

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

Subject: -

Appeal No.14 of 2023

Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali,
Punjab, through its authorized signatory/representative Sh.
Jaisaljit Singh.

...Appellant

Versus

1. Kulwinder Singh Pabla, r/o House No.162, Near PNB Bank,
Village Kansal, SAS Nagar, Mohali Punjab-160103.
2. Mandeep Kaur, w/o Kulwinder Singh Pabla, r/o House
No.162, Near PNB Bank, Village Kansal, SAS Nagar, Mohali
Punjab-160103.
3. Housing Department Finance Limited, SCO 548, Sector 70,
SAS Nagar Mohali-160059.

....Respondents

Memo No. R.E.A.T./2023/ 404

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 **31st day of October 2023.**

Tharun Kaur
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE LD. REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 14 of 2023

MEMO OF PARTIES

Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali, Punjab, through its authorized signatory/representative Sh. Jaisaljit Singh.

...Appellant

Versus

1. Kulwinder Singh Pabla, r/o H. no. 162, Near PNB Bank, Village Kansal, SAS Nagar, Mohali, Punjab 160103.
2. Mandeep Kaur, w/o Kulwinder Singh Pabla, r/o H. no. 162, Near PNB Bank, Village Kansal, SAS Nagar, Mohali, Punjab 160103.
3. Housing Development Finance Limited, SCO 548, Sector 70, SAS Nagar, Mohali 160059.

... Respondents



Place: Chandigarh
Dated: 03.04.2023




 (Tejeswar Singh, Dewangana Chhillar, & Mohit Uppal)
 P/1355/2015 D/417/2016 PH/1707/2020
 Advocates

COUNSEL FOR THE APPELLANT

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

Appeal No.14 of 2023

Country Colonisers Pvt. Ltd., Sector 85, SAS Nagar, Mohali,
Punjab, through its authorized signatory/representative
Sh. Jaisaljit Singh.

...Appellant

Versus

1. Kulwinder Singh Pabla, r/o House No.162, Near PNB Bank,
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2. Mandeep Kaur, w/o Kulwinder Singh Pabla, r/o House
No.162, Near PNB Bank, Village Kansal, SAS Nagar, Mohali
Punjab-160103.
3. Housing Department Finance Limited, SCO 548, Sector 70,
SAS Nagar Mohali-160059.

....Respondents

Present: - Mr. Tejeshwar Singh, Advocate for the appellant.
Mr. Kulwinder 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 developer is against the Order passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as Authority), on 28.12.2022.
2. The facts are not in dispute, thereby limiting the controversy to the amount that the present respondent is entitled to upon his seeking a refund upon retraction from the project being developed by the appellant (developer).
3. The respondent (complainant) had booked an apartment with the project being developed by the appellant for a total consideration of Rs.93,74,837.50. As per the Agreement to Sell 15% of the basic sale price amounting to Rs.24,91,604/- was the earnest money to be paid and the balance was payable in terms of the schedule appended as Annexure-II to the Agreement.
4. Clause 4.4 of the agreement envisaged cancellation of the allotment by the developer in the event of a default in payment for a period exceeding 2 months, with a further right to the developer to forfeit the earnest money (15% of the basic sale price) and also to recover interest, brokerage etc.
5. In terms of Clause 5.1 and 5.2 of the agreement, possession was promised within 30 months from the date of agreement with a further grace period of 6 months on account of force majeure.
6. Clause 5.5 of the agreement entitled the allottee for compensation at the rate of Rs.5/- per square feet per month in the event of delay in possession. The respondent-allottee made a total payment of Rs.85,62,767/- till the time of filing of the



complaint, out of which Rs.65,00,000/- was obtained as loan from the HDFC regarding which a Tripartite Agreement had been executed between the developer, the allottee and the Bank.

7. As per this agreement a loan of Rs.65,00,000/- was sanctioned for purchase of the apartment and till the time of disbursement of the entire loan of Rs.65,00,000/- all the Pre-EMIs along with simple interest on the loan amount were payable by the builder for a period of 36 months. The ultimate responsibility for payment of EMIs was of the borrower. Clause 8, 9 and 10 of the Tripartite Agreement are relevant as they govern the liability and obligation of the parties to the agreement. They are extracted herebelow:-

"8. That if the Borrower fails to pay the balance amount representing the difference between the loan sanctioned by HDFC and the actual purchase price of the residential Apartment or in the event of death of the Borrower or in the event of cancellation of the residential Apartment for any reason whatsoever the entire amount advanced by HDFC will be refunded by the Builder to HDFC forthwith. The Borrower hereby subrogates all his/her/their rights for refund with respect to the said residential Apartment in favour of HDFC.

9. Further if the Borrower commits a breach of any of the terms and conditions of this Tripartite Agreement it shall be treated as an event of default under the Agreement for Sale/Allotment cum Agreement for sale or any such agreement or document signed by and between the Borrower and the Builder for the sale of the said residential Apartment.

That in the event of occurrence of default under the Loan Agreement which would result in the cancellation of the Allotment as a consequence thereof and/or for any reason whatsoever if the allotment is cancelled, any amount payable to the Borrower on account of such cancellation shall be directly paid to HDFC. However, it is further agreed between the Parties that such payment made by the Builder directly to HDFC shall not absolve the Borrower from this liability to pay the residual amount, if any, from the outstanding under the Loan Agreement.



That the Borrower agrees that it unconditionally and irrevocable subrogates its right to receive any amount payable by the Builder to the Borrower in the event of cancellation in favour of HDFC and that the act of payment by the Builder to HDFC under this clause shall amount to a valid discharge of the Builder of its obligation to pay the Borrower such cancellation amount.

Further that the parties agree that the Builder shall in no circumstances forfeit any amount over and above the amount equivalent to the Borrowers contribution towards the purchase consideration paid to the Builder. Borrower's contribution for the purposes of this clause shall mean and include the difference between the total cost of the residential Apartment and the Loan amount as mentioned above.

10. Further, the Builder, in the event of default of repayment as mentioned in Clause-2 and 3 hereinabove, shall on intimation by HDFC cancel the allotment of the residential Apartment in favour of the borrower and refund all monies to HDFC directly under intimation to the borrower for appropriation and adjustment by HDFC against all monies due to it from the Borrower as mentioned above."

It is also not in dispute that the possession was not given within the stipulated time. Likewise undisputably after the expiry of 36 months, the respondent failed to pay the Pre-EMIs interest.

Consequently, the HDFC Bank vide its communication dated 13.10.2018 issued a cancellation-cum-refund letter in terms of the Tripartite Agreement. Subsequent to this letter by the bank, the appellant asked the complainant to pay the Pre-EMIs and also offered to bear the interest of these EMIs till the offer of possession.

8. It is pertinent to mention here that even though the agreement envisaged cancellation in the event of default such, a course was not adopted by the developer for reasons best known to it.
9. The respondent filed a complaint on 27.05.2019 and the appellant cancelled the allotment on 21.05.2019.



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10. In the complaint preferred the respondent had pleaded for refund of the amount along with interest in terms of Section 18(1) of the Act, which plea was accepted by the Authority vide the impugned order dated 20.12.2022.
11. It is pertinent to mention here that the possession was not offered up to the promised date i.e. 26.01.2018 but was in fact offered in the year 2020 but prior to that, the respondent had filed a complaint seeking refund of the amount. It is also not in dispute that an amount of Rs.60,71,163/- had been disbursed by the bank to the developer pursuant to the Tripartite Agreement even though a loan of Rs.65,00,000/- was sanctioned. The developer in-turn settled the matter with the bank after cancelling the allotment on 21.05.2019 and refunded an amount of Rs.68,69,414/-.
12. The learned counsel for the appellant while questioning the impugned order has argued that the cancellation order was never questioned by the respondent and if that be so then all the consequences flowing therefrom would necessarily be visited upon the respondent. He has further argued that not a word was said in the complaint regarding the offer made by the appellant to pay the interest on Pre-EMIs in the face of the default made by the respondent.
13. It was next argued that even if the best case of the complainant is to be accepted yet the order of the Authority ordering a refund of Rs.24,91,604/- cannot stand because of the reason that the appellant had paid Pre-EMIs equivalent to Rs.14,65,264/- and this amount necessarily had to be refunded



to the developer and while formulating the relief, the Authority had failed to take into account this aspect.

14. We have heard the learned counsel for the parties at some length and are unable to accept the plea of the appellant. Much has been argued on the aspect of the Tripartite Agreement but to our minds that agreement has to be seen distinctly and divorced from the grievance of the respondent. Both cannot be linked without doing disservice to the cause of the parties.

15. The Authority was wrong in observing that the agreement would be built into the Agreement to Sell. This also forms the basis of an argument of the appellant who contends that there is nothing on record to show that the residential units allotted to other allottees was in any way of a lesser amount than the price offered to the respondent. It is argued that the Authority was wrong in proceeding on the assumption that the subvention linked payment plan took into consideration the EMIs and the interest thereon to determine the price to inflate it artificially.

16. We have gone through the impugned order and even though the Authority has observed as much that the Tripartite Agreement would be read into the Agreement to Sell but it makes no difference to the controversy and the findings recorded in conclusion as we are even otherwise of the opinion that the agreement would determine the rights and liabilities of both the parties and the loan arrangement with the bank would be merely a facilitator to the ultimate transaction between the developer and the allottee. The appellant had received a sum of more than Rs.85,00,000/- out of the total sale consideration of



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Rs.93,74,837/- out of which an amount of Rs.60,71,163/- had been paid by the HDFC in one go. The Tripartite Agreement and the Clauses extracted in the foregoing paragraphs reveal the liabilities in the event of default by the borrower and ensures that in the event of cancellation of the residential apartment the entire amount advanced by HDFC will be refunded by the builder to the HDFC forthwith. The borrower however was not protected from liability to pay the residual amount under the loan agreement. It is for this reason that we are of the opinion that the loan agreement has to be viewed as distinct, from the grievance of the allottee under the Act. Since the bank and the developer had already settled this issue of refund of an amount of Rs.60,71,163/-, the parties to the agreement would be at liberty to take recourse to their remedies in law to enforce any residuary rights or liabilities flowing therefrom.

17. Insofar as the right of the allottee under the Act is concerned, the fact remains that the developer failed to deliver the possession up to December, 2018, which was the promised date. It was only in 2020 that the offer of possession was made but before that the complaint stood filed, wherein allottee exercised his right under the Act seeking refund of whatever amount that remained with the developer, along with interest in terms of Section 18(1) of the Act.

18. The Authority has reasoned while settling equities and the statutory rights of the allottee under the Act that a sum of more than Rs.60,00,000/- was utilized by the developer for as long as 5 years upon the execution of the Tripartite Agreement on



27.01.2015. Having utilized this amount for a number of years without performing the corresponding duty of delivering possession the developer cannot make a virtue of having paid EMIs to the extent of Rs.14,00,000/- to raise a plea of deduction of this amount. The Authority has ordered as refund an amount of Rs.24,91,604/- along with statutory interest under the Act, which to our minds is just, reasonable and not arbitrary. For the aforesaid reasons we do not find any merit in the appeal, which is dismissed.

19. Files be consigned to the record room.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

October 30, 2023

AVG

Certified To Be True Copy

Chandrasekhar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

31/10/2023