

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
SAS NAGAR (MOHALI)**

APPEAL NO. 9 OF 2018

1. Sangeeta Sharma W/o Sachin Sharma
2. Sachin Sharma S/o Sukhdev Sharma

Both residents of House No. 104, Bedok Road, Singapore.
Alternative/Correspondence Address: House No. 1136,
Sector-15, Panchkula

....Appellants

Versus

M/s Barnala Builders & Property Consultant, having its
registered office SCO No. 1, opposite Yes Bank, Zirakpur-
Patiala, Road, Zirakpur, SAS Nagar through its
Proprietor/Representative Sh. Satish Jindal son of Angrej Lal
resident of House No. 288, Sector- 10, Panchkula.

....Respondent

Present: Sh. Arun Singla, Advocate for the appellants.

Sh. Ambrish Sharma, Advocate for the respondent.

CORAM: JUSTICE RAJIVE BHALLA,(RETD), CHAIRMAN

S.K. SHARMA, IPS (RETD.), MEMBER

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JUDGMENT: (Rajive Bhalla (J) (Retd):

The appellants pray that order dated 15.03.2018, whereby the authority constituted under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), has dismissed their complaint for refund and interest @ 18% per annum, possession after obtaining requisite permissions from the competent authority, payment of Rs. 5,00,000/- for late delivery of possession, Rs. 50,000/- on account of deficiency of service, mental agony, physical harassment and Rs. 50,000/- as litigation expenses, may be set aside.

Counsel for the appellants submits that a perusal of the impugned order reveals that the officer exercising power of the Authority under the Real Estate (Regulation and Development) Act, 2016, (hereinafter referred to as the Act), has despite the absence of any completion/partial completion certificate, held that the project is complete. The Authority has also held that the appellants have failed to take possession despite repeated requests by the respondent builder. Counsel for the appellants submits that these findings disregard provisions of the Act, that require a builder offering possession, to obtain a completion/partial completion certificate and only then may a project be deemed to be complete and ready for delivery of possession.

Counsel for the respondent on the other hand submits that the project is complete in all respects, namely allottees are

residing, internal and external roads are complete, and all other facilities are complete but the appellants refused to accept possession by raising frivolous pleas and infact have lost their cases before the NRI Commission, the Consumer Court etc. The finding that the project is complete/ready for possession is incidental as the complaint has primarily been dismissed on the ground that the appellants' refused to accept possession.

After addressing arguments for some time, counsel for the parties agree that as the finding that the project is complete has been recorded without either party referring to any certificate of completion/partial or final etc., the appeal may be allowed and the matter be remitted to the Authority, exercising power under the Act, for adjudication afresh in accordance with law.

In view of the statements made by the counsel for the parties, the appeal is allowed, the impugned order dated 15.03.2018 is set aside and the matter is remitted to the Authority for adjudication afresh in accordance with law. Parties are directed to appear before the Adjudicating Officer, on 14.12.2018.



JUSTICE RAJIVE BHALLA (RETD.)

CHAIRMAN



S.K SHARMA, IPS (RETD.)

MEMBER

✓ November 12, 2018

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