

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

Subject: -

APPEAL NO.47 of 2024

Omaxe New Chandigarh Developers Pvt. Ltd. having its address at
#10, Local Shopping Complex, Kalkaji, New Delhi, 110019.

...Appellant

Versus

Real Estate Regulatory Authority, Punjab having its office address at
1st Floor, Block-B, Plot No.3, Madhya Marg, Sector 18-A, Chandigarh
through its Secretary.

....Respondent

Memo No. R.E.A.T./2024/ 459

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 uploading the same on website.

Given under my hand and the seal of the Hon'ble Tribunal this 16th
day of December, 2024.


REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB



Details of Appeal

MEMO OF PARTIES

1. PARTICULARS OF THE APPELLANT:		
(i)	Name(s) of the Appellant	Omaxe New Chandigarh Developers Pvt. Ltd.
(ii)	Address of the Appellant	# 10, Local Shopping Complex, Kalkaji, New Delhi, 110019
(iii)	Address for service of all notices.	# India Trade Tower, First Floor, Baddi Kurali Road, New Chandigarh, Mullanpur - 140901
(iv)	Contact Details	# India Trade Tower, First Floor, Baddi Kurali Road, New Chandigarh, Mullanpur - 140901 Email: customerrelation_chandigarh@omaxe.com
2. PARTICULARS OF THE RESPONDENT:		
(i)	Name(s) of the respondent	Real Estate Regulatory Authority, Punjab, Through its Secretary
(ii)	Office Address of the Respondents	Real Estate Regulatory Authority, Punjab, 1 st Floor, Block-B, Plot No. 3, Madhya Marg, Sector 18-A, Chandigarh, Through its Secretary
(iii)	Address for service of all notices.	Real Estate Regulatory Authority, Punjab, 1 st Floor, Block-B, Plot No. 3, Madhya Marg, Sector 18-A, Chandigarh, Through its Secretary
(iv)	Contact Details	Phone: 0172-5139800 Email: psmember.rera@punjab.gov.on



THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

APPEAL NO.47 of 2024

Omaxe New Chandigarh Developers Pvt. Ltd. having its address at #10, Local Shopping Complex, Kalkaji, New Delhi, 110019.

...Appellant

Versus

Real Estate Regulatory Authority, Punjab having its office address at 1st Floor, Block-B, Plot No.3, Madhya Marg, Sector 18-A, Chandigarh through its Secretary.

....Respondent

Present: - Mr. Ashok Kumar Jindal, Advocate for the Appellant
Mr. Prashant Rana, Advocate for the RERA, Punjab.

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

DR. SIMMI GUPTA, IRS (IT), CHIEF COMMISSIONER OF INCOME TAX (RETD.) MEMBER (TECH./ADMN.)

JUDGMENT: DR. SIMMI GUPTA, IRS (IT), CHIEF COMMISSIONER OF INCOME TAX (RETD.) MEMBER (TECH./ADMN.) (ORAL)



FACTS

1. The facts of the case are that the appellant had got a project in the name and style of The Lake Group Housing Project registered with RERA, Punjab vide Registration No.PBRERA-SAS80-PR0040 dated 21.05.2019 vide Memo No.8572 dated 29.08.2022. The appellant had also filed an affidavit in Form-B as required under Rule 3(3) of the Punjab State Real Estate (Regulation and Development) Rules, 2017 specifying that the land was free from all encumbrances.
2. However, it later came to light that the appellant had entered into a loan agreement with PNB on 01.04.2018 for loan of Rs.200 Crores. In spite of the fact, that the loan had been taken by the promoter prior to the grant of registration, vide Letter dated 21.05.2019, however,

intimation in respect of this was only given to Real Estate Regulatory Authority, Punjab on 15.11.2021.

3. In view of the contravention of Section 11 of the Real Estate (Regulation and Development) Act, 2016 and in violation of Section 13(2) of the Real Estate (Regulation and Development) Act, 2016, penalty under Section 60 was levied on the appellant by the Authority, amounting to Rs.25,00,000/-. The main ground raised by the appellant in appeal, is that mistake in intimating the loan, in compliance to provisions of Section 4(2)(I)(b) of the Act was an inadvertent and bona fide mistake, the land of the project had never been hypothecated and therefore the appellant had submitted an affidavit stating that there was no hypothecation of the land. However, to show its bona fide the appellant had on its own and voluntarily intimated RERA in respect of the mistake committed by it. Though, the loan was to be repaid by December, 2020 however, on account of COVID-19 the loan has been repaid by August, 2021. The appellant therefore requested that as the mistake was bona fide, therefore there was no false information that had been submitted under Section 60 of the Act. The Order awarding the penalty of Rs.25,00,000/- should therefore be set aside. Learned counsel for the appellant also placed reliance on the judgment of Hon'ble Supreme Court in "*Chairman, SEBI Versus Shriram Mutual Fund (2006) 5 SCC 361*".

Decision

1. We have considered the entire arguments of both the parties and have considered the facts of the case. It is clear that the appellant has contravened the provisions of Section 11 of the Real Estate (Regulation and Development) Act, 2016 and it is also a matter of fact that the loan taken by the developer had caused conflict of interest to the various allottees who have purchased apartments/units in the



said project as they would had to take NOC from the Punjab National Bank Housing Finance Limited as the bank the first charge over the land.

2. Section 4(2)(I)(B) RERD Act, 2016 provides as under:-

“(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details.”

In this case admittedly appellant took a loan of Rs.200 Crores, from Punjab National Housing Finance Limited as is evident from letter Annexure A-6 dated 24.12.2015 after mortgaging the project land. However, it is also admitted fact that mortgage/hypothecation of the project land with the bank has not been disclosed by the appellant till 15.11.2021 (Annexure A-3) though the project was registered with Real Estate Regulatory Authority, Punjab on 21.05.2019 as is evident from letter Annexure A-2. Thus, by not disclosing the fact of not taking the loan and mortgage of the project land with the Punjab National Bank, the appellant has clearly violated the provisions of Section 11 but also provision of Section 4(2)(1) referred above. As per Rules 15 of the Real Estate (Regulation and Development) Act, 2017 certain details are required to be uploaded on the website of the Authority by the Promoter and as per Section 15(1)(E)(ii)(f) the promoter was required to upload the information regarding the details of mortgage or charge created on the land and the project. But this case admittedly, the promoter/appellant never uploaded this information on the website of the Authority. Simply because he himself intimated the Authority regarding the fact of mortgage of project land vide letter (Annexure A-3) does not absolve the promoter



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of the violation of the mandatory provision of the Real Estate (Regulation and Development) Act.

3. Keeping in view the above facts as also the provisions of Section 60, where there is no requirement of mala fide intention, for invoking the penalty clause, there is no reason to interfere in the stand taken by the authority.

The appeal is thus, dismissed and the order of the Authority is upheld.



Sd/-

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

Sd/-

**DR. SIMMI GUPTA, IRS (IT)
CHIEF COMMISSIONER OF INCOME TAX (RETD.)
MEMBER (TECH./ADMN.)**

**December 12, 2024
Vishal**

Certified To Be True Copy

Anand Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

Shubh Sharma
16/12/2024