

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

Subject: -

**Appeal No. 50 of 2022**

1. Aeropolis Infrastructure Private Limited  
Address: Sector-66-A, SAS Nagar, Mohali, Punjab.
2. Sukhm Infrastructure Private Limited  
Address: Sector-66A, SAS Nagar, Mohali Punjab.  
Both through their joint Authorized Representative  
Jaspal Singh Sodhi.

....Appellants

**Versus**

Real Estate Regulatory Authority, Punjab  
First Floor, Block-B, Plot No.3, Sector-18A,  
(Near Govt. Press UT), Madhya Marg, Chandigarh-  
160018

....Respondent

Memo No. R.E.A.T./2022/ 210

To,

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1<sup>ST</sup>  
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 09<sup>th</sup>  
day of May, 2022.



*Thamunde furer*  
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

**IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB****AT CHANDIGARH**APPEAL No. 50 of 2022**MEMO OF PARTIES**

1. Aeropolis Infrastructure Private Limited

Address: Sector 66-A, SAS Nagar, Mohali, Punjab.

2. Sukhm Infrastructure Private Limited

Address: Sector 66-A, SAS Nagar, Mohali, Punjab.

Both through their joint Authorized Representative Jaspal Singh Sodhi

....Appellants

Versus

Real Estate Regulatory Authority, Punjab

First Floor, Block-B, Plot No.-3, Sector-18A,

(Near Govt. Press UT), Madhya Marg, Chandigarh – 160018

**Email:** [helprera@punjab.gov.in](mailto:helprera@punjab.gov.in)**Phone No:** 0172 - 5139800-29

.....Respondent

Through Counsel:-

Place: Chandigarh

Dated: 01.04.2022


  
 (TAJENDER JOSHI)


  
 (IRSHAAN SINGH KAKAR) (KUNAL THAPA)

Advocates

Counsel for the Appellants

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

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**Appeal No. 50 of 2022**

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160018

....Respondent

**Present:** Mr. Pawan Kumar Mutneja, Senior Advocate  
Mr. Tajender Joshi, Advocate  
Mr. Irshaan Singh Kakkar, Advocate  
Mr. Kunal Thapa, Advocate  
Mr. Meenakshi Bali, Advocate  
For the appellants.

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**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.))**

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1.

This appeal has been preferred by the appellant questioning the action of the Real Estate Regulatory Authority, Punjab (hereinafter known as the

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Authority) contemplating an enquiry under Section 35 of the Act and in pursuance thereof soliciting information from the appellant detailed in the Show Cause Notice dated 14.11.2019 .

2. On a prior occasion a similar appeal had been filed against the same show cause notice issued to the appellant, which was disposed of vide order dated 17.02.2020, as premature.
3. A perusal of this notice dated 14.11.2019, reveals that the Authority upon noticing several deficiencies in the project of the appellant sought various clarifications from it. For the purposes of reference, the deficiencies mentioned in the show cause notice are as below:-

*“a. you have failed to create your web page on the official website of the Authority and enter the details required under Section 11(1) of Real Estate (Regulation and Development) Act, 2016 (hereinafter called the Act), despite having been reminded in this regard vide letter no.RERA/2019/EG(T)/6113 dated 15.10.2019.*



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- b. *you have failed to deposit the deficient project registration fee of Rs.22,798/-, despite having been directed to do so vide letter no.RERA/Pb/2018/5573 dated 09.07.2018 and again vide letter No.RERA-Pb./Fin/2019/6675 dated 07.11.2019.*
- c. *you have failed to submit annual report on statement of accounts, in Form 5, for the FY 2018-19 in terms of the proviso to Section 4(2)(I)(D) of the Act, read with Regulation 4 of the Punjab Real Estate Regulatory Authority (General) Regulations, 2017 framed under the Act.*
- d. *you have failed to submit the quarterly updates of your project as required under Section 11(1) of the Act read with Rule 15(D) framed thereunder.*
- e. *there has been a spurt in the complaints filed against your project and as many as 20 complaints have been filed in the last 30 days.*

The information sought is as below:-

- "a. *Statement showing the amount of sale proceeds from the allottees of*



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*the project as on date, duly certified by a Chartered Accountant (CA),*

- b. Statement showing the amount deposited in the Separate bank account reported to this Authority out of (a) above, as required u/s 4(2)(I)(D) of the Act, duly certified by a CA,*
- c. Statement on amount spent on cost of land and construction of the project as on date, duly certified by a CA, separately mentioning amount withdrawn out of (b) above,*
- d. Details of all the bank accounts maintained for the said projects, clearly mentioning whether it is a collection account, escrow account or otherwise,*
- e. Statement of accounts for the FY 2018-19 in Form 5, duly certified and signed by CA in terms of Section 4(2)(I)(D) proviso 4, read with Regulation 4 framed under the Act,*
- f. Status of inventory sold/booked against the total inventory (category wise) as on date.”*

5. This notice been issued by Manager (Admin) purportedly acting on behalf of the Chairperson, Real Estate Regulatory Authority, Punjab, and was followed up, by another communication dated 23.12.2019. It would be relevant to refer to this



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document, where the appellant was apprised that his failure to furnish information would warrant an Enquiry under Section 35 of the Act. In fact, in the same breath and through this letter the appellant was also informed that M/s Mazars India LLP, Esplanade House, 29, Hazarimal Somani Marg, Fort, Mumbai-400001, has been appointed by the Authority to conduct above enquiry as the appellant failed to supply the documents and satisfy the Authority in this regard.

6. On 03<sup>rd</sup> January, 2020, the appellant responded to the aforesaid communication dated 23.12.2019 and while apologizing for not responding in time, and giving a reason for the delay, it furnished certain documents and undertook to be compliant, with regard to the queries of the Authority.
7. A request was made that decision to hold an enquiry under Section 35 be reviewed.
8. This prayer to review the decision to hold an enquiry was declined by the Authority on 07.01.2020 and the appellant was informed that apart from the information solicited through communication dated 14.11.2019, additional information in the enclosed



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annexures to the communication dated 07.01.2020 be also supplied within 15 days from the receipt of the reference in question.

9. The record suggests inter se correspondence between the appellant and the Authority and communication of the Authority on 10.02.2020, 11.02.2020 and 19.02.2020. The communications from the Authority more or less were seeking some additional information, required to be furnished by the appellant while the response of the appellant was indicative of prayer for time to satisfy the queries raised by the Authorities. The bank statements through a pen drive etc. were supplied as also were other pieces of information.
10. It was at this stage, that the first attempt was made by the appellant through an Appeal No.130 of 2020, wherein it expressed an apprehension that the Authority was determined to proceed adversely against the appellant and prayed to this Court to intervene and set aside the proceedings.

At the cost of repetition, it is stated that this appeal was disposed of as premature, noticing that the appellant would have sufficient opportunities to allay





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any apprehensions before and after any order is passed by the Authority.

12. The present Appeal No.50 of 2022 has been filed with no particular change in the circumstances except that aggrieved by the orders passed by the Chairperson of the Tribunal sitting single, the issue was agitated before the Hon'ble Punjab and Haryana High Court in related matters, which held that the Chairperson sitting single would lack the jurisdiction of passing any judicial orders. As a consequence the order passed by this Court disposing of the appeal as premature had to be treated as non est.
13. The fact however, remains that no order adverse to the appellant has been passed as yet. Therefore, the present appeal too would be premature as was the earlier one, in view of the fact that the Authority has yet to apply its mind to the material/responses submitted by the appellant, while submitting himself to the show cause notice and other communications issued by the Authority. The instant appeal therefore has also to be held to be premature, to warrant disposal as such. Ordered accordingly.



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14. However, lest the appellant feels prejudiced by the fact of our not noticing the contentions raised before us, we hereby set down his grievances raised before us in appeal as below: -

- a. That the enquiry under Section 35 of the Act can be initiated only by the Authority after passing a reasoned order, revealing the necessity of such an enquiry.
- b. Officials of the Authority would not be competent to hold an enquiry.

15. We heard learned counsel for the appellant and after noticing his primary grievance in relation to the procedure envisaged under Section 35 of the Act, sought a report from the Authority in this regard vide order dated 11.04.2022. The contention of the appellant was duly noticed therein and finds reflection in the said order.

16. We have received a report from the Authority, copy of which was also supplied to the learned counsel for the appellant.

One of the grievance of the appellant is that there has been non-compliance of Section 35 of the Act,



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inasmuch as, that no order has been passed by the Authority recording its satisfaction to call upon the appellant to furnish information relating to its affairs.

18. Section 35 of the Act is extracted hereinbelow:-

*“35. (1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an enquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.*

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under subsection (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—



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- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be perscribed.

19. Evidently, the Section empowers the Authority to call for information either on a complaint or suo moto and conduct investigations but after recording an order in writing, containing reasons, sufficient to call upon a promoter or allottee or real estate agent as the case may be at any time to furnish in writing such information or explanation relating to its affairs, **and in this regard appoint one or more persons to make an enquiry in relations to such affairs of the promoter, allottee or the real estate agent as the case may be.**



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20. Sub Clause (2) of Section 35 vests immense powers of a Civil Court in the Authority in the matters of discovery and production of books of accounts; summoning and enforcing attendance of persons and examining them; issuing commissions for the examination of witnesses or documents and any other matter that may be prescribed.
21. This particular Section in fact confers powers upon the Authority to hold any promoter, allottee or real estate agent accountable to it, if its affairs are not in consonance with the Rules and Regulations of the Act.
22. No doubt language of the Section talks of a reasoned order to precede the initiation of an enquiry and asking a person to furnish information but the argument of the appellant that in the absence of any such order, it would nullify all the proceedings may have to be kept at bay for the present for the simple reason that there is no material to suggest that process adopted by the Authority, in any way violates the principles of natural justice. The appellant as an affected person has been given ample opportunities to respond to the queries of the



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Authority or the Officer appointed by the Authority in this regard and hence the entire proceedings cannot be permitted to be nullified, unless such a person shows gross prejudice caused to him on account of such a procedural irregularity. This can be done when a final order is passed by the Authority, after conclusion of the proceedings in enquiry.

23. It is a settled proposition of law, that every procedural irregularity does not ipso facto lead to a conclusion of failure of justice. It is incumbent upon such a person, who questions the procedure to be flawed to also show prejudice on account of such failures.
24. The appellant submitted himself to the queries raised by the Authority through its initial notice and continued to be compliant in this regard. Rather, he gave an undertaking to furnish all and such information as may be asked for, by the Authority. Not only this, the appellant has actually furnished by now quite bit of information as asked for by the Authority during this course of more than 2 years.



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25. Therefore, this ground of violation of Section 35 would be available to the appellant, in case any order adverse to him is passed and challenge to it is mounted in which eventuality, it shall be open to the appellant to show prejudice caused to him on account of any flawed procedure adopted by the Authority.

26. An argument was raised by the appellant that prejudice and bias manifests itself from the fact that forensic audit and fishing/roving enquiry is being held.

27. We are afraid that such an argument cannot be accepted for the simple reason that the amplitude and magnitude of the enquiry is a course to be determined by the Authority and such a fact simplicitor can never be suggestive of a prejudice. Besides we as a Court cannot bridle the scope of an enquiry being resorted to under the provisions of the Act, the language of which suggests an open ended enquiry of wide amplitude.



28. We however, appreciate the argument of learned Senior Counsel for the appellant that the matter regarding information and conduct of investigation is

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a serious issue and cannot be left out entirely to a  
functionary of the Authority.

29. We notice from the record as also the report  
furnished by the Authority that the information has  
been sought by the Manager (Admin) but no  
document has been brought to our notice, which  
would suggest that the Authority has itself gone into  
the issue to record its satisfaction or to authorize its  
functionary in this regard.
30. We may also observe here that the word 'reasons',  
as given in Section 35 of the Act, in no way should  
be construed to be an order by the Authority that  
may give an impression of pre-judging an issue. If a  
complaint is received then while dealing with the  
complaint, the Authority should extricate the  
deficiencies pointed out by the complainant and  
record its desirability to probe the affairs of the  
promoter further and in the case, where it decides to  
initiate suo motu proceedings then evidently  
whatever shortcomings have come to its notice  
through any means should be encapsulated and  
indicated to the promoter along with the information  
that is intended to be solicited. We may also note





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here that in the facts of the present case, there is no mention of any complaint, which is suggestive of suo motu proceedings. In such an eventuality, the deficiencies or the information sought from the promoter have been duly communicated to the appellant, who has already responded to it. Thus prima facie, the deficiencies pointed out through the show cause notice do not suggest any violence to the language of the statute. Merely because it can be done in a better or a different way cannot be a reason to assume a violation particularly when only information is being solicited and no order has been passed.

31. We may once again refer to the language of Section 35(1) of the Act, which does empower the Authority to get an enquiry conducted through one or more persons. Thus it is not that such a course is impermissible in law. So when the Authority authorized an enquiry through Mazars India LLP, then it can't be said to be in conflict with the law but noticing the serious impact that an adverse finding or even proceedings can have on the affairs of a promoter or any other affected person, it is



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imperative that the enquiry and the proceedings be under the control and supervision of the Chairperson of the Authority or any Member authorized by him in this regard. It would be desirable that any information sought, be considered by the Chairperson of the Authority or the designated Member of the Authority to record its relevance as also the necessity of seeking further information in whatever regard. It cannot be left to any functionary of the Authority to persist with queries and solicit information from any promoter or the person intended to be proceeded against without there being an application of mind by the Authority at every step. The functionary can however communicate the orders of the Authority to the affected person and vice-versa.

32. If such an important function as a one envisaged in Section 35 is left to the discretion of a managerial functionary of the Authority, then it can possibly have serious repercussions of an abuse of power.

All this would imply that the Officer, soliciting information, would merely, be collecting, information on part of the Authority and not hold any say in the



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assessment of such information leading to a decision by the Authority. Our view is strengthened from the language of Section 35(2), which vests the Authority powers of a Civil Court in matters of discovery and production of documents, summoning and enforcing attendance of witnesses, issuing commission for examination of witnesses etc. Such a power can be exercised only by the Authority and that too if such a course presages a reasoned order.

34. The learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in [AIR 1974 SC 1791], where it has been held that even if a Tribunal had jurisdiction to enter upon an enquiry, the fact that it overlooked applicability of mandatory provision in the course of the enquiry would denude it of the jurisdiction.

35. We have observed in the forgoing paragraph that a challenge on this ground would be available to the appellant, in case an adverse order is passed against him. We have not foreclosed the option of the appellant to raise such an issue of procedural irregularity. It is upto him to show prejudice caused



to him on account of any lapse in procedure alleged by him.

36. The judgment in **Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs. UOI**, does not apply to the facts of the case. In any case the law has now been settled in the "**M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.**", that the provisions of the RERA, Act are retroactive and not retrospective. Issues revolving around this aspect can be gone into if the appellant faces the prospect of any penalty etc. upon conclusion of the proceedings against him. Hence the judgment in **Neelkamal Realtors Suburban Pvt. Ltd. and anr. Vs. UOI** is of no avail to the appellant for the present.

37. Likewise, the judgment in **Janta Land Promoters Private Limited Vs. Union of India & Ors. (in CWP No.8548 of 2020) [2020 4 RCR (Civil) 845]** and **M/s. Chitra Homes Pvt. Ltd. Vs. the Union of India**, is of no avail in the absence of any final order passed by the Authority.



38. Similarly, the judgment in **Om Parkash Berlia and ors. V. Unit Trust of India and Ors.** is of no avail as it pertains to issue arising under the Companies Act.
39. Counsel for the appellant has also placed reliance upon judgment of the Hon'ble Supreme Court in **Civil Appeal No.33 of 2003** titled as **M. Chinnasamy Vs. K.C. Palanisamy & Ors.** This judgment was passed under the Representation of Peoples Act, the provisions of which are completely different from the ones enshrined in the RERA Act, where Section 35 provides for an open ended enquiry. Hence the judgment is inconsequential in the facts of the present case. Likewise, the judgment referred of Hon'ble Punjab and Haryana High Court in **Shambu Nath and Sons Ltd. Vs. Additional Industrial Tribunal, Delhi.**
40. Other judgments relied upon by the appellant **Rohtas Industries Ltd. Vs. S.D. Agarwal AIR 1969 SC 707** and **Prafulla Chandra Vs. State [AIR 1988 Ori 18]**, also do not come to its rescue at present, as he would be at liberty to raise all the issues, including violation of principles of natural justice, in case such a situation arises.



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41. We therefore dispose of the appeal with the following directions:-

- i. The Chairperson, Real Estate Regulatory Authority, Punjab or any Member authorized by him, shall take control of the proceedings henceforth.
- ii. It can however, through a specific order direct any official to communicate the decisions of the Authority but only after the Chairperson or a Member nominated by him to hear the matter passes an order after evaluating information/material already furnished.
- iii. No other office except the Chairperson or a Member of the Authority shall evaluate/assess the information supplied by the appellant to establish its relevance and lay the foundation of a conclusion.
- iv. Since sufficient time has elapsed whatever enquiry has to be conducted shall be completed within a period of 3 months from the receipt of the certified copy of the order. The Authority, shall pass an order within one month thereafter.

*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)

May 02, 2022  
AN



Certified To Be True Copy  
*Shanesh kaur*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

09/05/2022