

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

Subject: -

APPLICATION No.78 of 2024

M/s 7C Realty Management Pvt. Ltd. through its authorized signatory Sh. Rakesh Kumar Sharma, SCO 2, Sector 80, SAS Nagar (Mohali), Punjab, India, 140308.

...Applicant

Versus

Real Estate Regulatory Authority, Punjab, First Floor, Block B, Plot No.3, Sector 18A, near Government Press, Madhya Marg, Chandigarh,-160018.

....Respondent

Memo No. R.E.A.T./2024/ 149

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 for be uploading the same on website.

Given under my hand and the seal of the Hon'ble Tribunal this 10th day of April, 2024.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



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

Application No. 78/2024

M/s 7C Realty Management Pvt. Ltd.

....Applicant

Versus

Real Estate Regulatory Authority, Punjab

....Respondent

MEMO OF PARTIES

M/s 7C Realty Management Pvt. Ltd through its authorized signatory Sh. Rakesh Kumar Sharma, SCO 2, Sector 80, SAS Nagar (Moahli), Punjab, India, 140308.

26-03-2024

....Applicant

Versus



Real Estate Regulatory Authority, Punjab, First Floor, Block B, Plot No.3, Sector 18A, near Government Press, Madhya Marg, Chandigarh, -160018.

....Respondent

Place: Chandigarh

Dated: 26-03-2024

7C Realty Management Pvt. Ltd.

Director
Signatures of applicant

Through Counsel

Mohit Dhiman & Pooja and Manisha Maggu
(PH/5981/20221)&(PH/2251/2019)&(PH/3341/2022)
Advocates

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPLICATION NO. 78 OF 2024

M/s 7C Reality Management Pvt. Ltd through its authorized signatory Sh. Rakesh Kumar Sharma, SCO 2, Sector-80, SAS Nagar (Mohali), Punjab, India, 140308

...Applicant

Versus

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

....Respondents

Present: - Mr. Mohit Dhiman Advocate along with Ms. Manisha Maggu, Advocate for Appellant
Mr. Prashant Rana Advocate along with Mr. Jaspal Khaira, Advocate for 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. In this application a limited prayer has been made, that the Authority be directed to issue a Registration Number to the applicant and the project be deemed to have been registered in terms of Section 5(2).

2. It has been pleaded before us that the issue regarding the grant of Registration was considered by the Authority in its meeting dated 24.01.2024, after the applicant had submitted his application through Diary No.PRJ2023SAS0058 on 19.05.2023 upon completing all the queries raised by the Authority from time to time.

3. It has been asserted by the applicant in its petition supported by an affidavit that the prayer for registration was accepted by the



Authority in its meeting on 24.01.2024 and Sh. Rakesh Kumar Sharma, the representative of the applicant, present in the meeting, was verbally informed of the approval.

4. However, even after passing of more than 2 months no intimation about acceptance or rejection of the application has been given to the applicant. The website of the Authority does not indicate the status of the project after 24.01.2024.
5. In the backdrop of the above facts the applicant pleads that in terms of Section 5(2) of the Act, the project be deemed to have been registered and the Authority be mandated to grant Registration Number, Login I.D. and Password to the promoter.
6. For the purposes of reference Section 5(1)(2) is extracted here below:

(1) on of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login ID and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; of

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to



fill therein the details of the proposed project.

7. We had issued notice to the Respondent-Authority and Sh. Prashant Rana appeared on behalf of the Authority on 04.04.2024 to seek instructions with regard to the facts noticed above.
8. We have heard the learned counsel for the parties.
9. On our paper-book, appended as Annexure A-II, is a notice issued by the Authority on 28.02.2024 informing the promoters and general public about the delay in processing applications of registration, extensions and revisions of Real Estate Projects, in view of the fact, that the Chairperson and a Member of the Authority had relinquished their positions.
10. The Real Estate Regulatory Act mandates registration of all the projects undertaken by a Developer to ensure that they come within the regulatory mechanism envisaged in the Act.
11. A perusal of Section 5 makes it abundantly clear that the issue of grant of registration has to be considered with promptitude and for that purpose a period of 30 days has been prescribed for consideration that may result in acceptance or rejection of the project.
12. In the case of rejection the applicant has to be given an opportunity of being heard prior to passing of such an order, but if no decision is taken within 30 days the project shall be deemed to have been registered. Such is the mandate of the statute with a further directive that after the expiry of 30 days the Registration Number, Login ID and Password is to be provided to the promoter within 7 days thereafter.



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13. If we see the facts of the case then concededly the meeting for consideration of the issue of registration of the project took place on 24.01.2024 which would imply that 30 days would expire on 24.02.2024. In this period no intimation was given to the applicant regarding acceptance or rejection of the prayer. The notice issued by the Authority is of 28.02.2024 which is beyond the period of 30 days.
14. The content of the notice is demonstrative of the fact of the Authority being aware of the consequences of not taking or communicating the decision to the developer after consideration. The holding of meeting and consideration of the case of the developers as an admitted fact, is an inescapable conclusion.
15. That apart the Authority in its notice has enlarged the time under Section 5 by inserting a clarification in the language "it is clarified that until the requisite Regulatory Authority is formed or until the State Government issues a order in this regard, the deemed approval as provided in Section 5 of the Act shall not be applicable" such a clause in the notice means enlargement of time granted under the statute or virtual negation or suspension of the provision altogether for which the Authority would have no powers. There is nothing in the Act that empowers the Authority to circumvent the statutory provisions of the Act or defer or suspend its applicability as has been done through notice dated 28.02.2024.
16. It is a settled provision of law that executive instructions cannot override the legislative provisions. In the instant case the case is on a worse footing as the communication dated 28.02.2024 is



merely an administrative order through which the legislative effect of Section 5(2) is being scuttled depriving a developer of his statutory entitlement.

17. The mandate of Section 5 prescribing a period of 30 days is unambiguous and failure to take decision within such time would entail a deemed registration of the project. Not only this the notice issued by the Authority on 28.02.2024 is flawed on another count, when it says that the "notice shall apply in relation to the registration, extension, revision of Real Estate Projects and other related matters under the provisions of Real Estate Regulations and Development Act, 2016 with effect from 08.02.2024". This implies giving a retrospective effect to a decision taken on 28.02.2024.
18. Assuming for the sake of arguments that such a notice was sustainable, even then the information should have been given to each and every developer whose matters were considered on 24.01.2024, otherwise they would fall within the ambit of Section 5(2) to invite a deemed Registration.
19. It was imperative for the Authority to inform every developer whose matter was listed on 24.01.2024 or in a similar meeting held on any other date where after 30 days have expired without a decision of acceptance or rejection. If the same was not done then it would operationalize the provisions of Section 5(2) and to our minds there cannot be any better example of such a deemed registration then the one in the present scenario.
20. The learned counsel for the respondent has raised objections about the maintainability of the present proceedings and also



submitted that given an opportunity they would decide the matter within a period of 1 week. We have considered this aspect but are not agreeable to the submission of maintainability of the present proceedings for the simple reason that it is in-action on the part of the Authority that has given rise to the statutory right of the appellant. It is in these circumstances that he has approached us because evidently the Authority through its notice Annexure A-2 has clearly conveyed its mind with regard to Section 5(2) of the Act. Insofar as the plea of deciding the matter within 1 week is concerned it is entirely a fruitless plea in the given circumstances. In any eventuality the Authority has sufficient control over the developer even after granting the Registration as it can bind the developer to various aspects of declarations in the event of such a developer being non-compliant of the requirements of law. In this regard the Authority would also be at liberty to exercise effective control as envisaged in Sections 4 to 7.

For the afore-stated reasons we accept the application and hold that the project of the applicant be deemed to have registered under Section 5(2) of the Act and the Authority is directed to issue the necessary Registration Number, Login ID and Password to the applicants.

22. This however, does not mean that the Authority would not be enabled in law to ensure statutory compliances in accordance with the provisions of the Act.
23. That apart the Authority has ample power under Section 7 of the Act to enforce compliances and cancel the registration if the



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Developer is not compliant or in conflict of the provisions of Real Estate Regulatory Act.

24. With the aforesaid observations the application stands disposed

of.



Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, B & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

April 09, 2024
SR

Certified To Be True Copy

Shamendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh
10/04/2024 *[Signature]*