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 3rd day
of September, 2024.

T. Dharampal Singh

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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

Appeal No.2026..... of 2022
(Arising Out of Complaint no. 1482 of 2019)

MEMO OF PARTIES

Lt. Col. Rahul Jain, S/o Sh. Virender Kumar Jain, R/o House No. 12/8,
Ashirwad Enclave, Dehradun, Uttarakhand, Pin Code- 248001.

...Appellant

Versus

1. ATS Estates Pvt. Ltd., Having its Registered Office at 711/92,
DeepaliNehru Place, New Delhi, Pin Code- 110019.
2. HDFC Bank, Having its Office at The Capital Court, OLOF Plame Marg,
Munarika, New Delhi, Pin Code- 110067.

...Respondents

Chandigarh

Dated: 28.11.2022

T. Seth. P. Kaur. D. Bansal
(Tarun Seth) (Parminder Kaur) (Deepika Bansal)
Advocates

Counsels for the Appellant



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPLICATION NO. 316 OF 2022
APPLICATION NO. 317 OF 2022
AND APPEAL NO. 206 OF 2022

LT. COL. RAHUL JAIN
VERSUS
ATS ESTATE PRIVATE LIMITED AND ANOTHER

Present: - Mr. Mahir Sood, Advocate for the appellant
Mr.J.P. Rana, Advocate for the respondents.

1. This appeal has been filed against the Order dated 10.03.2022 passed by the Real Estate Regulatory Authority (hereinafter known as the Authority).
2. The facts of the case are not in dispute. Admittedly, the complainant/appellant booked a Flat No.7091 in Tower 7 in the project. The total price of the unit was Rs.57,65,000/-. Out of this amount the complainant paid a total sum of Rs.51,82,808/-. Allotment letter was issued on 09.01.2013 and the agreement for sale was signed on 23.02.2013. As per the agreement the possession was to be handed over within 42 months of the start of the construction which is by June, 2016. However, the possession was not offered within the prescribed period. Ultimately, the Legal Notice dated 30.08.2019 was sent to the respondent which did not yield any positive response.
3. The respondents contested this complaint by filing reply thereto by raising various objections. A rejoinder was also filed by the complainant. After hearing the counsel for the parties and after going through the record the learned Authority dismissed the complaint referring undertaking



dated 02.11.2016 given by the complainant by applying principle of estoppel.

4. We have heard the learned counsel for the parties. There is a delay of 177 days in filing this appeal. However, the respondent has not opposed the application filed by the complainant for condonation of delay. Keeping in view the fact that the application has not been opposed as well as the facts and circumstances of the case, delay in filing the appeal stands condoned.
5. Annexure R-5 is the undertaking given by the allottee which is as follows:



"With reference to Clause 15 of Buyer Agreement, I/We are entitled to receive compensation at Rs.5 per square feet per month for delay in handing over of possession. I/We, hereby with this letter, seek said compensation on "Monthly" basis in order to lessen the burden of money EMI and interest that I/We are paying to Bank/Financial Institution, starting from 01-07-2016 till actual offer of possession is offered to me/us.

I/We hereby undertake that we shall not seek any compensation for delay in offer of possession at the time of actual offer of possession. We also undertake not make/raise any complaint before any authority. Forum etc. or any Court of Law regarding compensation for delay in offer of possession and shall not withdraw from the project or surrender the allotment of said flat.

Accordingly we request for monthly disbursement of compensation under Clause 15 of Buyer Agreement as stated above."

This uncertainty was like a memo of understanding between the two parties subject to both agreeing to the terms and conditions of this undertaking i.e. no action would be taken by the allottee if he received compensation in accordance with Clause 15 of the Buyer Agreement.

6. The learned Authority on the basis of this undertaking came to the conclusion that it is not necessary to go into the pleadings in detail as the complainant has already given the undertaking not to raise any objection of any kind regarding the delay of possession of the plot in question. This undertaking was given in Nov, 2016 but till date admittedly, the possession has not been handed over to the appellant. From reply given by the respondent it is also evident that they have stopped payment of the compensation which they had agreed to pay as per Clause 15 of Agreement even from June, 2019 and subject to which the allottee had given his undertaking.
7. The undertaking of the complainant reproduced above would reveal that it was a conditional undertaking and it will remain in force till the compensation as per Clause 15 of the Agreement is paid to the complainant.
8. As stated above, the respondent has not paid the compensation since June, 2019 onwards as such the alleged



undertaking given by the allottee becomes meaningless. Since the complaint has not been decided on merits and has been decided on the basis of undertaking only, without going through the pleadings in detail so the order of the Authority cannot be sustained. Moreover, the only prayer made by the appellant/complainant in this appeal is for remanding back the case to the learned Authority for deciding the same afresh on merits.

- 9. For the aforementioned reasons this appeal is accepted the impugned order is set aside and the case is remanded back to the learned Authority to decide the case afresh after going through the facts and merits of the case. The learned Authority is directed to dispose the case within 3 months from the receipt of copy of this judgment.



Sd/-
 SANJEEV KUMAR GARG, D&S. JUDGE (RETD.)
 MEMBER (JUDICIAL)

Sd/-
 DR. SIMMI GUPTA, IRS (IT)
 CHIEF COMMISSIONER OF INCOME TAX
 MEMBER (TECH./ADMN.)

AUGUST 01, 2024
 SR

Certified To Be True Copy
Sharendra Kaur
 Registrar
 Real Estate Appellate Tribunal Punjab
 Chandigarh
Shweta Sharma
 3/9/2024