

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

Subject: -

APPEAL NO. 63 of 2023

M/s KC Land and Finance Limited, KC Towers, Chandigarh Road, Shahid Bhagat Singh Nagar, (Nawanshahr), Punjab through its Director Mr. Rameshwar Gandhi, aged about 26 years, son of Ashwani Gandhi R/o House No.B-5/617, Bhatti Colony, Chandigarh Road, Nawanshahr, Punjab (UID: 976846216248) (M.No.9878200078)

...Applicant/Respondent
Versus

1. Ashok Kumar Gupta S/o Sh. Des Raj Gupta R/o House No.303, Sector 17, Panchkula
2. Vaneet Kumar Gupta son of Sh. Ashok Kumar Gupta, R/o House No.602, Jade Garden Kalangar, behind MIG Club, Bendra Club East, Mumbai-400051

....Respondent/Petitioner

Memo No. R.E.A.T./2024/206



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 5th day of June, 2024.

Shanendra Kumar
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJABAppeal No. 63 of 2023**MEMO OF PARTIES**

M/s KC Land and Finance Limited, KC Towers, Chandigarh Road, Shahid Bhagat Singh Nagar, (Nawanshahr), Punjab through its director Rameshwar Gandhi, aged about 26 years, son of Ashwani Gandhi R/o House No. B-5/617, Bhatti Colony, Chandigarh Road, Nawanshahr, Punjab (UID: 976846216248) (M. No. 9878200078)

..... Applicant/Respondent

Versus

1. Ashok Kumar Gupta son of Sh. Des Raj Gupta, resident of house no. 303, sector 17, Panchkula
2. Vaneet Kumar Gupta son of Sh. Ashok Kumar Gupta, resident of house no. 602, Jade Garden Kalangar, behind MIG club, bendra club east, Mumbai-400051

..... Respondent/Petitioner



Place: Chandigarh

Dated: 19.10.2023

(Through Counsels)



RAJIV MALHOTRA

(P-374/2014)



AVICHAL SHARMA

(PH-4380/2022)

ADVOCATES FOR APPLICANT

THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO. 63 of 2023

M/s KC Land and Finance Limited, KC Towers, Chandigarh Road, Shahid Bhagat Singh Nagar, (Nawanshahr), Punjab through its Director Mr. Rameshwar Gandhi, aged about 26 years, son of Ashwani Gandhi R/o House No.B-5/617, Bhatti Colony, Chandigarh Road, Nawanshahr, Punjab (UID: 976846216248) (M.No.9878200078)

...Appellant

Versus

1. Ashok Kumar Gupta S/o Sh. Des Raj Gupta R/o House No.303, Sector 17, Panchkula
2. Vaneet Kumar Gupta son of Sh. Ashok Kumar Gupta, R/o House No.602, Jade Garden Kalangar, being MIG Club, Bendra Club East, Mumbai-400051

....Respondent/Complainant

Present:- Ms. Heena Singh, Advocate for Mr. Rajiv Malhotra, Advocate for the Appellant
Mr. Harish Bansal, Advocate along with Ms. Nidhi Ayer, Advocate for the Respondent.

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

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

1. This Appeal is directed against the order dated 29.08.2023, passed by the Adjudicating Officer, Real Estate Regulatory Authority, Punjab (herein after known as the Authority), declining the prayer of the appellant on an Application under Section 39 of the Real Estate Regulation Development and Act (hereinafter known as the Act).
2. Section 39 of the Act deals with rectification/correction of any order passed by the Authority but limits the exercise of the power



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to any mistake apparent from the record. The power of review/rectification is thus limited and restricted.

3. It is not in dispute that the respondents herein had earlier filed a complaint which was decided by the Adjudicating Officer vide separate orders dated 01.10.2021.
4. It is also the admitted case of the parties that no appeal was preferred by the appellant against this Order. Execution proceedings are pending, against which the appellant is in revision (CRA-4863 of 2022) before the Hon'ble High Court where operation of the order dated 14.07.2022 passed by the Executing Court has been stayed.
5. The present appeal before this Court has been adjourned time and again and on 30.05.2024, this Court had granted last opportunity to the appellant considering that the counsel representing the appellant was out of station, and the prayer for adjournment was strenuously opposed by the respondent.



Today, when the matter was taken-up the learned counsel appearing on behalf of Sh. Rajiv Malhotra, reiterated the prayer for adjournment which was declined. The Court made it clear that in case she wants to make her submission she was welcome to do so but she expressed her inability to do so because of the absence of Sh. Malhotra. Despite repeated persuasion by the Court no argument was put forward by her and the plea for adjournment was put forward again and again. This was opposed by the learned counsel for the respondent who stated that crores of rupees due to them have been held up because of this frivolous appeal and there has been an attempt by appellant to be evasive before this Court.

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7. After declining the prayer since, it was found unjustifiable an Email was received during the midst of the proceedings from Sh. Malhotra, informing the Court that he is out of station.
8. Be that as it may the Court does not find this to be justifiable as Sh. Malhotra, plea for adjournment was accommodated vide orders dated 30.05.2024. He had not made any specific reference about the days of his unavailability in which case the Court could have granted a longer adjournment. Four days time granted by this Court ought to have been sufficient for the learned counsel to make alternative arrangements to make submissions.
9. The learned counsel for the respondent was heard on the issue at hand.
10. It has been contended that the appellant is impugning the order dated 29.08.2023 passed under Section 39 of the Act which has a very limited scope of interference. It was contended that all the facts pleaded in this Application stood already considered in the order of the Adjudicating Officer dated 01.10.2021, against which no appeal was filed.



I have heard the learned counsel for the respondent at some length and I am of the opinion that the present appeal is totally misconceived. The Adjudicating Officer was right in observing about the limited scope of Section 39 and declining the application more particularly when the issue revolved around the agreement between the parties dated 28.06.2014 which was duly considered in the order initially passed i.e. 01.10.2021. This agreement dated 28.06.2014 was substituted later on by a Settlement Agreement dated 29.03.2017 by the parties and in lieu of the Industrial Plot (subject matter of sale in agreement dated June 2014) a sale of 5 Flats in the project being executed by the associate concern of the

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present company was arrived at. On this very date a buyers agreement was also executed qua these flats and payment duly made by the respondent and accepted by the appellant. The plea as taken up in the appeal is that this document was not considered and there was no agreement between the signatory and the respondent which in fact could at best been raised in the first instance before the Adjudicating Officer when the order dated 01.10.2021 was passed or if the appellant had taken a recourse to civil remedies for declaration to nullify the Settlement Agreement dated March 2017 or for that purpose by impugning the Order dated 01.10.2021 in appeal. Neither, of these was resorted to.

12. This Court thus does not find any reason to interfere with the and impugned order considering that the scope of Section 39 is limited and the Adjudicating Officer held likewise particularly when all these documents were duly considered while passing the orders of 01.10.2021 which have not been challenged at all by the appellant. If the substantive order has not been challenged then the order seeking a review thereof would have very limited scope for interference on the premise that certain documents were not considered which also is factually found to be incorrect.

13. Dismissed.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
 CHAIRMAN

June 03, 2024

SR

Certified To Be True Copy

Shanendra Kumar
 Registrar
 Real Estate Appellate Tribunal Punjab
 Chandigarh

05/06/2024 *[Signature]*

