

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

Subject: -

APPEAL NO. 171 OF 2022

Harnek Singh S/o Sh. Bhag Singh, Aged 54 years, R/o Nakodar Road, Satnampura, Phagwara, District Kapurthala.

...Appellant

Versus

1. Real Estate Regulatory Authority, Punjab, Madhya Marg, Sector-18, Chandigarh, through its Chaiperson.
2. Chairperson Real Estate Regulatory Authority, Punjab, Madhya Marg, Sector-18, Chandigarh.

....Respondents

Memo No. R.E.A.T./2022/501

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 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 04th day of October, 2022.



Manoj Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

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**BEFORE THE CHAIRMAN, REAL ESTATE APPELLATE
TRIBUNAL, PUNJAB**
SCO 95-98, (Top Floor, Above Aadhaar Card Office, Punjab
Financial Corporation Building)

Appeal No.....171.....of 2022

Memo of Parties

HARNEK SINGH son of Shri BHAG
SINGH, aged 54 years, resident of
Nakodar Road, Satnampura,
PHAGWARA, District KAPURTHALA.

...Appellant

Versus

1. REAL ESTATE REGULATORY
AUTHORITY, Punjab, Madhya Marg,
Sector 18, CHANDIGARH, through its
Chairperson.

2. CHAIRPERSON REAL ESTATE
REGULATORY AUTHORITY, Punjab,
Madhya Marg, Sector 18, CHANDIGARH.

...Respondents



19/09/2022
I.S. RATTI & T.S. RATTI
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98140-27419 98154-60073

CHANDIGARH
DATED: 06.09.2022

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

APPEAL NO. 171 OF 2022

Harnek Singh S/o Sh. Bhag Singh, Aged 54 years, R/o Nakodar
Road, Satnampura, Phagwara, District Kapurthala.

...Appellant

Versus

1. Real Estate Regulatory Authority, Punjab, Madhya Marg,
Sector-18, Chandigarh, through its Chairperson.
2. Chairperson Real Estate Regulatory Authority, Punjab, Madhya
Marg, Sector-18, Chandigarh.

....Respondents

Present: Mr. Iqbal Singh Ratta, Advocate for the appellant.

**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 is directed against the impugned order dated
09.09.2019 and subsequent order dated 10.02.2022²⁰²⁰~~2022~~
passed by the Real Estate Regulatory Authority, Punjab
(hereinafter known as the Authority).
2. List of non-compliant projects dated 12.01.2018 was sent
by the Jalandhar Development Authority to the Authority
informing, that the appellant's project by the name and
style of 'Charan Enclave' at village Kakkon, Tehsil &



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Distt. Hoshiarpur was in complete violation of Section 3 of the Act.

3. A show cause notice was thus issued on 06.02.2018 to the appellant (hereinafter known as the developer) as to why proceedings under Section 59 be not initiated against him.
4. This notice was received back with report "wrong address", prompting the Authority to intimate the Jalandhar Development Authority through a communication dated 22.02.2018 requesting it to effect service of the notice upon the developer which was done upon the representative of the developer i.e. Duggal Agencies Satnampura, Phagwara. This fact was conveyed to the Authority by the Jalandhar Development Authority vide its letter dated 24.05.2018. Another notice was also sent on 10.05.2018 which was received back undelivered with report "out of station RTS". It was felt by the Authority that service of the notice upon the developer through ordinary process was not a feasible option given the past track record and thus publication of the notice was effected in 'The Tribune' dated 02.09.2018 informing the developer to appear before the Authority on 22.10.2018.



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5. Pursuant to this publication Sh. Sham Sundar, representative of the developer appeared on the assigned date i.e. 22.10.2018 and informed the Authority that Harnek Singh the partner to whom the notice was addressed was in jail but he would persuade the other partners to apply for registration under the Act so as to make the project compliant. The case was then adjourned to 10.12.2018 on which date also the representative of the developer appeared and prayed for an adjournment which was allowed and the case was adjourned to 07.01.2019, on which date Sham Sundar, the representative of the developer appeared again and pleaded for more time which was allowed. No one appeared on behalf of the developer on the next date of hearing or thereafter and the matter was directed to be proceeded with, ex-parte on 14.03.2019.
6. Since the developer failed to produce any material to justify its non-compliance of the provisions of the Act, the representative of the Authority was asked to produce its evidence and finally the matter was taken up on 16.05.2019. The report received from Jalandhar Development Authority giving the details of the project was brought on record. It gave out the total cost of the project as also its prospects. The project was reported to be in an area of more than 8 acres and was residential in



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character. Cost of the project was shown as Rs. 249.57lacs. Cost of approvals/external development charges and license fee was mentioned as Rs. 45.75lacs and Rs. 3.83lacs respectively making the total cost as Rs. 299.15lacs.

7. After having considered this material and in the absence of any material to the contrary the Authority recorded a violation of Section 3 of the Act by the developer and after taking the cost of project as Rs. 299.15lacs imposed a maximum penalty permissible under the law i.e. up to 10% of the cost of the project but by taking a sympathetic view a lesser penalty than the maximum of Rs.15lacs was imposed. It was further directed that this shall be deposited in the Government treasury under Head-0216-Housing-80-General-800 within 2 months from the date of issue of this order and submit the copy of the receipt to the Authority for its record.

8. After this ex-parte order dated 09.09.2019 an application was moved for setting it aside on 17.12.2019.

It was pleaded that whole of the family of the developer was lost in an accident on 26.03.2017. The appellant Harnek Singh was in a police custody w.e.f. 08.02.2018 till 01.06.2019 and hence was totally unaware of the show cause notices as well as orders passed by the



Authority on 09.09.2019. It was next pleaded in para 3 of the application that delay in completion of project as well as registration was due to delay in acquisition of land and obtaining regulatory clearances from the competent authorities. That apart a general slump in the real estate activity was also pleaded along with the effect of demonetization on the economic activity. These were broadly the reasons set up by the developer in his application dated 17.12.2019 pleading for setting aside ex-parte order dated 09.09.2019. This was answered by the Authority vide the order dated 10.02.2020 and the prayer was declined.

10. The appellant is thus before us in these circumstances impugning both the orders dated 09.09.2019 and 10.02.²⁰²⁰~~2022~~.
11. It has been argued by the learned counsel for the appellant with reference to the impugned order dated 10.02.2020 that issue has been decided as if it were an application for review whereas it was primarily for setting aside the ex-parte proceedings. It was next argued by the learned counsel for the appellant that the appellant was in custody and it was for the Authority to ensure service of the summons in the jail. Lastly it was argued that in any case the partnership deed stood dissolved and the



Authority ought to have taken consequential effect of these facts into consideration to answer the legal proposition as a partner of a dissolved firm, ^{and} no liability _{Mr} could be fastened upon him.

12. We have heard the learned counsel for the appellant at some length but are unable to persuade ourselves to agree, with his contentions in the appeal. The first and foremost submission of the learned counsel for the appellant that the application was decided as an application for review rather than the one for setting aside ex-parte proceedings would be inconsequential, considering that all the pleadings and submissions set out in the application have been dealt with by the Authority. Therefore, it makes no difference if it has been styled as an order or review rather than one for setting aside ex-parte proceedings. It was open to the appellant to show prejudice on this count. None has been shown. In para 5 of the order dated 10.02.2020, the Authority has noticed that the appellant was proceeded against ex-parte after giving him many opportunities to appear and explain his position, but he did not avail of these opportunities, rather he appeared and defaulted. It was for him to explain the default. The plea of the appellant that he was in judicial custody on 08.02.2018 to 01.06.2019 was also discarded as no document to this



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effect had been produced or annexed with the application. Apart from this it was noticed that the first impugned order of the Authority was passed on 09.09.2019 more than 3 months after the appellant's release from custody. It may not be out of place to mention here that after publication was done, one Sh. Sham Sundar, representative of the firm appeared on 22.10.2018 and informed the Authority that Harnek Singh the present appellant was in jail. But he assured the Authority that other partners would be persuaded to apply for registration upon which the matter was adjourned to 17.01.2019. On this date also Sh. Sham Sundar pleaded for time which was granted. But thereafter he defaulted in appearance and none appeared leading to ex-parte proceedings. The appellant has miserably failed to show that Sh. Sham Sundar was not authorized to appear on behalf of the firm. Rather he states that this person was known to him and if that be so it cannot be appreciated that the appellant would not be in the know of the proceedings. Before us today, the learned counsel for the appellant made a lame attempt to wish away presence of Sh. Sham Sundar even while acknowledging his acquaintance with him as is evident from the record. Evidently the stand of the appellant in this regard is not worth acceptance.



13. Cumulatively looked at, there is absolutely no justification offered by the appellant at any stage before the Authority or before us with regard to non appearance.
14. It has been argued by the learned counsel for the appellant with some vehemence that the partnership stood dissolved and thus it should have been taken note of by the Authority. The effect of such a dissolution being a legal proposition ought to have been answered, is an argument raised repeatedly before us.
15. We are unable to appreciate this argument for the reason that this fact was not even pleaded ever before the Authority while making an application for setting aside the ex-parte order. So much so there seems to be nothing on record before the Authority to this effect. Even otherwise whether a firm was dissolved or whether the firm was reconstituted or not are matters based on evidence. In this case it was not even pleaded, assuming the Authority had the jurisdiction to deal with such an issue of validity of dissolution deed and its consequential effects. No material was ever produced before the Authority.
16. Apart from these facts, the appellant has also failed to show and satisfy the Authority as also us regarding the primary issue of non-registration of the project. Rather it was contended by Sh. Sham Sundar when he appeared



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before the Authority that he ^{would} persuade ^{it} the partners to get the project registered to avoid any consequence and the liability under the Act. The appellant has nowhere stated that the project is not in existence and if that be so, he has no option but to be compliant ⁱⁿ ~~of~~ law. Even before us the appellant has not shown even the remotest inclination to get the project registered.

17. For the aforestated reasons we are of the opinion that the appellant has failed to show anything from the record that could persuade us to interfere with the impugned order passed by the Authority. The appeal is held to be without any merit and is hereby dismissed.
18. The amount deposited by the appellant in compliance of Section 43(5) of the Act which we have retained in a fixed deposit shall be released and deposited in the account of the Real Estate Regulatory Authority, Punjab as directed in its impugned order dated 09.09.2019 in account of the Government treasury under Head-0216-Housing-80-General-800.

File be consigned to the record room.

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)

September 19, 2022
DS



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

09/10/2022