

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

Subject: -

Appeal No. 113 of 2022

Neetika Sharda Wife of Sh. Amit Kumar previously resident of R/o House No.9, Sector 41-A, Chandigarh-160036 presently residing at H.No. 4097A, Sector 125, Sunny Enclave, Kharar, District SAS Nagar, Mohali

...Appellant/Complainants

Versus

M/s Bajwa Developers Ltd. at SCO No.17-18, 5-6th Floors, Sunny Business Centre, Sector 125, Desu Majra, SAS Nagar (Mohali), Punjab-140301

....Respondent/Developer

Memo No. R.E.A.T./2024/ 36.

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 **25th**
day of January, 2024.

Shamset Far

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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

Appeal No. 113 of 20

MEMO OF PARTIES

Neetika Sharda Wife of Sh. Amit Kumar previously resident of R/o House No.9, Sector 41-A, Chandigarh – 160036 presently residing at H. NO.4097A, Sector 125, Sunny Enclave, Kharar, District SAS Nagar Mohali

...Appellants/Complainants



Versus

M/s Bajwa Developers Ltd. At SCO No.17-18, 5-6th Floors, Sunny Business Centre, Sector 125, Desu Majra, SAS Nagar (Mohali), Punjab – 140301.

...Respondent/Developer



**Place: Chandigarh.
Dated: 06.06.2022**



(M.S. LONGIA) (GOURAV SHARMA)
ADVOCATES
COUNSEL FOR APPELLANT

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

Appeal No. 113 of 2022

Neetika Sharda Wife of Sh. Amit Kumar previously
resident of R/o House No.9, Sector 41-A, Chandigarh-
160036 presently residing at H.No. 4097A, Sector 125,
Sunny Enclave, Kharar, District SAS Nagar, Moali

...Appellant

Versus

M/s Bajwa Developers Ltd. at SCO No.17-18, 5-6
Floors, Sunny Business Centre, Sector 125, DesuMajra,
SAS Nagar (Mohali), Punjab-140301

....Respondents

Present: - Ms. Neetika Sharda, (In person)
Mr. M.S. Longia Advocate for the Appellant
None for the respondent

**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**



**JUDGMENT: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)
(Oral)**

1. The appellant who is the allottee, has impugned the order dated 09.05.2020 of the Real Estate Regulatory Authority (hereinafter known as the Authority) whereby the following findings and directions were issued.

8. Based on written submissions and oral pleadings, following are the findings:-

- I. The complainant booked a flat of 600 sq. ft. in the above cited project for a total sale consideration of Rs.9,80,400/-.
- II. No agreement to sell was executed.
- III. The respondent executed a conveyance deed in favour of the complainant on 15.10.2019 after the complainant made full and final payment, including service tax and maintenance charges on 17.09.2019.
- IV. The complainant did not make any written communication with the respondent, subsequent to full and final payment and execution of conveyance deed, in regards to any deficiencies or non-completion of the flat.
- V. The complainant did not raise any objection to non-receipt of CC/OC at the time of execution of conveyance deed or subsequent for a period of 2 years. This issue was raised for the first time in the present complaint.
- VI. Having made all the payments, obtaining NDC and execution of conveyance deed way back in October, 2019 no cause for relief U/s 18(1) of the Act is made out at this stage.



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2. After recording the aforesaid the complaint was dismissed which is the cause of grievance to the appellant.
3. Before we proceed with the matter any further we need to notice the contents of the complaint filed by the appellant before the Authority. To be exact to the narrative the relevant portion of the complaint is extracted herebelow:

After the advertisement, the complainant was allured to buy the flat bearing no.8431/C, Area: 0-1 Marla, Ground Floor, Covered Area 600 square feet, situated at Eco Floor-2, Ground Floor, Highway City Sunny Enclave, Sector 125, Kharar. It was further stated that the project is RERA Registered bearing RERA No.PBRERA-SA S80-PR0260 (C-1). Layout Plan (C-2) was also shown to complainant about the positioning of his flat in Highway City. It was further assured that the internal works would be completed within a period of four months from the date of registration of sale deed, and it was assured that the possession would be handed over, maximum, within a period of 120 days after obtaining completion and occupation certificate from the competent authority. It was further assured that the flat would be



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handed over within a period of four months only, therefore, no agreement to sell is required to be executed and straightway sale deed can be executed. Being allured, the complainant purchased the flat after payment of Rs.9,80,400/- vide bank drafts and thereafter, sale deed was executed on 15.10.2019 (C-3). Thereafter, the complainant consistently and repeatedly visited the respondent for completion of his flat and for handing over possession after OC & CC, but the respondent kept on dilly dallying the matter and did not deliver the possession by 15.02.2020. Thereafter, the builder started taking plea that the flat could not be completed due to COVID-19 Pandemic. The flat of the complainant as also various other persons, have not been furnished and neither OC & CC have been obtained, which is mandatory requirement before handing over the possession. Photographs of the flat are attached herewith as C-4. The present complainant does not wish to withdraw from the project and wish to take possession as she is in requirement of the flat. Therefore, through



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this present complainant, the complainant seeks the possession, and till the time, the possession is not handed over, the complainant, in terms of Section 18 of RERA Act, seeks interest on the amount paid, for every month of delay till the handing over the possession at the rates, prescribed by the competent authority i.e. RERA.

4. In brief the grievance appears to be that even though the sale was executed on 15.10.2019, the flat was not complete in all respects and hence the complainant had prayed that possession be given after obtaining the occupation certificate and completion certificate by the developer. Repeated attempts to get the grievance rectified did not bear any result and then COVID intervened which resulted in delay in approaching the Authority.

5. On 25.07.2022, while hearing the appeal we noticed the contention of the appellant that despite the execution of the conveyance deed the possession of the flat had not been handed over. We apparently had our reservations about the statement made by the appellant and made it clear to him that in case such an assertion is found to be incorrect, he would be held liable for consequences for making incorrect statements before the Court.



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6. On 29.08.2022, we recorded that service had been effected upon the respondent but none appeared on its behalf despite service. We however, granted an opportunity to him before we decided upon ex parte proceedings.

7. On 24.11.2022, Sh. Vipul Monga, submitted his memorandum of appearance on behalf of the respondent and prayed for time to argue the matter. Thereafter, on 15.12.2022, 12.01.2023, 02.02.2023 and 16.02.2023, request for adjournment was received from the respondent and on the last date mentioned i.e. 16.02.2023, we imposed a cost of Rs.20,000/- upon the respondent for delaying the proceedings and also directed that the appellant be handed over the possession of the flat in case it has not been done. On 13.04.2023, Sh. Monga, put in appearance but it was the appellant who failed to appear. However, on the next date 22.07.2023, the appellant filed an affidavit and the respondent prayed for time to respond to the affidavit.

8. On 17.08.2023 we noticed in our order that the dispute is centering around the factual aspect of the possession of the flat which was asserted by the respondent but denied by the appellant. For the purposes of reference the contention which were elaborately noticed in the order dated 17.08.2023 is extracted herebelow:

*Present: Mr. M.S. Longia, Advocate for
the appellant*

*Mr. Vipul Monga, Advocate for
the respondent*



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There is a serious dispute with regard to handing over the possession to the appellant. There is no dispute that conveyance deed was executed in which it is noticed that possession has been handed over to the appellant. This fact of actual possession is however strenuously denied by the appellant who states that the flat for which he had applied has not been given to him so far and even the No Dues Certificate dated 12.12.2019 mentions in Clause (3) "in case variation in the size of the flat is found at the time of demarcation/possession, customer will be liable to pay the cost of additional area at the prevalent prices at the time."

The learned counsel for the appellant also refers to the Possession Certificate dated 13.06.2019 issued to another allottee and contends that a similar possession certificate has not been given to him. In fact he asserts with vehemence that the possession has not been handed over to him at all and this fact is equally strenuously denied by the respondent.

Since there is a serious conflict on facts, we deem it appropriate to appoint a Local Commissioner at the expense of the respondent for the reason that it is he who asserts that possession has been given and to determine this assertion, we do not deem it appropriate to burden the appellant who is already litigating for the flat and



possibly may be a victim. We shall however settle this aspect at the time of final disposal of the appeal or even after ascertaining the veracity of the rival claims noticed above. Consequently we appoint Smt. Rahish Pahwa, Advocate to visit the spot and determine the following questions:-

- i. Whether the Flat No.8431/C measuring 600 sq. ft. in Sector 125, ECO Floor-II, Sunny Enclave, Residential Township, Kharar, Distt. Mohali is ready in all respects?*
- ii. Whether the possession has been handed over to the appellant as asserted by the respondent or not?*

The fee of the Local Commissioner is determined at Rs.75,000/-. The amount be deposited by way of DD in the name of counsel. Report be submitted on or before the next date of hearing.

*The case is adjourned to
28.09.2023*

Although the Local Commissioner was appointed in the presence of the parties as is evident from the afore extracted order, the respondent neither deposited the fee of the Local Commissioner nor did he appear thereafter. On 20.11.2023, we were apprised of a request from the respondent for an adjournment which was not appreciated in the light of its previous record and the fact that the proceedings had been pending since year 2022.



10. The appellant in ~~turn~~^{turn} had produced photographs before us of the intended flat but we refrained from commenting on their veracity. They indeed showed a dismissal picture of the site and the flat, assuming they related to the flat in question.
11. To be fair to the parties we observed that no order shall be passed by us on the photographs till we hear the respondent on the subject and granted him one more opportunity subject to a payment of Rs.10,000/-.
12. Thereafter, the matter was adjourned to 18.01.2024, on which date the respondent did not show-up and neither were the costs deposited. No application or response was filed to controvert the photographs placed on record.
13. The sum and substance of the afore extracted details of the proceedings is that the assertions made by the appellant have gone uncontroverted. There is thus very little room for us to observe anything else but to accept the assertions of the appellant.
14. We have however, independently applied our minds to the facts of the case and the photographs to which no response has been filed. They show a dismissal picture of an incomplete flat and equally incomplete building structure where it is situated. It reveals shoddy work and in brief one can say that it is not habitable at all. Neither doors nor windows have been affixed and similarly there are tiles and incomplete sanitary works which is evident, as also are cracks and peeling plaster.



15. Simply because the sale deed has been executed would not ipso facto suggest that the possession of the flat had been handed over complete in all respects. The respondent has denied the averments in the complaint and the Authority has totally ignored looking into rival claims and the factual aspects by observing the delay in approaching it as the prime factor to decline interference.
16. To our minds the Authority has failed to address the core issue of the allottees grievances regarding possession and an incomplete unit.
17. The crux of the complaint was that the possession be handed over to the appellant after obtaining occupation certificate and completion certificate but these core issues were not even addressed by the Authority which has resulted in the present situation of the respondent being let of conveniently even when the entire sale consideration has been received by it.
18. The impugned order is thus held to be unsustainable for the aforesaid reason of the failures of the Authority to address the ~~cost~~^{core} issues and particularly when the respondents' conduct before us shows complete apathy and also for the reason that all the assertions made before us have gone uncontroverted. The photographs placed on record have not been objected to by any affidavit in response. The attempts to have a clearer picture through an appointment of a Local Commissioner were also frustrated by the respondent. Besides he never deposited the cost imposed by us and



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continued to frustrate the proceedings. This in strict sense of law means that the defense of the respondent deserves to be struck of.

19. Taking into consideration all the above factors we accept the appeal and direct as follows:-

1) The possession of the flat be handed over to the appellant within a period of two months from today compete in all respects and to his satisfaction. Alongwith it a possession certificate be issued as has been done in the cases of other allottees particularly one Hemant Kumar, which has been placed on record as Annexure A-6. Simultaneously, a no Dues Certificate be issued. The respondent shall also ensure that a copy of the Occupation Certificate and Completion Certificate is given to the appellant. The appeal is accepted in the aforesaid terms with a cost of Rs.50,000/- which shall be compensatory to the appellant. The appellant shall also at liberty to approach the Adjudicating Officer for grant of compensation if so advised.



Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sdr
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

January 18, 2024

SB

Certified To Be True Copy

Manoj Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

25/01/2024 *B*