

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

Subject: -

APPEAL NO. 207 OF 2022

M/s TDI Infrtech Limited, Registered Office: SCO 678-679, TDI House, Sector-119, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab

...Appellant

Versus

Real Estate Regulatory Authority, Punjab having Office at Plot No.03, Block-B, First Floor, Madhya Marg, Sector-18 A, Chandigarh.

....Respondent

Memo No. R.E.A.T./2023/ 9)

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST FLOOR,
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,
CHANDIGARH-160018.**



Whereas appeal 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 16th day of February, 2023.

Dhanraj Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Appeal No. 207 of 2022

MEMO OF PARTIES

M/s TDI Infratech Ltd., Registered Office :- SCO 678-679, TDI House, Sector 119, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

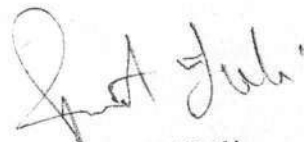
...Appellant

Versus

Real Estate Regulatory Authority Punjab having office at Plot No 3, Block-B, 1st floor, Madhya Marg, Sector 18-A, Chandigarh.

...Respondent

DATE:- 01/12/22


Puneet Tuli

Advocate
COUNSEL FOR THE APPELLANT



Date of Filing 01/12/22/877
Date of Receipt by nos 8/877
Appeal No. _____
Signature _____
Registrar _____

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

APPEAL NO. 207 OF 2022

M/s TDI Infrtech Limited, Registered Office: SCO 678-679, TDI House, Sector-119, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab

...Appellant

Versus

Real Estate Regulatory Authority, Punjab having Office at Plot No.03, Block-B, First Floor, Madhya Marg, Sector-18 A, Chandigarh.

....Respondent

Present: - Mr. Puneet Tuli, Advocate for the appellant.
Mr. Vipul Joshi, Advocate for RERA, Punjab.
Ms. Supriya Sharma, Executive (Legal), RERA, Punjab.



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: (JUSTICE MAHESH GROVER (RETD.), CHAIRMAN)

1. This appeal has been directed against the decisions taken by the Real Estate Regulatory Authority, Punjab (hereinafter referred as the Authority) declining

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temporarily the prayer for registration made by the appellant for various projects to be initiated by him as a part of the Mega Project already being developed by him.

2. For the sake of brevity the nomenclatures of various projects, the registration of which was sought for by the appellant are given below:

- i. Golf Link Commercial Market (PRJ2022SAS0109)
- ii. Golf Link Extension (PRJ2022SAS0099)
- iii. Apna Bazaar (PRJ2022SAS0101)
- iv. South Extension-I (PRJ2022SAS0103)
- v. Sadar Bazaar (PRJ2022SAS0102)

3. The cause of grievance is identical as also the decision of the Authority qua all the above referred projects with orders, to deny/defer a request for registration of the said projects. For the sake of reference the extract of one of them is extracted herebelow:-



Project Name: Golf Link Commercial Market (PRJ2022SAS0109)

- (1.) NOCs or approval related to the project (The application for registration of the project was discussed in the meeting of the Authority held on 20.10.2022 and it was observed by the Authority that the Environment Clearance submitted by the you was expired and you have applied for revised Environment Clearance on 25.11.2021. It was also observed that you have no submitted the Consent to Establish NOC from PPCB, as per condition no.12 of the Approval of Revised Layout Plan dated

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21.04.2022. Accordingly, you are directed to submit the valid Environment Clearance and Consent to Establish NOC from PPCB for this particular project.)

(2.) *Proforma Agreement for sale as prescribed in the rules (though proforma of agreement to sale as per Form Q is provided but the same was amended on 26.08.2022. Therefore, as per directions given in the meeting of the Authority held on 20.10.2022, please provide the amended proforma of agreement to sale as per Form Q amended on 26.08.2022 and accordingly provide declaration in this regard.)*

4. The case of the appellant is that prior to 28.09.2022 the Authority had put out on its web portal the requisites for registration of the project envisaging any two clearances along with the other information desired of the developer. But, after a meeting of the Authority on 28.09.2022, a completely new criteria regarding approvals was introduced to reject or defer the prayer for registration made by various developers. This decision is flawed as it was taken by a single Member of the Authority, when the chairman and another Hon'ble Member had relinquished office upon completion of their tenure and a single Member could not overturn the earlier decisions of the Authority as it would be hit by a lack of quorum, and would also be without jurisdiction. The new mandate with regard to the NOCs is as follows:-

III. Regarding requirement of NOCs:- While issuing Change of Land Use (CLU) Certificate/License to Develop Colony(LDC), the Competent Authorities are imposing conditions for obtaining NOC's from the



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various Department/Authorities, as mentioned in these documents, such as Environment Clearance as per EIA notification, NOC from PPCB under Water (Prevention & Control of Pollution Act, 1974), Municipal Solid Waste Management and Handling Rules, 2016, NOC from IAF under Indian Aircraft Act, 1934, NOC from PSPCL, Forest and Drainage Department, etc. Further, the definition of "Sanctioned Plan", as prescribed under Section 2(zq) of the Act, is reproduced as under:-

"(zq) "Sanctioned Plan" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permission, which are approved by the competent authority prior to start of a real estate project"

Similarly, the documents which needs to be submitted along with the application for registration of project have been prescribed under Section 4 of the Act and requirement of the "Sanctioned Plan" is provided under Section 4(2)(d). In these circumstances, the Member (APS) has directed that as per definition of Sanctioned Plan, the environment permission alongwith the other permissions, which ar required to be submitted [as per conditions imposed by the Competent Authority], prior to start of the project must be obtained before registration of the project. The NOC from Fire Department in the case of built up development can be obtained after development of the building, as part of the quarterly updates. This would over-ride para 17(I) of the revised guidelines issued for evaluation of application for registration of the project on 29.07.2020.



5. Apart from the grievance regarding insistence upon the aforementioned documents the decision was also

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questioned on the issue of propriety and jurisdiction as prior to the decision of the Authority taken in its meeting on 28.09.2022, a different procedure was being followed to which the Hon'ble Member who has now overturned the earlier procedure was a privy to. The Chairman and another Hon'ble Member of the Authority had demitted office upon completion of their tenure and the sole Member then introduced this new criteria unsettling the cause of numerous developers, even though he himself as a Hon'ble Member as a part of the decision making under the erstwhile Chairman was granting clearances. Besides when the application was submitted the earlier criteria was in vogue but the impugned decision has been taken as per the new criteria, giving it a retrospective effect.

6. The argument of the learned counsel for the appellant was broadly on these lines, apart from referring to the provisions of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) and The Punjab State Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as the Rules).
7. The learned counsel for the respondent on the other hand has defended their decision by contending that no illegality has been committed by them particularly when



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prayer for registration has not been rejected but merely deferred to enable the appellant to be compliant with the objections pointed out to him in the impugned decisions of the Authority.

8. We have heard learned counsel for the parties at some length.
9. Through this appeal the appellant has highlighted the fact that prior to September 2022 a completely different procedure was being followed where the developer was required to append only two clearances. This decision evidently was taken by the Full Bench of the Authority and would be in furtherance of the regulation making powers of the Authority under the Chairperson who at that point of time occupied the office. Section 29 of the Act talks of the meetings of the Authority and is extracted herebelow:-

“29. Meetings of the Authority -- (1) *The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.*

(2) *If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.*

(3) *All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the*



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Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period."

10. A perusal of the above indicates that there is a provision of Quorum for the meetings of the Authority that may be specified by the regulations made by the Authority itself. It also provides that if the Chairperson for any reason is unable to attend the meeting of the Authority any other member chosen by the members present amongst themselves at the meeting shall preside and all the questions that come up in any meeting be decided by the majority of the votes of members present and voting. Section 30 mandates that no act of proceeding of the Authority shall be invalid merely by reason of any vacancy in, or any defect in the constitution of the Authority or any defect in appointment of a person acting as a Member of the Authority; *or any irregularity in the procedure of the Authority not affecting the merits of the case.* The present alteration in procedure and requirements affects the appraisal on merits of each case.



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11. Section 30 of the Act which protects any act or proceeding of the Authority from being invalidated has to be confined to the contingency envisaged therein i.e. of any vacancy or any defect in consideration or appointment of a person acting as a Member of the Authority or any irregularity in the procedure adopted by the Authority but not affecting the merits of the case. It cannot override the provisions of Section 29 mandating the quorum, more particularly when the decision of the Hon'ble Single Member of the Authority has the effect of making a regulation which is a power that cannot be delegated.

12. Besides a Division Bench of the Hon'ble Punjab and Haryana High Court while answering a bunch of petitions, CWP No. 8548 of 2020 being one of them has categorically observed in conclusion as below:

"87. The conclusion in his judgment may be summarized as:

(a) A single Member of the Authority cannot validly pass orders on a complaint under the Act Regulation 7 and 8 of the Punjab RERA procedure regulations are struck down as being ultra vires"

13. We have been informed that the Quorum for any meeting of the Authority was prescribed through a regulation duly framed under law and if that be so then we wonder as to how the single Member of the Authority could overturn a duly framed regulation governing the process of registration and particularly, when this sole Hon'ble



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Member was himself a part of the decision making on the strength of the earlier existing regulations. The power to make regulations cannot be delegated to any single Member. Section 81 is extracted herebelow:

81. Delegation.—*The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under Section 85, as it may deem necessary.*

The view in this regard is strengthened by the observations made by the Hon'ble Supreme Court in **M/s New Tech Promoters and Developers Pvt. Ltd. Vs. State of UP and Others**. Question No. 03 which is to the following effect was specifically framed and answered by the Court. Question No. 03: *"Whether Section 81 of the Act authorizes the Authority to delegate its powers to a single Member of the Authority to hear complaints instituted under Section 31 of the Act?"*

It was observed by the Hon'ble Supreme Court as follows:-

112. *Section 81 of the Act 2016 empowers the authority, by general or special order in writing, to delegate its powers to any member of the authority, subject to conditions as may be specified in the order, such of the powers and functions under the Act. **What has been excluded is the power to make regulations under Section 85**, rest of the powers exercised by the Authority can always be*



delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by general and special order to its members is always permissible under the provisions of the Act.

113 xxxx; 114 xxxxx

115. It is a well-established principle of interpretation of law that the Court should read the section in literal sense and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such a manner as to render it to some extent otiose. Section 81 of the act positively empowers the authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act. **As a consequence, except the power to make regulations under Section 85 of the Act, other powers and functions of the authority, by a general or special order, if delegated to a single member of the authority is indeed within the fold of Section 81 of the Act.**

14. The decision of the Hon'ble Member taken in September 2022 reversing the earlier procedure violates provisions of Regulation 15 stating that "The Quorum of the meetings of the Authority shall be two".
15. Section 29 and Regulation 16 prescribe that the Chairperson shall preside over the meeting to conduct the business and in his absence the senior most Member shall preside, but the requirement of quorum as contained in Regulation 15 has to be respected.
16. In the instant case both the Chairperson and another Hon'ble Member had demitted office upon completion of



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their tenure leaving only one Member. He could not thus have with the assistance of some officers gone ahead with the meeting to alter a regulation because the officers whose presence has been referred to in the meeting of 28.09.2022 do not fall within the definition of a 'Member of the Authority'. We remind ourselves of Section 21 which talks of composition of the Authority and is extracted herebelow:-

“21. Composition of the Authority.—*The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.”*

In the absence of two whole time Members the decision taken by the single Member to overturn a validly introduced regulation through legal process could not have been done.

17. Section 85 lays down that the Authority shall within a period of three months from its establishment, by notification make regulations consistent with the Act and Rules made thereunder. Evidently, a single Member would not have the Authority or jurisdiction to make such changes as he has done without offending the above mentioned provisions.

18. It has not been denied by the learned counsel for the Authority that Full Bench of the Authority consisting of



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the Chairperson and two other Hon'ble Members assembled to consider and grant registrations to various projects. This Hon'ble Member who has now affected the change was a privy to such meetings and nowhere was his dissent ever recorded qua the procedure that was being applied and followed.

19. Learned counsel for the appellant stated that in similar circumstances number of his own projects were granted registration numbers as per the procedure existing prior to September 2022.
20. This would raise a question of propriety apart from the decision being legally flawed for the aforesaid reasons and has to be declared void ab initio.
21. As a direct and logical consequence of our observations with regard to unsustainability of decision dated 28.09.2022 any action taken pursuant thereto would necessarily have to be termed erroneous.
22. The impugned decision therefore, is unsustainable in law and keeping in view what we have stated above the appellant's cause of registration would merit reconsideration in accordance with law.
23. Having said thus, we make it abundantly clear that the decision making vests with the Authority while exercising its powers to address core issues envisaged in law and



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needless to say such a decision should withstand judicial scrutiny on the time-tested principles of adherence to law and observance of principles of natural justice.

24. For the aforesaid reasons we are of the opinion that the entire issue be decided afresh by the Authority in accordance with law. The decision be taken within a period of three weeks from the date of receipt of the copy of the order.

File be consigned to the record room.



Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sdr
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

XXXXXXXXXXXXXXXXXXXX
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)
(Differing Opinion)

13-02-2023
January 10, 2023
DS

Certified To Be True Copy

Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

16/02/2023

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- (4) -

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

APPEAL NO. 207 OF 2022

M/s TDI Infratech Ltd., Registered Office :- SCO 678-679, TDI House,
Sector 119, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

..... Appellant

Versus

Real Estate Regulatory Authority Punjab having office at Plot No 3,
Block-B, 1st floor, Madhya Marg, Sector 18-A, Chandigarh.

..... Respondent

Present: Mr. Puneet Tuli, Advocate for the appellants
Mr. Vipul Joshi, Advocate and Ms. Supriya Sharma,
Executive (Legal) for RERA, Punjab

QUORUM: 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: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.) – HIS VIEW)

1. By this order, I will dispose of above mentioned appeal dated 01.12.2022 (Diary No. 877A dated 01.12.2022) bearing Appeal No. 207 of 2022 (TDI Infratech Ltd. versus Real Estate Regulatory Authority, Punjab) filed against alleged direction/ decision/status dated 28.10.2022 passed by the Real Estate Regulatory Authority, Punjab (*hereinafter referred to as the Authority*) in the appellant's online application(s) submitted in May 2022 for registration of its five new projects .



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2. The facts stated in the appeal in brief are (i) the Government of Punjab (*hereinafter referred to as GoP*) with a view to attract new investments in the State, formulated Industrial Policy 2003 and the appellant company (*hereinafter referred to as the company*), under the said policy in order to set up a mega housing project in village Ballomajra and village Daun, with huge investment, submitted its proposal to the Directorate of Industries and Commerce, Punjab; (ii) that the said proposal was accepted and a letter of intent was issued in favour of the appellant company on 21.12.2005 (**Annexure A-2**); (iii) that subsequently, an agreement was signed between the company and the GoP for implementation of said mega housing project on 26.05.2006; (iv) that in continuation to the said agreement dated 26.05.2006 as per the mandatory provisions the supplementary agreements were also signed vide dated 05.06.2015, 22.05.2018, 16.07.2019, 27.11.2020 and recently on 13.07.2021; (v) that as per clause 9 sub clause 'd' of the supplementary agreement dated 13.07.2021 (**Annexure A-3**) it is clearly mentioned and declared that the additional area under the project shall not be advertised/launched and no money will be collected from general public for allotment of land plot/ flat on any part of land till such time the layout plan /zoning plan are approved by the competent authority, exemption under Section 44(2) of Punjab Apartment and Property Regulation Act 2014 (*hereinafter referred to as the PAPRA 2014*) is issued by the government and this additional area of the project is registered with Real Estate Regulatory Authority Punjab; (vi) that resultantly, the GoP vide its notification under section 44 of the Punjab Apartment and Property Regulation Act, 1995 (*hereinafter referred to as the PAPRA 1995*), exempted the mega housing project of the company from



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application of the provisions of the PAPRA 1995 on 11.04.2008 (Annexure A-4), 09.03.2010, 09.08.2012, 10.03.2017, 21.07.2020 and recently on 16.03.2022 (Annexure A-4); (vii) that the appellant builder in the normal course of expansion of the project has been applying for registration of projects before the Authority; (viii) that the revised layout plan of the company was approved on 05.03.2021 (Annexure A-5) by the competent authority for the projects namely Connaught Plots, Chitakoot, Golf Link and South Extension-II; (ix) that while registering the projects through online portal, only two NOC's were required to be uploaded and the other NOC's or the approvals were obtained during the due course of the development of the project; (x) that the same procedure has been adopted throughout the state of Punjab that the approvals which are available are attached at the time of filing of the registration of the project and subsequently the other approvals are being filed thereupon as and when the approvals come from the competent authorities; (xi) that some of the approvals are obtained subsequent(ly) and are not obtained merely on approval of layout plan or on approval of building plan or on registration of the project under the Real Estate (Regulation and Development) Act, 2016 (*hereinafter referred to as the Act*) but is obtained before completion the project; (xii) that copy of certificate of registration under the Act for the projects namely Connaught Plots dated 11.06.2021, Chitakoot dated 11.06.2021, Golf Link dated 15.06.2021 and South Extension-II dated 15.06.2021 is annexed herewith as Annexure A-6 (Colly); (xiii) that similarly, the revised layout plan of the company was approved on 21.04.2022 by the competent authority after due scrutiny and as per the procedure laid down under law wherein these 5 pockets which are having a



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nomenclature as Sadar Bazar, South Extension-1, Apna Bazar, Golf Link Extension and Golf Link Commercial Market were sanctioned accordingly (**Annexure A-7**) and a copy of separate layout plans as per the approval accorded showing all these five projects namely SADAR BAZAR, SOUTH EXTENSION-I, APNA BAZAR, GOLF LINK EXTENSION and GOLF LINK COMMERCIAL MARKET is annexed as **Annexure A-8 (colly)**; (xiv) that the above said documents were placed on record while submitting the online registration; (xv) that all the required documents (*as detailed under paragraph 5A(vii) at pages 8 to 9 of the paper-book of the appeal*) were placed on record while applying for the online registration of the above said projects; (xvi) that the Authority has observed in a meeting held on 20.10.2022 the following observations in respect of the projects SADAR BAZAR, SOUTH EXTENSION-I, APNA BAZAR, GOLF LINK EXTENSION and GOLF LINK COMMERCIAL MARKET “(1.) NOCs or approval related to the project (*The application for registration of the project was discussed in the meeting of the Authority held on 20.10.2022 and it was observed by the Authority that the Environment Clearance submitted by the you was expired and you have applied for revised Environment Clearance on 25.11.2021. It was also observed that you have not submitted the Consent to Establish NOC from PPCB, as per condition no. 12 of the Approval of Revised Layout Plan dated 21.04.2022. Accordingly, you are directed to submit the valid Environment Clearance and Consent to Establish NOC from PPCB for this particular project*) (2.) Proforma agreement for sale as prescribed in the Rules (*Though proforma of agreement to sale as per Form Q is provided but the same was amended on 26.08.2022. Therefore,*



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as per directions given in the meeting of the Authority held on 20.10.2022, please provide the amended proforma of agreement to sale as per Form Q amended on 26.08.2022 and accordingly provide declaration in this regard.)” (the above mentioned observations have been repeated for each of the five projects on second to fourth pages of the alleged direction/decision being impugned, Annexure A-9); (xvii) that the appellant has applied for registration of the said new projects before the Authority under section 4 of the Act; (xviii) that whereas the new project allottees shall enjoy the amenities and services of Mega Residential Project TDI City I SAS Nagar, Mohali; (xix) that the Mega residential Project of the appellant is well established and operative since long and many happy families are staying in the said project; (xx) that the status of each of the five new projects, bearing diary No. PRJ2022SAS-0102, 0103, 0101, 0099 and 0109, under registration as on 28.10.2022 is “In-Complete Application (Additional Information Sought by the Authority) (Please attend to the observations raised by evaluation team with reference to the orders passed in the meeting held on 20.10.2022 under the chairmanship of Ld. Member (APS) and resubmit.)” (reproduced from the first page of the alleged direction/decision being impugned, Annexure A-9); (xxi) that in the above said observation, the environment clearance as discussed in the meeting of the Authority held on 20.10.2022, the appellant has already applied for a revised environment clearance and is pending for approval with the concerned competent authority; (xxii) that similarly, there are certain NOCs and approvals which are either pending for revised clearances or for approvals with the competent authorities whereas there are certain approvals which are subsequent to the



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development of the project which will be applied and the approvals will be taken accordingly as and when required; (xxiii) that the consent to establish NOC from Punjab Pollution Control Board (*hereinafter referred to as the PPCB*) can only be obtained before the start of construction on the site and subject to the clearance from the Environment Department; (xxiv) that whereas the performa of the sale deed vide form Q has also been rectified and will be submitted accordingly; (xxv) that copy of the registration application form of all the five projects are attached as **Annexure A-10 (Colly)** and a copy of list of documents filed with registration application form is attached as **Annexure A-11 (Colly)**; (xxvi) that the appellant has applied for the registration of the new projects in the month of May, 2022 and time and again the Authority has raised objections to which the appellant has satisfied and the requisite approvals were placed on record; (xxvii) that a copy of the guidelines issued for registration of the real estate projects is annexed herewith as **Annexure A-12**; (xxviii) that without appreciating the specific submissions/documents and even an undertaking submitted on dated 13.10.2022 (**Annexure A-13**) and grounds taken by the present appellant and in total disregard of the applicable law, the Authority, vide direction/decision dated 28.10.2022, has rejected the registration of all the new projects and have directed to re-submit the registration application along with revised environment clearance, consent to establish NOC from PPCB and form Q amended up-to-date.

3. The appellant in its appeal has contended that the direction/decision dated 28.10.2022 passed by the Authority is liable to be set aside, inter alia, on the grounds that (i) that section 4 of Act lays down the procedure of registration of the real estate



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projects; (ii) that the company had also applied for the registration of its new projects through online portal along with all the relevant documents and subsequently an undertaking was also filed to the effect that the relevant clearance will be submitted as and when the same is granted by the competent authority; (iii) that the requisite approvals and NOCs were attached at the time of filing of online registration and there are certain NOCs and Approvals which are either pending for revised clearances or for approvals with the competent authorities whereas there are certain approvals which are subsequent to the development of the project which will be taken accordingly and will be placed on record as and when granted; (iv) that the Authority has failed to appreciate the provisions of law under section 4(2)(1)(E) of the Act; (v) that the appellant has filed a declaration to submit the approvals from the competent authorities as and when granted; (vi) that some of the approvals are obtained subsequent and are not obtained merely on approval of layout plan or on approval of building plan but is obtained before completion; (vii) that concerned authority shall issue an approval only after satisfying itself regarding the compliance of all regulations and all other formalities and for that the said project has to be developed constructed; (viii) that earlier while registration of the projects through online portal, only two NOCs were required to be uploaded and the other NOCs or the approvals were obtained according to the development of the project and during the due course of the development of the project; (ix) that the same procedure has been adopted throughout the state of Punjab that the approvals which are available are attached at the time of filing of the registration of the project and subsequently the other approvals are being filed thereupon as and



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when the approvals come from the competent authorities; (x) that the approvals and NOCs are subject to some conditions per se some approvals and NOCs from different local bodies or from competent authorities are approved with some condition precedent, the Authority would have granted the registration of the projects subject to certain conditions to be fulfilled in near future as per the provisions of the Act; (xi) that the appellant took various legal submissions that the conditions can be imposed before the start of the construction work, however, the Authority did not address and consider the submissions taken by the appellant by passing a non-speaking, cryptic and arbitrary decision/direction; (xii) that the Authority didn't give any reasonable ground whatsoever for rejecting the registration of the new projects; (xiii) that the procedure adopted for the expansion of any Mega Housing Project includes a) purchase of land from farmers by paying mutually agreed sale consideration and relevant stamp duty and charges for the expansion of the Mega housing project, b) agreement with the GoP, c) Change of Land Use (CLU) of freshly purchased land (after paying the requisite Govt charges), d) approval of Revised Layout Plan/Zoning after depositing necessary part payment of EDC and License fees along with schedule for balance payments of EDC, which is recoverable from the respective allottees, e) approval of Building Plan and Architectural frame controls, and f) approvals from Environment/ PPCB, Services laid like water, roads, sewerage, electrical scheme from PSPCL; (xiv) that the promoter builder can not sale/advertise/float any project in the open market unless or until the project is registered under RERA; (xv) that RERA online registration has been made so complex and rigid that to register a project online is in self a project; (xvi) that if



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the promoter is capable enough of raising funds on its own, if the promoter builder is capable of raising the project on its own, if the promoter builder is capable of completing the project on its own with all the NOC's and approvals at the time of registration under RERA, then what is the need of registration under RERA, what is the need of the Act or what is the need of the applicable law because if all the approvals and NOC's are with the builder promoter then the promoter will get the completion certificate instead of getting RERA registration; (xvii) that if the project registration process under RERA is made so complicated and tangled an stiff then how the real estate sector will survive.

4. The appellant, in his appeal has sought the reliefs of (i) setting aside the impugned direction/decision dated 28.10.2022 passed by the Authority; (ii) modifying the said direction/decision to the extent that there shall be a conditional approval subject to the fulfilment of the conditions.

5. During arguments on 19.12.2022 and 02.01.2023, the counsel for the Authority sought time to clarify as which approvals and permissions could be kept pending in terms of section 4(2)(I)(E) and which are to be submitted along with the application for registration.

6. On 09.01.2023, the counsel for the Authority has filed a brief note dated 09.01.2023 (*i.e. after the vacancies of the posts of Chairperson and second Member of the Authority were filled up upon joining of the incumbents in December 2022*) on behalf of the Authority, whereby it has inter alia been contended that (i) the conjoint perusal of sections 4(2)(d) and 2(zq) reveals that inter alia environment permission must necessarily accompany the



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application for registration of a project; (ii) section 4(2)(l)(E) cannot have the overriding effect of making the provisions of section 4(2)(a) to (k) otiose.

7. He further contended that (i) the CLU granted to the appellant vide letter dated 06.08.2021 (**Annexure-1** of aforesaid note dated 09.01.2023 of the Authority) mandates that the appellant to obtain the requisite NOC from PPCB in terms of the Water (prevention & Control of Pollution) Act, 1974 before undertaking any development at the site; (ii) that the Chairman of State Environment Impact Assessment Authority (SEIAA), Punjab vide its letter dated 08.02.2022 (**Annexure-2** of the said note) issued to the Authority, inter alia pointed out that the developers ought to obtain prior environment clearance(s) from the SEIAA in terms of notification dated 14.09.2016; (iii) that obtaining prior NOC from the PPCB as well as environment clearance in terms of aforesaid notification dated 14.09.2016 were incorporated in the revised layout plan of TDI City-1 approval letter dated 21.04.2022 (**Annexure-3** of the said note).



8. He also contended that (i) in the light of aforesaid provisions of the Act and the communication received from SEIAA, Punjab, the Authority deemed it expedient to hold meetings to discuss the issue of processing of applications under section 4 of the Act, particularly in light of the NOCs, permissions and approvals that ought to be insisted upon at the time of its submission; (iii) that in the meeting held on 28.09.2022, the Member (APS), holding the charge as Chairperson, inter alia directed the environment permission along with other permissions, which are required to be submitted as per conditions imposed by the competent authority prior to start of the project, must be obtained before registration of

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the project; (iv) that in the meeting held on 26.11.2022, it was inter alia decided that the essential NOCs to be considered for the purposes of registration are NOC from PPCB, Punjab State Power Corporation Limited (PSPCL), Drainage, Forest, Environment Clearance from Ministry of Environment and Forest (if applicable), Airport Authority/Ministry of Defence (if applicable), which should be insisted upon only if mentioned in the specific conditions of the license to develop colony, issued by the competent authority.

9. He has also contended that (i) missing approvals and permissions on account of which the application of the appellant has been deferred are such that obtaining the same right at the time of preferring the application under section 4 of the Act is imperative; (ii) that a harmonious consideration may be made by juxtaposing the provisions of the Act with the conditions imposed upon the appellant vide the CLU as well as the approval of the revised layout plan; (iii) that the declaration qua the 'pending approvals' contemplated under section 4(2)(1)(E) of the Act, pertain to the kind of approvals and permissions which, by their very nature, are obtained from time to time, during the course of completion of the project in question; (iv) that PPCB, vide its letter dated 30.12.2022 while imposing an environment compensation of Rs. 10 lakh on the project proponent (M/s TDI Inftratech Ltd.) has given the direction that "*GMADA shall not issue license to the project to the project proponent for carrying out construction activity in any area development project in future in District SAS Nagar*".

10. On the other hand, as per appellant own case:-

- (i) it is mentioned under clause 9(d) of the supplementary agreement dated 13.07.2021 (Annexure A-3) that the



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additional area under the project shall not be advertised/launched and no money will be collected from general public for allotment of land plot/ flat on any part of land till such time the layout plan /zoning plan are approved by the competent authority, exemption under Section 44(2) of PAPRA 2014 is issued by the government and this additional area of the project is registered with Real Estate Regulatory Authority Punjab; and

- (ii) the revised layout plan was approved on 21.04.2022 by the competent authority for five pockets/new projects namely, Sadar Bazar, South Extension-1, Apna Bazar, Golf Link Extension and Golf Link Commercial Market (Annexures A-7 and A-8) (The letter dated 21.04.2022, vide which the said revised layout plan was approved and condition No.12 of which is referred to in the directions of the Authority being impugned by the appellant, was not placed on record by the appellant. However, the same has been placed before this Tribunal by the respondent with his note dated 09.01.2023).



11. The appellant is aggrieved by the online status dated 28.10.2022 showing the appellant's applications for registration of the projects and thereby directing the appellant in each of the five new projects to attend to the following directions of the Authority in the meeting held on 20.10.2022 (Annexure A-9):-

- (i) to submit the valid Environment Clearance and Consent to Establish NOC from PPCB; and

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(iii) to provide amended proforma of agreement for sale as prescribed in the Rules as Form 'Q' as amended on 26.08.2022 and declaration in this regard.

12. The appellant has inter alia contended in his appeal that (i) the appellant has already applied for a revised environment clearance and is pending for approval with the concerned competent authority; and (ii) that there are certain NOCs and approvals which are either pending for revised clearances or for approvals with the competent authorities whereas there are certain approvals which are subsequent to the development of the project which will be applied and the approvals will be taken accordingly as and when required.

13. The appellant has also stated in its appeal that the consent to establish NOC from PPCB can only be obtained before the start of construction on the site and subject to the clearance from the Environment Department; whereas the performa of the sale deed vide form Q has also been rectified and will be submitted accordingly.

14. In its undertaking dated 13.10.2022 (Annexure A-13), the appellant has inter alia declared that (i) the revised layout plan for Mega Project TDI City-I, falling under sectors 74a, 92, 116, 117, 118, 119, SAS Nagar has been approved on 21.04.2022; (ii) that the appellant has obtained the environment clearance for its 'project' from SEIAA, Punjab vide letter dated 01.10.2015; (iii) that they have already applied for revised environment clearance for new area on 25.11.2021; (iv) that TOR for the appellant's case had also been already issued and is under consideration with the department for approval; (v) that NOC from PPCB shall be



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processed after the same; and (vi) that the appellant shall submit the copy of the revised environment clearance shortly. However, the appellant has not placed on record the aforesaid letter dated 01.10.2015 of SEIAA, Punjab vide which it had obtained the project clearance for its 'project' and its application for 'revised' clearance for 'new' area.

MY FINDINGS:

15. As the bone of contention is insistence of the Authority for environment clearance and Consent to Establish NOC of PPCB before registration of the project(s) with the Authority under the Act, I would like to look into the relevant provisions of the Act in this context as under, showing certain text in bold to lay emphasis:-

- (i) Section 3(1) of the Act, **no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Authority.**



- (ii) As per the explanation appended to the section 3 of the Act, for the purpose of section 3 of the Act, where the real estate project is to be developed in phases, **every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.**

- (iii) As per section 4(1) of the Act, **every promoter shall make an application to the Authority for registration of the real estate project.**

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- (iv) As per section 4(2) of the Act, the promoter shall, inter alia, **enclose along with the application for registration** of the real estate project, as per its clause (c), an authenticated copy of the **approvals and commencement certificate** from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority **for each of such phases**; and, as per its clause (d), the **sanctioned plan**, layout plan and specifications of the **proposed project or the phase thereof, and the whole project** as sanctioned by the competent authority;
- (v) Section 2(m) of the Act defines the "commencement certificate" to mean the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, **as per the sanctioned plan**;
- (vi) Section 2(zq) of the Act defines the **sanctioned plan** to mean the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as **environment permission** and such other permissions, which are approved by the competent authority prior to start of a real estate project;
- (vii) Sub-clauses (a), (b) and (e) to (k) of section 4(2) of the Act, specify some other documents (briefly like detail of



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enterprise, detail of the projects launched in the past, the plan of development works, the location details of the project, proforma for allotment letter/agreement for sale/conveyance deed, apartments detail, garage detail, real estate agents, detail of contractors/architect/structural engineer etc) that a promoter is mandated by section 4(2) of the Act to enclose **along with his application for registration;**

(viii) As per sub-clauses (c) and (d) of section 4(2) of the Act when read with its sections 2(m) and 2(zq), a promoter is mandated to enclose **along with his application for registration** 'commencement certificate' to permit to begin development as per **sanction plan, the sanctioned plan** (i.e. the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan, structural designs, if applicable, **environment permission** etc), layout plan and specifications of the **proposed project or the phase thereof, and the whole project** as sanctioned by the competent authority.



16. Perusal of the above provisions of the Act, **undisputedly mandate a promoter to enclose** the documents specified under clauses (a) to (k) of sub-section (2) of section 4 of the Act (which includes **environment permission** for a phase of the project, and the whole project) **along with the application for registration of the real estate project.**

17. Section 4(2)(1)(E) of the Act stipulates that a declaration, supported by affidavit, inter alia stating that **the promoter shall take all the 'pending approvals' on time, from the competent authorities.** To my mind, this provision does not confer a right upon the

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promoter to treat any of the document specified under clauses (a) to (k) of section 4(2) as a 'pending approval' in terms of provisions of section 4(2)(l)(E) of the Act, thereby allowing the promoter not to enclose the relevant document along with the application for registration of the project by just declaring that the said pending document/approval shall be taken by the promoter on time, from the competent authorities.

- 18.** Let us see the probable consequence, if a declaration for 'environment permission' is allowed to be accepted in terms of the provisions of section 4(2)(l)(E) of the Act, instead of insisting the environment permission along with the application for registration in terms of provisions of section 4(2)(d) of the Act, and the projects are registered. In such an eventuality, the promoter shall immediately start advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase the plot, apartment or building, as the case may be. In case the promoter fails to get the environment clearance due to any reason whatsoever, then the innocent allottees, who have booked plots etc in such the projects, most of whom spent their life time savings for buying a plot/apartment, will be left in lurch; and the basic objective of the Act to protect the interest of the consumers in the real estate sector shall be defeated.

- 19.** Thus, such an in-built regulatory mechanism by way of insisting for inter alia the environment permission along with the application for registration of the projects ensures protection to the prospective allottees of the projects and to my mind, may also be in the interest of even a promoter.



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20. Section 11(3)(a) of the Act provides that the promoter at the time of the booking shall be responsible to make available to the allottee, the information, inter alia namely sanctioned plans (which include environment permission), by display at the site or such other place as may be specified by the regulations made by the Authority; and section 85(2)(d) of the Act directs the Authority to make regulations, consistent with the Act and the rules made thereunder to carry out the purposes of the Act, in particular to provide, inter alia, for display of sanctioned plans (which include environment permission), for display under clause (a) of sub-section (3) of section 11.
21. As per section 19(1) of the Act, the allottee is entitled to obtain the information inter alia relating to sanctioned plans (which include environment permission), layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
22. The above provisions of the Act amply indicate that the environment clearance/permission must be obtained by the promoter from the competent authorities before the registration of the project with the Authority under the Act.
23. The appellant may seek remedy, if so advised, under the applicable law at appropriate forum to get expedited the requisite environment clearance and Consent to Establish NOC of PPCB etc.
24. Though the appellant has not taken any objection in his appeal regarding passing of the order, being impugned, by the single member of the Authority, the perusal of section 29(1) of the Act



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when read with Regulation 15 of the Punjab Real Estate Regulatory Authority (General) Regulations 2017 (*hereinafter referred to as the General Regulations*), at the first blush, leads to an impression that the decisions taken by the lone member of the Authority (having charge as chairperson) in the meetings, inter alia held on 28.09.2022, 20.10.2022, 26.11.2022 etc., when the posts of its Chairperson and its other member were lying vacant, are invalid.

25. However, section 30 of the Act provides that no act or proceedings of the Authority shall be invalid merely by reason of, inter alia, (i) any vacancy in the Authority; and (ii) any irregularity in the procedure of the Authority not affecting the merits of the case.
26. Sections 29 and 30 of the Act are reproduced hereunder, with certain portions thereof emboldened as well as underline to lay emphasis:-



“29. Meetings of Authority. (1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.

(2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by **the Members present and voting**, and in the event of an equality of votes, the Chairperson or in his absence, **the person presiding shall have a second or casting vote.**

(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the

Authority shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

30. **Vacancies, etc., not to invalidate proceeding of Authority. No act or proceeding of the Authority shall be invalid merely by reason of—**

- (a) **any vacancy in, or any defect in the constitution of, the Authority;** or
- (b) **any defect in the appointment of a person acting as a Member of the Authority;** or
- (c) **any irregularity in the procedure of the Authority not affecting the merits of the case.**

27. Section 85(2)(f) of the Act directs the Authority to make regulations, consistent with the Act and the rules made thereunder to carry out the purposes of the Act, in particular to provide, inter alia, for time, places and the procedure in regard to transaction of business at the meetings of the Authority under subsection (1) of section 29; and in exercise of the powers so conferred on it, the Authority has made, inter alia, the following Regulations of the General Regulations:-



“Meetings

- 14. This section shall be applicable to the meetings of the Authority, **other than those held in connection with the adjudicatory proceedings of the Authority.**
- 15. The **quorum for the meetings of the Authority shall be two.**
- 16. The Chairperson shall preside over the meetings and conduct the business. If the Chairperson is unable to be present in the meetings for any reason, or **where there is no Chairperson, the senior most Member present shall preside at the meeting.** Provided that any Member who, either

himself or through immediate family, has a direct or indirect pecuniary or other interest in any matter coming up before the Authority shall not take part in any deliberation or decision of the Authority relating to such matter.

Explanation:- *For the purpose of this Regulation, immediate family means spouse, child, parent or sibling regardless of whether they are dependent upon the member or not.*

17. (a) *All questions which come up before any meetings of the Authority shall be decided by a majority of votes of the Members present and voting. In the event of an equality of votes, the Chairperson or in his absence, **the Member presiding shall have a second or casting vote.***
- (b) *Save as otherwise provided in these Regulations, every Member shall have one vote.*

Vacancies, etc., not to invalidate proceedings:

20. **No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Authority.**



28.

The Regulations 14 and 15 of the General Regulations conjointly provide for the quorum for the meetings of the Authority, other than those held in connection with the adjudicatory proceedings, to be two. These Regulations cannot override the provisions of section 30 of the Act, because the Authority has made these Regulations in exercise of the powers conferred on it under section 85(2)(f), which inter alia requires that these Regulations should be **consistent with the Act and the rules made thereunder to carry out the purposes of the Act.** Rather Regulation 20 of the General Regulations too provides, inter alia, that no act or proceedings of the Authority shall be questioned or shall be invalidated merely on

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the ground of existence of any vacancy. Further, section 30 of the Act also provides that no act or proceedings of the Authority shall be invalid merely by reason of any irregularity in the procedure of the Authority **not affecting the merits of the case**; and as per subsection (1) of section 29 of the Act, 'quorum' is included in the procedure.

29. Further, Regulation 38 of the General Regulations provides that the Authority may, at any time and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceedings before it (including any clerical or arithmetical error in any order passed by the Authority), and all necessary amendments, rectifications shall be made for the purpose of determining the real question or issue arising in the proceedings, with the proviso that if the Authority desires to make amendments or rectifications in order to determine the real question or issue arising the Authority shall provide an opportunity to the parties affected by such amendment or rectification touching the real question or issue to make representations and submissions with respect to the proposed amendment or rectification.

30. However, the aforementioned note dated 09.01.2023 has been filed on behalf of the Authority before this Tribunal pursuant to the proceedings held before this Tribunal on 02.01.2023 i.e. after joining of the Chairperson and the other Member of the Authority in December 2023, wherein the impugned order has not been recommended to be amended for any defect or error in the proceedings for the purpose of determining the real question or issue arising in aforesaid proceedings dated 28.09.2022 and 20.10.2022.



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31. In view of above discussion, I am not inclined to interfere in the status/directions dated 28.10.2022/20.10.2022 of the Authority, being impugned in the present appeal and deem it appropriate to dismiss the appeal.
32. Ordered accordingly.
33. File be consigned to record room after filing a copy of this order in the file of this appeal and after sending a copy to appellant as well as to the Authority.



Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)

February 13th, 2023

Certified To Be True Copy
Shamsher Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

16/02/2023