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

Subject: -

Appeal No. 64 of 2021

TRI STAR HOTELS PVT. LTD. NO.1216 HAL 2ND STAGE 1007 FEET ROAD INDIRA NAGAR BENGALURU KARNATAKA 560008 THROUGH AUTHORIZED SIGNATORY SH. RS BEDI.

....Appellant

Versus

1. CURO INDIA PVT. LTD. HAVING ITS REGISTERED OFFICE AT K-28, GREEN PANK EXTENSION, NEW DELHI-110016 THROUGH ITS CHAIRMAN/MD/DIRECTOR
2. SH. PAWAN GARG (CHAIRMAN AND MD OF RESPONDENT NO.1)
3. SH. ABHINAV GARG (DIRECTOR OF RESPONDENT NO1)
4 SH. ABHAY GARG (DIRECTOR OF RESPONDENT NO.1

....Respondents

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Memo No. R.E.A.T./2022/ 106

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 **11th day of March, 2022.**

REAL ESTATE APPELLATE TRIBUNAL PUNJAB * CHANDIGARH *

REGISTRAR
REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

IN THE REAL ESTATE APPELLATE TRIBUNAL OF PUNJAB AT CHANDIGARH

MEMO OF PARTIES

TRI STAR HOTELS Pvt. Ltd. No. 1216 HAL 2nd Stage 1007 Feet Road Indira Nagar Bengaluru Karnataka 560008 though authorized signatory Sh. RS Bedi

...Appellant

And

1. CURO INDIA Pvt. Ltd. having its registered office at K-28, Green Park Extension, New Delhi – 110 016 through its Chairman/ MD/ Director.
2. SH. PAWAN GARG (Chairman and MD of Respondent no. 1)

   (pawangarg@curoindia.com) K-28, Green Park Extension, New Delhi – 110 016
3. SH. ABHINAV GARG (Director of Respondent no. 1)

   (gargabhinav.garg@curoindia.com) K-28, Green Park Extension, New Delhi – 110 016
4. SH. ABHAY GARG (Director of Respondent no. 1)

   (abhay.garg@curoindia.com) K-28, Green Park Extension, New Delhi – 110 016

... Respondents

Mehuklgupta

VIJAY K. GUPTA & Co.
(COUNSEL FOR THE APPELLANT)
D1 DHAWANDEEP BUILDING,
6 JANTAR MANTAR ROAD,
NEW DELHI-110 001
98103 1050203, 9899613344
Email: Lawyervijay32@rediffmail.com

DELHI
DATED:01.09.2021

REAL ESTATE APPELLATE TRIBUNAL PUNJAB * CHANDIGARH *

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
AT CHANDIGARH

Appeal No. 64 of 2021

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Versus

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2. SH. PAWAN GARG (CHAIRMAN AND MD OF RESPONDENT NO.1)
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....Respondents

Present: - For the appellant
Mr. Vijay K. Gupta, Advocate
Mr. Gaurav Deep Goel, Advocate

For respondents
Mr. Aashish Chopra, Senior Advocate with
Mr. Shobit Phutela, Advocate
Ms. Maher Nagpal, Advocate

***

QUORUM:**JUSTICE MAHESH GROVER (RETD.), CHAIRMAN**
SH. S.K GARG DISTRICT AND SESSIONS JUDGE (RETD.)
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER (ADMINISTRATIVE/TECHNICAL)

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JUDGMENT: (*Justice Mahesh Grover (Retd.)*)

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1. This appeal is directed against the order dated 09.07.2021 of the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority) dismissing the complaint of the appellant, wherein he sought revocation of the project under Section 7 of the Act along with other consequences prayed for in the complaint.

2. The facts of the case serve as a prequel to the complaint and therefore need to be set out to understand the controversy.

3. An agreement to sell dated 19.07.2006 was entered into between the appellant and a company known as Dynamic Continental Private Limited and the present respondent is its successor with a changed nomenclature-an admitted fact. It was agreed between the contracting parties that the appellant would purchase land for development of a Five Star Hotel-cum- Service Apartment Complex in land measuring 1.53 acres depicted in Schedule A and specifically demarcated as Appendix B to the agreement (also described as Schedule B). It was agreed that this property, with sanctionable built-up area of 2,00,000 sq. ft. would be transferred to the appellant upon total sale consideration of Rs.12.50 crores for the purpose

noticed above, in accordance with change of land use and FAR 1:3 together with a frontage of 120 feet. The schedule of payment was also agreed upon. The appellant paid a sum of Rs.6.5 crores but the sale did not fructify, despite various communications inter se between the parties, that also suggest a follow up by the respondent with the Government of Punjab.

4. A letter was written by the respondent to the complainant on 18.10.2008, informing them that it would not be possible to obtain CLU for building a hotel for the reason of a prescribed requirement by the State of a minimum 200 sq. feet frontage and since the land in question merely had a frontage of 120 feet, the Legal Department of the Company was of the opinion that agreement dated 19.07.2006 (Agreement to sell on record as Annexure A-6) was frustrated in the eyes of law and could not be acted upon. It went on to say that the agreement to sell was of no consequences in view of the legal impediment. This was followed up by a similar communication dated 20.10.2008. However, in this exchange of letters one of the respondent's communication dated 25.10.2008 suggests that CLU could be obtained by projecting the proposal as an "**integrated plan for construction of hotels**" etc. on the whole land measuring

about approximately 8.24 acres. It was suggested that if such a course is adopted, the agreement dated 19.07.2006 may not be frustrated. The appellant was asked to pay Rs.5 crore for applying for CLU.

5. On 30.10.2008, another letter was written by the respondent to the appellant informing him that an amount of Rs.5 crores, for change of land use be paid immediately. This mail was followed up by a similar communication on 01.11.2008 and 08.11.2008. This apparently is the last communication between the parties on the subject and admittedly so.

6. The fact that after 08.11.2008, no steps were taken by either of the parties in furtherance of the agreement to sell dated 19.07.2006 is not denied. It is also not disputed that a notification of the State dated 11.01.2008 does prescribe a frontage of 200 sq. feet for a hotel project.

7. After lapse of 8 years, the respondent commenced upon development of a project on 01.07.2016, independent of what was conceptualized in the agreement dated 19.07.2006, after the registration was granted by the RERA, Punjab on 18.12.2017.

8. A complaint was preferred by the present appellant three years thereafter i.e. on 12.10.2020. A perusal of Clause 4 of the complaint, wherein facts are detailed shows that the entire history of the intended transaction to purchase the land, flowing from agreement dated 19.07.2006, which we have already noticed above was given and a grievance was made that the respondent was involved in unfair trade practice in not disclosing a subsisting transaction with the complainant, wherein Rs.6.50 crores was taken by them but instead of transferring the said land, the respondent sought to build up a commercial and residential project on the land after wrongfully misappropriating the amount of Rs.6.5 crores. It was pleaded that the appellant would have a lien on the land and since these facts were not mentioned in the application for registration of the project, the same be cancelled and the respondent be visited with consequences under Section 7 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter known as the Act).

9. The respondent had filed a reply to the complaint admitting the agreement to sell but asserted that the same stood frustrated in view of the legal impediment prescribing a

frontage of 200 sq. ft. as a consequence of which obtaining a CLU became non-feasible. This fact was duly informed to the appellant in the year 2008 itself but the appellant failed to carry it forward as the communications noticed above did not go beyond November, 2008, even when there was a suggestion by the respondent to go ahead with a proposal of an integrated development plan to come within the parameters of legal requirements. The appellant neither responded thereto nor did he pay the amount of Rs.5 crore and thus in the wake of this lack of interest of the appellant after 2008, the agreement dated 19.07.2016, was rendered inconsequential and terminated, in view of Clause 19, which is extracted hereinbelow:-

> *"19. Default by either of the parties to the agreement:*
>
> *i) In the event that the permission and approval of the Government of Punjab for the purpose of the issuance of the change of land use for the Schedule-A Property is not issued within twelve months from the date of this Agreement, other than on account of the default of the FIRST PARTY, then at the sole option of the SECOND PARTY, the time to obtain the said permission shall be extended for another period of twelve months. In the event that the said permission is not issued even after the expiry of twenty four*

(24) months from the date of this Agreement, then the present agreement shall stand terminated and FIRST PARTY shall refund all the amounts, already received to the SECOND PARTY.

10. That apart, it was pleaded in the reply that no legal proceedings were initiated by the appellant to enforce the agreement either in the Court of Law or through a mutually agreed upon process of arbitration and thus the conduct of the parties would suggest a termination of the agreement. Besides, the proceedings initiated by the appellant before the Authority were also after about three years of grant of registration and thus belated. It was also pleaded that the respondent was under no obligation to disclose a transaction, which stood frustrated in the Year, 2008, with no follow-up by the appellant to assert his claim to the land upon which he now claims lien after a lapse of more than a decade.

11. While determining the complaint, the Authority observed that the parties had indeed entered into an agreement in the Year 2006, whereas the Act came into existence partly in 2016 and partly in 2017. The Act would operate only if a Real Estate project is being developed by the promoter and would fall within the definition of Real Estate Project if land is being

developed into plots, whereas the transaction between the parties indicated a sale of single plot. Upon this reasoning the complaint was held to be not maintainable. The Authority went on to determine the issue on merits as well and observed that the complaint cannot succeed on this count as he has not sought possession of the plot but pressed for revocation of the registration of the respondent's project requiring such a prayer to be dealt with under Section 7 of the Act and the only argument raised in this regard is that the respondent had not disclosed the factum of agreement for sale at the time of applying of registration for the project thereby violating Section 4(2)(m) of the Act. With reference to Rule 15 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, the Authority observed that an unregistered transaction between the parties cannot be construed to be 'encumbrance' on the land warranting a disclosure to the Authority at the time of registration of the project.

12. Aggrieved thereof, the appellant in the present appeal through his counsel submits that since there was a subsisting agreement to sell with a well-defined purpose of a development of a project, it would fall within the definition of

an ongoing project to attract the provisions of the Act. It was argued with vehemence that the Authority was wrong in holding that the complaint was not maintainable as the project did not envisage the development of the land into plots and merely envisaged the sale of a single plot, whereas the agreement and the facts would speak to the contrary. It was further argued that Section 4(2)(m) would warrant a disclosure of any transaction related to this land particularly when the appellant had paid a substantial sum of Rs.6.5 crores in furtherance of the agreement to sell, which would automatically create his lien on the land, in which eventuality it was obligatory upon the respondent to reveal such a fact in view of the requirement of Section 4(2)(m) and a failure to do so would invite the consequences under Section 7 of the Act.

13. The respondent on the other hand has argued that since, 2008 the appellant took no steps to enforce the agreement or take any steps in furtherance of the proposed project and the respondent was thus within its right to ignore the agreement particularly when sufficient communications had been made in this regard. The appellant had been informed that the agreement stood frustrated. In fact his claims if any now stand

barred by the law of limitation and even the present complaint has been filed after three years of the registration of the project with no explanation as to why the proceedings have been initiated after such a delay. The appellant cannot even remotely enforce the agreement at this point of time and a frustrated agreement to sell cannot be construed to be 'encumbrance' warranting disclosure under the Act. It was thus argued that the Authority was absolutely right in dismissing the complaint.

14. We have heard the learned counsel for the parties at some length.

15. Concededly, there was an agreement to sell, which did not fructify and the communications between the parties stalled in the year 2008 itself. There is nothing to suggest that the appellant ever made any attempt to either enforce the agreement through a Court of law or any other mode of dispute settlement. Rather, he chose not to raise any dispute at all and remained quiet for almost 14 years of the execution of the agreement to sell.

16. Section 4 (2) obligates a promoter to disclose certain information by enclosing documents along with the application. It is Clause (m), which has been pressed into service, which reads as " *such other information and documents as may be prescribed*".

17. It is evident that apart from the information that the Act specifically obligates under Section 4(2), Clause (m) mandates through an open ended language the disclosure of "**any other information and documents as may be prescribed**". The word "**prescribed**" has been defined in Section 2(z) (i) to mean as 'what is prescribed by Rules made under this Act'. These words assume significance as they limit the disclosure of information as warranted under the Act and the Rules. Rule 15 supplements this provision of Section 4(2). One has to therefore travel to Rule 15, which lays down the details of the encumbrances on the land on which project is proposed to be developed. Relevant extract of Rule 15 is as below:-

E. *Details of approvals, permissions, clearances, legal documents-*

(ii) legal documents,-

(a) *details including the Performa of the application form, allotment letter, agreement for sale and the conveyance deed;*
(b) authenticated copy of the legal title deed reflecting the title of the promoter to the land on which development of project is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(c) *land title search report from an advocate having experience of at least ten years;*

(d) *details of* ***encumbrances*** *on the land on which development of project is proposed* ***including details of any rights, title, interest and name of any party in or over such land or non encumbrance certificate through an advocate having experience of atleast ten years from the revenue authority not below the rank of Tehsildar, as the case may be;***

(e) *where the promoter is not the owner of the land on which development is proposed, details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into*

between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed;

(f) details of mortgage or charge, if any, created on the land and the project.

18. The argument of the appellant is that since the respondent did not disclose the existence of an agreement to sell inter se between them, which according to him is still subsisting, it would form a lien on the land warranting a disclosure in terms the aforementioned provisions of law and failure to do so would attract the consequences of Section 7 of the Act read with Rules.

19. We are not inclined to accept this argument. Indeed the provisions of Section 7 of the Act and Rule extracted above would obligate a promoter to disclose an 'encumbrance' or 'charge on the land' but whether a mere agreement to sell admittedly gone wrong and not cemented or crystallized into an enforceable right through the Court of law can ever be construed to be an encumbrance and hence an information requiring disclosure under Section 4 (2) (m) of the Act read with Rules and the answer would be in the negative. A simple

dictionary meaning of the word "encumbrance" would suggest it to be "a burden or claim on the property as mortgaged". A perusal of the Rule 15 gives the details of the legal documents to be provided by the promoter and Clause (d) indicates the particulars of the encumbrances on the land on which development of project is proposed, including '**details of any** rights, title, interest and **name of any** party in or over such land.'

20. It is evident that the appellant failed to get his rights flowing from the agreement to sell, acknowledged through any legal proceedings or course available to him. The agreement to sell inter se between the parties executed 14 years back, in this scenario can hardly be termed to be an encumbrance in the absence of any concretization of the rights of the parties through any proceeding, decree or a legal acknowledgment.

21. Even though, a perusal of the Rule 15 (E) (ii) (d) suggests the disclosure of any interest of any person in the property/ in or over such land (i.e. on which a project is proposed) but the provision in the same flow of language, sets up alternatively the disclosure of an information/ encumbrance certificate from a revenue authority not below the rank of Tehsildar duly

certified by an Advocate, having at least 10 years experience. This is clearly suggestive of an emphasis on the word 'encumbrance' as understood commonly in legal parlance, to mean a charge, sale, mortgage or any unlawful/lawful possession of any third person other than the contracting parties.

22. In the facts of the case, the interest derived by the appellant through an agreement to sell more than a decade back would hardly have found its presence in any revenue record when not concretized by a decree or any enforceable order, or a legal acknowledgement warranting recognition of any interest of the appellant by the revenue authority, assuming, such a right subsisted.

23. For the sake of argument, even if it is supposed that it was obligatory upon the respondent to disclose this, then it can merely stated to be a desirability not backed by a mandate of law and if such a disclosure has not been made one cannot visit the harshness of Section 7 of the Act upon the respondent for not doing so. Apart from the reason detailed above Clause 19 of the agreement clearly envisages its termination in the event of a failure to obtain a CLU within 24 months, which

expired in 2008 almost the same time the last communications were entered into between the parties i.e. November, 2008.

24. An argument was raised that a perusal of Clause 19 not only prescribes the termination of the agreement upon failure to obtain CLU but also the return of money, to restore the parties to status quo ante and since the amount has not been returned, it would suggest the continuance of an agreement.

25. The argument is without any substance for the reason that these are issues to be settled through appropriate proceedings, which are available to both the parties in furtherance of the agreement. The RERA Authority under the Act or we as an Appellate Tribunal can hardly act in furtherance of the claim of the appellant revolving around the enforceability of an agreement, its validity or subsistence as on today. The only thing that the Authority was required to look into was whether there was concealment/non-disclosure by the respondent of the requisites prescribed under the Act and Rules so as to warrant proceedings under Section 7 of the Act and to our minds it has rightly appreciated that mere execution of an agreement without a further acknowledgment of a legal title or

a valid decree in the given set of facts cannot be construed as an encumbrance to obligate a disclosure under the Act.

26. Likewise, the argument of the learned counsel for the appellant that the project envisaged in the agreement to sell dated 19.07.2006 would mean that the project was ongoing when the Act was introduced inviting the applicability of the Act has to be negatived, as such a presumption is far-fetched. An ongoing project has been defined in Section 2 (h) of RERA Rules, 2017. Section 2 (h) is reproduced herein below:-

> *(h) "ongoing projects" means the Real Estate Projects which are ongoing in which development and development works as defined in Section 2(s) and Section 2(t) of the Act are still under way, excluding the area of portion of the Real Estate Project for which partial completion or occupation certificate, as the case may be, has been obtained by the promoter of the project*

By no stretch of imagination, can it been said that a mere agreement to sell envisaging a proposal for a project be termed to be an ongoing project when it is sans any tangible development pursuant to a conceptualized and proposed project.

27. Insofar as the applicability of the Act is concerned, we grant the appellant the benefit of consideration under the provisions of the Act because had he approached the Authority as an individual without the baggage of his past, even then the Authority would have been bound to look into his complaint, keeping in view the nature thereof i.e. misconduct of a promoter/developer in not disclosing requisite information mandated by law.

28. In conclusion, we can say with regard to this argument that even though the project cannot be termed as an ongoing project but the appellant can still maintain his complaint against the respondent for non-disclosure of vital information, but in view of our findings in the forgoing paragraphs, we cannot hold that it was an 'encumbrance' under the law requiring disclosure. The appeal is held to be without any merit.

Dismissed.

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)

REAL ESTATE APPELLATE TRIBUNAL PUNJAB CHANDIGARH

March 10 , 2022
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Real Estate Appellate Tribunal Punjab
Chandigarh
11/03/2022