

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

Subject: -

APPEAL NO. 211 OF 2022

1. Gurmeet Kaur Gulati Wife of Mr. Parminder Singh Gulati;

2. Parminder Singh Gulati Son of Mr. Surinder Singh;

Both residents of #711-A, 2nd Floor, Silver Birch, Omaxe City,
Mullanpur, New Chandigarh, District SAS Nagar, Mohali
(Punjab).

...Appellants

Versus

Omaxe New Chandigarh Extension Private Limited, India
Trade Tower, 1st Floor, Baddi-Kurali Road, Mullanpur,
District SAS Nagar, Mohali (Punjab).

....Respondent

Memo No. R.E.A.T./2023/ 345

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 **22nd**
day of September, 2023.

Shaninder Kaur

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

Appeal No.211..... Of 2022

MEMO OF PARTIES

1. Gurmeet Kaur Gulati Wife of Mr. Parminder Singh Gulati;

2. Parminder Singh Gulati Son of Mr. Surinder Singh;

Both Residents of #711-A, 2nd Floor, Silver Birch, Omaxe City,
Mullanpur, New Chandigarh, District SAS Nagar, Mohali (Punjab).

.....Appellants

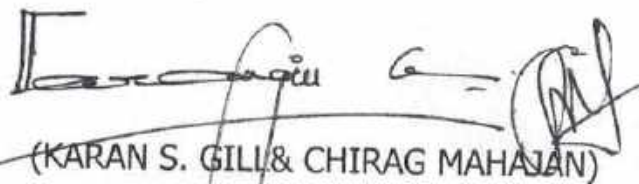
Versus

Omaxe New Chandigarh Extension Private Limited

India Trade Tower, 1st Floor, Baddi-Kurali Road, Mullanpur,

District SAS Nagar, Mohali (Punjab).

.....Respondent



(KARAN S. GILL & CHIRAG MAHAJAN)

ADVOCATES

(Enrl. No. P-884/1991 & PH-3705/2022)

COUNSEL FOR APPELLANT

Place: Chandigarh

Dated: 05/12/2022



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

APPEAL NO. 211 OF 2022

1. Gurmeet Kaur Gulati Wife of Mr. Parminder Singh Gulati;
2. Parminder Singh Gulati Son of Mr. Surinder Singh;

Both residents of #711-A, 2nd Floor, Silver Birch, Omaxe City,
Mullanpur, New Chandigarh, District SAS Nagar, Mohali
(Punjab).

...Appellants

Versus

Omaxe New Chandigarh Extension Private Limited, India
Trade Tower, 1st Floor, Baddi-Kurali Road, Mullanpur,
District SAS Nagar, Mohali (Punjab).

....Respondent

Present: Mr. Karan S. Gill, Advocate for the appellants.

Mr. Munish Gupta, 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)
(Oral)**

1. This appeal is directed against the order dated 06.10.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) declining the grant of interest under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act), while deciding the appellants' complaint under Section 31 of the Act.
2. Brief facts of the case are that the complainant had applied for a residential plot in the project being executed by the respondent on 15.10.2015 by making an initial deposit of Rs.5,00,000/-. Eventually a total amount of Rs.10,17,750/- was paid by the complainant during the period spread over from 15.10.2015 to 04.02.2016. The total price of the plot was Rs.33,22,500/-. Neither any agreement was executed nor any identifiable plot allocated to the appellant.
3. Alleging lack of development and failure to give possession of the plot, the complaint under Section 31 was filed and initially the proceedings were held before the Adjudicating Officer who accepted the complaint and while ordering refund of Rs.10,17,750/- along with interest in terms of Section 18 of the Act, also awarded a compensation of Rs.25,000/-.
4. This order of the Adjudicating Officer dated 10.06.2020 was challenged by way of an appeal by the respondent



and the matter was remanded back to the Authority for decision afresh on the issue of jurisdiction as in view of the pronouncement of the Hon'ble Supreme Court, the Adjudicating Officer would have no jurisdiction.

5. Thereafter the Authority entered upon the grievance of the appellant and passed the impugned order. While ordering refund it declined the payment of interest in terms of Section 18 of the Act on the ground that the appellant was also in default of making instalments to the respondent. This is now the cause of grievance to the appellant.
6. The respondent who contested the complaint did not deny the receipt of the amount but pleaded that after signing the application for 115 sq. yard plot on 15.10.2015 the complainant filed the expression of interest form on 21.10.2015. But after making a payment of Rs.10,17,750/- by 04.02.2016 they refused to pay any further instalment even though demanded by the respondent. It was thus pleaded that this amount deposited by the appellant was liable to be forfeited in accordance with the terms of the application form. Besides this it was submitted that the appellant never approached the respondent for refund of the amount and hence looking at the totality of the circumstances the liability to pay interest in terms of Section 18 was denied.



APPEAL NO. 211 OF 2022

4

Lastly it was submitted that in terms of Section 4(c)(I)(2) of the Act the question of refund would arise only if the possession was not handed over as per the declaration made by the developer. In the absence of any agreement or declaration made with regard to the specified date of possession the appellant cannot make a grievance of any default. It was pleaded that development of the site could not take place since the appellant himself defaulted in making the payment. In the backdrop of the above the impugned order was passed.

7. The learned counsel for the appellant contends that the statutory interest cannot be denied since the appellant had asked for refund and the default of the respondent manifested itself from the lack of development in the area. Possession was not handed over even after depositing 1/3rd of the amount of the base price of the plot. It was argued that the application for the plot was made in the year 2015 i.e. prior to the enforcement of the RERA Act, but since the project was ongoing it had to be mandatorily registered and which indeed it was. In the wake of this registration developer was obliged to conform to the provisions of the Act and in terms of Section 13 an agreement had to be executed which was not done. Therefore failure to execute the agreement and specify the date of possession, coupled with the fact that



possession itself was not handed over and the fact of lack of development indicated that the developer was at fault, hence the prayer for refund was absolutely justified and once such a plea was made by raising the issue in the complaint it would entitle the appellant to interest as well.

8. The prayer of the respondent was opposed by the learned counsel for the respondent who referred to an earlier decision by this Tribunal rendered in Appeal No.114 of 2019 decided on 05.04.2022 to contend that in the absence of any agreement the guiding factor was the model agreement and clause 7.5 envisaged forfeiture of the amount deposited by the allottee in the event of default by him in making the payment of the scheduled instalments.

We have heard the learned counsel for the parties at some length.

10. The payments made by the appellant are not in dispute and the only question that requires determination is whether the appellants' default in making the payment as alleged by the respondent would disentitle him to the interest in terms of Section 18 of the Act. It is essential to point out here that the respondent is not in appeal and has thus not questioned the refund of the amount but



has merely resisted the prayer of the appellant for grant of interest.

11. If that be so then the respondent cannot justifiably raise the plea of forfeiture on any premise, be it his reliance on the model agreement or an earlier order passed by us. The fact of the matter would remain that he has not questioned the refund by filing a separate appeal and thus has forsaken his right to insist upon forfeiture regardless of any agreement to that effect. Having said so there are other reasons why such a prayer would have been negated by us. The appellant never executed an agreement even though Section 13 mandated so particularly when he has received more than 1/3rd of the amount of the basic sale price. Section 13 warrants an agreement to be executed upon receipt of 10% of the amount.



12. It is a case where the Authority should have taken cognizance of this violation of Section 13 and proceeded to visit the consequences of such a violation upon the respondent. Since this aspect escaped the notice of the Authority but has been raised before us by the appellant we would take it upon ourselves to direct the Authority to treat this as a violation of the provisions of the Act and proceed against the respondent for violation of Section 13 of the Act.

13. Secondly the issue of forfeiture of the amount deposited by the appellant would not arise considering that the respondent failed to exercise his right, if any, exists in this regard, even upon an assumption of the appellant being in default. The respondent has relied upon our orders dated 05.04.2022 passed in appeal No.114 of 2019 which will not be attracted to the facts of the case as in that appeal there was a gross delay on the part of the allottee in approaching the Authority for as long as 7 years and a plea of limitation was raised by the developer, noticing which majority of us had observed that even though limitation has not been provided in the Act but prudence would require that a period of 3 years be considered as a safe period of limitation. It had been observed as follows:-



"Therefore, to our minds it would be safe to conclude that the period of limitation for initiating a suit i.e. 3 years should be the outer limit to raise the grievance under the Act. Even, while saying so, we do not intend to bind the process in a watertight compartment to discard a complaint initiated after a lapse of three years but rather, feel that a more appropriate course to be adopted by the Authority should be to mould the relief appropriately, so as to balance equities and ensure that the delay in invoking the proceedings does not result in unnecessary windfall to the allottee or any of the parties."

14. In the peculiar set of circumstances when there was no agreement and there was delay in approaching the Authority we had referred to Clause 7.5 of the Model Draft Agreement as a reasoning preceding our conclusions but stopped short of observing that wherever agreement is not signed, the model agreement should be taken as the guiding principle to determine the rights of the parties. Since we did not say as much, the order dated 05.04.2022 would not have a binding effect on us particularly when such observations are tested on the facts of the present case.
15. Here is a case where in the year 2015 an amount of Rs.5,00,000/- was deposited and by 04.02.2016 a total amount of Rs.10,17,750/- was deposited as against the total sale price of Rs.33,22,500/-. The RERA Act came into existence in 2017 and the complainant approached the Authority by filing a complaint on 14.09.2019. Therefore, the proceedings were not hit by delay and latches. The Adjudicating Officer who decided the complaint on 10.06.2020 was not within his jurisdiction to answer the complaint under Section 31 and therefore after another round of litigation the matter was considered and heard by the Authority resulting in the impugned order.



16. Cumulatively taken there has been no delay and since the project was ongoing at the time of enforcement of the Act, it was incumbent upon the respondent to have executed an agreement having received more than 1/3rd of the amount,
17. Now coming to the issue of grant of interest the respondent cannot deny the liability under Section 18 of the Act which would entitle the appellant to interest particularly when for 6 long years this amount has remained with the respondent for his utilization.
18. For the afore-mentioned reasons this appeal is allowed the appellants are held entitled to interest on principle amount of Rs.10,17,750/- on the prescribed rate, as per Rule 16 of the Act i.e. State Bank of India's highest marginal cost of lending rate + 2% from the date of payments till realization.



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 21, 2023
CND

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

22/09/2023