

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

Subject: -

**APPEAL NO.44 OF 2022**

1. Kiran Pal Gupta, R/o Flat No. 603, Tower F, Sixth Floor, Sushma Crescent, Dhakoli, Zirakpur, District-Mohali, Punjab.
2. Sneh Lata W/o Kiran Pal Gupta, r/o Flat No. 603, Tower F, Sixth Floor, Sushma Crescent, Dhakoli, Zirakpur, District Mohali, Punjab.

...Appellants

Versus

1. Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.
2. Bharat Mittal, Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.
3. Binder Pal Mittal, Managing Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.

....Respondents



**APPEAL NO.45 OF 2022**

1. Manas Chhabra, S/o Sh. Subhash Chhabra, R/o B-2/71, First Floor, Paschim Vihar, New Delhi 110063.
2. Veena Chhabra, W/o Sh. Subhash Chhabra, R/o B-2/71, First Floor, Paschim Vihar, New Delhi 110063.

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3. Binder Pal Mittal, Managing Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.

....Respondents

Memo No. R.E.A.T./2022/ 520

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup>  
FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,  
SECTOR-18, CHANDIGARH-160018.**

Whereas appeals 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 appeals 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 10<sup>th</sup> day of October, 2022.

  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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

Appeal No. 44 of 2022

In GC No. 1825 of 2020

**MEMO OF PARTIES**

1. **KIRAN PAL GUPTA**, R/o Flat No. 603, Tower F, Sixth Floor, Sushma Crescent, Dhakoli, Zirakpur, District - Mohali, Punjab.
2. **SNEH LATA W/o Kiran Pal Gupta**, R/o Flat No. 603, Tower F, Sixth Floor, Sushma Crescent, Dhakoli, Zirakpur, District - Mohali, Punjab.

...Appellants/Complainants

Versus

1. Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh - 160002.
2. Bharat Mittal, Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh - 160002.
3. Binder Pal Mittal, Managing Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh - 160002.

...Respondents

Chandigarh

Dated: 09.03.2022

*Narender Yadav*

*Vineet Yadav*

*Gaurav Rana*

(NARENDER YADAV & VINEET YADAV & GAURAV RANA)

ADVOCATES

COUNSEL FOR THE APPELLANTS



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

Appeal No. 95 of 2022

In GC No. 1826 of 2020

**MEMO OF PARTIES**

1. **MANAS CHHABRA** S/o Sh. Subhash Chhabra, R/o B-2/71, First Floor, Paschim Vihar, New Delhi 110063.
2. **VEENA CHHABRA** W/o Sh. Subhash Chhabra, R/o B-2/71, First Floor, Paschim Vihar, New Delhi 110063.

...Appellants/Complainants

Versus

1. Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh - 160002.
2. Bharat Mittal, Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh - 160002.
3. Binder Pal Mittal, Managing Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh - 160002.

...Respondents

Chandigarh

Dated: 09.03.2022

(NARENDER YADAV & VINEET YADAV & GAURAV RANA)

ADVOCATES  
COUNSEL FOR THE APPELLANTS



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

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**APPEAL NO.44 OF 2022**

1. Kiran Pal Gupta, R/o Flat No. 603, Tower F, Sixth Floor, Sushma Crescent, Dhakoli, Zirakpur, District-Mohali, Punjab.
  2. Sneh Lata W/o Kiran Pal Gupta, r/o Flat No. 603, Tower F, Sixth Floor, Sushma Crescent, Dhakoli, Zirakpur, District Mohali, Punjab.
- ...Appellants

Versus

1. Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.
  2. Bharat Mittal, Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.
  3. Binder Pal Mittal, Managing Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.
- ....Respondents

**APPEAL NO.45 OF 2022**

1. Manas Chhabra, S/o Sh. Subhash Chhabra, R/o B-2/71, First Floor, Paschim Vihar, New Delhi 110063.
  2. Veena Chhabra, W/o Sh. Subhash Chhabra, R/o B-2/71, First Floor, Paschim Vihar, New Delhi 110063.
- ...Appellants

Versus

1. Sushma Buildtech Limited, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.



APPEAL NO.44 OF 2022 & APPEAL NO. 45 OF 2022

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2. Bharat Mittal, Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.
3. Binder Pal Mittal, Managing Director, B-107, First Floor, Business Complex at Elante Mall, Industrial Area, Chandigarh. 160002.

....Respondents

Present: Mr. Narender Yadav, Advocate for the appellants.  
Mr. Sanjeev Sharma, Advocate for the respondents.

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

1. By this order we shall dispose of above noted two appeals preferred by the allottees (hereinafter known as appellants) against order dated 22.10.2021 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority). The respondent shall hereinafter be referred to as the developer.

2. Briefly stated the facts are that the appellants preferred a complaint alleging delay in possession and claiming statutory interest, besides highlighting certain deficiencies in the dwelling unit delivered to them.



3. According to the terms entered into between the appellants and the developer regarding the residential flat booked by the appellants the allotment letter dated 22.12.2012 contemplated the delivery of possession of the apartment within 36 months from the date of execution of the agreement with a provision for a grace period of 6 months and in this manner the date of offer of possession was set down as 22.06.2016. The appellants had also opted for an assured return scheme under which the developer was to pay Rs. 10,000/- per month commencing 04.02.2013 till the time, possession was offered.
4. However the offer of possession did not materialize till 19.02.2019 and this too, according to the appellants was without obtaining completion/occupancy certificate and the unit was having deficiencies.
5. Finally the possession was taken over by the appellants on 08.03.2019 and a conveyance deed was executed on 10.05.2019.
6. The complaint in essence was for grant of statutory interest for delayed possession.
7. In reply the developer admitted the booking of the flat by the appellants and the timeline provided. However he referred to the buyers agreement to contend that a



delayed possession envisaged compensation at the rate of Rs.5 per sq. foot of the super built-up area per month for the entire period of delay and in this regard a sum of Rs.2,91,047/- stood paid to the appellants.

8. This fact according to the developer was not disclosed by the appellants while filing the complaint and thus he prayed that the appellants be proceeded against for concealing material facts. Apart from this, it was stated that there was delay in timely payment of instalments which meant an accumulation of interest of Rs.73,329/- but the developer waived off Rs.64,296/- and this fact too was also not disclosed.
9. Reference was made to Clause 7.3 of the Model Agreement of the Punjab Real Estate Development and Regulation Rules, 2017 which envisage that in the event of failure of the allottee to pay the instalments as per schedule given, he would be liable to pay interest on the delayed amount and in addition, the possession of the said unit could be extended for the period of delay in paying defaulted amount.
10. The allegation of the appellants regarding not obtaining the completion/occupancy certificate was denied and it was asserted that the same was obtained on 15.12.2017. It was further averred that the buyers agreement itself





contemplated such a partial completion certificate since the project was a big one consisting of several towers. It was further asserted by the developer that an affidavit was submitted by the appellants on 06.03.2019 expressing his satisfaction with regard to the residential unit being handed over to them which also stated that no claim or dispute of any of the materials or equipments used in the apartment would be raised against the developer.

11. After evaluating the oral as well as written submissions the Authority dismissed the complaint in toto by observing as follows:-

*In view of the fact that the complainants, in this case, have submitted an affidavit giving up their claim in respect of their apartment after satisfying themselves about all aspects of its quality, specifications and fitting & furnishing and settling their accounts after accepting delay period compensation and waiver off interest payable by them, for the delayed period of instalments, are covered under the above part of the judgment of Hon'ble Supreme Court. Hence, the complainants are stopped from seeking relief of delayed period compensation after having entered into a settlement with the respondent. The averment of the complainants in regards to the agreement being one sided, unfair and unreasonable and hence cannot bind the complainants with its terms and conditions does not hold ground in this case as the complainants themselves have received delayed period compensation, as per Clause 14(d) of the Apartment buyers agreement & also in terms of a mutual agreement with the respondent. They further submitted an affidavit on 06.03.2019 before taking possession whereby they gave up any kind of claim in respect of the said apartment or any kind of claim*



*in respect of the said apartment or any of the materials and equipment used in the apartment.*

12. Disputing the above recorded findings, the learned counsel for the appellants contended that the undertaking/affidavit obtained from them dated 06.03.2019 cannot be relied upon by the developer to defeat his statutory rights and referred to the decision rendered by the National Consumer Disputes Redressal Commission, New Delhi in this regard, which according to him was upheld by the Hon'ble Supreme Court. Such an undertaking/affidavit obtained by the developer was held to be contrary to the provisions of Section 23 and 28 of the Indian Contract Act and against public policy and indicative of an unfair trade practice. For the purposes of reference the relevant paragraph is extracted herein below:-

*"The developer, while offering possession of the allotted flats insisted upon execution of the Indemnity-cum-Undertaking before it would give possession of the allotted flats to the concerned allottee. Clause 13 of the said Indemnity-cum-Undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever.*

*It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon Clause 13 of the Indemnity-cum-Undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer,*



*including the claim on account of the delay in deliver of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay in solely on account of the allottee no executing such an undertaking would be attributable to the developer and would entitled the allottee to compensation for the period the possession is delayed solely on account of his having no executed the undertaking-cum-indemnity.”*

13. This was mainly the thrust of the argument of the learned counsel for the appellants. Besides this it was argued that the statutory interest cannot be denied to an allottee once the delay in handing over the residential unit manifests itself from the facts. He referred to the complaint and the reply to contend that these are admitted facts and therefore his payer in this regard merits acceptance.
14. The learned counsel for the respondent on the other hand contended that a sum of Rs.2,91,047 stood paid to the appellants on account of the delay besides benefit of waiver of interest for the delayed payments of installments and this was sufficient compliance of a duty cast upon a developer.
15. He thus contended that in view of these facts as also the fact that material information was concealed by the appellants, the complaint was rightly dismissed and



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hence he prayed that the present appeal be also dismissed.

16. We have heard the learned counsel for the parties at some length.
17. In so far as the allotment, the timeline for possession and offer of possession are concerned there is no dispute qua these facts. Likewise there is no dispute that the possession was taken by the appellants on 08.03.2019 after he submitted an affidavit giving up all claims against the developer or to raise any dispute against him, with regard to the dwelling unit.
18. The question that requires our consideration is whether the appellants is entitled to any relief on account of delayed possession or not.
19. The first and foremost issue that engages our attention is the affidavit submitted by the appellants while obtaining possession on 08.03.2019, wherein he had given up his right to raise any dispute or claim against the residential unit, the possession of which was offered to them on the condition of executing this affidavit.
20. To our minds the developer cannot insist on such conditions to be imposed upon an anxious allottee at the time of delivery of possession, as this would certainly



imply an unfair trade practice, when the allottee being in no position to question the developer is subjected to execution of a document that can hardly be said to be free of duress.

21. The observations of the National Consumer Disputes Redressal Commission, New Delhi can be adopted to support our reasoning. Therefore the insistence of the respondent that no complaint or any issue could be raised qua the residential unit in view of this undertaking/affidavit is outrightly discarded.
22. This brings us to the remaining facts of the case as to whether the appellants is entitled to any relief on account of delayed possession under the Act.
23. Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act) specifically provides for such a contingency and the allottee who does not wish to withdraw from the project despite the delay, is held under the statute, entitled to interest for every month of delay till the handing over of possession at such rate as may be prescribed.
24. Keeping in view the aforesaid provision of the Act the developer cannot escape the consequences of the prescription of a statute. We, however, at the same time cannot be oblivious to the fact that the appellants had



already received Rs.2,91,047/- as per the buyers agreement on account of delay in handing over of possession. In addition the interest of Rs.73,329/- on account of delayed payments was also set off when the developer waived of a sum of Rs.64,296/-.

25. None of these facts find mention in the complaint and were disclosed by the developer in his reply. After this was done the appellants in his rejoinder did refer to this amount of Rs.2,91,047/- but never admitted to have received it. Yet in a 'tongue in cheek' manner stated that the developer be put to a strict proof in this regard.
26. For the purposes of reference we deem it appropriate to extract the relevant portion of the rejoinder in this regard:-
- "That opposite parties made a submission that the complainants have received an amount of Rs.2,97,047/- and the complainants have duly encashed the same. But the parties failed to prove the same by attaching strict proof of that averment."*
27. This according to us is an attempt mislead the Court by concealment of facts. The learned counsel for the appellants was unable to shake-off this assertion of the respondent which was made authoritatively in the Court by the learned counsel for the respondent. Likewise there is no reference to the waiver of interest and neither is there any denial of this in the rejoinder. As per settled



law if an assertion has been made with no denial from the other side, it has to be treated as an admission of a fact. The appellants had every opportunity to clarify these facts as is expected of a litigant who approaches the Court truthfully. The bona fides of the appellants are certainly under a cloud.

28. The falsity of the appellants' claim towards receiving penalty for delayed possession is completely shattered when a reference is made to Annexure R13 i.e. documents placed on record by the respondent indicating payments made to the appellants amounting to Rs.2,91,047/- spread out from 26.09.2017 till 31.03.2019. The appeal could have been dismissed solely on this ground of material concealment. Yet we shall not do so, but alternatively put the appellants to terms.
29. We have also perused the list of deficiencies pointed out by the appellants to the developer and concerned them not too significant. In any case, these are matters to be looked into if an appropriate prayer is made for grant of compensation for which separate proceedings have been provided under the statute.
30. Taking all the factors cumulatively we are of the opinion that appeal has to be partly allowed on the following terms:-



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1. The appellants cannot be denied the relief under Section 18 and has to be paid the statutory interest by the developer for the delay in possession. Accordingly, the developer shall pay the interest at SBI, Highest MCLR + 2% for the period from 22.06.2016 to 19.02.2019.
  2. Amount of Rs.2,91,047/- shall be adjusted against the amount so calculated.
  3. The appellants is burdened with a cost of Rs.10,000/- for concealing material facts from the Court and rather telling blatant untruths with regard to the receipt of amount of Rs.2,91,047/- and the interest for the delayed payment.
31. No other point was argued and therefore the appeal is disposed of on the aforesaid terms.

**Appeal No. 45 of 2022**

32. The facts in this appeal are identical to ones in Appeal No. 44 of 2022. Therefore, the reasoning given by us in Appeal No. 45 of 2022 as well but for an additional fact i.e. the claimants have claimed relief regarding the amount of Rs.79,579/- which the respondents-builder has claimed from the appellants on account of delayed interest on payments. According to the appellants, as per the Subvention Tripartite Agreement, the builder was required to demand the last two instalments from the bank but instead he demanded the same from the appellants which resulted in the demand of aforesaid





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amount of Rs.79,579/- by the builder from them, the said amount has been illegally taken from them by the builder, which the builder is required to refund them.

33. We have considered the submissions on the learned counsel and find merit in the same, particularly when the respondent has claimed this interest @ 24% which he is not entitled to claim as per the provisions of Section 19(7) and 2 (za) (1) of the Act.
34. The learned counsel for the respondent-builder could not justify this demand of interest and that too @ 24%. At the most the respondents are entitled to claim interest only as prescribed in Rule 16 of the Act. The excess amount of interest already charged from the appellants be refunded to them.

Files be consigned to the record room



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

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

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

September 27, 2022

DS

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Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

10/10/2022