

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-3762-C-2023 in/and RERA-APPL-52-2023(O&M)

Date of Decision: July 07, 2023

REGENT LAND HOLDINGS PVT. LTD.

....Applicant/Appellant

Versus

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB ON ITS OWN
MOTION**

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gunjan Rishi, Advocate for applicant-appellant.
Mr. Gagandeep Singh Wasu, Advocate for
Respondent.

HARKESH MANUJA, J. (ORAL)

CM-3762-C-2023

This is an application seeking condonation of delay of 27 days in filing the appeal.

For the reasons mentioned in the application which is supported by an affidavit and makes out sufficient cause, the same is allowed and delay of 27 days in filing the appeal is hereby condoned.

MAIN CASE

1. By way of present appeal, challenge has been made to an judgment dated 09.12.2022 passed by the Real Estate Appellate Tribunal, Punjab, dismissing the First Appeal filed at the instance of present appellant.

2. In the present case, on a complaint received against the appellant for not having registered its real estate project namely "Blessings City" Airport Road, Amritsar, proceedings under the provisions of Real Estate (Regulation And Development) Act, 2016 (hereinafter referred to as '2016 Act') were invoked alleging violation of

Section 3 thereof, contemplating proceedings under Section 59 against the appellant. In the aforesaid proceedings, the appellant was proceeded against ex parte and vide order dated 16.12.2021, the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority) imposed a penalty of Rs. 70 lakhs upon appellant. The operative portion thereof is reproduced hereunder:-

“As such imposition of penalty under section 59 of the Act is completely warranted. The Authority’s representative has contended that the total project cost would be higher than Rs.8.19 crores which was the cost of land alone. I however do not agree. No other costs have been mentioned in the reference received from the Amritsar Development Authority. I therefore take the cost of the project as 8.19 crores. The maximum penalty under the law is 10% of the cost of the land and in the circumstances a penalty of Rs.70,00 lakhs is imposed upon the respondent. This penalty should be deposited in this Authority by way of demand draft issued in its name i.e. ‘Real Estate Regulatory Authority, Punjab’ payable at Chandigarh. The needful be done within two months from the date of issue of this order. If the amount is not deposited within the specified time, recovery certificate be issued to the District Collector, Amritsar for effecting recovery under Rule 24 of the Real Estate (Regulation & Development) Rules, 2017.”

3. Aggrieve thereof, the appellant approached the Appellate Authority with some delay, requesting for setting aside of the order dated 16.12.2021 primarily for grant of opportunity so as to represent itself before ‘the Authority.’ The learned Appellate Tribunal vide its judgment dated 09.12.2022 declined to interfere with the order passed by ‘the Authority’ primarily for reason that there was explanation offered for non-appearance despite proper service, still permitted the appellant to approach the Authority for seeking recalling of the impugned order, if permissible in law.

4. By way of present appeal, order dated 09.12.2022 passed by learned Appellate Authority has been impugned.

5. While referring to Regulation 22 of the Punjab Real Estate Regulatory Authority (Procedure for Handling Complaints and Related matters), 2017, which earlier existed on the statute book, learned counsel for appellant submits that the power of review vested with 'the Authority' or the 'Adjudicating Officer' as previously provided under Regulation 22 now stands deleted w.e.f. 21.01.2022 which thus bars the Authority to exercise the powers of review and also prohibits the appellant to legally avail remedy of recalling/review the order. Learned counsel for appellant further submits that the order passed in the absence of appellant by the Authority has caused serious prejudice to its rights, as there was sufficient material in its possession so as to show that the provisions of the Act, Rules/Regulations substantially stand complied with and thus the imposition of penalty was unjustified.

6. On the other hand, learned counsel representing the respondent opposes the prayer made in the appeal while submitting that despite having duly served and possessing due knowledge about the pendency of petition pending before the Authority, the appellant chose not to appear or respond to any of the notices served upon it, and thus, at this stage, the proceedings cannot be reopened as the penalty was imposed, considering the interest of allottees, as well.

7. I have heard learned counsel for the parties and gone through the paper-book.

8. A perusal of record shows that despite having been duly

served, appellant failed to appear before respondent, resulting into imposition of penalty to the tune of Rs.70 lakhs. Although, I don't find any justification to interfere with the well reasoned judgment/order passed by the authorities below, yet considering the substantial rights of the appellant are involved in the present appeal as regards the payment of penalty amount on account of non- compliance of certain provisions of the Act, Rules/Regulations which would practically effect the rights of the allottees as well, the present appeal is allowed purely in the interest of justice and fair play so as to grant an opportunity to the appellant to defend itself. Resultantly, the impugned orders dated 09.12.2022 and 16.12.2021 are set aside and the matter is remanded to respondent for its fresh adjudication after grant of opportunity of hearing to the appellant. It would be appreciated if the exercise of fresh adjudication is concluded within a period of three months.

9. The aforesaid order shall, however, be subject to deposit of Rs.50,000/- as cost with respondent. This cost shall be in addition to the sum of Rs.2,00,000/- earlier deposited in pursuance to an order dated 18.04.2023, passed by this Court.

10. Disposed of in the aforesaid terms.

07.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No