

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
SAS NAGAR (MOHALI)**

Appeal No. 113 of 2019

M/s Parador Developers Amritsar Private Limited through its authorized representative Regd. Office WZ-1047A, Rani Bagh, Shakur Basti, Delhi-11034 and corporate office at Second Floor, Plot No. 18, Sector-32, Gurgaon, Haryana-122001.

....Appellant

Versus

Real Estate Regulatory Authority, Punjab through its Secretary/Registrar, Plot No.3, Block-B, First Floor, Sector-18, Sector-18, Madhya Marg, Chandigarh.

....Respondent

Present: Mr. Shekhar Verma, Advocate for the appellant.
Mr. Mohammad Sartaj, Additional Legal Adviser
for the Real Estate Regulatory Authority, Punjab.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER
(ADMINISTRATIVE/TECHNICAL)**



JUDGMENT: (Mahesh Grover (J) (Retd))

The appellant is a Developer who has been granted license to develop a residential colony, it was licensed on 13.06.2019 for a period of five years commencing from 13.06.2019 and ending 12.06.2024 with a stipulation that the development works would be completed within the prescribed period. It applied for registration to

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the Real Estate Regulatory Authority, Punjab (hereinafter known as the Authority), which accepted the plea to register the project but prescribed the timeline for completion of the project upto 12.06.2023 i.e. within a period of four years.

The grievance of the appellant is directed against the order dated 04.10.2019, prescribing the date of completion of the project as 12.06.2023, which is one year short of the period prescribed in the license i.e. 12.06.2024. While accepting the application for registration and prescribing the time limit the Authority recorded as follows: -

" This is a Residential Plotted Development project measuring 244348.29 Sq. Mtrs or 70.264 Acre. NOCs from PPCB and PSPCL are placed on file. Promoter License is valid upto 19.12.2022 and Licence to Develop Colony is valid upto 12.6.2024. The CLU is for 93.265 Acres out which 70.264 Acres is proposed to be developed in Phase 1 and 23.001 Acre in Phase 2 as per the declaration by promoter. The Layout plan is approved for 70.264 Acres for 574 plots (23.001 Acre is marked in red.) The completion date as per form B is 12.06.2024 Submitted for consideration please.



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According to the appellant such a course was not available to the Authority and the time limit prescribed in the license could not have been varied to its disadvantage and it necessarily had to be commensurate with the period prescribed in the license.

Reference has been made to Section 5 of the Real Estate (Regulation and Development) Act, 2016 which deals with the procedure to be adopted by the Authority in the event of application being made to it for registration.

Learned counsel for the appellant states that Section 5 Sub Clause 3 gives no flexibility to the Authority to vary the period than the one declared by the promoter. Section 5 Sub Clause 3 is reproduced herein below: -



- (3) *The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.*

Attention has also been invited to Section 6 of the Act which gives the Authority the power to extend the registration granted to a project for such a time as it considers necessary for a

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period not exceeding one year. The first proviso to Section 6 is reproduced herein below: -

6. *The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be prescribed.*

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:



In short, the argument is that the license granted to the appellant was for a period of five years and the registration prescribing the date of completion of the project necessarily had to coincide with this period. Any other interpretation would render the provision of Section 6 of the Act illusory. Besides it has deprived the appellant of the right to seek extension which, had it not been restricted to four years by the Authority, would have given the appellant six years by including the extended period of one year, had such an eventuality arisen.

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As against this the learned counsel for the respondent has stated that the Authority was very well within its rights to prescribe a period other than the one claimed by the appellant. It has been argued that such a course would be dependent on the facts of each case and would invite reasons to support a decision.

He has stated that reading of the proviso to Section 6 of the Act, makes it abundantly clear that the Authority may in reasonable circumstances based on the facts of each case and for reasons to be recorded in writing, extend the registration granted to a project and further the extension of registration is not a matter of right but is dependent on circumstances that the developer has to establish to be beyond his control i.e. due to force majeure.

Reliance has also been placed on the judgment of the Hon'ble Bombay High Court in "*Neelkamal Realtors Suburban Pvt. Ltd. and anr. versus Union of India & ors.*", where in para No.93 it has been observed as follows: -

It was submitted on behalf of the petitioners that under Clause (C) of Section 4(2)(l) a declaration has to be given by the promoter in respect of the time limit during which the promoter would complete the development work. This is a voluntary act to be



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performed by the promoter as he has to mention the period for completion of construction. Considering the scheme of RERA, we find that in case the promoter mentions unreasonable period to complete construction, certainly the authority would not register such an application of the promoter and issue necessary directions to the promoter, taking into consideration the facts of each case. We, therefore, do not find any arbitrariness in making the promoter to disclose a timeline at the time of getting registration of the ongoing projects. Such a declaration by the promoter would bind him to complete the remaining work which was pending, may be, for years together, without fault of the allottee.

We have heard the arguments at some length and are unable to persuade ourselves to accept the argument of the appellant. Indeed a self declaration has to be made by the Developer in terms of Section 4(2)(1)(c) but if the argument of the appellant is accepted it would imply that the Authority would be rendered powerless in the wake of such a declaration, being bound to it even if arbitrary and unreasonable and this is precisely the reasoning given in the judgment of the Hon'ble Bombay High Court in "Neelkamal Realtors Suburban Pvt. Ltd. and anr. versus Union of India & ors." (Supra).



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Of course we would unhesitatingly state that the Authority while rejecting the time frame or restricting it would essentially have to give reasons for doing so otherwise the decision would be hit by the vice of arbitrariness.

Once we say so then the argument of learned counsel for the appellant that observations given in the judgment of the Hon'ble Bombay High Court in "*Neelkamal Realtors Suburban Pvt. Ltd. and anr. versus Union of India & ors.*" (*Supra*), have to be applied only to ongoing projects, would also necessarily have to be negated as no such distinction manifests itself from the provisions of Act or the observations in the judgment referred to. Besides the Act does not specifically say that the period of license and the declaration made by the promoter in terms of Section 4(2)(c)(1) have to be co terminus.

We cannot therefore read into the Act something that it does not prescribe.

The resultant conclusion would be that the Authority would have the power to restrict the timeframe declared by the promoter or prescribe another than the one declared by it but would have to support such a decision by giving reasons.



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It is also to be understood that time limit for completion of the project is of great significance as the scheme of the Act also suggests. Section 6 of the Act, prescribes the maximum period for such extension can be for one year and that too in exceptional circumstances. If the argument of the appellant is accepted that the Authority would be powerless in the wake of a declaration made by the promoter then it would amount to giving the Developer a free run in the matter of time for completion of a project thereby adversely impacting the interest of the prospective allottees.

Learned counsel for the appellant would then contend that no reasons have been given by the Authority and hence the decision has to be revisited. He then seeks appropriate direction in this regard.

We have perused the material on record and find that the reason manifests itself in the decision. Initially when the appellant sought and was granted a license, it was to develop a colony in an area measuring 93.265 acres for which CLU had also been obtained but when the application for registration was made the project was limited to 70.264 acres in the first instance and that too with regard to a plotted colony. The remaining area was to be developed in



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Phase-2. The Authority then after noticing this content from the application of the appellant noted "However, since the Group Housing component is not being taken up, the date of completion would be 12.6.23.

Indeed the Authority could have written more if it so desired but if the decision contains a reason which answers the aspect of probity and is self contained then it satisfies the test of a reasoned order and merely because it is not elaborately set down cannot ipso facto be a ground to hold it a non speaking order. We thus do not find it necessary ~~to ask the Authority to revisit~~ ^{MS} the decision considering that in the facts of the case, the order does meet the requisites of a reasoned order.

Consequently, we do not find any merit in the appeal and the same is dismissed.



sd/-

JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

sd/-

ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER

03.07. 2020

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Real Estate Appellate Tribunal Punjab
Jhandigarh