

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,  
SAS NAGAR (MOHALI)

Appeal No. 64 of 2019

Mrs. Sarla wife of Col Tej Bhan, H.N. 335, Sector 8, Panchkula  
(HARYANA).

....Appellant

**Versus**

1. M/s Sushma Buildtech Limited, Unit No. B-107, Business Complex at Elante Mall, First Floor, Industrial Area Phase-1, Chandigarh- (UT) 160002 through its Managing Director Sh. Bharat Mittal.
2. Sh. Binder Pal Mittal, Chairman, M/s Sushma Buildtech Limited, Unit No. B-107, Business Complex at Elante Mall, First Floor, Industrial Area Phase-1, Chandigarh- (UT) 160002.

....Respondents

**Present: -** Mr. S.S. Pathania, Advocate for the appellant.  
Mr. Sanjeev Sharma, Advocate for the respondent.

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**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**

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**JUDGMENT: (Mahesh Grover (J) (Retd): (oral)**

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This is an appeal filed by the complainant/appellant against the order dated 18.12.2018 passed in Complaint No. GC-1019 of 2018 by the Chairperson, Real Estate Regulatory Authority,

Punjab, whereby her claim was partially accepted and while accepting her plea of cancellation of allotment, the respondents were held entitled to forfeit 10% of the total amount credited towards the account of the complainant/appellant. The remaining amount was directed to be refunded to the complainant/appellant but no interest was granted.

I have heard learned counsel for the parties and also perused the record. The grievance of the appellant is limited and confined to the denial of interest on the refunded amount and forfeiture of 10%.

A perusal of the impugned order reveals a finding attributing default to both, the appellant and the respondents. The appellant was required to deposit 18-odd lakhs by the end of 2014 as against which she had deposited merely a sum of Rs.5,30,828/-. It is in the month of March, 2016 when notice of cancellation was issued by the respondents that the appellant too woke up and sought cancellation of the allotment.

The appellant has been unable to offset at least this finding recorded in the impugned order regarding non-deposit of the amount of 18-odd lakhs by the end of 2014, except to say that the appellant had been visiting the office, there is no material to substantiate such a plea.

Therefore, this Tribunal is of the opinion that this finding needs affirmation.

If that be so then this Tribunal would examine the justification of forfeiture of 10% of the total amount deposited by the appellant as well as the denial of interest.

To my mind the appellant has been dealt with a dual blow while denying her the interest entirely and directing 10% forfeiture of the amount deposited. No provision has been shown to justify forfeiture and besides the respondents too seem to be in default even as per the finding of the Authority, which has not been questioned by them by filing an appeal. Consequently, it is deemed appropriate to modify the impugned order.

Assuming there was a default by the appellant herself in making the deposit yet the respondents cannot be absolved of their responsibility in not intimating the appellant of the periodic demand based on the level of construction since the appellant had opted for a construction linked plan.

The respondents have been unable to clarify this aspect. There is thus an irresistible inference that the amount deposited by the appellant remained with the respondents for almost 2 years and considering that the issue of cancellation was initiated at that point of time, the appellant is held entitled to interest @ 7% for 2 years on the amount deposited by her, while the forfeiture of 10% is held to be bad, and accordingly this ~~discretion~~<sup>direction</sup> is set aside in entirety.  
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Appeal disposed of as above.

JUSTICE MAHESH GROVER (RETD.)  
CHAIRMAN

September 03, 2019  
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