

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

Subject: -

Appeal No. 48 of 2023

Praveen Gangwani, S/o Late Shri H R Gangwani, age 59 years, Resident of Flat No.B-90, Jal Vayu Vihar, Sector 30, Gurgaon (Haryana).

...Appellant

Versus

1. Army Welfare Housing Organization, through its Managing Director, South Hutments, Kashmir House, Rajaji Marg, New Delhi.
2. Project Director, AWHO, AWHO Complex, Sector 114, Sahibzada Ajit Singh Nagar (Mohali) Punjab.

....Respondents

Memo No. R.E.A.T./2024/137.

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 for be uploading the same on website.

Given under my hand and the seal of the Hon'ble Tribunal this **4th day of April, 2024.**

Dhanraj Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB,
SECTOR-17, CHANDIGARH

APPEAL NO. 48 /2023

MEMO OF THE PARTIES

Praveen Gangwani, S/o Late Shri H R Gangwani, age
59 years, Resident of Flat No. B-90, Jal Vayu
Vihar, Sector 30, Gurgaon (Haryana). ...Appellant

Versus

1. Army Welfare Housing Organization, through its
Managing Director, South Hutments, Kashmir House,
Rajaji Marg, New Delhi.
2. Project Director, AWHO, AWHO Complex, Sector
114, Sahibzada Ajit Singh Nagar (Mohali) Punjab.

...Respondents

Place: Chandigarh
Date: 08.09.2023



(Balwinder Singh, Bhupinder Singh & Kunal Choksi)
Advocates
Counsel for the Appellant

THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 48 of 2023

Praveen Gangwani, S/o Late Shri H R Gangwani, age 59 years, Resident of Flat No.B-90, Jal Vayu Vihar, Sector 30, Gurgaon (Haryana)

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Versus

1. Army Welfare Housing Organization, through its Managing Director, South Hutments, Kashmir House, Rajaji Marg, New Delhi.
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....Respondents

Present: - Mr. Balwinder Singh along with Mr. Bhupinder Singh, Advocate for appellant.
Mr. Gurpreet Singh along with Ms. Gunjan Nahata, Advocate for the respondent
Mr. Balwir Singh, Project JCO of AWHO

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

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

MEMBER (JUDICIAL)

JUDGMENT JUSTICE MAHESH GROVER (RETD.), CHAIRMAN (ORAL)



This appeal has been filed by the allottee against the order passed by the Real Estate Regulatory Authority on 10.07.2023 vide which his prayer for refund was negated.

2. The facts are largely not in dispute as they revolve around the booking of a dwelling unit by the appellant in a project being developed by the respondent(developer) Army Welfare Housing Organization/AWHO. The unit was booked on 15.10.2010 and eventually over a period of time the appellant paid a total sum of Rs.61,39,125/- towards the price of the flat and desirous of taking possession he has submitted relevant

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documents and completed all formalities in this regard, leading to an issuance of a clearance certificate by the respondent on 01.10.2018.

3. The appellant then discovered that the project and the dwelling unit in particular was not complete in all respects as it suffered from various shortcomings making it unfit for habitation.
4. In so far as the project is concerned the respondent had not obtained the completion certificate and occupation certificate, even though, the respondent insisted that it was in process and had no bearing on the completion of the project and certainly not an impediment in taking over the possession of the unit by the appellant.
5. The appellant however, requested that the shortcomings be rectified and completion certificate/occupancy certificate be also shown to him.
6. Faced with an unresponsive respondent the appellant vide an E-Mail dated 28.04.2019 decided to withdraw from the project as it was inordinately delayed and he had been deprived of the possession despite having paying almost the entire sum.
7. In so far as the proceedings before the Authority are concerned, initially the complaint preferred by the appellant was dismissed by the Adjudicating Officer, RERA, Punjab on 08.10.2020 who held that the appellant is not entitled to the refund of the amount. This led to an appeal where this Court remanded the matter back in view of the pronouncement of the Hon'ble Supreme Court of India in the matter of



“Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors.”, prescribing separate procedure in the context of relief sought by the allottee.

8. It is then the appellant preferred a fresh complaint which has now been declined vide the impugned order leading to the present proceedings before us.
9. The short question involved in the appeal, as propounded by the learned counsel for the appellant is whether obtaining completion/occupancy certificate is mandatory or not and whether the Authority could have ignored this aspect to record findings against the facts on record. It was submitted that the record of the case reveal that completion/occupancy certificate had not been obtained and therefore, the finding of the Authority that the request for refund and withdrawal from project has been made after the offer of possession would not stand the scrutiny of law, since an offer of possession sans completion and occupancy certificate cannot be considered to be a valid offer.

The appeal has been opposed by the respondent who has stated that the defects pointed out by the appellant were too minor in nature to form a justification for not taking possession. It was vehemently argued that the project stood completed in all respects and since the offer of possession had been made the appellant could not be permitted to withdraw from the project and seek refund subsequent to such an offer. It was stated that offer of possession was made on 23.08.2018 and the appellant has completed all formalities and submitted



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documents in this regard as well. In this view of the matter the impugned order is completely justified to deny the appellant a refund and liberty to withdraw from the account.

11. We have heard the learned counsels for the parties. The foremost question is whether at the time of making an offer of possession the project was complete and whether the respondent had obtained completion/occupancy certificate to enable the handing over of dwelling units to desirous allottees, as the appellant.
12. Regardless of whatever has been submitted by the respondent on this aspect there is on record a Letter dated 14.03.2021 by the Competent Authority-cum-Additional Chief Administrator GMADA, SAS Nagar written to the project Director-AWHO(respondent) regarding the issuance of completion certificate and in Sub-Para XXI it has been observed as below:

“That the organization shall seek occupancy certificate from the competent authority before occupying the said floors, units, buildings/flats”.

13. This one document is sufficient to demolish the case of the respondent who has insisted that completion certificate/occupancy certificate was in their possession. Another communication of the same date and between the same Authority on records in Sub Para-XXI below:-

“That the organization shall be liable to take final completion certificate from the competent



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authority within the implementation period else they are bound to seek the renewal of agreement/implementation period so as to seek the final permission for the rest of the flat.”

14. It is not a case of partial completion in which eventuality the respondent would have been well advised to show to the Court that the dwelling unit of the appellant was within the area covered by the partial completion certificate.
15. Here all throughout the communications show that the issuance of completion and occupancy certificate was still engaging the authorities even in the year 2021, whereas the offer of possession according to respondent was made in 2018. Such an offer of possession would thus hold no meaning in law and the allottee cannot be compelled to take possession of an incomplete project and neither can his rights be defeated to seek refund and withdrawal from project if delay has been caused. The appellant has also referred to Annexure C-12 the information derived under the RTI Act dated 16.10.2019 specifically stating that the completion certificate/occupancy certificate has not been issued by the office of the GMADA to the respondent.
16. These documents therefore completely belie the case of the appellant. That apart even if offer of possession had been made it could not defeat the rights of the appellant to withdraw from the project if delay has been caused.



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17. We have held so in our Appeal No.153 of 2022 titled as **“Sumit Ray Versus RERA”**, the relevant para 6, 10 and 11 of which are reproduced as under:-

“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.

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 right to seek a refund along with other statutory benefits, such 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 payment till its realization.”

18. We are deliberately not entering into the issue of structural shortfalls that the appellant has pointed out but denied by the respondent for the simple reason that such a course may involve conflict of facts and possibly ascertainment thereof by



appointing a Local Commissioner, which course could have been adopted but since there is ample material to show that the project was incomplete and without completion/occupancy certificate when offer of possession was made (rather the certificate had still not materialized in the year 2021). Such an offer of possession cannot termed to be valid.

19. We therefore, set aside the impugned order passed by the Authority and hold that the appellant shall be entitled to refund of the amount deposited by him along with statutory interest as per State Bank of India's highest marginal cost of lending rate under the Act, which to our minds is just, reasonable and not arbitrary from the date when the appellant expressed his desire to exercise his right to withdraw from the project and seek a refund.
20. For the aforesaid reasons we find merit in the appeal, which is allowed as above.
21. Files be consigned to the record room.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

April
~~March~~ 03, 2024
SR *Mf*

Certified To Be True Copy

Dhanendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

04/04/2024 *[Signature]*