

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

Subject: -

APPEAL NO. 202 OF 2022

The Indian Cooperative House Building Society Ltd., Madhya Marg Extension, Chandigarh Mullanpur Barrier, Opposite Manohar Singh and Company, New Chandigarh, Distt, SAS Nagar (Mohali) Pin Code-140901 through its authorized representative Sh. Narinder Kumar Puri.

...Appellant

Versus

Hari Om Sharma S/o Sh. Sita Ram Sharma, R/o House No.102, Sector 10-A, Chandigarh Pin-160011.

....Respondent

Memo No. R.E.A.T./2023/

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 January, 2023.



Dhanendra Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE HON'BLE REAL ESTATE APPELLATE TRIBUNAL,**PUNJAB**Appeal No. 202 of 2022**MEMO OF PARTIES**

The Indian Cooperative House Building Society Ltd., Madhya Marg Extension, Chandigarh Mullanpur Barrier, Opposite Manohar Singh and Company, New Chandigarh, Distt. SAS Nagar (Mohali) Pin Code- 140901 through its authorized representative Sh. Narinder Kumar Puri.

...Appellant

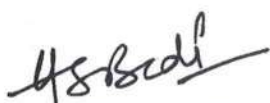
Versus

Hari Om Sharma S/o Sh. Sita Ram Sharma, R/o House No.102, Sector 10-A, Chandigarh Pin- 160011.

...Respondent



Chandigarh
Dated : 14.11.2022


(HARJOT SINGH BEDI)
Advocate
Counsel for the Appellant

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

APPEAL NO. 202 OF 2022

The Indian Cooperative House Building Society Ltd., Madhya Marg Extension, Chandigarh Mullanpur Barrier, Opposite Manohar Singh and Company, New Chandigarh, Distt. SAS Nagar (Mohali) Pin Code-140901 through its authorized representative Sh. Narinder Kumar Puri.

...Appellant

Versus

Hari Om Sharma S/o Sh. Sita Ram Sharma R/o House No. 102, Sector-10 A, Chandigarh Pin-160011.

....Respondent

Present: Mr. Harjot Singh Bedi, Advocate for the appellant.
Mr. Himanshu Raj, Advocate for the respondent.

**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. This appeal is against the order dated 01.09.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).

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2. The appellant herein is the developer and shall be referred to as such henceforth while the respondent is the complainant and shall be referred to as the allottee hereinafter.
3. The allottee filed a complaint in Form M under Section 31 of the Real Estate (Regulation and Development) Act 2016, (hereinafter known as the Act) read with Rule 36 of the Punjab State Real Estate (Regulation and Development) Rules 2017, (hereinafter referred to the Rules).
4. His grievance stemmed from the non-delivery of the plot measuring 350 sq. yards that he had booked in the project named "Suntec City", being developed by the appellant. The allottee paid a sum of Rs.15,75,000/- by way of two installments in the year 2011 as against the total basic sale price of Rs.31,50,000/-. It was asserted by the allottee that the remaining payments were not made as the developer had failed to sign an agreement for sale as per the provisions of Section 6(1) of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter known as the 1995 Act) as also as per the requirement of Section 13 of the RERA Act.
5. It was alleged that the developer had been misrepresenting the facts regarding having obtained a



CLU in the year 2014 whereas actually it was obtained on 30.06.2016, 5 years after the booking of the plot. The license to develop the colony materialized only on 19.03.2018.

6. He therefore claimed himself to be covered by definition of an allottee under Section 2(d) of the RERA Act and the developer to be covered by the definition of Section 2(zk) of the Act read with Section 2(zg)(vii) of the Act. The project was registered under the RERA Act and thus the developer is amenable to all the provisions of the Act. The complainant prayed that since delivery of the possession had been denied to him despite the fact of having paid 50% of the basic sale price and the fact that number of years had passed after the deposit he was entitled to the following reliefs:-

- (a) A direction to the developer to handover the possession of the unit after getting completion certificate from the competent authority; and

- (b) To direct the developer to pay interest under Section 18(1) of the RERA Act with effect from 2013 till the date of actual possession.

7. During the course of proceedings the allottee by way of replication also expressed his readiness and willingness to pay the balance installments provided an agreement is



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entered into by the developer. An allegation was also made that the requisite environmental clearances had not been obtained by the developer and it was prayed that action under the Act be taken against him.

8. The appellant contested the complaint and pleaded that the allottee was merely a member of the society by virtue of his membership application dated 10.02.2016 and could not be termed as an allottee under the Act. The applicability of the RERA Act to a cooperative society was also seriously questioned by the appellant.
9. On the factual aspects it was pleaded that the allottee is a chronic defaulter and despite several demand notices, he failed to clear balance installments and his membership from the society was liable to be cancelled. It was further pleaded that no date of possession or allotment letter was ever given to the allottee and in any case the date of possession as mentioned in the documents of registration before the Real Estate Regulatory Authority is 20.03.2021.
10. The Authority looked into the rival contentions and concluded that the provisions of the Act would very well be attracted in the case of a cooperative society and the allottee would be covered by definition of Section 2(d).



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11. After determining so the Authority accepted the plea of the allottee that he was not obligated to make the remaining payment to the developer on account of absence of an agreement statutorily required both under the 1995 Act and the RERA Act. The Authority reasoned that the developer had got the project registered and thus could not avoid the consequences of any default by him as envisaged in the statute as also the consequences that such defaults entailed.
12. It went on to hold the developer of being in violation of Section 13(1) of the RERA Act as no agreement of sale was executed even after registration of the project in the year 2018 and despite having received more than 10% of the sale consideration.
13. An argument raised by the developer with regard to the by-laws of the society in particular 7(c) of a deemed cancellation of membership of the allottee was specifically repelled while referring to by-law 11(b) which stipulates that no member shall be expelled except by resolution passed by two-third of the majority in a general meeting of the members.
14. Eventually it accepted the complaint and ordered the following reliefs to the allottee:-



“(a) The interest under Section 18(1) of the Act, read with Rule 16, is payable by the respondent to the complainant w.e.f the end of three years, from the date of booking, on the sum of Rs.15,75,000/-, till the date of this order. This amount shall be paid within three months of this order.

(b) Interest under Section 18(1) of the Act, read with Rule 16, shall be payable from the date of this order till a valid possession is offered to the complainant; after obtaining completion/partial completion certificate from the competent authority.

(c) The respondent will enter into an agreement for sale with the complainant and get it registered within one month of this order, as per sample agreement furnished by the respondent with this Authority at the time of registration of his project. The number of the plot shall be specified in the agreement.

(d) After the agreement for sale has been entered into, the complainant shall pay the balance amount due to the respondent for the at the time of offer of possession. No interest shall be payable by the complainant under Section 19(7) of the Act, as the respondent has failed to enter into an agreement to sell.

(e) The issue raised by the complainant, with regard to environment clearance under the definition of sanctioned plan, as given in Section 2(zq) of the Act, shall be put up before the Authority for consideration.”

Aggrieved thereof the developer is in appeal before us to contend that the provisions of the RERA Act would not apply to a cooperative society. Having raised this legal argument the learned counsel for the appellant went on to refer to the facts and contended that the default of the allottee in not paying the installments despite several demand notices in this regard would disentitle him to any relief. It was contended that in view of the fact that defaults in payments were admittedly made by the



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allottee, his membership from the society would stand terminated. It was argued that no misrepresentation was ever made to the allottee and after having received a payment of Rs.15,75,000/- he was duly intimated that a CLU has been received by the society and steps were being taken for approval of the layout plans whereafter a draw of lots would be conducted for allotment of plots to members who have deposited full basic cost of land and additional charges of CLU, IDC, EDC and Licence fee etc. Allottee was asked to pay a sum of Rs.4,000/- per sq. yards but he failed to make any payment after the initial deposit and thus he was liable to action under the by-laws of the society.

15. The allottee is on caveat and has reiterated his arguments and contentions that were made before the Authority based on the complaint and the facts set out in Form M.
16. We have heard the learned counsel for the parties at some length.
17. The first and foremost issue that needs to be determined is regarding the applicability of the provisions of the Act to a cooperative society.
18. A bare perusal of the provision of Section 2(zg)(vii) and 2(zk)(ii) leave no manner of doubt that the Act



contemplates its applicability to a cooperative society and the definition of word promoter/developer would suggest so. For the purposes of reference Section 2(zg)(vii) and 2(zk)(ii) are extracted herebelow:-

"Section 2(zg):- "Person" includes,-

- (i) xxx; (ii) xxx; (iii) xxx; (iv) xxx; (v) xxx (vi) xxx;*
- (vii) a cooperative society registered under any law relating to cooperative societies;*

Section 2 (zk):- "promoter" means,-

- (i) xxx;*
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or"*

The argument of the appellant is therefore without any substance and the Authority was right in rejecting it.

19. Having said so the next issue that needs to be determined is regarding the status of the allottee and whether he is covered under the definition of Section 2(d). Concededly, the project was registered with the Real Estate Regulatory Authority on 06.03.2018 and the license to develop a colony was obtained, if that be so the provisions of RERA Act would apply to the developer as also to the entire activity of selling plots/flats in a real estate project to be developed by it. Section 2(d) is extracted herebelow:-

"Section 2(d):- "allottee" in relation to a real estate project, means the person to whom a



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plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to who such plot, apartment or building, as the case may be, is given on rent;"

He would thus be squarely covered under the definition of allottee as envisaged under Section 2(d) as concededly the appellant as a developer has received payment of 50% of the basic price for a plot of 350sq. yards. It may not be out of place to mention here that this payment was made by the allottee on 20.07.2011 and the CLU was obtained much later in the year 2016 and registration under the Act obtained in the year 2018. This amount was obtained without entering into any agreement with the allottee even after registration of the project in the year 2018 or prior thereto under 1995 Act which also required the execution of the agreement, no such action was ever taken by the appellant.



20. The appellant has made serious attempts to question the status of the allottee by suggesting that he cease to be a member of the society altogether since he failed to make the balance payments.
21. To a pointed question as to whether any action was ever taken against the allottee for cessation of his

membership as per the by-laws, the answer was in the negative. If that be so that the argument that allottee ceased to be a member of society merits outright rejection.

22. Rather the appellant has much to explain as to why he retained the amount of the allottee for all these years when the CLU, layout plans and registration of the project was done years later. It is in fact in complete violation of provisions of Section 13 of the Act and in the given set of facts when the initial payment was made in the year 2011 and the licence obtained to develop a colony on 06.03.2018 arguments of the allottee that he did not deposit the remaining amounts as no agreement was executed seems justified. As a prudent person it was not expected that he would deposit more money with the appellant after having paid 50% of the basic price without there being any tangible acknowledgement of the same either in the shape of an agreement or allotment or even assignment of a plot.



23. After evaluating the entire controversy we are of the opinion that the allottee paid 50% of the amount which is substantial at the time of booking the plot with the developer which is a cooperative society. The allottee thus became a stake holder with an undivided interest in the

project. It is to be kept in mind that the affairs of the cooperative society are governed by bye-laws which determine the rights and liabilities of the members viz a viz the affairs of the society which too in turn are subject to the dictates of such bye-laws. If the allottee was errant in not depositing the amount pursuant to the demands raised then it was open to the developer to invoke the bye-laws and terminate the membership of the allottee by adopting whatever procedure was prescribed in the bye-laws. This in turn would have given a right to the allottee to take recourse to further measures for redressal of his grievance against the termination. But concededly, no such thing was done and if that be so then the allottee's membership cannot be termed to cancelled/terminated by a deeming fiction and his undivided interest thereby could not be diluted.

24. To make matters more worse, the developer has alienated the plot (which can be termed to be the share of the allottee) in favour of some other person without his consent and without informing him and more importantly terminating the arrangement with him.

25. In this scenario the default of the allottee seems lesser in significance than the fault of the developer itself. We say this because of the fact that the developer did not execute



any agreement despite having retained the amounts since 2011; obtained CLU in 2016 and license to develop the colony only in 2018. Any prudent person would be cautious in submitting to the demands of more payments in the absence of such measures that inspire a confidence in a developer.

26. Therefore while taking holistic view of the situation we are of the opinion that the impugned order of the Authority deserves to be modified to a limited extent only i.e., by holding the allottee disentitled to the benefit as granted by the Authority under clause (a) i.e. interest on the amount of Rs.15,75,000/- commencing upon expiry of 3 years from the date of booking till the date of the passing of the impugned order. The remaining reliefs granted by the Authority under clause (b), (c), (d) and (e) shall stand sustained. The Authority is also directed to proceed against the developer for violating the provisions of Section 13 of the Act, failure to execute an agreement despite being registered with the Authority and having received 50% of the amount which is a serious issue and deserves an appropriate action by the Authority against the developer.



27. We shall however add that since during the course of arguments it was stated by the appellant that no plot is

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available, then in such situation the allottee be given an option of an apartment or an alternate plot if available. If any of these contingencies are incapable of being fulfilled then the amount of the allottee retained by the developer shall be refunded in entirety from the date of its deposit till date of its realization along with statutory interest as envisaged under Section 18(1) of the Act read with Rule 16. The relief granted under this paragraph has to be viewed as an alternative to the reliefs already granted and affirmed by the Authority in clause (b), (c) and (d) and affirmed by us.

28. We also grant liberty to the allottee to approach the Authority for grant of compensation by filing a complaint under Form N. This shall however be in case of the alternate course being adopted by the parties.

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 7, 2022

DS

Certified To Be True Copy

Shanesh Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
13-1-2023