

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

Subject: -

EXECUTION APPLICATION NO. 03 OF 2023

IN APPEAL NO. 207 of 2022

M/s TDI Infratech Limited, Registered Office:- SCO 678-679,
TDI House, Sector-119, TDI City, Sahibzada Ajit Singh Nagar,
Mohali, Punjab

...Appellant

Versus

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

....Respondent/Complainant

Memo No. R.E.A.T./2024/ 161

To,

REAL ESTATE REGULATORY AUTHORITY, PUNJAB 1ST FLOOR,
BLOCK B, PLOT NO.3, MADHYA MARG, SECTOR-18,
CHANDIGARH-160018.



Whereas execution application 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 execution application 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 30th
day of April, 2024.

Shanvats Kaur
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

Application No. 03 of 2023
IN Appeal No. 207 of 2022

Between:

M/s TDI Infratech Ltd., Registered Office :- SCO 678-679, TDI House, Sector
119, TDI City, Sahibzada Ajit Singh Nagar, Mohali, Punjab.

...Appellant/Applicant

Versus

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

...Respondent



**EXECUTION APPLICATION UNDER SECTION 40 (2) OF THE REAL
ESTATE (REGULATION AND DEVELOPMENT) ACT,
2016 FOR PROCEEDING AGAINST THE RESPONDENT
FOR FAILURE TO COMPLY WITH THE ORDER DATED
13.02.2023 PASSED BY THE REAL ESTATE APPELLATE
TRIBUNAL IN APPEAL NO 207 OF 2022
AND
FOR FURTHER DIRECTIONS TO THE RESPONDENT TO
PROVIDE THE REGISTRATION NUMBER INCLUDING A
LOGIN ID AND PASSWORD TO THE APPLICANT
BIUILDER FOR ACCESSING THE WEBSITE OF THE**

... NEXT PAGE

THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

EXECUTION APPLICATION NO. 03 OF 2023

IN APPEAL NO. 207 of 2022

M/s TDI Infratech Limited, Registered Office:- SCO 678-679,
TDI House, Sector-119, TDI City, Sahibzada Ajit Singh Nagar,
Mohali, Punjab

...Appellant

Versus

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

....Respondent/Complainant

Present: - Mr. Puneet Tuli, Advocate for Applicant
Mr. Prashant Rana, Advocate for RERA, Punjab

CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

JUDGMENT: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN

(ORAL)



1. In this order I shall dispose of the Application No.03 of 2023 preferred by the applicant seeking to enforce our directions given vide the orders dated 30.02.2023, which by a majority of two is to one mandated the Authority to decide the issue of grant of Registration Number to the applicant, afresh, in a time bound manner of three weeks from the date of receipt of the copy of the order.
2. The present application has been styled as, one under Section 40(2) of the Act.
3. Due to recusal by Sh. S.K. Garg, the esteemed Judicial Member, without assigning any reason, and the retirement of Sh. A.K. Garg, the esteemed Technical Member, the mantle to decide the issue has fallen upon the Chairperson of the Tribunal.

EXECUTION APPLICATION NO.03 OF 2023 IN APPEAL NO. 207 OF 2022

4. On 18.04.2024, a detailed order was passed after perusal of the decision of the Authority taken by it in its meeting on 10.04.2024. This document is on record as Mark 'X' and the Authority was directed to reconsider the case of the applicant in the light of the decision taken by it on 10.04.2024. The matter was then ordered to be fixed before this Court on 29.04.2024.
5. Subsequent, thereto the Authority has considered the case of the applicant for grant of registration. The proceedings of the meeting held on 26.04.2024 by the Authority have been produced before this Court and taken on record as Mark 'Y'.
6. A perusal, thereof, shows that on 22.04.2024 the matter for grant of Registration was considered by the Authority with regard to the following projects of the applicant:

- (i) Sadar Bazar
- (ii) Apna Bazar
- (iii) South Extension-1
- (iv) Golf Link Extension
- (v) Golf Link Commercial Market



7. Thereafter, on 26.04.2024, the minutes of this meeting reveal that a fresh list of documents was given to the applicant, before his case could be evaluated for grant of registration with regard to the projects noticed above. The following are the documents asked for by the Authority.

- (i) Latest CA Certificate
- (ii) Inventory details of every project
- (iii) Latest Non-Encumbrance Certificate

EXECUTION APPLICATION NO.03 OF 2023 IN APPEAL NO. 207 OF 2022

- (iv) Clarification w.r.t revised orders issued by PPCB against letter No.7862 dated 30.12.2022 and letter No.224 dated 14.01.2021
- (v) Valid Commencement Certificate of the projects

8. No, further, date has been mentioned in the minutes of the meeting for consideration. However, the learned counsel for the respondent has stated that as and when the documents are submitted to the Authority a meeting shall be convened to consider it.
9. Learned counsel for the appellant has contended that all these documents were on record of the Authority at the time of submission in the year 2023 and were valid but due to efflux of time, largely attributed to the inaction of the Authority, they have expired and would warrant a renewal. It is thus, contended that the consideration cannot be denied on this ground of the document's validity particularly when they were valid at the time of submission and the appellant cannot be made to suffer for this inordinately long period of inaction by the Authority and then forced into more suffering by demanding valid certifications. It has been contended with reference to Document No.1 i.e. the 'latest CA Certificate' that it was valid at the time of submission but has expired during the pendency of the proceedings. With regard to Document No.2 the learned counsel for the appellants states that he binds himself to submission of an affidavit to validate all documents within a time frame and furnish the inventory details of every project. As regards the Document No.3 i.e. the latest Non-Encumbrance Certificate and Document No.5 i.e. Valid Commencement Certificate the same were valid at the time of submission and on the same logic he would submit an affidavit to seek validation in these cases also. With regard to Document No.4 i.e. 'Clarification with regard to revised orders issued by Punjab Pollution Control Board (PPCB) against the letter dated 13.12.2022 and 14.01.2021' it is submitted that the board has already issued the terms of reference (TOR) and the



EXECUTION APPLICATION NO.03 OF 2023 IN APPEAL NO. 207 OF 2022

appellant undertakes to submit the NOC in Q Forms again within a time frame to be prescribed by the Authority.

10. It is argued that in these peculiar circumstances, the grant of registration cannot be withheld particularly when the Authority has itself in its meeting dated 10.04.2022, demonstrated a willingness to deal with issues of grant of registration in a more constructive manner, a fact that has been appreciated by the Tribunal as well.

11. I have considered the matter at some length. Indeed, the matter is pending before this Court since 2022 when the Appeal No.207 was preferred and disposed of on 13.02.2023. Thereafter, more than a year has elapsed but the appellant's prayer for grant of registration continues to languish. The Court is at pains to notice that the Act envisages an application for registration to be disposed of with promptitude and Section 5 limits a decision to 30 days and in the event of the application remaining undecided, prescribes a deemed registration. Although, strictly speaking, this provision of law is not attracted to the facts of the present case but has been mentioned only to emphasize that time is of essence to the proceedings and suffice it to say that it is extremely unfair to the Developer to be forced into a situation of continued limbo of at least 2 years. At the time when the application was made the following documents were in order (i) CA Certificate (ii) Latest Non-Encumbrance Certificate (iii) Valid Commencement Certificate.

12. With regards to the Certificate from the Pollution Control Board, that too was obtained and terms of reference issued by the Board during the pendency of the Application, but in any case, it is not the intention of the Tribunal to find fault with the reasoning of the Authority in so far as the requirements expressed in its meeting dated 26.04.2024 is concerned. The fact remains, that most of these documents were valid at the time of submission of the application but out-lived their validity due to a



EXECUTION APPLICATION NO.03 OF 2023 IN APPEAL NO. 207 OF 2022

situation that the Authority is well aware of, and is in no way due to the fault of the applicant.

13. Ordinarily the validity of these Certificates at the time of the Application should be enough to demonstrate the credibility of the Developer but in any eventuality these are issues that can easily be addressed in terms of the declarations prescribed in the appendix to the Rules particularly in Form-B, the contents of which are extracted hereinbelow:-

FORM 'B'

[See rule 3(3)]

DECLARATION, SUPPORTED BY AN AFFIDAVIT, WHICH SHALL BE SIGNED BY THE PROMOTER OR ANY PERSON AUTHORIZED BY THE PROMOTER

Affidavit cum Declaration

Affidavit cum Declaration of Mr./Ms. _____ promoter of the proposed project/duly authorized by the promoter of the proposed project, vide its/his/their authorization dated;

I, _____ promoter of the proposed project/duly authorized by the promoter of the proposed project do hereby solemnly declare, undertake and state as under:

1. That I/promoter have/has a legal title to the land on which the development of the project is proposed

OR

_____ have/has a legal title to the land on which the development of the proposed project is to be carried out

AND

a legally valid authentication of title of such land along with an authenticated copy of the agreement between such owner and promoter for development of the real estate project is enclosed herewith.

2. That the said land is free from all encumbrances.

OR

That details of encumbrances _____ including details of any rights, title, interest or name of any party in or over such land, along with details.



EXECUTION APPLICATION NO.03 OF 2023 IN APPEAL NO. 207 OF 2022

3. That the time period within which the project shall be completed by me/promoter is _____
4. That seventy per cent of the amounts realized by me/promoter for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose.
5. That the amounts from the separate account, to cover the cost of the project, shall be withdrawn in proportion to the percentage of completion of the project.
6. That the amounts from the separate account shall be withdrawn after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.
7. That I/promoter shall get the accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.
8. That I/promoter shall take all the pending approvals on time, from the competent authorities.
9. That I/promoter have/has furnished such other documents as have been prescribed by the rules and regulations made under the Act.
10. I/promoter shall not discriminate against any allottee at the time of allotment of any apartment, plot or building, as the case may be, on any grounds.

14. To facilitate the registration, it thus becomes imperative for the Authority to segregate the mandatory requirements and the ones to which the applicant can be bound-down in terms of the affidavit and declarations contained in the rules. The Act and the Rules therefore have to be given harmonious interpretation so as to achieve the objects of the Act.



EXECUTION APPLICATION NO.03 OF 2023 IN APPEAL NO. 207 OF 2022

15. Consequently, the application is disposed of with a direction to the Authority that the compliances indicated in the contents of the meeting dated 26.04.2024 be secured through an affidavit/declaration in terms of the Rules and the form extracted above and while binding the applicant to a limited time frame to be compliant, grant the registration of the projects in question in terms of Section 4 forthwith preferably within 7 days of the receipt of the copy of the order.
16. To clarify it would mean that the Authority would proceed, to grant of registration and complete all other formalities in terms of the mandate of Section 4 but bind the applicant to an affidavit and a declaration of being compliant with regard to the deficiencies noticed in the minutes of meeting dated 26.04.2024 within a time frame.
17. Needless to say that the Authority has vast powers under Section 7 to rein in an errant Developer who tends to deviate from the requirements of law.
18. Insofar as the prayer for proceeding against the Authority in terms of Section 40(2) is concerned the same is misconceived and hence rejected. Application disposed of as above.



Sd/-
JUSTICE MAHESH GROVER (RETD.)

CHAIRMAN

April 30, 2024

SR *df*

Certified To Be True Copy

Shanvats fever
 Registrar
 Real Estate Appellate Tribunal Punjab
 Chandigarh

30/04/2024