

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

Subject: -

APPEAL NO. 96 OF 2022

Om Dutt S/o sh. Duli Chand, R/o H.No. 37, Mamta Enclave,
Dhakoli, Zirakpur, SAS Nagar, Mohali, Punjab-160104.

...Appellant

Versus

Sushma Buildtech Ltd. through its Directors, 1st Floor, Elante
Mall, Unit No. B-107, Business Complex, Industrial Area,
Phase-I, Chandigarh-160009.

....Respondent

Memo No. R.E.A.T./2023/30

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 16th
day of January, 2023.

Shanesh Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

**BEFORE THE LD. REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB
APPEAL NO. 96 OF 2022**

In the Matter of:

Om Dutt

...Appellant

Versus

Sushma Buildtech Ltd.
(Through its Directors)

...Respondent

MEMO OF PARTIES

Om Dutt

S/o Sh. Duli Chand

R/o H. No. 37, Mamta Enclave, Dhakoli,

Zirakpur, SAS Nagar, Mohali,

Punjab – 160104

...Appellant

Versus

Sushma Buildtech Ltd

(Through its Directors)

Ist Floor, Elante Mall, Unit no. B-107,

Business Complex, Industrial Area, Phase-I,

Chandigarh -160009

...Respondent

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group.sushma2005@gmail.com



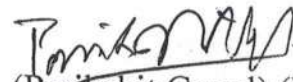
Place: Panchkula

Date: 31.05.2022

THROUGH

APPELLANT

COUNSELS


(Parikshit Goyal) (Nikhil Sharma)

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

APPEAL NO. 96 OF 2022

Om Dutt S/o sh. Duli Chand, R/o H.No. 37, Mamta Enclave,
Dhakoli, Zirakpur, SAS Nagar, Mohali, Punjab-160104.

...Appellant

Versus

Sushma Buildtech Ltd. through its Directors, 1st Floor, Elante
Mall, Unit No. B-107, Business Complex, Industrial Area,
Phase-I, Chandigarh-160009.

....Respondent

Present: - Mr. Parikshit Goyal and Mr. Nikhil Sharma,
Advocates for the appellant.
Mr. Harveet Singh Sehgal, Advocate for
respondent.



**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)

1. This appeal is directed against the impugned order dated 07.03.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority).

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2. The appellant is aggrieved of the fact that the respondent forfeited the entire amount of Rs.2.5 lacs. Prior to the issuance of an allotment letter or signing of any agreement, he had sought for cancellation and withdrawn his intent for booking a unit with the project of the respondent. It is averred with reference to the documents on record by the learned counsel for the appellant that an amount of Rs.2.5 lacs was deposited on 18.09.2018 along with an application and the request for cancellation was made through e-mail on 07.10.2018 (Annexure A-5), i.e., within a few days and ~~no~~^u no valid agreement had been executed but instead of accepting the request of cancellation the respondent forfeited the entire amount which then along with other issues were raised by the appellant before the Authority by filing a complaint resulting in the impugned order.

3. The Authority declined interference, by reasoning, that no prudent person would append his signatures on a blank sheet of paper to rely upon a promoter to fill the details. This observation was prompted since the allottee had pleaded in his complaint that he was assured of a flat but at the time of making of payment he was not offered the assured flat but an alternate one and this became the reason for writing an e-mail to withdraw from the developer's project altogether.



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4. Learned counsel for the appellant has contended that be that as it may, even if his grievance regarding the allotment of a particular flat is held to be falsified by the Authority, yet, it ought to have addressed itself to the issue of forfeiture of the entire amount when the developer had no authority to do so.
5. We had after noticing this contention of the allottee issued notice to the respondent who, upon appearance, has referred to the application form and clause 8 to contend that it gave him an absolute right to forfeit 10% of the Basic Sale Price (BSP) and since the amount deposited by the allottee was even less than the one contemplated it was forfeited in entirety.
6. We have heard the learned counsel for the parties and have gone through the record as also the impugned order.
7. Reliance placed by the respondent on the clause of the application form is extracted here below:

"The Applicant agrees that once the allotment letter of the said unit is issued by the developer then the applicant agrees to pay the Basic Sale Price (defined hereinafter) and all other amounts, charges, dues etc. as per the payment plan opted by the Applicant, enclosed with the Allotment Letter and/or as and when demanded by the Developer or in accordance with the terms of the Application/Allotment/Agreement that shall be executed by the Applicant and the Developer on the



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Developer's standard format. The Applicant has clearly understood that by submitting this Application, the Applicant does not become entitled to provisional and/or final allotment of the said Unit, notwithstanding the fact that the Developer may have issued a receipt in acknowledgement of the money tendered with this Application. The Applicant further understands that it is only after issuance of the allotment letter, that the allotment will get confirmed and after the Applicant signing and executing the Agreement and agreeing to abide by the terms and conditions laid down therein that the allotment of the Said Unit shall become final. If the Applicant fails to execute and return the Agreement with the Developer, within forty five (45) days from the date of its dispatch by the Developer then the Developer may treat this Application/Allotment as cancelled and on such cancellation due to default committed by the applicant the Developer shall deduct the earnest money (10% of the BSP) deposited by the applicant with the Developer and refund the balance amount if any upon the resale of the said unit to any third party and the applicant shall not raise any objection to the same. The Applicant understands that the Developer shall have no other liability of any kind except the refund of this amount under no circumstances whatsoever."



8. A perusal of the above clearly reveals that all the rights of the developer to forfeit any amount etc. as also the rights of the allottee would commence after the issuance of an allotment letter.
9. It is the conceded case of the parties that no allotment letter was ever issued.
10. If there is no agreement or an allotment letter then the argument of the learned counsel for the developer is

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difficult to accept. The liabilities of the allottee to deposit the amounts in view of the booked flat would commence only after the execution of such an agreement and issuance of an allotment letter. Likewise, the right of the developer to forfeit the amount in the event of a default by the allottee would also commence if there is a validly executed document in this regard. The allottee deposited the amount in September 2018 but wrote to the developer regarding cancellation within few days thereafter i.e. ^{on 30} 07.10.2018, before any legally and validly executed document came into existence. The developer therefore could not have acquired any right to forfeit the amount of the allottee because intent to cancel the booking was made at the threshold itself and his reliance on the above said clause is misplaced.



11. The Authority went wrong in ignoring this aspect altogether. We are thus of the opinion that for the reasons recorded above when the parties did not execute any valid or legal document from which the rights qua flat in the project developed by the respondent could materialize, the retention of the amount of Rs.2.5 lacs by him was unjust.
12. The appeal is therefore accepted and the developer is directed to refund the entire amount of Rs.2.5 lacs along

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with interest at the prescribed statutory rate of interest from the date when this amount was deposited till the date of its realization.

13. The appeal stands disposed of.

File be consigned to the record room.



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)

January 09, 2023
DS

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

16/01/2023

S.K. GARG, D & S.
MEMBER

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