

No _____ Through email dated Sept 4, 2020

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

Subject: - **APPEAL NO. 69 OF 2019**

Omaxe Chandigarh Extension Developers Pvt. Ltd., India
Trade Tower, 1st Floor, Madhya Marg Extension Road, New
Chandigarh, District SAS Nagar, Mullanpur, Punjab through its
Authorized Signatory Sh. Deepanjit Singh.

....Appellant

Versus

Sanjay Sharma & Indu Sharma, Both R/o 1624-A, Sector-35B,
Chandigarh-160022.

....Respondents

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.

Given under my hand and the seal of the Hon'ble Tribunal this
04th day of September, 2020.


REGISTRAR

REAL ESTATE APPELLATE
TRIBUNAL, PUNJAB

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

Appeal No. 69 of 2019

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Trade Tower, 1st Floor, Madhya Marg Extension road, New
Chandigarh, District SAS Nagar, Mullanpur, Punjab through
its Authorized Signatory Sh. Deepanjit Singh.

....Appellant

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Sanjay Sharma & Indu Sharma, Both R/o 1624-A, Sector-35B,
Chandigarh-160022.

....Respondents

Present: Mr. Sanjeev Sharma, Advocate for the appellant.
Mr. Amitabh Tewari, Advocate for the respondents No.1.
Mr. Mohammad Sartaj, Assistant Legal Adviser
o/o the Real Estate Regulatory Authority, Punjab.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER
(ADMINISTRATIVE/TECHNICAL)
SH. SANJEEV KUMAR GARG, MEMBER (JUDICIAL)**

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JUDGMENT: (Sh. Sanjeev Kumar Garg, Member)

This appeal has been filed against the order dated
12.09.2018 passed by learned Adjudicating Officer, Real Estate
Regulatory Authority, Punjab vide which the complaint filed by the



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respondents against the appellant was partly accepted and the appellant was directed to pay interest at highest rate of SBI MLCR plus 2% on the principal amount of Rs. 1,36,43,396/- w.e.f. 18.04.2016 till actual delivery of possession of villa to the complainants and further to pay compensation of Rs. 50,000/-.

2. The brief facts of the case are that respondents-complainants made a booking of one villa No. MCV/374J in Mullberry villa Chandigarh, part of Phase-2, Development of Mega Residential Project, situated at village Mullanpur, District Mohali, Punjab, on 26.09.2015, along with cheque of Rs.5,00,000/-. Since, the complainants wanted to shift from Delhi, so they opted for payment plan i.e. 95% up front and the balance 5% at the time of handing over the possession of the unit. The respondents-complainants paid an amount of Rs.1,33,68,162/- being 95% payment of the total cost, to the appellant against receipt, on the assurance of the appellant-promoter that they would hand over the possession of the same within six months i.e. by the end of March 2016. However, complainants were made to sign allotment letter dated 23.12.2015 containing one of the recital that possession of the villa was to be handed over within 18 months from the execution of the allotment



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letter, whereas, the respondents were verbally assured of the possession within the time period of six months. The appellant also obtained occupancy certificate of the villa in question on 02.11.2015. But despite those assurances and even after taking 95% of the total consideration the possession of the villa was not handed over to the complainants, hence, the complaint.

3. Upon notice, respondent-appellant appeared before the Adjudicating Officer, RERA and filed reply to the complaint pleading that the occupancy certificate was obtained on 02.11.2015 and that as per clause 23(b) of the allotment letter dated 23.12.2015 the possession was to be handed over within period of 18 months, further extendable for six months more and within that period they have handed over the possession to the complainants. The delay in handing over the possession occurred because complainants had not paid the remaining 5% of the sale amount, despite reminders.

4. After hearing learned counsel for the parties and after going through the record, the learned Adjudicating Officer, RERA passed the impugned order.



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5. Aggrieved from the same, this appeal has been filed.
6. Upon notice, respondents appeared through counsel Mr. Amitabh Tewari.
7. We have heard the arguments and have gone through the record of the case.
8. It has been argued by the learned counsel for the appellant that the allotment letter was executed between the parties on 23.12.2015 and clause 23(b) of the same provides that possession of the villa was to be handed over within 18+6 months from the execution of the allotment letter and the said period of 24 months expired on 22.12.2017. The appellant had already obtained occupancy certificate of the villa in question on 02.11.2015 and after furnishing the villa, they offered its possession to the respondents on 29.03.2017 and at that time a sum of Rs.9,76,597/- was due towards them. In this way, the possession of the villa in question was offered prior to the committed time line, as per agreed terms and conditions of the allotment letter, duly signed and accepted by both the parties. So, it cannot be said that there was any delay on the part of the appellant in handing over the possession of the villa to the



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respondents. Moreover according to the learned counsel for the respondents, the appellant had given a huge rebate on the sale price to the respondents on their depositing 95% of the sale consideration and that respondents have not deposited 95% of the amount to get immediately possession of the flat in question but to avail the heavy discount. According to the learned counsel, the learned Adjudicating Officer has erred in passing the impugned order, so it has been prayed that appeal be accepted and impugned order be set aside.

9. On the other hand, learned counsel for the respondents made submissions in support of the impugned order.

10. Admittedly, villa in question was booked by the respondents after paying 95% payment i.e. Rs.1,33,68,162/- in October, 2015 out of the sale consideration. As per case of the respondents, appellant-developer had assured to hand over the possession of the villa within six months therefrom. It is also an admitted fact that allotment letter dated 23.12.2015 was executed between the parties and that the developer has already obtained the occupancy certificate dated 02.11.2015 regarding the villa in question, which means that villa was ready to be occupied. The



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occupancy certificate has been defined in Section 2(zf) of RERA Act, as under:-

"Occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity.

This definition of occupancy certificate would show that it could be issued only after project is complete and completion certificate is issued because a buyer cannot be expected to live in an isolated building without any development in other part of the project, as required under the law. But in this case the completion certificate has not been produced by the appellant to show that project has been developed as per sanctioned plan, layout plan and specifications and internal and external development work, before issuance of the occupancy certificate.



11. Now, the short question for determination in this appeal is as to whether the appellant was required to hand over the possession of the villa in question within six months of the receipt of 95% of the sale consideration from the respondents, or within period of 18 months, which is extendable by six months more, as per the

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allotment letter. As stated above, the respondents paid huge amount of Rs.1,33,68,162/- on 17.10.2015 for purchasing the villa in question and at that time no agreement of sale was executed. The allotment letter dated 23.12.2015 was executed after a period of more than two months of the payment of 95% of the sale consideration. It is not disputed that respondents-complainants wanted to buy sample villa shown to them but the same was already sold, so respondents agreed to purchase semi built villa, on the assurance of the appellant that they would hand over its possession within six months. But despite receiving huge amount from the respondents, the appellant did not deliver the possession of the villa in question for years together. The correspondence between the parties, placed on the file, would show that appellant has been intentionally delaying the delivery of possession of the villa in question on one pretext or the other. Ultimately, the respondents took possession of the villa in question only on 12.05.2019 i.e. during the pendency of this appeal. No prudent person would pay such a huge amount for any house, the possession of which is to be handed over to him after three years. Since, it is the appellant, who despite obtaining occupancy certificate, has failed to handover possession of the villa in question to the respondents within the agreed period, so, it is he who has



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committed default in the present case. Since the appellant has not only used the amount deposited by the respondents for their own benefits but also deprived the respondents from the enjoyment of the house in question for such a long period. So they have been rightly burdened with interest and compensation by the learned Adjudicating Officer.

12. So far as the other contention of the learned counsel for the appellant that the respondents have deposited 95% of the sale consideration for availing heavy discount only, is concerned, the same is without any merit as this contention of the learned counsel is not substantiated by any document. There is absolutely no document to show that the respondents have been given any rebate for paying 95% amount upfront. So, it is evident that he paid 95% payment upfront on the assurance of the appellant that possession of the villa would be delivered by the end of March, 2016.

13. No other point argued.

14. For the reasons mentioned above, no merit is found in the present appeal and accordingly the same stands dismissed.



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15. The respondents shall be at liberty to withdraw the amount deposited by the appellant in this appeal subject to their furnishing indemnity bond and adequate verification of the same amount.



sd/
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

sd/
SANJEEV KUMAR GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

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

03.09.2020

AN

Certified To Be True Copy

Dhanendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

4-9-2020