

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

APPEAL NO. 39 of 2023

M/s Vasundra Developers, Address: Vikas Soni S/o Sh. Yoginder
Soni Partner of M/s Vasundara Developers, Pathankot-145023,
R/o Rose Villa, Ward No.12, Kathuie Bazar, Sujanpur, Pathankot
Now Address: 2-F, Ajit Market, Dhangu Road, Pathankot,
Punjab-145001

...Appellant

Versus

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

....Respondent/Complainant

Memo No. R.E.A.T./2024/122

To,

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST 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 22th day of March, 2024.



Dhanraj Kumar

REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Memo of Parties

BEFORE HON'ABLE REAL ESTATE APPELLATE AUTHORITY

Punjab

(APPEAL U/S 44 of the REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016)

IN THE MATTER OF:

Now Address: 2F, Ajit Market, Dhangu Road, Pathankot / now: Defense Enclave, Defense Road, Pathankot
M/S Vasundra Developers
Address: VIKAS SONI S/O SH. YOGINDER SONI PARTNER OF M/s Vasundra Developers, Pathankot-145023, R/o Rose Villa, Ward No. 12, Kathuie Bazar, Sujanpur, Pathankot. Mobile Number-9915780403

...APPELLANT

VERSUS

Punjab Real Estate Regulatory Authority, Punjab

Address: Real Estate Regulatory Authority
First Floor, Block-B, Plot No.-3, Sector-18A,
(Near Govt. Press UT), Madhya Marg,
Chandigarh - 160018
Phone- 0172 - 5139800-29

...RESPONDENT



Place: Chandigarh
Date: 01/8/2023

Ranjiv
CA. RANVIR SINGH
(Authorised Representative)

[Signature]

THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 39 of 2023

M/s Vasundra Developers, Address: Vikas Soni S/o Sh. Yoginder Soni Partner of M/s Vasundara Developers, Pathankot-145023, R/o Rose Villa, Ward No.12, Kathuie Bazar, Sujanpur, Pathankot

Now Address: 2-F, Ajit Market, Dhangu Road, Pathankot, Punjab-145001

...Appellant

Versus

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

....Respondent/Complainant

Present: - Mr. Ranvir Singh (C.A.), Advocate for the appellant
Mr. Prashant Rana, Advocate for respondent-
RERA Punjab

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

**SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)**

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

1. The present Appeal has been preferred by the appellant against the order dated 25.03.2021 of the Real Estate Regulatory Authority (herein after known as the Authority), vide which penalty of Rs.60,00,000/- was imposed on the appellant to be deposited within two months from the date of issuance of the order.
2. The appeal is accompanied by an application seeking condonation of delay of 857 days.
3. Arguments were heard on the issue of condonation of delay in the first instance. The appellant in his application has pleaded that the impugned order was not served on him and eventually it was upon



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invocation of the Right to Information Act, 2005 that information of the impugned order was obtained.

4. It was specifically averred that the impugned order was never served and information for the first time was derived through the orders of the Deputy Commissioner, Pathankot when, under his orders the Revenue Officials came calling-upon the appellants to give effect to the impugned order.
5. It was thus averred that the information about passing of the order was obtained through RTI on 31.05.2023 and the limitation of 60 days statutory period would commence thereafter.
6. The application was contested by the Authority which filed a reply, wherein it was stated that when the impugned order was passed on 25.03.2021, a certified copy thereof was dispatched by the Authority to the Developer on 06.05.2021 at the same address upon which the Notice under Section 59 of the Act and related correspondence was dispatched. It was stated that the appellant had responded to the notices and the reminders issued to him under Section 59 in the year 2018. The impugned order was sent to the appellant by a registered post which came back with the remarks that the office was found locked. The respondent has also placed on record material in this regard.
7. It was then averred that the appellant failed to appear before the Authority in proceedings under Section 59 despite service, after having initially contested them. It was further averred that the proceedings under Section 59 were adjourned sine die on 11.10.2018 to await the decision of M/s Vikas Housing Building Company and M/s Damini Resorts Builders Pvt. Ltd. ostensibly for the reason that the decisions might have a bearing on the appellants case. After the decision of these matters the proceedings were revived vide Orders dated 26.12.2018 and a letter was issued



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to the Developer duly received by him on 05.01.2019, who was asked to submit his response within 15 days of the receipt of the letter but no such response was filed and eventually, he was proceeded against ex-parte on 31.01.2019. Thereafter, also the matter was adjourned several times between 31.01.2019 and 25.03.2021 but faced with the continuous default of the appellant in appearance, the impugned order was passed on 21.03.2021.

8. It was next averred that the list of projects facing penalty under Chapter VIII of the Real Estate Regulation and Development Act, 2016 is uploaded and available on the official website of the Authority and the information in the case of the appellant was duly uploaded. Hence it was a notice to the appellant and the public at large.
9. In the backdrop of these pleadings, it was contended by the respondent that the delay of more than 850 days cannot be condoned.
10. The appellant in turn submitted written arguments wherein he set up a totally different case than the one pleaded in the application.
11. We have already noticed the plea of the appellant in his application supported by an affidavit but in the written submission he explained away the delay largely to the COVID situation prevailing at that point of time to contend that when the impugned order was passed and attempted to serve upon the appellant, the Office remained closed as one of the employees was suffering from COVID-19 and quarantine regimen, and restrictions of movement were in place.
12. We have heard the learned counsel for the parties at great length. Proceedings against the appellant were initiated when a list of properties was received from the Amritsar Development Authority



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on 16.01.2018 regarding the violation of Section 3 of the Act which included the appellant, whereupon a notice under Section 59 was initiated by the Authority and the appellant was asked to explain the reasons for violating the law. A reminder was issued on 14.03.2018 and duly received by the appellant who responded on 20.03.2018 requesting for time to collect the documents required for registration. It was followed up by another request on 18.05.2018 wherein it was pointed out that they had applied to the Amritsar Development Authority in September 2018, for a grant of Completion Certificate but the same has not been issued and was pending consideration.

13. On 09.08.2018 the representative of the appellant-company appeared with his counsel and sought two months time to register a project. However, no application was received thereafter. Indeed for some time the matter remained adjourned sine die on account of the pendency of a related matter M/s Damini Resorts Builders Pvt. Ltd. which could have had a bearing on the appellant's case. Thereafter, the matter was again taken up by the Authority on 26.12.2018 and through a prior communication dated 21.12.2018 the criteria fixed by the Authority was duly explained to the promoter who was asked to clarify whether it fulfilled the parameters laid down in M/s Damini Resorts Pvt. Ltd. within a period of 15 days from the date of receipt of the letter which was delivered to the appellant on 05.01.2019. None came present on the appellants' behalf and finally, ex-parte proceedings were ordered on 31.01.2019. The Authority then decided to proceed with the imposition of penalty and the appellants' representative was asked to submit evidence with regard to proposed penalty. Finally, mater was taken up on 25.03.2021 and upon consideration of the report by the Amritsar Development Authority the impugned order



imposing the penalty of Rs.60,00,000/- was passed and sent through a registered post to the appellant. The learned counsel for the respondent produced the original service report before us which revealed that as many as four times the postal authorities attempted to deliver the registered letter but the "shop was always found locked".

14. Be that as it may the facts as noticed above reveal that in 2018 itself the appellant appeared along with his counsel (09.08.2018) and sought two months time to register a project whereafter, it was obligatory upon the appellant to submit his application. Covid issues started after March 2020, but for two years the appellant neither submitted his application for registration nor made any attempt to enquire about the proceedings even though he was on notice and alive to the situation. Besides, after the matter was adjourned sine die to await the decision in M/s Damini Resorts Pvt. Ltd. the appellant was apprised of the parameters that needed to be complied with and this letter was also duly served upon the respondent on 05.01.2019, but none came present and finally on 31.01.2019 ex-parte proceedings were initiated. It is thus the apathy of the appellant which resulted in passing of the impugned order in his absence. He was alive to the situation since 2018 and had participated therein. No explanation has been given regarding this default which can be termed to be deliberate. Non-registration of the project is a serious matter and once the Authority gave notice in this regard proposing to proceed against him under Section 59 the appellant was on notice of the consequences of such a course undertaken by the Authority but from 2018 despite being aware of these issues, he made no attempt to make an application for registration even though a request in this regard was made to the Authority in 2018 itself.



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15. We are thus convinced that the appellant has been evasive and though being in the know of the entire proceedings deliberately kept himself away resulting in the impugned order which was also sent to him through registered post with as many as four attempts made by the postal authorities to deliver the same.

16. That apart in the application accompanied by sworn affidavit no such pleas were taken as the ones taken during the course of arguments and submitted before us by way of written submissions. Evidently, such pleas of Covid etc. are an afterthought. Since we find the explanation to be uninspiring we do not deem it to be a fit case where we can condone such an inordinate delay of more than 850 days. A reference to the following judgments of the Hon'ble Supreme Court of India, provide sustenance to our view expressed above:

- (i) *Esha Bhattacharjee versus Raghunathpur Nafar Academy, (2013) 12 SCC 649.*
- (ii) *C.C. Alavi Haji versus Palapetty Muhammed, (2007) 6 SCC 555.*
- (iii) *Madan and Co. versus Wazir Jaivir Chand, (1989) 1 SCC 264.*



17. Application is therefore declined. As a consequence, the appeal is held to be barred by the limitation.

18. Dismissed.

Sdr
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

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

March 14, 2024
SR

Certified To Be True Copy
Dharmendra Kaur
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
22/03/2024. *[Signature]*