

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

Subject: -

**Appeal No. 17 of 2023**

1. Mrs. Pushpa Sharma W/o Sh. Mahesh Chander Sharma, resident of House No.1126, Saini Vihar, Phase 3, Baltana, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.
2. Hridesh Sharma, S/o Sh. Mahesh Chander Sharma, resident of House No.1126, Saini Vihar, Phase 3, Baltana, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.

...Appellants

Versus

1. M/s Allwin Infrastructure Limited, Plot No. 361, Phase II, Industrial Area Panchkula, District Panchkula (Haryana) Pin Code: 134109
2. Ashok Kumar Garg, Managing Director of respondent No.1, Plot No.361, Phase II, Industrial Area Panchkula, District Panchkula (Haryana) Pin

Code: 134109

....Respondents

Memo No. R.E.A.T./2023/04

To

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup> 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 **08<sup>th</sup>** **day**

of January 2024



IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT  
CHANDIGARH.

Appeal No. 17 2023

MEMO OF PARTIES

1. Mrs. Pushpa Sharma, W/o Sh. Mahesh Chander Sharma, resident of House No. 1126, Saini Vihar, Phase 3, Baltana, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.
2. Hridesh Sharma , S/o Sh. Mahesh Chander Sharma, resident of House No. 1126, Saini Vihar, Phase 3, Baltana, District Sahibzada Ajit Singh Nagar (Mohali) Punjab.

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....Respondents

CHANDIGARH

DATED: 20.4.2023



(Atul Mahajan) & (Ramneek K. Sandhu)

P/662/1983

P/685/2018

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

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**Appeal No.17 of 2023**

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Ashok Kumar Garg, Managing Director of respondent No.1, Plot No.361, Phase II, Industrial Area Panchkula, District Panchkula (Haryana) Pin Code: 134109

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\*\*\*

**Present: -** Mr. Atul Mahajan, Advocate for the appellant.  
Mr. Tejeshwar Singh, Advocate for the respondents.

**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),  
MEMBER (JUDICIAL)**

**JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)  
(Oral)**

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1. This appeal by the allottee is against the order dated 10.04.2023 of the Real Estate Regulatory Authority, Punjab (hereinafter known as Authority).
2. ~~The~~ <sup>The</sup> appellant deposited a sum of Rs.1,00,000/- for allotment of one residential unit in the project being developed by the respondent. The total sale consideration of the apartment was Rs.41,00,000/- and an allotment letter dated 18.02.2021 was issued to him. An amount of Rs.4,00,000/- in addition to Rs.1,00,000/- already deposited, was to be paid by 15.05.2021 which would have obligated the developer to execute an agreement to sell. The appellant failed to deposit this amount despite a reminder by the respondent on 12.05.2021 resulting in cancellation of the allotment vide letter dated 21.05.2021.
3. That appellant thereafter deposited a sum of Rs.4,00,000/- on 24.05.2021 i.e. after the allotment had been cancelled. This amount was returned to the appellant promptly but the appellant once again deposited it on 27.05.2021 which was again refunded to the appellant. Aggrieved by the action of the developer in cancellation of the allotment a complaint was filed before the Authority which was rejected vide the impugned order.
4. The Authority observed that the appellant failed to abide by the payment schedule and the amount of Rs.4,00,000/- was deposited after the cancellation of the allotment. Besides, there was short fall in deposit of Rs.25,000/-.
5. Aggrieved thereof the present appeal has been filed.



6. Learned counsel for the appellant contended that the impugned order is unsustainable and the developer was at fault since he did not execute the agreement to sell whereas, the appellant was always ready and willing to deposit the amount but was only insisting upon the execution of the agreement to sell as a pre-requisite. In any eventuality the amount was deposited barely 9 days after the scheduled date of 15.05.2021 and therefore, the bona fides of the appellant could not be questioned because a week's delay should not have invited a cancellation and at best, interest could have been demanded on the delayed payment.

6A. It was also argued that cancellation was contrary to Rule 8(2) of the Punjab Real Estate (Regulation and Development Rules) which provides that any application, allotment letter or document signed by the allottee in respect of the apartment or a plot prior to the execution and registration of the agreement for sale shall not be construed to limit the rights and interest of the allottees under the agreement for sale. For the purposes of the payment Rule 8, is extracted here below:-

*"8. Agreement for sale. [Section 13(2) and 84(2)(zf)--*

*(1) For the purpose of sub-section (2) of section 13, the agreement for sale shall be in the form as per Annexure 'A'.*

*(2) Any application letter, allotment letter or any other document signed by the*



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*allottee, in respect of the apartment, plot or building, prior to the execution and registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale."*

6. Reliance was placed upon decision of the Consumer Dispute Redressal Commission, U.T. Chandigarh, wherein Para No.12, it was held that cancellation of an allotment is not an automatic consequence of a default by the allottee and principles of natural justice would demand issuance of the notice prior to cancellation and failure to do so would negate such a decision.
7. As against this learned counsel for the respondent has contended that the appellant was aware of the schedule of payment which bears her signatures and according to this the amount of Rs.4,00,000/- plus G.S.T. had to be deposited by 15.05.2021 upon which an agreement to sell was to be executed but without making the payment the appellant could not insist on execution of any agreement. It was next argued that the appellant had merely paid a sum of Rs.1,00,000/- as against the total sale consideration of Rs.41,00,000/-. Besides a reminder was sent to the appellant on 12.05.2021 demanding the payment as per the schedule which went unheeded and it is thereafter that a cancellation was done on 21.05.2021 i.e. week later, of the last date for deposit i.e. 15.05.2021.



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8. We have heard the learned counsel for the parties. The facts are not in dispute. An allotment letter was issued to the appellant on 18.02.2021 upon deposit of a sum of Rs.1,00,000/-. The payment schedule bears the signatures of the appellant implying acceptance and knowledge of the same. Payment of the next installment of Rs.4,00,000/- + G.S.T. was to be made on 15.05.2021. A letter was sent on 12.05.2021 to the appellant inviting her attention to the default and demanding the payment which went unheeded as also <sup>did</sup> the deadline of 15.05.2021. The amount was deposited post-cancellation on 24.05.2021.

9. The respondent evidently was not bound to accept this late deposit and hence returned the amount. Once again the amount was deposited on 27.05.2021 but met the same fate of refund.

10. In view of the above, the respondent cannot be held to be in default in any manner. The plea of the appellant that notice was not sent and reliance on the judgment of the State Consumer Commission referred to above would be of no consequence, considering that reminder was indeed sent on 12.05.2021 which carried a clear warning extracted hereinbelow:-

*"In default in payment of amount due, allotment letter issued to you shall cancelled without any further notice/reminder."*

11. In the wake of the above no further notice was required and thus, the plea that principles of natural justice were not



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complied with cannot be accepted. The appellant was clearly on notice to deposit the amount failing which the allotment would be cancelled. Reliance on Rule 8(2) would also be of no avail to the appellant as none of the appellants rights have been restricted. At least none has been shown. The allotment letter is a letter simplicitor only, ensuring the acknowledgement of the initial amount and promise of residential unit, but subject to the payment of the amount dues, The appellant could not have insisted upon the agreement for sale to be executed without deposit of the requisite amount prescribed in the statute obligating a developer to do so. Prior insistence of execution of the agreement to sell without deposit is not a condition recognized by law.

12. Therefore, in view of what has been stated above, we hold that the appeal is without any merit and hence dismissed.



*Sd/-*  
**JUSTICE MAHESH GROVER (RETD.)**  
**CHAIRMAN**

*Sd/-*  
**S.K. GARG, D & S. JUDGE (RETD.)**  
**MEMBER (JUDICIAL)**

**Certified To Be True Copy**

January 04  
December \_\_\_\_\_, 2023 (04-01-2024)

SR

Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

08/01/2024