

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

Subject: -

APPEAL NO. 204 OF 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001

...Appellant

Versus

1. Darshan Dass, S/o Gnesh Dass, R/o VPO Tapa, Near Peer
Khana, Tehsil Tapa, Barnala, Punjab-148108

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

Memo No. R.E.A.T./2022/623

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 13th
day of December, 2022.



Shanendra Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB, SECTOR-17, CHANDIGARH-160017**

Appeal No. 204 of 2022

MEMO OF PARTIES

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001 ...Appellant

Versus

1. Darshan Dass, son of Gnesh Dass, R/o VPO Tapa, Near
Peer Khana, Tehsil Tapa, Barnala, Punjab-148108.

...Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda, Punjab-
151001. ...Performa Respondent

Place: Chandigarh
Date: 25.11.2022


 (Bhupinder Singh, Balwinder Singh & Kunal Choksi)
 Advocates
 Counsel for the Appellant



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

APPEAL NO. 204 OF 2022

Estate Officer, PUDA Bathinda, PUDA Complex, Bhagu Road,
Bathinda, Punjab-151001

...Appellant

Versus

1. Darshan Dass, S/o Gnesh Dass, R/o VPO Tapa, Near Peer
Khana, Tehsil Tapa, Barnala, Punjab-148108

....Respondent

2. Bathinda Development Authority, through its Chief
Administrator, PUDA Complex, Bhagu Road, Bathinda,
Punjab-151001

....Performa Respondent

Present: Mr. Balwinder Singh and Mr. Bhupinder
Singh, Advocates for the appellants.

**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. The appellant is aggrieved of the order dated 05.04.2022 passed by the Real Estate Regulatory Authority (hereinafter known as the Authority). The respondent

Appeal No. 204 of 2022

2

(hereinafter known as the allottee) filed a complaint seeking a relief under Section 18(1) of the Act i.e. to withdraw from the project as the promised possession of the plot after development had not materialized. The Authority accepted the prayer and ordered a refund of Rs.1,17,330/- along with statutory interest envisaged under the Act.

2. The grievance of the appellant is directed against such a refund on the ground that the allottee was in default himself and therefore could not be granted the relief under Section 18(1) of the Act. It is however admitted by the appellant that the allottee had applied for a plot in a scheme floated by the appellant and deposited an earnest money of Rs.1,17,330/- on 11.02.2012. An allotment letter was issued to him after he was successful in the draw of lots allocating plot No. 54 in PUDA Enclave, Fazilka on fulfillment of certain conditions in particular clause 4(I) requiring him to deposit 15% of the total sale consideration in addition to the 10% earnest money already paid within 30 days of the issuing of the allotment letter. The mainstay of the arguments of the appellant is that failure to make 15% of the amount as envisaged in clause 4(I) the allotment was liable to be cancelled. The period of 30 days however could be extended up to 180 days upon a request being made by



Appeal No. 204 of 2022

3

the allottee and subject to payment of surcharge and penal interest for the delayed period.

3. It is conceded that an application was indeed made by the allottee on 29.04.2013 but it was treated to be beyond the period of 30 days which according to the appellant expired on 30.04.2013, as this period of 30 days was to be construed from the date of allotment letter i.e. (01.04.2013). The allotment was thus cancelled and earnest money forfeited vide order dated 20.06.2013 resulting in an appeal by the allottee which was rejected vide order dated 28.05.2014. This was challenged in a revision petition by the allottee and the Competent Authority remanded the matter back to the Estate Officer to decide the case afresh. While doing so it observed as follows:-

"I have heard both the parties and in light of the above facts I am of the view that without going in to the merits of the case it is clear after perusal of the allotment letter that clause 4(i) is applicable from the date of issue (excluding date of issue) which cannot be taken as date of dispatch. In this case the date of receipt of the allotment letter should be considered as date of issue, in this ground only the case is remanded to Estate Officer, BDA, Bathinda to decide the case afresh on merit after given opportunity of being heard."

This order was passed on 06.12.2016.



Appeal No. 204 of 2022

4

4. It has also been conceded that nothing was done by the Authority under the Act subsequent to the order of remand and despite a direction that the entire matter be decided afresh on merits. The allottee then filed the complaint resulting in the impugned order.
5. Assailing the same the appellant has contended before us that the allottee was in default throughout and consequently could not have been granted the relief as has been granted vide the impugned order. Reliance has been placed upon a decision by the Maharashtra State Real Estate Appellate Tribunal wherein it was observed that since upon cancellation the transaction between the parties ended an allottee would cease to be so within the meaning of Section 2B of the RERA Act.
6. We however do not agree with the arguments raised by the appellant in this regard for the simple reason that the cancellation order effected by the appellant was set aside by the Revisional Authority on 06.12.2016 in the afore extracted terms. This would mean that the parties were restored to status quo ante. It was for the appellant to have followed it up by granting a fresh hearing to the allottee and in case the cancellation order had been passed again and remained operative then the observations of the Maharashtra State Real Estate Appellate Tribunal would have become relevant. But since the cancellation order was specifically set aside and no fresh proceedings took place thereafter, the relationship between the parties continued to exist as it



Appeal No. 204 of 2022

5

was when the allotment was made. There is no material to suggest that the appellant abided by its promise of developing the area by offering/handing over possession to the allottee and neither was the default of the allottee pursued any further by any overt act or proceedings under the Act or the agreement. In our opinion and in these circumstances the developer is more at fault if not equally than the allottee himself and would thus have no right to retain the amount that it accepted from him as a part of an offer of a promise of a developed plot by pleading the default of the allottee. Neither would it have any justification in holding on to the amount deposited by the allottee.

7. For the aforesaid reasons we do not find any reason to interfere with the impugned order and consequently the appeal is dismissed. The amount so deposited by the appellant by way of compliance of Section 43(5) of the Act be released to the respondent along with interest accrued thereon after due verification.

File 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)

December 5, 2022

DS

Certified To Be True Copy

Shanesh Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

13/12/2022