

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

Subject: -

APPEAL NO. 160 OF 2022

LT. COL. SUNDEEP SALWAN Flat No.206-B Leafstone
Apartments, Highland Marg CHD-PATIALA Highway District
Sahibzada Ajit Singh Nagar (Mohali), Punjab Pin Code-140603.

...Appellant

Versus

1. M/s M.D. BUILDERS & DEVELOPERS. Office Address
SCO No.1 Basement Near Ganga Nursery, Zirakpur, Ambala
Road, Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab
Pin Code-140603.

2. Sh. Dharam Raj Garg, Partner House No.907, Sector-12-
A, Address Line 1 Panchkula District & State Panchkula,
Haryana Pin Code-134109.

....Respondents

Memo No. R.E.A.T./2023/ 32

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 17th
day of January, 2023.

Dhanraj Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB AT CHANDIGARH

RERA APPEAL NO. 160 OF 2022

MEMO OF PARTIES

LT COL SUNDEEP SALWAN Flat No 206 B Leafstone Apartments, Highland Marg CHD- PATIALA Highway District Sahibzada Ajit Singh Nagar (Mohali), Punjab Pin Code 140603 Email Address sandysalwan@gmail.com Mobile Number 7021128788

....APPELLANT

AND

1. M/S M.D. BUILDERS & DEVELOPERS. Office Address SCO No.1, Basement Near Ganga Nursery, Zirakpur, Ambala Road, Zirakpur, Sahibzada Ajit Singh Nagar (Mohali), Punjab, Pin Code 140603 Email Address ac.leafstone@gmail.com Mobile Number 7508028028.

2. Sh. Dharam Raj Garg, Partner House No.907, Sector-12-A, Address Line 1 Panchkula District & State Panchkula, Haryana Pin Code 134109

...Respondent(s)

Place Chd
Date 19.08.22.

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Counsel for the Complainants

Date of Filing 23/08/22/602
Date of Receipt by post 23/08/22
Appeal No. 160 of 2022
Signature Kamla
Registrar [Signature]



REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPLICATION NO. 318 OF 2022

APPLICATION NO. 223 OF 2022

AND APPEAL NO. 160 OF 2022

LT Col SUNDEEP SALWAN

VERSUS

M/s M.D. BUILDERS & DEVELOPERS & ANR.

Present: - None for the appellant.

We have waited long enough and the matter has been called out number of times during the course of the day. We had on 05.09.2022 recorded our dissatisfaction against the proceedings initiated by the appellant. The said order is extracted herebelow:

"This appeal is directed against the order dated 02.06.2022. The complainant preferred a complaint setting out several grievances such as that the respondent had not obtained the completion certificate/occupancy certificate; problems relating to power backup; fund statement of maintenance account; shortage of parking provision and no club house facility.

On the basis of this he sought refund of the entire cost of the flat i.e. Rs.42 lacs + other incidental charges.

The respondent stated that physical possession of the flat was handed over to the complainant on 23.03.2016 with no complaint from him in any of the matters referred to the complaint. The partial completion/occupancy certificate for tower no. 2 was obtained prior to the commencement of the Act and that the present complaint was in fact a counterblast to the civil suit initiated by the developer for recovery of maintenance charges along with GST and penalty which is pending before the Civil Court at Derabassi. The Authority declined interference in the complaint by stating the following reasons.

I. The complainant booked a flat in the above cited project on 19.06.2014. Allotment letter was issued on 16.07.2014 and apartment buyer agreement was executed 09.07.2014. As per the agreement, the possession was to be handed over on or before 31st December, 2014. However the possession was handed over on 23.03.2016,



after the complainant made all pending payment. The respondent obtained a PCC/OC on 03.04.2017 from the competent authority. The complainant is in peaceful possession of his flat, since the date of possession.

II. A civil suit for recovery of maintenance charges, alongwith GST and Penalty, is pending in the Court of Civil Judge (Jr. Division), Derabassi and a sum of Rs.3.00 lakhs is allegedly recoverable from the complainant, till the time of arguments.

III. The fact regarding the pending civil suit, has been concealed by the complainant, at the time of filing of complaint.

IV. The complainant has not been able to provide any evidence in support of his arguments that the respondent has contravened any of the provisions of the Act, particularly in reference to Section 60 & 61. The allegations made are vague and generalised.

V. Having enjoyed the property continuously since 23.03.2016, the complainant has failed to provide any evidence to seek refund, under any of the provisions of the Act.

The learned counsel for the appellant contends that the document dated 03.04.2017 cannot be termed to be an occupancy/completion certificate besides it has been issued by an authority not competent to do so.

No other grievance regarding the shortage of facility has been made.

We notice from the record that the appellant is in possession of the residential unit since 23.03.2016 with no complaint in this regard prior to 2020 when he initiated proceedings before the Authority. Therefore, for this entire period of almost 5 years the appellant enjoyed the possession making no grievance of the kind that he raised in the complaint.

This similar factor is sufficient to establish that the complaint is not bona fide and rather lends credence to the stand of the respondent that the complaint is a counter-blast to the civil suit initiated by the developer for recovery of maintenance charges.

To a pointed question as to why the maintenance charges were not deposited even though the appellant was in enjoyment of the residential unit for almost 5 years, there was no satisfactory response. We also notice that the appellant had

concealed this fact of pendency of the civil suit before the Court of Derabassi and it was brought to light by the respondent.

Looking at it from any angle the complaint does not come across as a bona fide genuine complaint. But before we record our disapproval to the proceedings initiated by the appellant we would for our own sake and understanding grant one opportunity to the appellant to substantiate his plea that the occupancy/partial completion certificate was not issued by the authority competent to do so.

While observing so we hasten to add that this clarification is only needed for our purposes of recording a finding and in no way does it enhance the credibility of the appellant in initiating these proceedings."

Thereafter, no serious attempt was made to address the issues and even when we had made our mind clear to the appellant he insisted upon arguing the matter. Today when the case has been called on repeatedly there is no appearance. We therefore dismiss the appeal in default as also for the reasons contained in our order, extracted above.



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)

January 09, 2023

DS

Certified To Be True Copy

Shamsher Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

17/01/2023

REGISTRAR