

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

Subject: -

APPEAL NO. 68 OF 2022

1. Varinder Kumar Singla S/o Gopi Ram, aged 67 years, R/o H.No. 96, Sector 12 A, Panchkula (Haryana)
2. Poonam Singla W/o Varinder Kumar Singla, R/o H.No. 96, Sector 12 A, Panchkula (Haryana)

...Appellants

Versus

1. Allwin Infrastructure Limited, Plot No. 361, Phase II, Industrial Area, Panchkula.
2. Ashok Kumar Garg, Plot No. 361, Phase II, Industrial Area, Panchkula
3. Ideal Homes, 35-A, 5th Floor, Royal Business Park, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali)

....Respondents

Memo No. R.E.A.T./2022/ 638

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 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 20th day of December, 2022.




REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

APPEAL NO. 68 OF 2022

MEMORANDUM OF PARTIES

- 1. Varinder Kumar Singla S/o Gopi Ram, aged 67 years, resident of H.No. 96, Sector 12-A, Panchkula (Haryana)..
- 2. Poonam Singla W/o Varinder Kumar Singla, aged years, resident of H.No. 96, Sector 12-A, Panchkula (Haryana)...

... Appellants

Versus

- 1. Allwin Infrastructure Limited, Plot No. 361, Phase II, Industrial Area, Panchkula.
- 2. Ashok Kumar Garg, Plot No. 361, Phase II, Industrial Area, Panchkula.
- 3. Ideal Homez, 35-A, 5th Floor, Royal Business Park, Zirakpur, District Sahibzada Ajit Singh, Nagar (Mohali).

... Respondents



CHANDIGARH
DATED: 25th April, 2022

Through

Vishal Sodhi
(VISHAL SODHI)

Jitesh Garg
And (JITESH GARG)

ADVOCATES
COUNSEL FOR THE APPELLANTS

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

APPEAL NO. 68 OF 2022

1. Varinder Kumar Singla S/o Gopi Ram, aged 67 years, R/o H.No. 96, Sector 12 A, Panchkula (Haryana)
2. Poonam Singla W/o Varinder Kumar Singla, R/o H.No. 96, Sector 12 A, Panchkula (Haryana)

...Appellants

Versus

1. Allwin Infrastructure Limited, Plot No. 361, Phase II, Industrial Area, Panchkula.
2. Ashok Kumar Garg, Plot No. 361, Phase II, Industrial Area, Panchkula
3. Ideal Homes, 35-A, 5th Floor, Royal Business Park, Zirakpur, District Sahibzada Ajit Singh Nagar (Mohali)

....Respondents



Present: Mr. Vishal Sodhi, Advocate for the appellants.
Mr. Vipul Monga, Advocate for respondent No.1 and 2.
Mr. Inder Singh, Advocate for the respondent, No.3.

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: (SH. S.K. GARG DISTT. & SESSIONS JUDGE
(RETD.), MEMBER (JUDICIAL))

1. This appeal has been filed against the impugned order dated 25.01.2022 passed by the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority) vide which the complaint of the appellants for refund of booking amount of Rs.28lacs and compensation for mental harassment etc was dismissed.
2. The appellants filed a complaint under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act) on the allegation that they had booked 6 apartments with respondent No.1 in the project namely 'EL-Spazia' for Rs.2,77,64,100/- in the year 2019. These 6 apartments were booked by them through one Broker, M/s Ideal Homes (respondent No.3) who introduced the appellants to respondents No. 2, Ashok Kumar Garg, Director of respondent No.1 (company). The payment of the booking amount of Rs.28lacs was made though RTGS and cheques in the account of respondent No.1. Respondent No.3, the broker issued two receipts (Annexure C4 and C5) as per which flats No. A-401, A-502, A-503, A-504, B-501 and B-504 were allotted to the complainants. Since the respondents failed to enter into an Agreement to Sell despite the passing of 18 months, so the complainants have filed this complaint with the prayer for refund of their earnest money along with interest as per provisions of the Act.



3. The respondents contested the complaint and they pleaded in their reply that the complainants never applied for any flat in the project in question. Respondent No.3 arranged the meeting with the complainant for providing the financial assistance to respondent No.1. The complainants provided financial assistance/loan of Rs.28lacs to the respondent company out of which Rs.5lacs has already been paid back to them. Regarding receipts Annexure C4 and C5, it has been submitted that these are forged documents regarding which an FIR has already been lodged in the local police station. Respondent No.3 was never given any authority to issue receipt or sell the alleged units.
4. Respondent No.3 in its reply has alleged that complainants had agreed to purchase 6 residential flats in the project of respondents No.1 and 2 in Zirakpur by paying the amount in question directly to them. The respondent No.3 had issued the necessary receipts because at that time the respondents No.1 and 2 were not issuing allotment letters as the project was yet to be registered with the Authority.
5. The complainant/appellants filed rejoinder and reiterated their stand taken in the complaint. The deposit of Rs.5lacs in their account by the respondents No. 1 and 2



has been admitted however, according to them this amount was directly deposited in their account without any intimation to them.

6. The Authority dismissed the complaint on the ground that the complainants have failed to prove that the amount of Rs.28lacs was paid by them for booking the residential apartments and that they have failed to prove for what purpose this amount was paid by them. The receipts issued by respondent No.3 are meaningless as there is no link between the respondent No.1 and 3 and moreover the FIR under Section 420 and 120 IPC has already been registered against respondent No.3.
7. Aggrieved from the impugned order the present appeal has been filed. Almost similar grounds, as taken in the complaint, were pressed in support of their case by the complainants i.e. the amount of Rs.28lacs was paid for the purpose of booking 6 residential apartments in the project of respondent No.1 and that this amount was never given as loan as alleged by the respondents. No receipt or agreement was executed by respondent No.1 and 2 because at the time of the payment of the booking amount, their project was not registered with the Authority. The respondents No. 1 and 2 have accepted this amount in violation of the provision of the Act, so an



action was required to be taken against the respondents by the Authority but instead of that, their lawful claim of refund of Rs.28lacs was declined by the Authority.

8. We have heard the learned counsels for the parties and have perused the impugned order as well as record of the case.
9. It is an admitted fact that an amount of Rs.28lacs was paid by the appellants to respondents No.1 and 2 in February and March 2019. According to the respondents No. 1 and 2 the appellants gave this amount to them as financial assistance/loan. But, they have miserably failed to prove this fact. There is absolutely nothing on the file that respondent No.2 was having any personal relationship with the appellants and as per their own case it is the respondent No.3 who introduced the appellants with respondent No.2 who is the Managing Director of respondent No.1. So when the parties did not know each other, nor there is any relationship between them, it is highly improbable that they would give such a huge amount as financial assistance/loan to respondents No. 1 and 2. Nothing has been pleaded on what terms and conditions this loan amount was given and when it was to be returned and what was the rate of interest to be given by the respondents. Even no writing was



executed in this regard by the parties. It is beyond imagination that the appellants being retiree and senior citizens would give such a huge amount without getting any security for its repayment. So, by no stretch of imagination the payment of Rs.28lacs can be said to be a loan or financial assistance to respondents No. 1 and 2.

10. Admittedly the appellants have no relation with the respondents No.1 and 2. Respondent No.3 used to act as an agent of respondents No.1 and 2 as is evident from his visiting card, enclosure-F. It is he who arranged the meeting between the appellants and respondent No.2. The only purpose of this meeting could be purchasing of the flats in the project of the respondents. It is also not disputed that at the time of paying the amount of Rs.28lacs by the appellants the project of respondents No.1 and 2 was not registered. It was registered ultimately on 01.10.2019 vide reference No. RERA/2019/523. It is the respondents No.1 and 2 who have played the mischief by taking the amount for booking of the flats in contravention of Section 3 of the Act. It is due to this very reason that respondents No.1 and 2 did not issue receipts nor executed any agreement with the appellants. The fact that the amount in question was paid for booking the flats also stands fortified from the WhatsApp Chats between Rajat Kaushik, Partner of



respondent No.3, agent (M/s Ideal Homes) and Aditya, Director of EL-Spazia (Promoter). The said chatting has been placed on the file along with the appeal and also by way of additional evidence. The contention of the learned counsel for respondents No. 1 and 2 that the evidence regarding WhatsApp Chat, as referred above, cannot be given any importance as the same has not been proved as per the Indian Evidence Act, 1872 is without any merit because as per Section 53 of the Act, this Court is not bound by the rules of evidence and the procedures laid down by the Code of Civil Procedure. Section 53 is reproduced as under:

- 53.** (1) *The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.*
- (2) *Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.*
- (3) *The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.*
- (4) *The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—*
- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) *requiring the discovery and production of documents;*(c) *receiving evidence on affidavits;*
 - (d) *issuing commissions for the examinations of witnesses or documents;* (e) *reviewing its decisions;*
 - (f) *dismissing an application for default or directing it ex parte;* and (g) *any other matter which may be prescribed.*



(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

11. The evidence and circumstances discussed above goes on to reveal that the amount of Rs.28lacs was paid by the appellant in connection with the purchase of the flats as otherwise there was no occasion for them to pay such a huge amount to respondents. The respondents No.1 and 2 are using this amount for the last more than 3 years without paying any interest. The allotment letter was not issued because the project was not registered. Since the appellants did not want to remain in the project, so they are entitled to get their money back along with the interest.
12. As discussed above the project of respondents No.1 and 2 was registered on 01.10.2019 vide reference No. RERA/2019/523 whereas the complainant/appellant paid the amount of Rs.28lacs for the purpose of booking this residential apartments in February and March 2019. It is also an admitted case of the parties that it is respondent No.3, the real estate agent who facilitated the above transaction between the complainant and respondent No. 2. Section 3(1) of the Act bars sale etc. of any plot, apartment or building before the registration of the real estate project. Similarly, Section 10(a) also bars



the real estate agents from facilitating the sale or purchase of any plot/apartment or building etc. in an unregistered project. But in this case the respondents by accepting the amount in connection with the sale of apartments in their unregistered project have violated the aforesaid provisions of the Act. In this view of the matter learned Authority was required to take action against the respondents under relevant provisions of the Act.

13. For the reasons mentioned above, we allow this appeal. The respondents No.1 and 2 are directed to refund the amount of Rs.23lacs (28lacs – 5lacs already returned) to the complainant along with the interest as per the State Bank of India's highest marginal cost of lending rate + 2% in view of the provisions of Section 18(1) of the Act read with Section 16 of the Punjab State (Regulation and Development) Rules, 2017 with effect from the dates of payments till payment. The respondents shall also pay interest on Rs.5lacs from 01.02.2019 till the return of this amount on 27.08.2020 at the same rate as mentioned above. The respondents are directed to make the payment along with interest within 60 days from today.



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 19, 2022
DS

Certified to be True Copy
Manoj Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
20/12/2022