

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

Subject: -

APPEAL NO. 153 OF 2022

Sumit Arey S/o Pawan Kumar Arey R/o Ward No. 3, VPO
Mehatpur, Tehsil & District Una, Himachal Pradesh-174315.

...Appellant

Versus

1. Real Estate Regulatory Authority, Punjab, through its Chairperson, First Floor, Block-B, Plot No. 03, Sector-18 A, Madhya Marg, Chandigarh-160018.
2. Sushma Buildtech Ltd., Unit No. B-107, Business Complex, , Chandigarh.

....Respondents

Memo No. R.E.A.T./2023/ 55

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 24th day of January, 2023.

Manande Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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

Appeal No. 153 of 2022

In ADC No. 0184 of 2021 BF TR

MEMO OF PARTIES

1. Sumit Aery S/o Sh. Pawan Kumar Aery, resident of Ward No.3,
VPO Mehatpur, Tehsil & District, Una, Himachal Pradesh-174315,
....Appellants/Complainants

Versus

1. Real Estate Regulatory Authority, Punjab, through its Chairperson,
First Floor, Block-B, Plot No.-3, Sector-18A, Madhya
Marg, Chandigarh -- 160018.
2. M/S SUSHMA BUILDTECH LIMITED UNIT NO. B-107 ,
BUSINESS COMPLEX , CHANDIGARH



.....Opposite Parties

MEMO OF PARTIES



Chandigarh

Dated: 08.07.2022



LUV MALHOTRA & MOHAMMAD SARTAJ KHAN
ADVOCATE
COUNSEL FOR THE APPELLANTS

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

APPEAL NO. 153 OF 2022

Sumit Arey S/o Pawan Kumar Arey R/o Ward No. 3, VPO
Mehatpur, Tehsil & District Una, Himachal Pradesh-174315.

...Appellant

Versus

1. Real Estate Regulatory Authority, Punjab, through its
Chairperson, First Floor, Block-B, Plot No. 03, Sector-18 A,
Madhya Marg, Chandigarh-160018.
2. Sushma Buildtech Ltd., Unit No. B-107, Business Complex, ,
Chandigarh.

....Respondents

Present: - Mr. Mohammad Sartaj Khan, Advocate for the
appellant.
Ms. Supriya Sharma, Executive (Legal), RERA,
Punjab (respondent No.1).
Mr. Sanjeev Sharma, Advocate for respondent
No.2.



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)

(ORAL)

1. The appellant is aggrieved of the order dated 07.06.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).
2. The conceded case of the parties is that the appellant booked a unit at a Basic Sale Price (BSP) of Rs.29,36,729/- qua which a buyers agreement was executed on 13.06.2015. The schedule of payment related to the progress of construction and the possession was assured within 42 months + 6 months as a grace period. The date for possession as per the complainant was 12.12.2018, but the possession was offered on 14.06.2021 after a delay of 2½ years. The appellant sought refund by writing an e-mail on 07.09.2021. The respondent did not agree to the refund leading to the complaint which has now been answered by virtue of the impugned order dated 07.06.2022 and is the cause of grievance to the appellant in the present appeal.



Learned counsel for the appellant contends that the Authority was wrong in observing that since the issue of withdrawal from the project was raised post the offer of possession, it would deprive him of his right to seek a refund and the only course available to him was to accept the valid offer of possession. Besides the Authority

observed that for more than two years the appellant did not raise any issue of refund and construed it as a default by the appellant.

4. It is contended by the learned counsel for the appellant that the Authority was completely in error in view of the observations made by the Hon'ble Supreme Court in **M/s New Tech Promoters and Developers Pvt. Ltd Vs. State of UP and Others in Civil Appeal Nos. 6745-6749 of 2021** wherein para 78 it has been observed as follows:-

*78. This Court while interpreting Section 18 of the Act, in **Imperia Structures Ltd. Vs. Anil Patni and Another** held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under:*

*"25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". **The right so given to the allottee is unqualified** and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest*



for every month of delay till the handing over the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

On the other hand learned counsel for the respondent justifies the impugned order of the Authority by contending that the appellant had a right to withdraw from the project before a valid offer of possession and his silence in this regard ought to be taken as an acquiescence to the delay, thereby disentitling him to the refund of the amount. That apart learned counsel for the respondent refers to the e-mail sent by the appellant to contend that even therein no refund was sought and only a prayer for possession had been made.

5. An objection has been raised that the complaint was not filed by a person competent to do so as there was no proper authorization by the original allottee in favour of the person prosecuting the appeal. It is argued that the appeal is thus defective and ought to be dismissed on this score alone.

6. After hearing the learned counsel for the parties we are of the opinion that the observations made by the Hon'ble Supreme Court clearly entitle an allottee to refund in the



event of delay and mere offer of possession that intervene cannot defeat his statutory right in this regard.

7. This argument of the learned counsel for the appellant therefore merits acceptance.
8. Not only on this ground but on other aspects as well the appellant seems to be in the right. Concededly, there was a delay by the respondent in offering the possession. The e-mails that the learned counsel for respondent refers to as a request for possession and not for refund is also misplaced. The e-mail dated 07.09.2021 clearly makes a request for refund of the entire amount along with interest and compensation. Therefore this argument of the learned counsel for the respondent merits rejection.
9. In so far as the plea of a defect in appeal is concerned that too has to be rejected. Smt. Babita has been authorized to prosecute the appeal and she is the wife of the original allottee and hence not an alien to the benefits of the allotment. Besides the Act empowers the Tribunal to have its own procedures and not necessarily be strictly bound to the rigors of the Code of Civil Procedure.
10. Looking at the factual aspect coupled with the proposition of law, we are of the opinion that once the delay has been caused by the respondent in handing over the possession, the appellant was very well within his



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right to seek a refund alongwith other statutory benefits, such a right being indefeasible.

11. We therefore accept the appeal and direct that the entire amount deposited by the appellant i.e. Rs.29,38,729/- to be refunded to the appellant along with statutory interest with effect from the date of payments till its realization.

File be consigned to the record room.



Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sdr
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

Sdr
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

January 12, 2023
DS

Certified To Be True Copy
Manendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

24/01/2023