

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

Subject: -

Appeal No.70 of 2022

Om Scaffolders, Plot No.274-A, Industrial Area Phase II,
Panchkula Pincode-134104 now village Kuranwala
Derabassi, Barwala Road, Derabassi, Punjab 140507
through its partner Mr. Varinder Mangla.

....Appellant

Versus

Chandigarh Overseas Private Limited, SCO No.196-197,
Sector-34-A, Chandigarh, Pincode-160022 now SCO
No.249, Sector-44 C, Chandigarh, Pincode-160047.

....Respondent

Memo No. R.E.A.T./2022/ 256

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST
FLOOR, BLOCK B, PLOT NO.3, MADHYA MARG,
SECTOR-18, CHANDIGARH-160018.**

Whereas appeals 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 appeals 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~~ ^{1st} day of ~~May~~ ^{June}, 2022.

OK

T. Namender

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



IN THE HON'BLE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT
CHANDIGARH

Appeal no. 70 2022

MEMO OF PARTIES

Om Scaffolders, Plot No. 274-A, Industrial Area Phase II, Panchkula
Pincode-134109 now village Kuranwala Derabassi, Barwala Road,
Derabassi, Punjab 140507 through its partner Mr. Varinder Mangla.

....Appellant

VERSUS

Chandigarh Overseas Private Limited, SCO No. 196-197, Sector- 34-A,
Chandigarh, Pincode-160022 now SCO No.249, Sector-44C,
Chandigarh, Pincode-160047

...Respondent

Place: Chandigarh

Dated: 01.05.2022


(RAJINDER KUMAR SINGLA)

(P/895/2002), ADVOCATE

COUNSEL FOR THE APPELLANT



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

Appeal No.70 of 2022

Om Scaffolders, Plot No.274-A, Industrial Area Phase II, Panchkula Pincode-134104 now village Kuranwala Derabassi, Barwala Road, Derabassi, Punjab 140507 through its partner Mr. Varinder Mangla.

....Appellant

Versus

Chandigarh Overseas Private Limited, SCO No.196-197, Sector-34-A, Chandigarh, Pincode-160022 now SCO No.249, Sector-44 C, Chandigarh, Pincode-160047.

....Respondent

Present: Mr. Rajinder Kumar Singla, Adv. for the appellant.

**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K GARG DISTRICT AND SESSIONS JUDGE (RETD.)
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER
(ADMINISTRATIVE/TECHNICAL)**

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JUDGMENT: (*Justice Mahesh Grover (Retd.)*)



This appeal is directed against the order dated 03.03.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority).

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2. The complainant filed a complaint seeking benefits of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) for the delayed possession and pleaded that he has paid the entire consideration of Rs.55.00 lakhs but the project and possession of his unit has been delayed by as many as 7 years. He thus prayed that the principle amount be refunded to him along with interest @ 18% per annum from the date of payment till realization. He also asked for compensation amounting to Rs. 1 lakh for mental agony etc. besides penalizing the respondent to the extent of Rs. 10 lakhs.

3. While responding to the complaint, the respondent denied the receipt of Rs.55 lakhs, while admitting receipt of Rs. 2.5 Lakhs only, towards the price of the flat.

4. The Authority observed that there was a conflict in the actual amount paid by the appellant, while with



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regard to an amount of Rs. 2.5 lakhs there apparently was no conflict and allowed the refund of this amount along with interest at the rate of 9.30% (today's SBI MCLR Rate plus 2%) to be paid from the date of deposit till the date of actual refund.

5. Learned counsel for the appellant refers to the receipt at page 41(**Annexure A-3**) to contend that Rs. 27,96,256/- is clearly mentioned as receipt against account of Flat No.719, Tower No.10. Likewise he has referred to a receipt of 18.05.2012 (**Annexure A-6**), where receipt of Rs. 2.5 lakhs in cash has been recorded.

6. Thereafter he referred to another set documents at page 59-64 (**Annexure A-9 colly**), which are also receipts similar to **Annexure-3**.

7. It is thus contended by him that all the receipts go to show that amounts have been received by the respondent, which would render the finding of the Authority limiting the receipt of Rs. 2.5 lakhs alone



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as erroneous and thus warranting interference by this Court.

8. At the first blush, this argument of the learned counsel for the appellant seemed attractive but a closer look at the receipts shows that it is recorded therein, that they pertain to bills of one Star Construction or Future Colonisers.
 9. It was candidly conceded by the learned counsel for the appellant that Om Scaffolders, appellant herein is in business relationship with respondent and through the agency under the name of Style of Star Construction and Future Colonisers providing scaffolding material to the respondent.
 10. This implies that the appellant is probably having regular settlement of accounts with the respondent for the material that he supplies to them.
- It is therefore difficult to accept the plea of the appellant that this amount reflected in the receipts pertain to the payment of cost of the residential



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unit, more particularly when there are no pleadings to this effect. A bare reading of the complaint shows that the only plea taken up by the complainant is related to a buyer's agreement dated 6th of April 2012, promising possession of the dwelling unit on or before 30th of June 2013, which has not been done despite lapse of several years. There is absolutely no averment about the amount paid by the appellant and in what manner. Assuming that in the course of business there were some amounts adjusted towards the price of the dwelling unit then such a fact should have been pleaded by the appellant so that the respondent was on notice and alive to these aspects, so as to enable him to either admit or deny the facts.

12. Neither before the Authority nor before us was this fact specifically pleaded with reference to some material that could have been reflective of such a stance. Therefore, all the arguments advanced in



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this regard by the learned counsel for the appellant are in the realm of fiction. It is a settled proposition of law that a fact has to be pleaded and proved by the person who asserts it. In the absence of any pleading or documents to support such an assertion, we are unable to appreciate the conflicting stance of the parties before us and for this very reason, we do not find any fault in the impugned order, based on a similar reasoning.

13. The appeal is therefore held to be without any merit and dismissed. File be consigned to record room and a copy of this be communicated to the parties as well as to the Real Estate Regulatory Authority, Punjab.

Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

My opinion/judgment is appended on subsequent pages
ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER (ADMINISTRATIVE/TECHNICAL)

May 16, 2022
AN



Certified To Be True Copy
Dhanendra's
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

01/06/2022

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REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

Appeal No. 70 of 2022

Om Scaffolders, Plot No. 274-A, Industrial Area Phase II, Panchkkula
Pincode-134109 now village Kuranwala Derabassi, Barwala Road,
Derabassi, Punjab 140507 through its partner Mr. Varinder Mangla

.....Appellant

Versus

Chandigarh Overseas Private Limited, SCO No. 196-197, Sector- 34-A,
Chandigarh, Pincode-160022 now SCO No.249, Sector-44C,
Chandigarh, Pincode-160047

.....Respondent

Present: Mr. Rajinder Kumar Singla, Advocate for the appellant.

QUORUM: 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: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.))

(MINORITY VIEW)

1. By this order, I will dispose off above mentioned appeal bearing Appeal No. 70 of 2022 (**Om Scaffolders versus Chandigarh Overseas Private Limited**) against order dated 03.03.2022 passed by Sh. Navreet Singh Kang, Chairperson (*hereinafter also referred to as the the Bench*) of the Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) in the complaint bearing AdC No. 15182020 filed/instituted on 10/11.02.2020.



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2. The complaint has been partly accepted by the Bench vide his order dated 03.03.2022 and the respondent-promoter has been directed to refund Rs. 2.50 lakhs to the complainant-appellant along with interest at the rate of 9.30% p.a. (today's SBI MCLR Rate plus 2%) to be paid from the date of deposit till the date of actual refund and it has also been directed therein that the payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017 (*hereinafter referred to as the Rules*).
3. Aggrieved by the impugned order, the appellant-complainant has filed present appeal dated/filed on 10/11.05.2022 and sought the reliefs of (i) setting aside the impugned order; (ii) issuance of direction to the respondent to refund the entire sale consideration amount i.e. Rs. 55 lacs alongwith interest at the rate of 18% from the date of deposits till its realization; (iii) directing the respondent to pay an amount of Rs. 10 lacs on account of deficiency in service and unfair trade practice; (iv) directing to pay an amount of Rs. 10 Lacs on account of physical, mental agony suffered by the appellant; and (v) directing to pay an amount of Rs. 1 lac on account of litigation expenses towards non handing over the possession of the said flat/ unit.
4. The the above mentioned reliefs, obviously except that of setting aside the impugned order, had even been sought by the appellant in his composite complaint dated 10/11.02.2020 in Form 'N' filed before the Adjudicating Officer under section 31 of the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) and Rule 37(1) of the Rules. Hence, the last



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three reliefs sought again in the appeal, being in respect of compensation, might be being looked into by the Adjudicating Officer, who, as per paragraph 2 of the impugned order dated 03.03.2022 of the Bench, has referred, vide his order dated 03.01.2022 the present case of refund and interest to the Bench in view of the judgment of the Supreme Court in "M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. And Ors." (Civil Appeal No.6745-6749 of 2021).

5. Therefore, the only grievance of the appellant, which needs to be decided by this Tribunal, is in respect of refund of only Rs. 2.50 lakh along with interest @ 9.30% per annum as ordered by the Bench vide the impugned order, whereas he has been seeking refund of Rs.55,00,000/- paid by the complainant-appellant till the date of his complaint along with interest @ 18% per annum.
6. The Bench has allowed refund of and interest on only Rs. 2.50 lakh against Rs.55,00,000/- as claimed by the complainant-appellant primarily on the basis of his following observations mentioned in paragraph 8 of the impugned order, some portions of which have hereby been emboldened to lay emphasis:-

*"8. As noted above, there are conflicting versions about the actual amount paid and received in relation to the apartment. In support of his contention that a sum of Rs.55.00 lakhs had been paid, the complainant has **relied upon the receipts issued by the respondent.** His counsel drew my attention to the judgement of dated 22.06.2020 of the Adjudicating Officer in Complaint No. 1256 of 2019, and specifically the following extract*

"Though, on behalf of the respondent, it has been specifically pleaded that the complainant did not make the payments of balance amount



and therefore, the earnest money stood forfeited and it being case of automatic cancellation of the allotment, however, on behalf of the respondent in the pleadings, there is no specific denial to the averment of the complaint that the amount of Rs.27,00,000/- was received and receipts were issued by the respondent as to how the said documents came into existence, if further payments had not been made on behalf of the complainant. In such a situation, it can be safely concluded tht the complainant made the total payment of Rs.27,00,000/- to the respondent in respect of the allotment of unit no. 318."

He submitted that this order would be applicable in this matter too since the respondent had not explained the source of the receipts. He also relied upon the record of payment maintained by the respondent and placed on record on 04.03.2021 as Annexure C-4. As noted in para 4 above this shows a payment of Rs.55.00 lakhs. Opposing this, Sh. Vipul Monga pointed out that out of eight receipts relied upon by the complainant, only one (No. 3202 dated 18.05.2012) related to payment for the apartment. The remaining receipts were on account of other transactions between the complainant and two entities, M/s Star Constructions and M/s Future Colonizers. He also pointed out that Annexure C-4 showing a payment of these Rs.55.00 lakhs could not be relied upon since it was on plain paper and did not carry the signatures of the respondent or its authorized personnel. Having considered these rival contentions I would hold that seven of the eight receipts submitted by the complainant do not relate to payment for allotment of the apartment. This is because six of the bills have the words "Bills of Future Colonizers" written on them whereas one has "Bills of Star Constructions" inscribed therupon. In view of this it is difficult to hold that these receipts are for payment of the price of the apartment, especially since one remaining bill states it to be so. Annexure C-4 submitted by the complainant



also does not inspire confidence since it is not signed by any authorized signatory on behalf of the respondent. Thus it is held that only a payment of Rs. 2.50 lakhs has been made qua the allotment of the apartment, and refund is limited to this amount along with interest."

7. The appellant has inter alia contended in his present appeal (i) that M/s Star Construction & Allied Industries and M/s Future Colonisers & Construction Private Limited paid an amount of Rs.55 Lacs on behalf of the appellant towards the flat/unit No. 719 in tower No. 10 of the respondent's project; (ii) that the respondent issued receipts in favour of the appellant (Annexures A-3, A-6 & A-9); (iii) that the respondent issued a provisional allotment letter dated 18.05.2012 (Annexure A-5) for the said unit; (iv) that the possession had to be delivered on or before 30.06.2013 but no offer of possession had ever been made even though the total consideration paid by the appellant; (v) that the complaint was filed but the Bench, after overlooking the evidence on record, directed the respondent to refund only Rs.2.50 Lacs along with interest @ 9.30% per annum, instead of entire sale consideration i.e. Rs.55 lacs along with interest @ 9.30% per annum.
8. Besides copies of the Buyer Developer Agreement dated 06.04.2012 (Annexure A-1), provisional allotment letter dated 18.05.2012 (Annexure A-5), above mentioned eight receipts (Annexures A-3, A-6 and A-9) and a copy of legal notice dated 09.05.2019 (Annexure A-14), which find mention under paragraph 5 titled as "Facts of the case:" of the present appeal, a large number of other documents as per index of the appeal have also been attached but no mention of such documents has been made under



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aforesaid paragraph 5 of the appeal. These documents are (i) copies of the ledger accounts of M/s Star Construction & Allied Industries in the appellant's books (Annexure A-2); (ii) a copy of receipt dated ---- (illegible) issued by the appellant firm and its letter dated 18.05.2012 addressed to the respondent (Annexure A-4 colly.); (iii) the copies of the bills raised by the appellant on M/s Future Colonisers & Construction Pvt. Ltd. (Annexure A-7 colly.); (iv) a copy of ledger account of M/s Future Colonisers & Const. Pvt. Ltd. (Annexure A-8); (v) a copy of TDS document for Assessment Year 2013-14 (Annexure A-10); (vi) a copy of list of flats of respondent of each tower (Annexure A-11 colly.); (vii) a copy of undertaking dated 01.03.2014 by the respondent (Annexure A-12); (viii) a copy of ledger account for April 2013 – May 2016 of Future Colonisers & Construction Pvt. Ltd. (Annexure A-13); and (ix) a copy of cheque dated 03.09.2010 for Rs.10 Lakh issued on behalf of “Star Constructions” in the appellant's favour and some gate passes (Annexure A-15 colly). However, the appellant has not placed on record before this Tribunal appellant's rejoinder filed before the Bench and Annexure C-4 annexed thereto.

9. The relevant details of the aforesaid receipts, annexed with the present appeal as Annexures A-3, A-6 & A-9, are as under:-

Receipt No.	Dated	Amount (in Rs.)	Recived by
3201	18.05.2012	27,96,256	Bills of Star Construction c/o COPL
3202	18.05.2012	2,50,000	Cash
3204	22.06.2012	1,95,186	Bills of Future Colonisers c/o COPL m/o April
3205	22.06.2012	2,17,034	Bills of Future Colonisers c/o COPL m/o May



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3208	20.07.2012	4,03,795	Bills of Future Colonisers c/o COPL m/o June
3209	13.08.2012	4,84,536	Bills of Future Colonisers c/o COPL m/o July
3211	18.09.2012	5,00,000	Bills of Future Colonisers c/o COPL m/o August
3218	04.01.2013	6,53,193	Bills of Future Colonisers c/o COPL
	Total	55,00,000	

10. Main part of the receipt No. 3201 dated 18.05.2012 reads as
*“Received with thanks from **OM SCAFFOLDERS** a sum of the Rupees **TWENTY SEVEN LAKH NINTY SIX THOUSAND TWO HUNDRED FIFTY SIX ONLY** by Cash/Draft/Cheque No. **BILLS OF STAR CONSTRUCTION C/O COPL** Dated Drawn on on account of **FLAT NO. 719, TOWER NO. 10**”,* the matter shown in bold being hand written on the printed format of the receipt. The main part of remaining seven receipts is similar to it except the amount and mode of payment (i.e. “by Cash/Draft/Cheque No.” or otherwise), which vary as per table under paragraph 9 above.
11. Perusal of the copies of these eight receipts placed on record by the appellant before this Tribunal depicts that (i) in each of these eight receipts, the amount is shown as received from “OM SCAFFOLDERS” on account of FLAT NO. 719, TOWER NO. 10; (ii) the format of all these receipts is identical but bears different receipt No. (“3201”, “3202”, etc), which appears to be stamped after printing; (iii) all these receipts are of “Chandigarh Overseas Private Limited”; (iv) all these eight receipts (including receipt No. 3202 dated 18.05.2012 for Rs.2,50,000/-, which



stands admitted by the respondent in paragraphs 4 and 6 of its short reply dated 07.10.2020 to the complaint filed by the appellant) bear same signatures of some "Authorised Signatory" of the respondent-promoter.

12. During oral submissions made by learned counsel for the appellant, he inter alia pointed out that even as per Sr. No. 13 of the list of flats for Tower-10, the respondent has received Rs. 55,00,000/- for flat No. 719 in the name of "Om Scaffolders" (Annexure A-11, page 75 of the paper-book)
13. He also drew attention towards Annexure A-12, as per which, on 01.03.2014 (Annexure A-12, page 78 of the paper-book), Sh. Gursharan Batra Director of the respondent-promoter has given an undertaking, in which it has inter alia been confirmed (i) that the respondent-promoter had appointed Future Colonizers & Construction Pvt. Ltd. as authorized contractors at the respondent's Fashion Technology Park; (ii) that the respondent arranged shuttering material on hire basis from the appellant to the said contractor; (iii) that as a said contractor is not paying the payments so respondent-promoter promised to pay the payment of Rs.66,33,668/- up to 31.04.2014 on behalf the said contractor.
14. The appellant-complainant, in its complaint dated 11.02.2020 has indicated the total value of the flat as Rs.55 lacs and the total amount paid till then as Rs.55 lacs under the field/paragraph (1) (iv) of Form 'N' and has attached with it inter alia 8 pay slips/receipts as C-2, which have also been noticed under paragraph 3 of the impugned order dated 03.03.2022.



15. Under paragraph 4 of his short reply dated 07.10.2020 to the complaint filed before the Adjudicating Officer/Bench, the respondent has alleged that *"4. The complaint filed is false, bogus and time barred. As a matter of fact a total amount of 2.5 lakh only paid by the complainant and the same is admitted by the respondent. Rest of the amount claimed by complainant is vehemently denied and undertake that no payment has ever been received from the Complainant"*; and under its paragraph 6 has alleged that *"6. It is important to mention here that complainant has not given any of the payment except receipt no 3202 vide dated 18.05.2012. Respondent has only received Rs 2,50,000/- till today. And the complainant is at default of making rest of the payments to the respondent company"*.
16. Paragraph 7 of the respondent's aforesaid short reply dated 07.10.2020 reads as, with portion of it emboldened hereby to lay emphasis, *"7. Further it is stated that no valid receipts of payment have been produced yet. **There was the adjustment made with the future coloniser or with star construction company in regard to the construction of the flat, as the construction company has not paid the amount to the complainant. Which depicts that there might be an agreement b/w Om Scaffolders and future colonizer.**"*.
17. In his aforesaid short reply dated 07.10.2020, the respondent has not specifically either denied the issuance of the remaining seven of aforementioned eight receipts by its authorized signatory or alleged the said seven receipts to be fake.
18. In his aforesaid short reply dated 07.10.2020, though the respondent has alleged that the complainant-appellant defaulted in



making payments to the respondent, but has not even mentioned about issuance of any demand letter or notice for recovery of outstanding payments. On the other hand, the respondent, under paragraph 8 and its sub-paragraphs I to XVI of its aforesaid short reply dated 07.10.2020, has laid emphasis on its defence on the basis of his justification for delay in completion of the project due to force majeure/conditions beyond his control and has annexed Annexures R-1 to R-4 to support his contentions for delay in completion of the project.

19. In view of above, in my opinion, the appeal should not be dismissed at the threshold and should be decided on merits, may be after obtaining appropriate affidavit, undertaking etc. as deemed fit or should be remanded back to the Bench/Authority to review the impugned order in view of material observations that have been brought to fore in my this judgment.
20. The appeal is accordingly disposed off. File be consigned to record room and a copy of this order be filed in the file of the appeal and also be communicated to the parties as well as to the Authority and the Adjudicating officer.

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

May 16, 2022



Certified To Be True Copy
Manendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
01/06/2022