

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

Appeal No. 59 of 2019

M/s Country Colonisers Pvt. Ltd., having its registered office
at Sector 85, SAS Nagar, Mohali, Punjab.

....Appellant

Versus

1. Bimal Kumar Goel son of Sh. Krishan Kumar,
2. Seema Goel w/o Sh. Bimal Kumar Goel,

Both R/o House No. 125, Bank Colony, Patiala, Punjab.

....Respondents

Present: Mr. Tejeshwar Singh, Advocate for the appellant.
Mr. J.P. Singla, Advocate for the respondents.

**QUORUM: JUSTICE ARUN CHAUDHARI, (RETD), CHAIRMAN
S.K. SHARMA, IPS (RETD.), MEMBER**

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JUDGMENT: (Satish Kumar Sharma (IPS) (Retd) (Member)

The present appeal has been filed challenging the impugned order dated 09.10.2018 passed by the bench of the Chairperson, Real Estate Regulatory Authority, Punjab with a prayer to (a) set aside the impugned order dated 09.10.2018 passed by the Chairperson, Real Estate Regulatory Authority, Punjab (b) to dismiss the complaint with costs against the respondents/buyers. At the very outset, counsel for the appellant states that the preliminary

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objections (i), (ii), (iii) and (iv) raised before the Authority have been decided by one line order by the Real Estate Regulatory Authority and have not been adjudicated upon while observing that the said preliminary objections have already been decided in similar cases i.e. "Gautam Uppal Vs. Country Colonizers Pvt. Ltd., (Complaint No. 4(a) of 2017)", "Surjit Kaur Vs Omaxe Chandigarh Extension Developers Pvt. Ltd.", "Hon'ble Bombay High Court" and "the Full Bench of this Authority in Bikramjit Singh's case" and in the same breath the appellant also states that this Tribunal has relegated the matter to the Authority in the appeals No. 33, 34 and 35 of 2018 titled as "M/s Country Colonizers Pvt. Ltd. versus Gautam Uppal" to decide the matter in respect of certain preliminary objections vide its order dated 04.12.2018. The relevant part of the order dated 04.12.2018 passed by this Tribunal reads as follows: -

"Counsel for the parties agree on instructions that instead of any order on merits, the impugned orders in all the appeals may be set aside and the matter may be remitted to the appropriate Authority/Adjudicating Officer for afresh adjudication after taking into consideration the procedure set out in the Act and as interpreted by this Tribunal in Appeal No. 1 of 2018 titled Emaar MGF Land Ltd. versus Kamalroop Singh Sooch and another decided on 20.09.2018."

Counsel for the appellant also contends that this Tribunal has already held while deciding a bunch of appeals in respect of the subject matter for grant of relief to the complainant by the Authority including refund and compensation in the appeal No. 53 of 2019 titled as "Sandeep Mann Versus Real Estate Regulatory Authority and another" and other connected appeals decided on 27.02.2019. The relevant portion of the order reads as follows: -

X X X X

- (iii) *A violation claiming relief of compensation can only be adjudicated by the Adjudicating Officer exercising power under Section 71 of the Act and Rule 37 of the Rules.*
- (iv) *Where the violation alleged leads to a relief of compensation or if compensation is a part of multiple reliefs like return of investment with interest and compensation or refund with interest including compensation, the complaint shall be placed before the Adjudicating Officer exercising power under Section 31 and 71 (1) of the Act read with Rule 37 in form N.*

X X X X

Hence the matter could have been adjudicated upon only by the Adjudicating Officer as per the judgment of this Tribunal cited above.

We have repeatedly called upon the learned counsel for appellant-builder to show anywhere that the preliminary objections

were in fact raised before Real Estate Regulatory Authority, Punjab. He could not point out the same even remotely from the pleadings. We cannot allow that at the appellate stage as the appellant submitted to jurisdiction. But then in order to avoid any further challenge on that aspect, we have decided to look into the objections. Following are the preliminary objections which have been raised before Real Estate Regulatory Authority, Punjab and this Tribunal: -

- (i) *That the complaint was not maintainable since the complainants were not to use it as their residence but had only purchased it for investment purposes. This violated the condition of the agreement that the dwelling unit would be used only for residential purposes.*
- (ii) *Since the complainants were not 'consumers', they could not seek protection of RERA Act, which was enacted to protect the interest of the consumers.*
- (iii) *That the complaint was not maintainable in view of the presence of the arbitration clause in the agreement.*
- (iv) *That the RERA Act is prospective in nature and cannot be invoked in the cases of transactions that took place prior to its enactment.*
- (v) *That the complainants had violated the provisions of the agreement and had also failed to adhere to the stipulated payment plans. Thus they were themselves in default and the complaint should be held to be non maintainable.*

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We have heard counsel for the appellant and seen the objections. As to objection No.(i), it cannot be a preliminary objection as the issue whether the complainant agreed to purchase for investment or not is a question of fact to be decided on merits. As to (ii), this objection is based on objection No. (i) that complainant is only the investor. The objection (iii) about arbitration clause has no merit in view of coming into force of Special Act i.e. Real Estate (Regulation and Development) Act, 2016. As to objection (iv), the cause of action for complainant being continuing as he did not get his refund, there is no merit in this objection. As to (v), this is a question of fact as to who violated the agreement.

We thus hold that all these preliminary objections are frivolous and have been raised with a view to delay the lis. We reject all of them.

Counsel for the appellant also stresses upon the facts of the case and refers to defaults on the part of the respondents/buyers in making payments due from the respondents as per the agreement and the payment plan agreed to, between the parties and further states that the respondents/buyers have violated Section 19 of the Real Estate (Regulation and Development) Act, 2016. The relevant portion of Section 19 of the RERA Act reads as follows: -

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(1) to (5) X X X X X X X

(6) *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

(7) *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

Counsel for the appellant also contends that the allegation of the respondents/buyers that the project was not completed within the fixed period as agreed between the parties i.e. 30 months, doesn't stand ground as per Clause 5.1 of the Allottee(s) Arrangement, which specifically states that "Subject to Clause 5.2 and further subject to all the Allottee(s) of the said "Residential Floor" in the "Said Project" making timely payment(s), the Developer shall endeavour to complete the development. Counsel for the appellant further refers to the judgment passed by the Hon'ble Supreme Court in Chand Rani V. Kamal Rani, (1993) 1 SCC 519 and at the same time states that the appellant has completed the construction of unit in question and has already offered possession of the same to the respondents/buyers vide letter dated 02.07.2018.

Counsel for the appellant/builder further submits that there was a tripartite agreement between the seller, buyer and the bank and for the said reason bank is a necessary party, as the majority of the payments were made by the bank out of total amount paid i.e. Rs. 57,99,292/- and the respondents have only paid Rs. 9,99,292/- thereby making a case for impleading bank as a party and has also raised this contention that the respondents/buyers are not genuine buyers and have entered into an agreement to purchase a flat not for their own residence but rather for an investment.

After raising all his contentions counsel for the appellant leaves the floor open for counsel for the respondents.

Counsel for the respondents avers that the order dated 09.10.2018 passed by the Real Estate Regulatory Authority, Punjab deserves enforcement and implementation without wasting further time as the appellant/builder has unnecessarily delayed the matter while clearly loosing the case before the Real Estate Regulatory Authority, Punjab on merits. Counsel for the respondents further states that an agreement was made between the appellant/builder and the respondents/buyers on 11.11.2014 for purchase/sale of Floor No. 179 Second Floor, Sector-85 Mohali, Punjab and as per clause 5 of the agreement, the builder has to complete the project in general and the said residential floor in particular within 24 months.

In this way the builder was required to deliver the possession on or before 12.11.2016. The respondents/buyers have made payments to the appellant/builder by obtaining a loan from the HDFC Bank as follows: -

S.No.	Date	Amount (Rs.)
01	11/02/2013	3,00,000/-
02	22/03/2013	3,18,540/-
03	18/05/2014	1,00,000/-
04	29/08/2015	1,74,756/-
05	19/09/2014	1,00,000/-
06	27.11.2014	57,93,296/-
	<i>Total</i>	<i>57, 93, 296/- (Rs. Fifty Seven Lakhs Ninty Three thousands two hundred and ninty six only.</i>

Counsel for the respondents/buyers further submits that the respondents have invested a huge amount to purchase a flat in the project developed by the appellant/builder who miserably failed to fulfill its obligations of delivering possession within 24 months of the agreement, with a grace period of 6 months. Even allowing for this grace period, possession should have been delivered by 13.05.2017 and because of this unreasonable delay, the respondents are not interested in retaining the flat and therefore demanded the return of money deposited by the respondents/buyers along with interest and also compensation for the mental harassment caused to them and in this regard the Real Estate Regulatory Authority has held as under: -

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“ The matter has been considered. As already noted above, none of the above preliminary objections raised on behalf of the respondent contains any substance. Coming to the merits of the case, it is clearly established on the record that the respondent has not been able to deliver possession within the stipulated time i.e. 2 years and a grace period of 6 months. It has been contended that this was not a mandatory stipulation and the only commitment that the respondent would endeavour to hand over possession within above period. This contention cannot be accepted. Time is of the essence in such contracts and the complainants cannot be expected to wait indefinitely for the respondent to complete the project and hand over its possession to them. As it is they have waited for about a year before the filing of the present complaint. It cannot, therefore, be said that their desire to withdraw from the project is unreasonable. The respondent's other contentions that the complainants have been defaulted on various obligations, including that of timely payment of installments, is also without merit. If the complainants had defaulted on any account, the respondent should have taken action under the terms of the agreement. They chose not to do so and now cannot be allowed to plead this in their defence, even if for the sake of argument it is accepted that the complainants were actually in default.

As a result of above discussion, the complaint is accepted. The respondent is directed to refund the amount paid by the complainants along with interest prescribed in Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 within a period of two months from the date of receipt of this order, after adjusting the pre-EMI interest paid by the respondent to the financing institution.”

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Arguments advanced by the rival parties have been heard in detail. The contention of counsel for the appellant to decide the preliminary objections first and then decide the case on merits has been considered and decided. We are of the firm view that since the preliminary objections raised before this Tribunal have been decided against the appellant, as these do not hold ground, we have decided to hear and consider the merits of the case. The contention of counsel for the appellant that in view of the judgment passed in Sandeep Mann case (supra) by this Tribunal, the adjudication of matter by the Adjudicating Officer only falls flat as the Tribunal itself decided that “ *This order shall not apply to any matter that has attained finality*” and the same issue was not raised before the Authority in the said manner.

The contention of counsel for the appellant that the buyers were not a genuine buyers and had entered into an agreement to purchase a flat only for the purpose of investment, does not hold ground in the light of the averments of counsel for the respondents that the flat was required for their son studying at Allen, Chandigarh to whom the respondents has to put in PG house @ 18000/- per month and as the said purpose has been defeated by not handing over the possession in time, the same is no more

required. Counsel for the respondents/buyers also states that the liability to repay the bank under the tripartite agreement is of the buyers and not of the promoter, hence the contention of the appellant that the bank is a necessary party gets defeated. We agree with the contention of the respondents that contention of the appellant does not hold good.

The Real Estate Regulatory Authority, Punjab has considered all these factors in detail while holding the right of the respondents to withdraw from the project under Section 18 of the Real Estate (Regulation and Development) Act, 2016 which reads as follows: -

18. ***Return of amount and compensation. –***

(1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –*

(a) *in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

(b) *X X X*
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

X X X X

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As it is established that the appellant-builder failed to deliver possession of the unit No. 179, Second Floor, Sector 85, Mohali Punjab, within the stipulated period thereby attracting the provisions of Section 18 of the Real Estate (Regulation and Development) Act, 2016 reproduced above which entitles the allottee to withdraw from the project and the promoter is entailed with a liability on any such demand by the allottee to withdraw from the project to (a) refund the amount received by him. (b) pay interest at such rate as may be prescribed.

Hence, we concur with the judgment passed by the Real Estate Regulatory Authority, Punjab, uphold grant of refund and interest as per Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 and dismiss the appeal.

The Registrar is directed to release the payments deposited by the appellant to the respondents forthwith.

No costs.

S.K SHARMA, IPS (RETD.)
MEMBER

JUSTICE ARUN CHAUDHARI (RETD.)
CHAIRMAN

24.07.2019
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