

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

Subject: -

APPEAL NO. 111 OF 2022

1. Dr. Raj Kumar Sharma, S/o Sh. Bhola Ram Sharma, R/o House No. 45, Sector-27 A, Chandigarh-160019.
2. Ashwini Kumar Sharma, S/o Sh. Bhola Ram Sharma, R/o House No. 45, Sector-27 A, Chandigarh-160019.

...Appellants

Versus

M/s ATS Infrabuild Pvt, Ltd. 711/92, Deepali, Nehru Place,
South Delhi, New Delhi-110019.

....Respondent

Memo No. R.E.A.T./2023/06

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 02nd day of January, 2023.



Thamendraj

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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

Date of Filing 29/06/2022/475
Date of Receipt by me 30
Appeal III of 2022
Signature Kamla
Registrar [Signature]

APPEAL NO. III OF 2022
(ARISING OUT OF COMPLAINT NO.
ADC 0047/2021BF-TRAUTH0169/2021)

In the matter:

1. **Dr. Raj Kumar Sharma**

S/o Sh. Bhola Ram Sharma
R/o House No. 45, Sector 27-A,
Chandigarh-160019.

2. **Ashwini Kumar Sharma**

S/o Bhola Ram Sharma,
R/o House No. 45, Sector 27-A,
Chandigarh-160019.

....Appellants

VERSUS

M/s ATS Infrabuild Pvt. Ltd.

711/92, Deepali,
Nehru Place, South Delhi
New Delhi-110019.

....Respondent

**APPEAL UNDER SECTION 44 OF THE REAL ESTATE (REGULATION
AND DEVELOPMENT) ACT, 2016 AGAINST THE ORDER DATED
09.05.2022 PASSED BY THE LD. MEMBER, REAL ESTATE
REGULATORY AUTHORITY, PUNJAB IN COMPLAINT NO. ADC
0047/2021BF-TRAUTH0169/2021 TITLED AS "DR. RAJ KUMAR
SHARMA & ANR. VS. M/S ATS INFRABUILD PVT. LTD."**



DETAILS OF THE APPEAL:

1. **Particular of the Appellant:**

- (i) Name of the Appellant No. 1: Dr. Raj Kumar Sharma.
- (ii) Name of the Appellant No. 2: Ashwini Kumar Sharma

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

APPEAL NO. 111 OF 2022

1. Dr. Raj Kumar Sharma, S/o Sh. Bhola Ram Sharma, R/o House No. 45, Sector-27 A, Chandigarh-160019.
2. Ashwini Kumar Sharma, S/o Sh. Bhola Ram Sharma, R/o House No. 45, Sector-27 A, Chandigarh-160019.

...Appellants

Versus

M/s ATS Infrabuild Pvt, Ltd. 711/92, Deepali, Nehru Place,
South Delhi, New Delhi-110019.

....Respondent

Present: - Mr. Shubhnit Hans, Advocate for the appellants.
Mr. Hardeep Saini, Advocate for Mr. J.P Rana,
Advocate for the respondent.

**CORAM: 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 by the complainant is against the impugned order dated 09.05.2022 passed by the Real. Estate



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Regulatory Authority, Punjab (hereinafter known as the Authority).

2. The complainant booked a 4BHK apartment in the project being developed by M/s ATS Infrabuild Pvt. Ltd. by the name 'CASA ESPANA' and an Agreement to Sell was executed on 18.09.2017, clause 7.1 of which talked of an assured possession by 31.03.2018 plus 3 months of grace period.
3. The complainant opted for the down payment plan and against the total price of the apartment of Rs.1,34,58,241/- he paid a sum of Rs.1,10,98,214/- (Rs.1,10,00,000/- as booking amount and Rs.98,214/- as TDS).
4. The possession did not materialize by the assured date and instead on 06.08.2018 the respondent raised a demand of Rs.7,49,404/- towards EDC along with interest despite the fact that more than 82% of the amount had been paid and the remaining amount was to be paid at the time of valid offer of possession.

5. It was alleged by the complainant that on 13.07.2020 the respondent offered interim possession without having any occupation certificate in his favour.



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6. On 07.11.2020 the complainant received an e-mail along with the possession letter dated 30.10.2020 raising a demand of Rs.24,49,682/-. Even at that point of time the flat was incomplete and would have required more than a month to complete.
7. The complainant requested the respondent that the demand of Rs.24,49,682/- raised was without any justification and even if it is legitimate it should be adjusted against the interest on account of delayed possession which the respondent was liable to pay.
8. On 14.12.2020 the complainant sent a termination notice to the respondent and sought refund of the entire amount along with compensation but instead of acceding to the request the respondent insisted upon his demands.
9. Eventually the complaint was filed before the Authority seeking to withdraw from the project and consequently refund of the entire amount along with statutory benefits from the date of the payment of in terms of Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act).
10. The respondent referred to the timeline given to the Authority at the time of registration of the project to contend that the said period of completion of the project



was to expire on 25.07.2021 which was in any case extended up to 25.01.2022 due to the pandemic. It was further contended that the unit of the complainant was ready when an offer of interim possession was made on 13.07.2020 followed by offer of possession of 30.10.2020 but instead of clearing the dues, the complainant sent a notice terminating the arrangement and seeking refund of payment. It was asserted that the completion certificate was obtained from the competent authority on 11.11.2020 in respect of Tower No.10 in which the apartment of the complainant is located.

11. After giving its consideration to the rival contentions that were broadly based on the pleadings of the parties the Authority concluded as below:

“From the above facts it is clear that the respondent was required to offer possession buy 30.06.2018 but a valid offer of possession was made only subsequent to obtaining OC on 11.11.2020, although the actual possession was offered on 13.07.2020/07.11.21020. The present complaint was filed subsequent to the receipt of O.C. The complainant consistently till 04.03.2021, referred to payment of Rs.36,12,467/-, calculated till February, 2021, payable as compensation for delay in possession, indicating their willingness to take possession, despite delay in obtaining O.C. Hence, the complainants have not been able to prove their case in terms of Section 18 of the Act as refunds has been sought subsequent to valid offer of possession, after obtaining the Completion Certificate.”



Aggrieved thereof the present appeal has been filed and it has been contended by the appellant that 82% of the amount stood paid when the appellant opted for the down payment scheme and this amount was retained by the respondent since September 2017. There was an inordinate delay in completion of the project and instead of handing over possession by the assured date i.e. 31.03.2018 the offer of interim possession was made on 13.07.2020, more than 2 years thereafter. This was also without procuring any occupation certificate and this fact was duly pointed out by the appellant to the respondent. Instead of rectifying the situation the respondent initially insisted on a demand of Rs.7,49,404/- then raised another demand of Rs.24,49,682/-. It was in these circumstances when there was a delay in handing over of possession and the occupation certificate had not been obtained that the appellant opted for the withdrawal from the project by sending an e-mail on 14.12.2020.

12. It was argued by the learned counsel for the appellant that all these facts cumulatively show that the appellant was indeed entitled to the withdrawal from the project and more particularly when during the pendency of the complaint respondent alienated the unit allotted to the appellant in favour of some other person and all these facts were brought on record by way of an application no.



111 of 2021 before the Authority which did not even refer to this. Our attention was drawn to the said application wherein para 6 and 7 it has been specifically averred that the apartment had been sold to one Sh. Kamal Matta. We also perused the reply of the respondent to the application but it is evasive as far as this factual aspect is concerned, rather it states that the complainant issued a bogus cancellation letter dated 14.11.2020.

13. Whatever the meaning of this statement by the respondent the fact remains that the amount of the appellant was retained by the respondent since September 2017 and it was not a small amount since the appellant opted for a down payment scheme and he paid almost 82% of the price of the unit, amounting to Rs.1,10,98,214/-. Possession was assured by 31.03.2018 but the first offer of interim possession materialized on 13.07.2020. The appellant was right in insisting upon the occupation certificate which concededly the respondent did not have till 11.11.2020.

14. As a prudent person who had paid a substantial amount of money his insistence on the occupation certificate cannot be faulted with.

15. If we see the reasoning of the Authority in the impugned order, it declined the prayer of the appellant solely on the



ground that the complaint was filed subsequent to the receipt of the occupation certificate and it further went on to observe that since the appellant has been insisting on the payment of Rs.36,12,467/- (calculated till February 2021) payable as compensation for delayed possession, it was suggestive of his willingness to take possession by overlooking delay in obtaining occupation certificate. These facts cumulatively were taken as indicative of the failure of the appellant to substantiate his case in terms of Section 18 of the Act and hence the complaint was dismissed.

16. We are of the opinion that the Authority fell in error in its reasoning to conclude against the appellant.
17. An undue emphasis has been accorded to the factum of the occupation certificate and filing of the complaint subsequent thereto. All the facts that preceded the offer of possession were relegated to insignificance which to our minds is erroneous. The facts of the case would compel us to observe that great injustice had been done to the appellant by the Authority in ignoring the aspect of delayed possession altogether. Concededly an amount of Rs.1,10,98,214/- was paid to the respondent in the year 2017 and the possession was to be given on 31.03.2018 with a grace period of additional 3 months which did not



materialize and in fact the offer of interim possession was made in July 2020, much beyond the promised period and that too without the occupation certificate. After this the appellant in all fairness offered that whatever amount he is entitled to as interest on the delayed possession be taken into account while determining any outstanding liability towards payment of the apartment but it was ignored.

18. The Act envisages relief for delayed possession to an allottee and this substantive right under the statute cannot be taken away from an allottee upon an inference of a waiver of the statutory rights. One cannot ignore the fact that on 14.12.2020 the appellant had shown his intention to withdraw from the project. There is nothing on record to suggest that respondent had intimated the appellant of the fact of an occupation certificate in his favour. That apart we cannot ignore the fact that this e-mail of the appellant dated 14.12.2020 went unheeded. There is no cancellation or termination of the agreement pleaded or shown from the record. If that be so then we fail to understand how the unit allotted to the appellant could be alienated in favour of some other person even while the respondent retained the amount deposited by the appellant. Possibly another scenario could have emerged if the amount had been refunded along with termination of the arrangement but nothing of the sort happened and it seems that respondent had unfairly deprived the appellant of the amount of more than Rs.1Crores since 2017 without any tangible benefits to



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him and then to inflict insult upon injury it has alienated the apartment in question to someone else.

19. The solitary reasoning of the Authority that the complaint was filed after the occupation certificate was received by the respondent can at best be termed to be erroneous, as it ignores other facets of the case and cannot be sustained without doing gross injustice to the allottee.
20. For the aforesaid reasons we are of the opinion that the impugned order suffers from a great fallacy of reasoning and hence it is set aside.
21. As a consequence we accept the appeal and direct that the amount of Rs.1,10,98,214/- deposited by the appellant since September 2017 be refunded to him along with interest at the statutory rate as prescribed in Section 18 of the Act. The interest shall continue on the principal amount till the time the amount is paid to the appellant.
22. The appeal is disposed of as above.

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)



December 16, 2022

DS

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