

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

Subject: -

**Appeal No. 14 of 2021**

Nirmal Singh S/o Sh. Nazar Singh R/o V.P.O. Nangli,  
Fatehgarh Churian Road, Amritsar, Punjab-143008.

....Appellant

**Versus**

Real Estate Regulatory Authority, Punjab, 1<sup>st</sup> Floor, Block  
B, Plot No.3, Madhya Marg, Sector-18, Chandigarh-  
160008 through its Assistant Manager.

....Respondent

Memo No. R.E.A.T./2022/269

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 were 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 7<sup>th</sup>  
day of June, 2022.



*Sh. Anand Singh*

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL PUNJAB  
AT CHANDIGARH

Appeal No. 14 of 2021

**MEMO OF PARTIES**

Nirmal Singh S/o Sh. Nazar Singh, R/o V.P.O. Nangli, Fatehgarh  
Churian Road, Amritsar, Punjab -143008 ...Appellant

And

Real Estate Regulatory Authority Punjab, 1<sup>st</sup> Floor, Block B, Plot No. 3,  
Madhya Marg, Sector-18, Chandigarh-160008 through its Assistant  
Manager ...Respondent

Chandigarh  
Dated: 15.03.2021

*Amitabh*  
(AMITABH TEWARI) (P/1780/2014)  
*Harshit Joon*  
(HARSHIT JOON) (D/6461/2017)  
Advocates  
COUNSELS FOR THE APPELLANT



Date of Filing 24/02/2021  
Date of Receipt by post                       
Appeal No. 14/2021  
Signature Rubender Kans  
Registrar

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

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**Appeal No. 14 of 2021**

Nirmal Singh S/o Sh. Nazar Singh R/o V.P.O.  
Nangli, Fatehgarh Churian Road, Amritsar, Punjab-  
143008.

....Appellant

**Versus**

Real Estate Regulatory Authority, Punjab, 1<sup>st</sup> Floor,  
Block B, Plot No.3, Madhya Marg, Sector-18,  
Chandigarh-160008 through its Assistant Manager.

....Respondent

**Present:** -Mr. Amitabh Tewari, Advocate for the appellant.  
Mr. Vipul Joshi, Advocate for Real Estate Regulatory  
Authority, Punjab/respondent.

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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:** (Sh. Mahesh Grover (Retd.), Chairman)  
(oral)

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This appeal is directed against the order dated  
11.07.2019 and the order 28.01.2020 passed by the Real  
Estate Regulatory Authority, Punjab (hereinafter known  
as the Authority).

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2. The Authority exercising its powers under Section 34 of the Act called upon the promoter (the present appellant) as also various development authorities of the State to supply information about projects which were licensed but no completion certificate had been granted to them.
3. Evidently the purpose was to enforce the provisions of Section 3 of the Real Estate Regulatory Act (hereinafter referred to as the Act) and in particular thereof requiring such projects to be registered.
4. The promoter was given sufficient opportunities to appear and provide the information but he defaulted and failed to provide any information to the Authority leading to the passing of the impugned order dated 11.07.2019 vide which the Authority proceeded against him under Section 59 of the Act and imposed a penalty of Rs. 1.25 Crores.



5. In determining this amount the Authority calculated the cost of land as Rs. 10.99 Crores and in addition thereto Rs. 2.53 Crores was taken as the cost towards obtaining

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necessary clearances while Rs. 2.69 Crores was assessed as the cost of development works.

6. In this manner the total amount came to Rs. 16.22 Crores. The Authority noticed that it was empowered to impose penalty to the extent of 10% of the cost of the project but taking a sympathetic view, imposed a penalty of Rs. 1.25 Crores only.
7. The promoter then sought review of this order and pleaded that the projects stood completed in the year of 2014 itself which is reflected from the fact that no sale, offer, or advertisement, took place thereafter. From this he wanted the Authority to infer that the projects stood completed, which would imply that the provisions of the Act would not be attracted, thereby liberating the appellant from the requirement of registration under Section 3 of the Act. The review application was however dismissed and the present appeal has now been preferred against the aforementioned two orders of the Authority.



8. Before filing the appeal, the appellant approached the Hon'ble High Court by way of Civil Writ Petition No. 17133 of 2020 which was decided on 16.02.2021, seeking a waiver of pre deposit in terms of Section 43 (5) of the Act. The Court allowed the prayer and directed the promoter to deposit 15% of the penalty amount of 1.25 Crores. We may note here with some emphasis that the Hon'ble Supreme Court has observed that there is no escape from a pre deposit under Section 43 (5) of the Act. As a Court we too have taken a similar view. Therefore the observations of the Hon'ble High Court in this regard would be of no avail to the promoter in the present appeal.

9. Learned counsel for the appellant has contended that the fact that no sale, offer, or advertisement, took place after 2014 should be sufficient to establish the factum of completion of the project. Besides the Hon'ble High Court in its order in writ petition No. 17133 of 2020 has noticed this fact of the project's completion. It is thus argued that



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both these facts cumulatively should be sufficient to record a finding in favor of the promoter in this regard.

10. It is next argued that assuming that the provisions of the Act would apply then also the Authority could not have imposed this excessive penalty by including Rs. 2.5 Crores on account of the cost of approval etc. In this regard reference has been made by the learned counsel to the definitions of the Real Estate project which we extract here below:-

*"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*



11. From the above it is argued that the definition does not warrant inclusion of such costs of approvals as has been

done by the Authority and therefore the impugned order would suffer from an excessive exercise of assessment sans legal basis and thus liable to be set aside.

12. Learned counsel for the respondent on the other hand has argued that the observations of the High Court with regard to the completion of the project would be meaningless considering that in the same breath it notices that its findings are not a reflection on the merits of the case. Besides these observations came while dealing with the issue of waiver of the pre deposit and cannot be held to be conclusive with regard to a fact which needed to be established independently of vague assertions as has been done by the promoter. It is next argued that the exercise of discretion has been judiciously done by the Authority particularly when it was empowered to impose the penalty of 10% but restricted it to 7.75% of the assessed amount of the project.





13. After hearing the learned counsel for the parties we are of the opinion that appeal is without any merit. We have noticed above the definition of the Real Estate Project which to our mind is all inclusive and of a wide amplitude to include in its ambit, a variety of factors that can possibly contribute to the cost of the project. That apart **Section 2 sub-clause (V)** of the Act defines the 'estimated cost' of the real estate project to mean the total cost in developing the real estate project and includes the land cost, taxes, cess, development and other charges. For the purposes of reference **Section 2 sub-clause (V)** is extracted here:-

*"estimated cost of real estate project" means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;"*



14. If the definition of real estate project and the estimated cost are read in conjunction with each other then the argument of the learned counsel for the appellant would

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fall flat on its face. The cost of approval would certainly be covered under clause 2 sub-clause (V). This argument therefore has to be noticed only to be rejected.

15. The argument that discretion to levy penalty is excessive is also without any merit, since the Authority has already taken a sympathetic view, and though the Act contemplates a penalty of <sup>upto 3</sup>10% of the total cost it has restrained its hands to impose it at 7.75 percent. It is settled law that discretion exercised if not arbitrary, should not be interfered with.

16. In so far the primary argument of the non-applicability of the Act is concerned we may state that initially the promoter did not appear before the Authority to furnish the information sought of him. Even thereafter when he filed a review the only plea taken up by him was that since no sale, offer, or advertisement, had taken place, it should be an indicator of the completion of the project.

We are afraid such an ambiguous plea without any supporting material can hardly form the basis of the



finality of a fact of a project being completed. The necessity of obtaining a completion certificate is not merely an empty formality, but rather envisages an overt act of an application followed by a proper process before its fructification. Therefore the Authority was absolutely right in concluding that there were no material to establish the assertion of the promoter regarding completion of the project.

17. If that be so then no fault can be found with the orders of the Authority in this regard. An application has been moved by the appellant before us seeking to produce additional material in this regard. We are afraid such a plea cannot be allowed particularly when the appellant has failed to establish its case by even producing necessary material to establish such fact before the Authority when information was sought from it.



18. Even when he filed a review petition he did not supply any information that would have been useful to him in

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offsetting the finding of the Authority in its order of 11.07.2019.

19. We therefore do not find any reason to interfere with the impugned orders, particularly when the appellant has failed to show that he has a completion certificate or that the project is <sup>not</sup> an ongoing one prior to the enforcement of the Act, the only two contingencies in which the Act does not ~~apply~~ <sup>warrant registration of a project.</sup>
20. Dismissed. File be consigned to record room and a copy of this be communicated to the parties as well as to the Real Estate Regulatory Authority, Punjab.

*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 19, 2022  
AN



Certified To Be True Copy  
*T. Anand Kumar*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

07/06/2022