

**139 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RERA-Appeal-15-2022 (O&M)

Date of decision: 16.05.2022

Nimai Developers and Pvt. Ltd.

....Appellant

Versus

Saroj Singal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Siddharth Gulati, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The promoter and developer assails the correctness of the order passed by the Real Estate Regulatory Authority as well as Real Estate Appellate Tribunal. The appellant failed to deliver possession of the apartment as per the agreed terms. On an application filed by the buyer, the Real Estate Regulatory Authority ordered refund of the amount deposited by the buyer. The promoter filed an appeal against the aforesaid order which has been disposed of.

The only argument addressed by the learned counsel representing the appellant is to the effect that the regulatory authority did not order refund of the amount alongwith interest, therefore, in his appeal, the appellant could not be burdened with interest. This Court has considered the submission made by the learned counsel representing the appellant, however, finds no merit therein. Section 18 of the Real Estate (Regulatory and Development) Act, 2016 is extracted as under:-

"18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

On careful reading of sub-section 1 of Section 18, it is evident that if the promoter fails to complete the project or is unable to give possession of the apartment, plot or the building, he shall be liable to refund the amount alongwith interest on such rate as may be specified by the authority. This provision of refund alongwith interest is a mandatory provision. The rate of interest has been specified in the rules framed by the Haryana government.

The Real Estate Appellate Authority had fulfilled the aforesaid statutory mandate.

Though, the provisions of Code of Civil Procedure, 1908 are not applicable, however, its broader principles shall be applicable. Order 41 Rule 33 enables the appellate court to pass appropriate orders even if the other party has not filed any appeal. The scope of the appellate Tribunal is broader and wider. The Appellate Tribunal has only ordered refund of the amount alongwith the statutory rate of interest, as

specified in the rules framed by the State Government. There is no dispute that the promoter has failed to deliver the possession of the apartment to the allottee. Even otherwise, the appellant who has failed to deliver the possession of the property bought to the buyers, does not deserve any indulgence due to negligence on his part and conduct.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

16.05.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE