

**IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB****MEMO OF PARTIES**

Amit Kumar son of Sh. Ramesh Kumar, resident of Flat No. C-4,  
Marvel Homes, Barewal Road, Ludhiana.

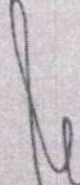
...Appellant

Versus

1. M/s Marvel Homes Construction Pvt. Ltd., Barewal Road,  
Backside Gurdev Hospital, Ludhiana through its Managing  
Director/Director.
2. Municipal Corporation, Zone-D, Ludhiana, Sarabha Nagar,  
Zone-D Office, Ludhiana through its Commissioner.
3. Department of Local Government, Municipal Bhawan, Plot  
No.3, Dakshin Marg, Sector 35-A, Chandigarh through its  
Principal Secretary.
4. Real Estate Regulatory Authority, Punjab, First Floor,  
Block-B, Plot No.3, Sector 18A (Near Govt. Press UT), Madhya  
Marg, Chandigarh through its Chairperson.

...Respondents

Place: Chandigarh.  
Dated: 19.05.2019

  
(MUNISH GUPTA)  
P-515/2005  
ADVOCATE  
COUNSEL FOR APPELLANT

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

**APPEAL NO.68 of 2019**

Amit Kumar, son of Sh. Ramesh Kumar, resident of Flat No.C-4,  
Marvel Homes, Barewal Road, Ludhiana.

**...Appellant**

Versus

1. M/s Marvel Homes Construction Pvt. Ltd., Barewal Road, Backside Gurdev Hospital, Ludhiana through its Managing Director/Director.
2. Municipal Corporation, Zone-D, Ludhiana, Sarabha Nagar, Zone-D Office, Ludhiana through its Commissioner.
3. Department of Local Government, Municipal Bhawan, Plot No.3, Dakshin Marg, Sector 35-A, Chandigarh through its Principal Secretary.
4. Real Estate Regulatory Authority, Punjab, First Floor, Block-B, Plot No.3, Sector-18A (Near Govt. Press UT), Madhya Marg, Chandigarh, Through its Chairperson.



**....Respondents**

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**Present: -** Mr. Amit Kumar, Appellant (In Person)  
Mr. Gaurav Chopra, Advocate along with Mr. Vardan Seth and Ms. Darika Sikka, Advocates for Respondent No.1  
Mr. Prashant Rana, Advocate for RERA, Punjab

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**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.)**

1. The facts of the case are that the appellant filed a consumer complaint before the State Consumer Disputes Redressal Commission stating therein that the developer had not completed the facilities in the society and that the completion

and occupation certificate had not been obtained by the builder/developer. The Consumer Disputes Redressal Commission ordered the respondent-developer to obtain the completion certificate which was then applied for by the respondent-developer. The appellant then approached the Real Estate Regulatory Authority (hereinafter referred to as Authority) vide E-mail dated 19.07.2018 bringing to light that in the project the completion certificate had not been obtained and therefore directions be issued to get the project registered. Accordingly, Notice under Section 59 of RERA Act was issued by the Authority to the respondent-developer to explain regarding non-registration of the project and why action not be taken for non-registration.



2. Vide Order dated 13.11.2018 the Authority, after considering the order passed by the State Consumer Dispute Redressal Commission, Punjab directed the builder to apply for registration of the project within 3 weeks failing which the penalty would be imposed. The matter was adjourned to 11.12.2018 and later to 18.12.2018. On 18.12.2018 the respondent-developer filed response stating therein that the project was complete and the completion certificate was given on 31.03.2011 by depositing composite fee of Rs.11,77,603/-. It was also mentioned that the common areas of the project have been handed over to the society and the RWA duly registered. The Authority without giving the appellant an opportunity to file reply vide Order dated 18.12.2018 stated that the respondent-developer was fulfilling the

conditions which were laid down for exempting projects from registration and therefore the notice is hereby filed. The appellant prepared a detailed application dated 08.01.2019 relying on the fact that no opportunity had been given to him to rebut the contentions of the respondents. In response the Authority again fixed the case and summoned the respondent-developer and after considering the reply of the respondent on 08.05.2019 vide the impugned order dismissed the complaint of the appellant on the basis that the complainant had not been able to produce any evidence which goes against the claim of deemed completion of the respondent.



3. The appellant has filed appeal against the impugned Order dated 08.05.2019 challenging the Order of the Authority on the basis that:-

- i. All the units had not been sold by the respondent-developer before the commencement of the RERA Act, 2016.
- ii. No document was produced by the builder showing that inspection had been carried out to show that the project was complete.
- iii. The respondent-developer had applied for completion certificate on 25.06.2018 and therefore the certificate of completion claimed by the respondent-developer could only be deemed completion certificate and therefore the project was still incomplete and thus, required to be registered.

- iv. The Authority passed an Order dated 13.11.2018 to get the project registered and then passed subsequent orders dismissing the same, the subsequent order is thus a non-est order and could not have been passed by the Authority.

**PRAYER OF THE APPELLANT:-**

The appellant has prayed for setting aside the Order dated 08.05.2019 and to direct the respondent-developer to register the project and to obtain completion certificate as per law.

**RESPONSE OF THE RESPONDENT:-**

1. The respondents on the other hand has challenged the appeal of the appellant on the basis that the present appeal is not maintainable as the appellant has not challenged the Order dated 18.12.2018 while the Order dated 13.11.2018 was a interim order and merged with the Order dated 18.12.2018. The order against which appeal has been filed by the appellant is merely a review order and in the absence of appeal against the actual Order dated 18.12.2018 the appeal filed by the appellant is not maintainable.
2. Secondly, the respondent-developer has claimed that the Order dated 08.12.2018 could not have been reopened as there are no powers with the Authority to review or reopen matter already decided and the only power available was of rectification of any mistake which is apparent from record as provided under Section 39 of the Act.
3. Thirdly, the respondent had in the year 2006 got the building plan approved and had completed the construction in



November, 2010 and it got completion certificate by paying composite fee of Rs.11,77,603/- on 31.03.2011 and thus, completion was deemed to have been granted and there is no question that the project needs to be registered as the project was completed before the RERA Act came into existence.

**Decision:-**

1. We have considered the issues raised by both the parties. To decide this matter we also called for the record from the Authority. The examination of the record showed that the Notice issued by the Authority on 11.01.2019 after the objection raised by the appellant against Order dated 18.12.2018 was in continuation of the Office Notice bearing Memo No.RERA(Notice-LDH/147)2018/6341 dated 07.08.2018 followed by Memo No.RERA(Notice-LDH/147)2018/6572 dated 27.08.2018, on the basis that the appellant had submitted a complaint alleging concealment of information and misrepresentation by the respondent in replies. On this basis Notice under Section 37 was issued to the respondent to submit point wise comments along with authenticated copies of the documents. This shows that the proceedings subsequent to the Order dated 18.12.2018 were not review of this order but continuation of the proceedings which culminated into issuance of final Order dated 08.05.2019 and thus, the Order dated 18.12.2018 is also an interim order which finally resulted in the Order dated 08.05.2019. Keeping in view these facts the appeal by the appellant is maintainable.



2. The only issue which remains to be decided between the parties is with regard to the issuance of completion certificate. This fact is also evident from the Zimni Order dated 19.05.2022 passed in this case. Vide Order dated 13.11.2018 the Ld. Authority observed as under:-

*“The complainant specifically brought to notice, Para 24 (iv) of the order on page 34 vide which the State Commission directed the respondent to get Completion Certificate from the Competent Authority within a period of 2 months from the date of the order. The respondent admitted that they are not in receipt of Completion Certificate and have applied for the same on 25.06.2018 as per their affidavit filed by them before the State Commission. In view of the fact that the respondent was not in possession of Completion Certificate as on the date of the notification of RERA Act and he only applied for the same as on 25.06.2018, the project was ongoing in nature at the time of notification of the act and as such liable for registration. The plea taken by the respondent is hereby rejected and he is directed to apply for registration of the project within 3 weeks failing which he shall be liable for imposition of penalty, as provided U/s 59, which may extend upto 10% of the estimated cost of the real estate project as determined by the Authority.”*



3. On 12.02.2019 the Ld. Authority passed the following Order:-

*"The counsel for the respondent appeared and submitted reply. He brought to notice of this Authority the provision of Section 272 of Punjab Municipal Corporation, Act, 1976, in regards to 'Deemed Completion' in case of failure of the Commissioner of the corporation to communicate his refusal to grant such permission after the receipt of the notice of completion from the promoter.*

*Further the complainant appeared in person on whose complaint the action was initiated. He sought time to file a rejoinder to the submission made by the counsel of the respondent. Accordingly time is granted to the complainant for filing rejoinder on or before 20.02.19.*

*Further the provision of Punjab Municipal Corporation, Act, 1976, needs to be examined in depth by full bench of authority as the concept of "Deemed Completion" has a bearing on similar such notices issued to other promoters. Accordingly, the matter is being referred to the authority for consideration separately."*



4. Another Order dated 08.05.2019 was passed in which it has been recorded that the Notice under Section 59 was issued to the developer and his plea with regard to deemed completion certificate under Section 272 of the Punjab Municipal Corporation Act, 1976 was accepted. The complaint was then dismissed being devoid of merit and Notice under Section 59 was consigned to the record room.



5. Vide Order dated 18.05.2019 a report regarding deemed completion was called from the Authority and the Authority in its Report dated 07.07.2022 has stated that in view of the Order dated 12.02.2019 referred above a meeting was held in the Office of the Authority on 15.10.2019 to discuss the functioning of the Authority and it was decided that the concept of deemed completion is alien to the provisions encapsulated in Section 3 and 59 of the Act and that the benefit of deemed completion under Section 272 of Municipal Corporation Act relates to erection of an individual building or the execution of any work and not to a real estate project. So the plea of deemed completion was held to be improper. The Commissioner Municipal Corporation, Ludhiana in his Report dated 04.08.2023 has also mentioned that till that date the respondent/developer has not resubmitted the request for issuance of completion certificate on the E-Naksha Portal of the Government.

6. A perusal of the orders referred above would show that the Ld. Authority speaking through one of its the then Members abruptly dismissed the complaint without waiting for the report of the full authority which was sought vide Order dated 12.02.2019 by the same Member. A perusal of the impugned Order would further show that various documents relied upon by the parties and the admissions made by the respondents regarding the issuance of completion certificate have not been considered before the passing of the impugned order. The impugned order appears to have been passed hurriedly and



without applying mind to the entire record of the case as such it cannot be sustained. Accordingly, the impugned Order dated 08.05.2019 is set aside and the case is remanded back to the Ld. Authority with the direction to pass a fresh order after considering the reports submitted by it to this Tribunal and the speaking Order dated 04.08.2023 passed by Commissioner of Municipal Corporation, Ludhiana as well as the other documents on record.

7. Since, the matter has already been delayed considerably so the Authority is directed to decide the case within a period of 3 months after the appearance of the parties. The parties are directed to appear before the Authority on **13.03.2025**. Record of the Authority along with its Reports dated 07.07.2022 and 15.09.2022 as well as Report/Speaking Order dated 04.08.2023 passed by the Commissioner, MC Ludhiana, be sent back and record of this appeal be consigned.

*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.)**

February 20, 2025  
**Vishal Sharma**

Certified To Be True Copy

*Shamendra Kumar*  
Registrar  
Real Estate Appellate Tribunal Punjab  
Chandigarh

*Shubh Sharma*  
24/2/2025