107 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RERA Appeal No. 48 of 2022 (O&M)
Date of Decision: April 25th , 2023

Tri Star Hotels Private Limited

.......Appellant

Versus

Curo India Private Limited and others

........Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. M.L. Sarin, Sr. Advocate assisted by
Ms. Hemani Sarin, Advocate,
Mr. Vijay Gupta & Mr. Gaurav Deep Geol, Advocates,
for the appellant.

Mr. Aashish Chopra, Sr. Advocate assisted by
Mr. Shubhit Phutela & Ms. Mehar Nagpal, Advocates
for private respondents.

Ms. Lavanya Paul, DAG, Punjab.

Mr. Jaspal Singh Khara, Assistant Manager Legal,
Real Estate Regulatory Authority (RERA), Punjab.

<u>MAHABIR SINGH SINDHU, J.</u>

"*Real estate cannot be lost or stolen,*
nor can it be carried away.
Purchased with common sense,
paid for in full, and managed with reasonable care,
it is about the safest investment in the world."

"Franklin D. Roosevelt."

This appeal has been preferred under Section 58 of the Real Estate (Regulation & Development) Act, 2016 (for short "the Act of 2016") with the following prayer:-

"The order dated 09.07.2021 passed by the learned Punjab Real

Estate Regulatory Authority, Chandigarh in GC/1818 of 2020, Tri Star Hotels Pvt. Ltd. Versus Curo India Pvt. Ltd. and others as well as order dated 10.03.2022 passed by the Real Estate Appellate Tribunal, Punjab, Chandigarh in Appeal No. 64 of 2021, Tri Star Hotels Pvt. Ltd. Vs. Curo India Pvt. Ltd. be set aside being totally illegal, arbitrary, against the facts and provisions of law.

It is further prayed that the registration of respondent No.1 with RERA, Punjab may kindly be revoked on account of fraudulent practice(s), and contravention/violation of the RERA Act;

Alternatively, Appellant may kindly be granted compensation which comprises of refund of Rs.6.50 crores along with accrued interest thereon @ 12.% p.a. with annual rest from date of the said agreement i.e. 19.07.2006."

2. Paper book reveals that appellant submitted a complaint dated 12.10.2020, (in Form-M), before Real Estate Regulatory Authority, Punjab (for short "Authority") under the Punjab State Real Estate (Regulation & Development) Rules, 2017 (for short "Rules of 2017") and relevant part of the same reads as under:-

> "*a. Respondents approached the Complainant that they owned land measuring 39 bigha, 11 biswas at village Mullanpur-Garibas and likely acquire more than within a short time. They further represented that vide communication dated 30.08.2005 from Govt. of Punjab that the said agricultural land shall converted from agriculture to commercial purpose for purpose of a five star hotel with FAR 1:3 and represented that Complainant would be able to develop a five star hotel on land measuring 1.53 acres.*
>
> *b. On these representations, complainant paid a sum of Rs.6.50 crores to Respondents Company Dynamic Continental (which is now known as Curo-India Private Limited from 19.11.2005 till 05.08.2006. Vide agreement to sell dated 19.07.2006, the Respondent agreed to sell land measuring 1.53 acres with sanctionable built-up areas for*

setting up five star hotel project to Complainant for sale consideration of Rs.12.50 crores, out of which Rs.6.50 crores was already paid to Respondents.

c. Vide letter dated 18.10.08 Respondents informed complainant that due to inadequate frontage of 120 sq.feet, CLU for building the hotel was not possible and minimum of 200 sq. feet front was made mandatory for hotel project and thus, agreement to sell stood frustrated.

d. Vide letter dated 25.10.08 respondent wrote back that they would get CLU sanctioned on said land after making internal adjustments in the said project and demanded further sum of Rs.5 crores from the Complainant. Complainant vide E-Mail dated 05.11.08 were told that payment of Rs.5 crores would be given only when CLU is given and building plan was sanctioned and asked complainant to execute supplementary agreement.

e. Respondents kept on assuring Complainant from 2008 till 2019 that agreement to sell would be implemented and sanctions for building five star hotel project would be obtained. Complainant asked for refund of part sale consideration, but Respondents assured that all sanctions have been obtained and soon a land for five star hotel would be given to Complainant.

f. In 2020, the Complainant came to know that the Respondents have changed the name of their Company from Dynamic Continental Pvt. Ltd. to Curo India Pvt. Ltd. Complainant further came to know that respondents started a project by name Curo One Part-I, Commercial and Curo One, Part-II, residential on the same land which they had promised to sell to Complainant for setting up a hotel project and taken a substantial sale consideration of Rs.6.50 crore in 2006-07."

2.1. Relief clause of the aforesaid complaint being material is also extracted here as under:

"a. Grant of registration of projects namely Curo One Part I

Commercial (PBRERA-SAS80-PM0020) & Curo One Part II Residential (PBRERA-SAS80-PR0616) being developed by Respondent No.2 may kindly be revoked in prevailing facts and circumstances of present case on following due process of law;

b. Upon revocation of registration, the Respondents be debarred from accessing their website in relation to the said project and further display the photograph of respondents No.1-5 in the list of defaulters and be notified to other authorities;

c. Further the authority may freeze the bank account of Respondents No.1-5 maintained for collecting money from the said projects;

d. Issue such other directions as it may be deemed necessary.

e. Authorities may not re-grant registration to projects of Respondent No.2 unless all disputes between the Complainant and Respondents are fully and finally settled."

2.2 It is necessary to mention here that no monetary relief i.e. compensation, penalty or interest was prayed while filing the above complaint by appellant.

3. Upon notice, the respondents filed response and opposed the complaint, *inter-alia*, raising the following pleas:-

The Agreement to Sell dated 19.07.2006 (for short "Agreement") between the parties stands terminated. There exists no relationship of allottee and promoter between them; rather the transaction was commercial contract entered on principal to principal basis. The complainant has made an attempt to derail the real estate project of the respondent without any valid reason. The cause of action, if any, had arisen in favour of the complainant much prior to the date of enforcement of the Act of 2016 and as such, the Authority has no jurisdiction to try the complaint. Also submitted that the Act of 2016 is applicable prospectively and not retrospectively. Specifically submitted that Department of Housing and Urban Development, Government of Punjab issued a notification dated 11.01.2008 to the effect that Hotels were permitted to be built up only on the plot having at least frontage of 200 ft. width; therefore, in terms of Section 56 of the Indian Contract Act, 1872 (for short "Act of 1872"), the agreement stood frustrated on that count. Again submitted that appellant agreed to pay additional sum of Rs.5 crores to the respondents at the time of applying for CLU, but the commitment was not honoured. Categorically submitted that there was no communication between the parties after 08.11.2008 till filing of the complaint on 12.10.2020.

Respondents applied for registration of project on 27.07.2017, which was granted on 08.12.2017 by the Authority. Also submitted that under clause 25 of the Agreement, it was stipulated that dispute, if any, between the parties shall be referred to the Retired Judge of Punjab & Haryana High Court, at Chandigarh as a sole arbitrator for adjudication under the provisions of Arbitration & Conciliation Act, 1996 (for short 'Act of 1996'). Lastly submitted that dispute, if any, on the basis of Agreement was purely civil in nature; thus covered under the Specific Relief Act, 1963. The appellant remained in deep slumber for about 12 years; thus, in view of the provisions of Limitation Act, 1963, even the remedy to approach Civil Court also became time barred and then only, appellant has launched the present proceedings without any legal basis.

4. After taking into consideration the material available on record and upon hearing both sides, the Authority dismissed the complaint.

5. Aggrieved against the dismissal order, present appellant preferred statutory appeal before Real Estate Appellate Tribunal, Punjab (for short 'Tribunal'), but remained unsuccessful. Hence, present appeal.

6. It is noteworthy that ld. Tribunal while dismissing the appeal observed that "*the appellant can still maintain his complaint against the respondent for non-disclosure of vital information.*"

7. **CONTENTIONS**:-

7 (a) **ON BEHALF OF APPELLANT:**

(i) The Authority as well as ld. Tribunal while passing the impugned orders did not adhere to the provisions of the Act of 2016 and rules framed thereunder; hence, the same are not legally sustainable;

(ii) The Agreement and receipt of Rs.6.5 crores have been duly admitted by the respondents. Out of sale consideration of Rs.12.5 crores, sum of Rs.2.50 crores was agreed on account of approval of CLU which was to be paid within 15 days on grant of the same. However, the needful was not done; therefore, the aforesaid amount was not paid.

(iii) Main object of the Act of 2016 was to avoid fraud and for increasing transparency in the real estate sector. As per Clause 19(1)(i) of the Agreement, in case permission and approval of the Government for issuance of CLU is not issued, then after expiry of 24 months from its execution, the respondents were under obligation to refund the entire money to appellant; but till date, the same has not been refunded.

(iv) that as per the provisions of Section 4(2) of the Act of 2016, a promoter is under obligation to enclose proforma of the Allotment Letter, Agreement for sale and the Conveyance Deed proposed to be signed with the allottees at the time of submission of application for registration of real estate project. Still further, under clause (l) thereof, the promoter is also required to make a declaration supported by an affidavit that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if the land is owned by another person. The declaration shall also indicate that the land is free from all encumbrances; or the 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 be specified. The promoter shall also declare that 70% of the amounts realised 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 & land cost and shall be used only for that purpose, but the respondents failed to deposit 70% of Rs.6.5% crores received from the appellant in the manner indicated above; nor the factum of Agreement was disclosed in the declaration.

(v) Also submitted that respondents fraudulently changed the language of clause 8 (vii) of the Agreement for Sale specified under rule 8 of the Rules of 2017 as per their convenience in order to conceal the Agreement entered between the parties.

(vi) While making reference to the judgment of Hon'ble Supreme Court rendered in ***M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others, (2021) 9 SCR 909,*** Ld. Senior Counsel submitted that the Act of 2016 is applicable retroactively, hence it will apply to all ongoing projects and as such the present, controversy is squarely covered with the law laid down by Hon'ble Supreme Court. Also submitted that the respondents have not got the Agreement frustrated from any competent Court; rather the same is still subsisting between the parties. Reference in this regard is made to E-mail dated 25.10.2008 (A-12).

(vii) While referring to word "shall" occurring in Section 4 of the Act of 2016, it is contended that the disclosure of Agreement was mandatory upon the respondents, but they deliberately concealed the same at the time of applying for registration of the project.

(viii) the respondents have knowingly violated Clause 19(1)(ii) of the Agreement by not obtaining CLU or refunding the money, therefore, they are liable to pay heavy penalty.

(ix) Above all, the so called Non-Encumbrance Certificate(s) (for short "NEC") annexed by the respondents along with their application for registration of the project were palpably wrong and legally flawed as the same have not been issued in consonance with rule 3(1)(e) of the Rules of 2017; inasmuch as there is a requirement to obtain the NEC through an Advocate having experience of atleast ten years from the revenue authority, not below the rank of Tehsildar.

(x) Also submitted that as per rule 15(1)(E) *(ibid)*, the Authority shall ensure that details of approvals, permissions, clearances & legal documents, including encumbrances certificate or NEC shall be available on their website in respect of each project registered under the Act of 2016, but in the present case, there is a complete failure on the part of the Authority for the reasons best known to them. Thus, frustrated the entire purpose and object of the Act of 2016 while not maintaining transparency as well as in protecting the interest of allottees.

(xi) by way of present proceedings, the appellant is not seeking enforcement of the Agreement; rather their sole grievance is that registration of respondents deserves to be revoked in view of the gross violation of the Act of 2016 as well as Rules framed thereunder.

7(b) ON BEHALF OF THE RESPONDENTS:

(i) Mr. Chopra, learned Senior counsel, while referring to provisions of Section 56 of the Act of 1872, contended that the Agreement stood frustrated on account of the issuance of Notification dated 11.01.2008 (A-7) by Government of Punjab. As per clause (3) of the aforesaid Notification frontage of at least 200 ft. (width) on a minimum of 80 ft. wide road is required for construction of a Hotel. Since the land in question was having frontage of only 120 ft.; therefore, the Agreement could not be honoured being contrary to law as well as against the public policy. The appellant approached the respondents for entering into a new agreement whereby, it was agreed between the parties that they shall apply for CLU of the entire land for an integrated development, including Hotel etc. Out of the total developed area, the respondents agreed to sell an approved FSI of 2,00,000 sq. ft. as proportionate ownership in the entire land; for which the appellant agreed to pay Rs. 5 crore at the time of applying for CLU as the balance sale consideration and this fact was never denied by the appellant. Thereafter, to ascertain the earlier demand raised by the respondents, they sent two different E-mails dated 30.10.2008 & 01.11.2008 (A-13 & A-14) respectively which was never responded by the appellant. However, *vide* letter dated 05.11.2008, the appellant intimated that until sanctioned plan is obtained for the project, their bank would be unable to disburse further funds in view of the RBI norms (A-15). Vide letter dated 08.11.2008 (A-16), the appellant sought certain information which was duly supplied by the respondents. Also submitted that after November 08th, 2008, there had been no correspondence between the parties and after a gap of about 12 years, present complaint was filed on 12.10.2020 before the Authority, just to put a pressure upon the respondents.

(ii) Specifically submitted that appellant is not falling within the definition of 'allottee' under the Act of 2016 and reference in this regard has been made to Section 2(d) thereof. Further contended that the provisions of the Act of 2016 would be applicable only in case a 'Real Estate Project' as defined under Section 2(zn) of the Act of 2016 is being developed by a promoter. The 'Real Estate Project' is defined as the development of a land into plots or apartment. In the instant case, the transaction between the parties was for the sale of a single piece of land. Since the transaction did not relate to sale of plot in a 'Real Estate Project' by its promoter, inasmuch as projects of the respondents has been registered much later i.e. 08.12.2017 and 07.07.2020 revised on 19.12.2022; thus the complaint is totally frivolous and has rightly been dismissed by the Authority as well as the Tribunal. Further contended that the Agreement was executed on 19.07.2006 and the provisions of the Act of 2016 came into force w.e.f. 01.05.2017 and as such appellant cannot take any benefit of the same in any manner.

(iii) that the sole grouse of the appellant is that while seeking registration of the project, respondents did not disclose the factum of Agreement and which according to them, was an encumbrance on the land. In this regard, it is submitted that as per Section 4 of the Act of 2016, the Agreement in question does not amount to an 'encumbrance' as it was executed way back on 19.07.2006 and by the time, the registration of project was applied, much water had flown; thus, this appeal is liable to be dismissed even on account of delay and latches with costs.

(iv) that as per Clause 19 of the Agreement, the CLU was to be obtained within a period of 24 months and it was further stipulated that on the expiry of this period, the Agreement shall stand terminated and the respondents shall refund all the amounts to the appellant. Still further as per Clause 20 of the Agreement, it was stipulated that in case of non-performance of any part of the Agreement, an aggrieved party shall have right to seek specific performance, apart from availing remedy of Arbitration.

(v) present proceedings are camaflouge; under the guise of same, the appellant wants to seek specific performance of the Agreement, which right otherwise has become time barred and in case the present appeal is allowed, it would amount to entertaining a suit for specific performance, after a period of 12 years.

(vi) Since the remedy for specific performance was available to the appellant, thus they ought to have restricted to that effect; however, having failed to do so, the appellant has resorted to the present proceedings with ulterior motive, and as such, not maintainable under any provision of law.

8. After hearing both sides and upon perusal of the records, the substantial questions of law for consideration of this Court would be:-

(i) As to whether, on the basis of Agreement dated 19.07.2006, the appellant is having any right, title or interest in the real estate projects; namely,(i) Curo One Part I Commercial (PBRERA-SAS80-PM0020) & (ii) Curo One Part II Residential (PBRERA-SAS80-PR0616)?

(ii) Whether the impugned order(s) passed by the Authority and/or ld. Tribunal is/ are legally sustainable?

(iii) Whether in view of the facts and circumstances of the present case, the registration of aforesaid real estate projects, deserve(s) to be revoked under section 7 of the Act?

(iv) What order to be passed?

POINT (i)

9. Both sides argued extensively regarding legality and validity of the Agreement dated 19.07.2006; this court has also minutely gone through the contents thereof.

9.1 As per opening paragraph of the Agreement, respondent No.1(earlier known as "Dynamic Continental Pvt. Ltd.") was owner-in-possession of 39 bigha, 11 biswa (out of total land measuring 92 bigha, 10 biswa) comprised in Khewat/khatauni No.674/791, 746/869, 390/337; jamabandi for the year 2001-02, Hadbast No.342 situated at village Mullanpur, Garibdass, Tehsil Kharar, District Roop Nagar. Respondent No.1 showed a communication dated 30.08.2005 received from the office of Director of Industries & Commerce, Punjab to the appellant, about the decision of Empowered Committee taken in its meeting held on 19.07.2005, regarding conversion of agriculture land for commercial purpose i.e. Mall-Multiplex-5 Star Hotel Complex with FAR 1:3.

9.2 The appellant expressed interest in purchasing of above land and which was marked as Schedule 'B' property in the Agreement. The respondent No.1 agreed to sell the land in favor of the appellant, measuring 1.53 acres with sanctionable built up area of 2,00,000 sq. ft., for sale consideration of Rs.12.50 Crore @ Rs.6.25/- per sq.ft. having frontage of 120 ft. at Chandigarh-Mullanpur-Baddi Road, for 5-Star Hotel-cum-service apartment complex in accordance with change of land use.

9.3 It is a matter of record that until execution of the Agreement on 19.07.2006, the respondent No.1 received an amount of Rs.6 crores from the appellant and details of which are as under. :-

Sr. No	Amount	Cheque No.	Date	Bank
1.	Rs.50,00,000/- (fifty lakh)	086052	19.11.2005	ICICI Bank, Indira Nagar Branch, Bangalore
2.	Rs.4 crore	086077	09.03.2006	ICICI Bank, Indira Nagar Branch, Bangalore
3.	Rs.1,50,00,000/- (one crore fifty lakh)	991169	15.07.2006	ICICI Bank, Indira Nagar Branch, Bangalore

9.4 According to Clause 3 of Agreement, the appellant agreed to pay balance consideration of Rs.6.5 crores as per the following schedule:-

S.No.	Particulars	Amount
1.	Within seven days from the execution of agreement	Rs.50 lakh, paid vide cheque No. 991193 dt.05.08.2006 (credited on 18.08.2006)
2.	Within 15 days from receipt of approval/sanction for change of land use as commercial with a FAR of 1:3	Rs.2.5 crore
3.	Within 30 days from receipt of approval/sanction under clause (iii) above.	Rs. 2 crore
4.	Within 7 days from receipt of approval/sanction of building plans from competent authority and commencement of construction	Rs.75 lakh
5.	On the registration of sale deed/conveyance deed	Rs.75 lakh

9.5 Also necessary to mention here that an amount of Rs.50 lakh mentioned at serial No. 1 (*ibid*) was also paid by the appellant on 05/18.08.2006 to the respondent No.1. The execution of Agreement as well as receipt of Rs 6.5 Crore from the Appellant is not disputed by respondents. The appellant is alleging that due to fault of respondents in obtaining the CLU from competent authority, the transaction did not fructify. However, the respondents are justifying their stand while forfeiting the amount of Rs. 6.5 crores, on the premises that land in question was having a frontage of 120 ft.; and in view of the notification dated 11.01.2008, issued by the Government of Punjab, there was a pre-condition that for a hotel, it must have a frontage of at least 200 ft.; therefore, the Agreement was frustrated being impermissible in law and this fact was duly conveyed to the appellant vide communication dated 18.10.2008 (A-10) and which reads as under:

> *"Dynamic*
>
> *Dated: 18.10.08*
>
> *To*
>
> *George Abrahim*
> *CEO*
> *M/s Tristar Hotels (P) Ltd.*
> *9th and 10th Floors, Delta Tower,*
> *Sigma Softech Park No. 7, White Field*
> *Main Road, Opposite Varthur Lake*
> *Bangalore-560006*
>
> *Sub: Agreement to sell dated 19.07.06 executed between yourself and ourselves.*
>
> *Dear Sir,*
>
> *We have come to know that for the purpose of obtaining CLU for building a hotel, the land has to have a front of minimum 200 feet. In your case the land has a front of 120 feet. As per the opinion of our legal departments, our agreement dated 19.07.06 has frustrated in the eyes of law and cannot be acted upon. The agreement is therefore of no consequence.*
>
> *Parteek Srivastava*
> *From*
> *M/s Dynamic Continental (P) Ltd.*
> *Sd/"*

9.6 There is no dispute that various letters/e.mail(s) were exchanged between the parties on specific dates: 20.10.2008 (A-11, A-11/A), 25.10.2008 (A-12, A-12/A), 30.10.2008 (A-13, A-13/A), 01.11.2008 (A-14), 05.11.2008 (A-15), and 08.11.2008 (A-16); however, for about 12 years, there was no communication between them. Even the appellant did not raise any grievance before a court of law or pursue arbitration in terms of the specific clause to that effect. The reasons for prolonged inaction are only known to the appellant; but it is quite discernible that they remained absolutely relaxed during this long period, until filing of the complaint on 12.10.2020.

9.7 Hence before proceeding further, it would be appropriate to recapitulate the relevant Clauses of the Agreement dated 19.07.2006 and which read as under:-

> ***"19. Default by either of the parties to this agreement;***
>
> ***I) Change of Land Use.***
>
> *i) In the event that the permission and approval of the Government of Punjab for the purposes of the issuance of the change of land use for the* ***Schedule-A*** *property is not issued within 12 months from the date of this Agreement, other than on account of the default of the FIRST PARTY, then at the sole option of the SECOND PARTY, the time to obtain the said permission shall be extended for another period of 12 months. In the event that the said permission is not issued even after the expiry of Twenty Four (24) months from the date of this Agreement, then the present agreement shall stand terminated and FIRST PARTY shall refund all the amounts already received to the SECOND PARTY.*
>
> *ii) In the event that the permission and approval of the Government of Punjab for the purposes of the issuance of the change of land use for the Schedule-A property is not issued within 12 months from the date of this agreement on account of the default of the FIRST PARTY, then at the sole option of the SECOND PARTY, the time to obtain the said permission shall be extended for another period of twelve months. Further, on the occurrence of such a default, the FIRST PARTY shall pay an additional sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the SECOND PARTY and the FIRST PARTY shall continue to be bound to obtain the permission for change of land use.*
>
> *In the event that the said permission is not issued even after expiry of twenty four (24) months from the date of this agreement, on account of the default of the FIRST PARTY, then the SECOND PARTY shall have the option and right to seek termination of this Agreement and the FIRST PARTY shall pay an additional sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only). Further upon the exercise of this right by the SECOND PARTY, the FIRST PARTY shall refund all amounts received by the FIRST PARTY from the SECOND PARTY.*
>
> ***(II) NON PAYMENT BY SECOND PARTY***
>
> *In the event if the SECOND PARTY commits default in the payment of the balance consideration payable under items (2), (3), (4) of Schedule in Clause 3 hereinabove, then the SECOND PARTY shall continue to be liable to*

make the payments under default and in addition to the same,it shall pay a penalty of a sum of Rs.50,00,000 (Rupees Fifty Lakhs only) and under items (5) and (6) of Schedule in Clause 3 hereinabove, the SECOND PARTY shall pay a penalty of Rs.15,00,000 (Rupees fifteen lakhs only) instead of Rs.50,00,000/- (Rupees fifty lakhs only) for each default and the Agreement continue to be valid and subsisting.

In the event that default continues and there is a second instance of default in the payment of the balance consideration payable under the Schedule hereinabove, then the FIRST PARTY, at its sole option shall have the right to terminate the agreement, refund all amounts received from the SECOND PARTY after forfeiting and deducting a sum of Rs.1,00,00,000 (Rupees One crore only).

For the purposes of the above section, there shall be a grace period of 60 days to complete the payment under the Schedule hereinabove. After the expiry of which period the SECOND PARTY shall be deemed to have committed default in the payment of the amounts under the Schedule hereinabove.

***20. Specific Performance**:- That the parties to the agreement agree that in case of any breach or non-performance of any of the provisions of this agreement by either of the parties, then the other party shall be entitled to take legal recourse for seeking specific performance of the terms of the agreement against the other party at cost and expenses of the other party.*

***25.** That it is further agreed between the parties that in case of any kind of dispute arising between the parties in respect of the present agreement, then the same shall be referred to the sole arbitration of retired Justice of Punjab & Haryana High Court at Chandigarh who shall adjudicate such dispute between the parties under the provisions of Arbitration and Conciliation Act, 1996. The decision and award given by the sole arbitrator shall be final and binding upon the parties. The Arbitration shall be held in New Delhi.*

9.7.1 According to Clause 19(1)(i) of the Agreement, if the government does not issue permission and approval for Change of Land Use (CLU) for the Schedule-A property within 12 months from the date of

Agreement, except due to the respondents' default, the appellant has an option to extend the time to obtain permission for another 12 months. However, if permission is not granted even after 24 months from the date of Agreement, the same shall be terminated, and the respondents shall refund all amounts received from the appellant

9.7.2 Clause 19(1)(ii) addresses a situation where the government's permission for CLU is not issued within 12 months due to the respondents' default. In such a case, the appellant can choose to extend the time for obtaining permission for another 12 months. Additionally, the respondents shall pay an amount of Rs.50,00,000 to the appellant, and they remain obligated to obtain the CLU permission.

9.7.3 Furthermore, it was agreed that if permission is not granted even after 24 months from the Agreement date due to respondents' default, the appellant has a right to terminate the Agreement. In such a situation, the respondents are required to pay an additional amount of Rs.50,00,000, and they shall refund all amounts received from the appellant.

9.7.4 Clause 19(II) covers non-payment by the respondents. It states that if the appellant defaults in paying the balance consideration as specified under items (2), (3), and (4) of the Schedule (*ibid*), the appellant remains liable for the payment and shall additionally pay a penalty of Rs.50,00,000. However, for defaults related to items (5) and (6) of the Schedule, appellant is liable to pay a penalty of Rs.15,00,000; instead of Rs.50,00,000 for each default, and the Agreement remains valid and effective.

9.7.5 It was also agreed that if the default persists and there is a second default in payment of the balance consideration specified in the

Schedule, the respondents have sole option to terminate the Agreement. In such a case, the Respondents shall refund all amounts received from the appellants after deducting a sum of Rs.1,00,00,000/- (Rupees One crore only). Additionally, it was agreed that there would be a grace period of 60 days to complete the payment as per Schedule, and after that period, the appellant will be considered to have defaulted in the payment of specified amount as per the Schedule.

9.7.6 According to Clause 20 of the Agreement, it was mutually agreed that if either party breaches or fails to fulfill any provisions of the Agreement, the other party has a right to seek specific performance through legal means and the expenses incurred for taking such a recourse will be borne by the defaulting party.

9.7.7 Furthermore, Clause 25 of the Agreement stipulates that in the event of any dispute between the parties in respect of the Agreement, the matter shall be referred to a retired Justice of the Punjab & Haryana High Court in Chandigarh for arbitration. The appointed arbitrator will resolve the dispute in accordance with provisions of the Act of 1996 and decision or award of the sole arbitrator shall be final and binding upon both parties.

9.8 It is a matter of record that on 18.10.2008, appellant was informed by the respondents regarding frustration of the contract.

9.9 Admittedly, from 08.11.2008 until the filing of the complaint on 12.10.2020, there has been a complete lack of communication between the parties. It is all mystery that appellant paid a substantial amount to the respondents i.e. Rs. 6.5 crores; yet, no legal action was taken for nearly 12 years. Thus, in the given circumstances, even if it is assumed that respondents failed to obtain CLU as per the Agreement; still, such a long delay on the part of appellant would be the genuine basis to firmly observe that the Agreement has lost its legal significance in all respects over the period of time.

9.10 Although Mr. Sarin, learned Senior counsel, tried to make an attempt while arguing that the appellant is falling within the definition of 'allottee' from an ongoing project as per proviso to section 3 of the Act of 2016 and as such, delay would not be fatal; but, the contention is liable to be rejected for the following reasons:

i. The Agreement in question was executed for purchase of land measuring 1.53 acres and which was intended to be developed as a Hotel.

ii. There is no quarrel that in view of the provisions of Punjab Apartment & Property Regulation Act, 1995 (referred to as 'the Act of 1995'), the CLU would be pre-requisite for such development activities.

iii. Still further, under Section 3 of the Act of 1995, it is mandatory to obtain a license as Promoter for the development of agriculture land as residential, commercial, or industrial etc.

iv. At the time of executing the Agreement on 19.07.2006, the respondent No.1 had neither been granted permission; or CLU and/or license; nor registered as a Promoter to develop any project under the Act of 1995 .

v. It is evident from records that CLU was granted in favor of respondent No.1 for a group housing project on 03.09.2015, regarding the land measuring 9.713 acres, including 1.53 acre, and thereafter, got itself registered as Promoter on 11.11.2016 under the Act of 1995.

vi. The real estate project in favor of respondent No.1 was registered on 08.12.2017, under the Act of 2016.

9.11 For reference, all these documents giving specific details regarding CLU; Certificate as Promoter and registration of Real Estate

Project are extracted as A,B and C, respectively:

A. **C.L.U**

"DEPARTMENT OF TOWN & COUNTRY PLANNING, PUNJAB
PUDA BHAWAN, 6TH FLOOR, SECTOR 62, SAS NAGAR

To

M/s Curo India Pvt. Ltd.
SCO No. 50-51, Ist Floor,
Sector 9-D, Chandigarh

Memo No. 4233 -CTP(PB)/SP-432
Dated Chandigarh 3-9-2015

Sub: Permission for Change of land use for Group Housing Project of M/s Curo India Pvt. Ltd. at village Mullanpur Garibdas (Master Plan New Chandigarh) (Area 10.18 acres).

Ref: Your request dated nil.

2. Your request for change of land use for the area of 10.18 acres falling in village Mullanpur Garibdas (Master Plan New Chandigarh) to develop Group Housing Project has been considered at the Govt. level. After deducting the area measuring 0.467 acres acquired by GMADA for widening of existing road, the permission for the remaining 9.713 acres is hereby granted to use this area from agriculture to residential Group Housing purpose on the following terms and conditions.

……………………………………………………………………………………

Sd/-
Chief Town Planner
Punjab, Chandigarh"

B. **PROMOTER**

"GREATER MOHALI AREA DEVELOPMENT AUTHORITY
SAS NAGAR

CERTIFICATE OF REGISTRATION AS PROMOTER
[See Rule 23(2)]

This Certificate of registration is hereby granted to Curo India Private Limited having its registered office at SCO No. 50-51, 1st Floor, Sector 9-D, Chandigarh, as a qualification to obtain a license u/s 5 of the Punjab Apartment and Property Regulation Act, 1995 and the rules made there under for developing a colony and constructing apartments, which would be subject to the following terms:-

(i) The Certificate shall be operative in the jurisdiction of GMADA.
ii) The Certificate does not entitle the promoter to set up a Colony without obtaining the requisite license as mandated under the Punjab Apartment & Property Regulation Act, 1995.
(iii) The Certificate shall remain valid from the date of application for renewal of promoter registration i.e. 26.10.2016 to 25.10.2021.
(iv) The Certificate may be renewed on submission of fresh application along with prescribed fee provided that the application has been submitted three months before the date of expiry, as mentioned above.
(v) The Promoter shall inform GMADA in case development of any colony/apartment is undertaken by it in any area which is outside the jurisdiction of GMADA.
(vi) The Promoter shall maintain a website which shall exhibit the details of all approvals taken by with regard to any project undertaken by the promoter, which include this certificate, approved layout plans, payment terms etc. or any other documents/information which requires to be disseminated to the prospective buyers.
(vii) The undersigned reserves the right to withdraw or cancel this Certificate at any time during the tenure of its validity, if it is found that the promoter:

a) has given any wrong information in his application for registration, or
b) has been adjudicated as insolvent or is under-charged insolvent, or
c) has been convicted under the Act or any other law relating to construction or use of premises, or has contravened any of the terms and conditions of this Certificate or any of the provision of the Act or the rules made there under or any other Law enacted by the Central or the State Government.

Sd/-
ADDL. CHIEF ADMINISTRATOR,
(Exercising the powers of Competent Authority)

No. E.O.. (R)/2016/32
Date of issue: 11.11.2016
(Note*: This licence has been issued on the renewal Promoter Licence No. 2011/70 dated 09.09.2011 (which has been retained in this office in original).*

Sent to Delhi Curo Office, handed over to Mr. Rajesh Joshi."

C. REAL ESTATE PROJECT

> ***"REAL ESTATE REGULATORY AUTHORITY, PUNJAB***
> ***PUNJAB MANDI BHAWAN, SECTOR 65-A, SAS NAGAR***
> ***(MOHALI)***
>
> *Memo No. RERA/2017/1414 Dated: 08.12.2017*
>
> *To*
>
> *M/s Curo India Private Limited,*
> *SCO 50-51, Madhya Marg,*
> *Sector 9-D, Chandigarh.*
>
> *(Contact No. 0172-5060800)*
> *Email.ID: curo@curoindia.com*
>
> *Sub: Registration of Real Estate Project Area 9.713 Acres Project (Group Housing 6.92475 Acres and Commercial 2.30825 Acres) ("CURO") situated at village Mullanpur Garibdas, Under New Chandigarh Master Plan, Tehsil Kharar, District SAS Nagar.*
>
> *This is to inform you that this Authority has accepted your application for registration of your project and the following registration number is allotted:-*
>
> ***Registration No: PBRERA-SAS80-PM0020***
>
> *The registration certificate of the project will be issued to you subsequently, along with Login Id. and user password, in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules made there under by the Govt. of Punjab. You shall also be liable to pay GST or any other taxes, as applicable, levied by Government of India/State Government in this regard, within 30 days from the issue of demand notice by this office, regarding the same.*
>
> ***Sd/-***
> ***Member-1***
> ***RERA, Pb."***

9.12 In view of the aforesaid discussion; coupled with the CLU/Certificates as Promoter/Registration with Authority {A,B&C}(*supra*), there remains no doubt that the Agreement in question was purely a transaction for purchase of land measuring 1.53 acres, but could not fructify. However, the appellant was neither offered or allotted any Plot, Flat, SCO, Shop or Apartment etc. from any project or proposed project, registered under the Act of 1995 or Act of 2016 by the promoter; hence appellant cannot be termed as an 'allottee' under any provision of law.

9.13 As discussed above, at the time of the execution of the Agreement, the respondent No.1 was neither registered as promoter, nor did they possess the required CLU and/or registration under the Act of 1995 or the Act of 2016. Thus, by no stretch of imagination, it could be said that the Agreement for purchase of land measuring 1.53 acres shall form the part of an ongoing project in terms of proviso to section 3 of the Act of 2016, read with Rule 2(h) of the rules of 2017. Consequently, the principle outlined in the case of ***M/s Newtech Promoters and Developers Pvt. Ltd. (supra)*** does not even remotely apply to the facts of the present case.

9.14 Thus, after analyzing the whole gamut, it comes out that the appellant has tried to make an attempt to reopen the issue through complaint dated 12.10.2020, which otherwise had become a non-issue by afflux of time. It seems that the appellant, for reasons best known to them, did not avail the legal remedies at relevant point of time; instead remained in imagination at their own peril. As rightly said by Jean Jacques Rousseau in 18^{th} Century, that "*the world of reality has its limit; the world of imagination is boundless*". Resultantly, there is no hesitation to observe that the Agreement in question has lost its significance and legal effect due to gross inaction of the appellant.

9.15 Considering that the appellant did not take timely action to enforce their rights flowing from the Agreement, before the appropriate forum; such as a civil court or arbitrator, they cannot be permitted at this stage, to vindicate any claim on the basis of complaint dated 12.10.2020. Consequently it is held that on the basis of Agreement dated 19.07.2006, the appellant has no right, title or interest in either of the projects namely,(i) Curo One Part I Commercial (PBRERA-SAS80-PM0020) &(ii) Curo One Part II Residential (PBRERA-SAS80-PR0616).

Point no.(i) is decided accordingly.

POINT (ii).

10. As already observed at Point no. (i), that on the basis of Agreement dated 19.07.2006, the appellant has no cause of action to lay any claim against both the projects. At the same time, upon perusal of records, it transpires that after about 2 years and 7 months of the registration letter dated 07.12.2017, the initial registered project i.e. ***"PBRERA-SAS80-PM0020"*** was bifurcated into two separate real estate projects i.e. residential and commercial, respectively vide revised registration of even date, viz. 07.07.2020 and which are extracted as under:-

"PUNJAB REAL ESTATE REGULATORY AUTHORITY ***Ist Floor, Plot No.3, Block B, Madhya Marg, Sector 18-A, Chandigarh*** ***Website.www.rera.punjab.gov.in Email: helprera@punjab.gov.in*** ***Telephone: 0172-5139800***	***"PUNJAB REAL ESTATE REGULATORY AUTHORITY*** ***Ist Floor, Plot No.3, Block B, Madhya Marg, Sector 18-A, Chandigarh*** ***Website.www.rera.punjab.gov.in Email: helprera@punjab.gov.in*** ***Telephone: 0172-5139800***
Memo No.RERA/2020/224 ***Date****: 07/07/2020*	***Memo No.RERA/2020/225*** ***Date****: 07/07/2020*
Revised Registration Letter *To* *M/s Curo India Private Limited* *Village Mullanpur Garibdas, New Chandigarh,* *Old Barrier, District SAS Nagar (Mohali), Punjab-140901.* *Mobile No. 81466-80071* *Email.Id. curo.Chandigarh@curoindia.com*	*To* *M/s Curo India Private Limited* *Village Mullanpur Garibdas, New Chandigarh,* *Old Barrier, District SAS Nagar (Mohali), Punjab-140901.* *Mobile No. 81466-80071* *Email.Id. curo.Chandigarh@curoindia.com*
Subject: ***Registration of Real Estate Project "Curo One, Part-I, Commercial."***	*Subject:* ***Registration of Real Estate Project "Curo One, Part-II, Residential."***

*This is to inform you that this Authority has accepted your application for **revised registration** of Real Estate Project, with details as follows:-*

Projet Name :Curo One Part-I, Commercial Village Mullanpur Garibdas, Under New Chandigarh Master Plan, Tehsil Kharar, District SAS Nagar (Mohali), Punjab.
Type of Project :Mixed
Total Area : 19720.331 Sq. Mtrs.

S.No.	*Unit Type*	*Qty*		*S.N.*	*Unit Type*	*Qty*
01	*SCO Plots*	*032*		*04*	*Service Apartments*	*136*
02	*Shops*	*129*		*05*	*Offices*	*096*
03	*ATMs*	*002*		*06*	*Audi*	*005*
					TOTAL	***400***

Registration No. :PBRERA-SAS80-PM0020
Valid Upto: 30-June-2023
The registration certificate of the project will be issued to you subsequently, in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules made there under by the Govt. of Punjab. You shall also be liable to pay the deficient registration fee, if any GST or any other taxes, applicable, levied by Government of India/State Government in this regard, within30 days from the issue of demand notice by this office, regarding the same.
Your attention is also drawn to Chapter III (Section 11 to 18) of the Real Estate (Regulation and Development) Act, 2016 in which the functions of a Promoter have been prescribed. You are required to comply with these.
Note: This Revised Registration Letter is in supersession of previous Registration Letter ref. No. RERA/2017/1414 Dated 08.12.2017. In addition, you are directed to upload the information/documents provided to the Authority for the registration of this application within 30 days from the date of issuance of this letter.

Sd/-
Secretary
Real Estate Regulatory Authority,
Punjab"

*This is to inform you that this Authority has accepted your application for **revised registration** of Real Estate Project, with details as follows:-*

Projet Name :Curo One Part-II, Residential Village Mullanpur Garibdas, Under New Chandigarh Master Plan, Tehsil Kharar, District SAS Nagar (Mohali), Punjab.
Type of Project :Residential (Group Housing)
Total Area : 16834.92 Sq. Mtrs.

S. No	*Towers*	*Flats*		*S.N.*	*Towers*	*Qty*
01	*Tower 1*	*068*		*04*	*Tower 4*	*034*
02	*Tower 2*	*068*		*05*	*Tower 5*	*034*
03	*Tower 3*	*068*		*06*	*Tower 6*	*068*
					TOTAL	***340***

Registration No. :PBRERA-SAS80-PR0616
Valid Upto: 31-Dec-2025
The registration certificate of the project will be issued to you subsequently, in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules made there under by the Govt. of Punjab. You shall also be liable to pay the deficient registration fee, if any GST or any other taxes, applicable, levied by Government of India/State Government in this regard, within30 days from the issue of demand notice by this office, regarding the same.
Your attention is also drawn to Chapter III (Section 11 to 18) of the Real Estate (Regulation and Development) Act, 2016 in which the functions of a Promoter have been prescribed. You are required to comply with these.
Note: "In addition, you are directed to register yourself on our web portal (www.rera.punjab.gov.in) and upload the information/documents provided to the Authority for the registration of this application."

Sd/-
Secretary
Real Estate Regulatory Authority,
Punjab"

"REAL ESTATE REGULATORY AUTHORITY PUNJAB

Plot No. 3, Block B, First Floor, Sector 18, Madya Marg, Chandigarh-160018
Ph: 0172-5139800
www.rera.punjab.gov.in

CERTIFICATE OF PROJECT REGISTRATION

*This registration is granted under Section 5 of the Real Estate (Regulation and Development) Act, 2016 to the following project under project registration number **PBRERA-SAS80-PR0616***
*Project Name: **Curo One, Part-II, Residential***
*Project Type: **Residential***
Developed in a total area of 16834.9380 sqr mtrs at Curo One, Village Mullanpur Garibdas, Old Barrier,

	New Chandigarh, Sahibzada Ajit Singh Nagar (Mohali), Punjab, 140901 *1. Promoter's Name:* ***Curo India Private Limited****, having its registered office/principal place of business at Curo One, Mullanpur Garibdas, Near Old Barrier, New Chandigarh, Sahibzada Ajit Singh Nagar (Mohali), Punjab-140901.* *2. This registration is granted subject to the following conditions, namely:-* *(i) The promoter shall enter into an agreement for sale with the allottees as provided in 'Annexure A' of the Punjab Estate Real Estate (Regulation and Development) Rules, 2017;* *…………………………………………………………………* *(iv) The registration shall be valid for a period of 5 year(s) 6 month(s) commencing from 07/07/2020 and ending with 31/12/2025 unless renewed by the Real Estate Regulatory Authority in accordance with Section 6 of the Rules read with Rule 7 of the Act.* *(v) The promoter shall comply with the provisions of the Act and the rules and regulations made thereunder;* *(vi) The promoter shall not contravene the provisions of any other law for the time being in force in the area where the project is being developed.* *3. If the above mentioned conditions are not fulfilled by the promoter, the regulatory authority may take necessary action against the promoter including revoking the registration granted herein, as per the Act and the Rules and Regulations made thereunder.* *Dated: 05.02.2021 Sd/-* *Place: Chandigarh* ***(Charandev Singh Maan)***

10.1 It would be relevant to mention here that registration Certificate of Curo One, Part-II, Residential i.e. "***PBRERA-SAS80-PR0616"*** was further revised vide letter dated 19.12.2022 and which reads as under:-

"PUNJAB REAL ESTATE REGULATORY AUTHORITY
Ist Floor, Plot No.3, Block B, Madhya Marg, Sector 18-A, Chandigarh
Website.www.rera.punjab.gov.in Email: helprera@punjab.gov.in
Telephone: 0172-5139800

Memo No.RERA/2020/481-484 ***Date****: 19/12/22*

Revised Registration Letter

To

1. *M/s SSRG Marbella Developers & Promoters LLP,GHS-3, IT City, Airport Road, SAS Nagar (Mohali), Punjab-160055*
   Mobile No.: 98140-36194
2. *M/s Curo India Private Limited*
   Village Mullanpur Garibdas, New Chandigarh,
   Old Barrier, District SAS Nagar (Mohali), Punjab-140901.
   Mobile No. 81466-80071
   Email.Id. curo.Chandigarh@curoindia.com
3. *M/s Acron Buildwell LLP*
   # K-28, Green Park Extension

New Delhi-110016
4. M/s Guru Nanak Dairy and Poultry Farm
Curo One, Mullanpur Garibdass
New Chandigarh-Punjab-140901

Subject: ***Registration of Real Estate Project "Curo One, Part-II, Residential."***

This is to inform you that this Authority has accepted your application for revised registration of Real Estate Project, with details as follows:-

Project Name :Curo One Part-II, Residential
Village Mullanpur Garibdas, Under New Chandigarh Master Plan, Tehsil Kharar, District SAS Nagar (Mohali), Punjab.

Type of Project :Residential (Group Housing)
Total Area :16834.92 Sq. Mtrs.

S.No	***Towers***	***Flats***		***S.N.***	***Towers***	***Qty***
01	*Tower 1*	*068*		*04*	*Tower 4*	*034*
02	*Tower 2*	*068*		*05*	*Tower 5*	*034*
03	*Tower 3*	*068*		*06*	*Tower 6*	*068*
					TOTAL	***340***

Registration No. :PBRERA-SAS80-PR0616
Valid Upto: 31-Dec-2025

The registration certificate of the project will be issued to you subsequently, in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules made there under by the Govt. of Punjab. You shall also be liable to pay the deficient registration fee, if any GST or any other taxes, applicable, levied by Government of India/State Government in this regard, within 30 days from the issue of demand notice by this office, regarding the same.
Your attention is also drawn to Chapter III (Section 11 to 18) of the Real Estate (Regulation and Development) Act, 2016 in which the functions of a Promoter have been prescribed. You are required to comply with these.

Note: 1. This Revised Registration Letter is in supersession of previous Registration Letter issued vide Memo. No. RERA/2020/225 Dated 07.07.2020.
Note 2:- The promoter is directed to comply with all the statutory provisions contained in the REA Act/Rules, in respect of development of this project and all the statutory provisions contained in the approvals of project imposed by the respective competent authorities.

Sd/-
Secretary
Real Estate Regulatory Authority,
Punjab"

Here, it is quite relevant to note that under the Act of 2016; or rules of 2017, there is no provision for seeking successive revision of an ongoing project; yet the Authority has proceeded to grant revised registration in an unusual manner, without considering the interdict stipulated under section 14 of the Act of 2016. Curiously enough, as per the website of the Authority, the promoter of real estate project bearing Registration No. ***PBRERA-SAS80-PR0616*** has been shown as M/s SSRG Marbella Developers Promoters LLP, GHS-3, IT City, Airport Road, SAS (Mohali), Punjab**;** and not Respondent No.1 i.e. Curo India Pvt. Ltd., which is not permissible without the consent of $2/3^{rd}$ allottees (vide Section 14 of the Act of 2016).

10.2 Apart that, it is also necessary to mention here that the NECs submitted in support of application(s) for registration of project(s) are inherently flawed and which are recapitulated as under:-

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Non-Encumbrance Certificate (Commercial)

Non-encumbrance and transfer certificate in respect of property situated at village Khijrabad Hadbast No. 322, Tehsil Kharar, SAS Nagar Mohali owned by M/s Curo India Private Ltd., Mullanpur Garibdas through Dharampal Rana son of Raghvir Singh Rana resident of House No. 2087, Sector 15-C, Chandigarh is as under:-

Sr. No. Name of village & Hadbast No. Khasra No. Area

Applicant is owner in possession of land admeasuring 42 bigha 11 biswa as per which khata No. 765/875, 853/966, khasra No. 2236/1/1 (1-16), 2237/1/(5-2), 2238/1 (5-4), 2239/1 (3-7), 2248 (8-4), 2249/1/(8-12), 2250/2 (2-12), 2239/2/1 (1-11), 2246/2 (3-5), 2247/2 (2-18) kite 10 admeasuring 42 bigha 11 biswa situated at Village Mullapur Garibdas No.342, Sub-Tehsil Majri, Tehsil Kharar, District SAS Nagar which is free from all encumbrances.

This property is free from encumbrance for the period 15.10.2002 to 14.10.2015, as per the affidavit given by the applicant and according to the report of Area Patwari.

Sr. No. Name of village & Hadbast No. Khasra No. Area

There is no other change in the property. This certificate is being issued on the basis of affidavit furnished by the applicant and report made by the Patwari. The undersigned office is not responsible for ownership/possession of aforesaid land.

*Sd/-
Joint Sub-Registrar,
Majri*

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Non-Encumbrance Certificate (Residential)

That, I M/s Curo India Private Ltd., K-23, Green Park Extension New Delhi through Dharampal Rana son of Raghvir Singh Rana resident of House No. 1205, Sector 40-B, Chandigarh khewatdar of village Mullanpur Garibdas Tehsil Kharar, District SAS Nagar situated at village Mullanpur Garibdas No. 342, Tehsil Kharar, District SAS Nagar hereby issues following certificate:-

That my possession and ownership land is admeasuring 41 bigha 8 biswa as per which khata No. 713/812, 651/748, khasra No. 2236/1/12 (1-12), 2237/1/(5-2), 2238/1 (5-4), 2239/1/2 2-8), 2248 (8-4), 2249/1(8-12), 2250/2 (2-12), 2239/2/1 (1-11), 2246/2 (3-5), 2247/2 (2-18) kite 7 admeasuring 41 bigha 8 biswa and vide report No. 93 dated 21.01.2019 khasra no. 2248 (8-4) having 109/164 share admeasuring 5 bigha 9 biswa and khasra No. 2249/1 (8-12) having 68/172 share admeasuring 3 bigha 8 biswa and khasra No. 2250 (2-12) having 1/52 share admeasuring 0 bigha 1 biswa and No. 2238/1 (5-4) having 41/104 share admeasuring 2 bigha 1 biswa and khasra No. 2246/2 (3-5) having 18/65 share admeasuring 0 bigha 18 biswa and khasra no.2247/2 (2-18) having 7/58 share admeasuring 0 bigha 7 biswa total area 12 bigha 4 biswa situated at Village Mullapur Garibdas No.342, Tehsil Kharar, District SAS Nagar is under hypothecation by M/s Curo India Private Limited in favour of GMADA, PUDA Bhawan Sector 62, SAS Nagar in lieu of Rs.18,26,59,381/- (Rupees Eighteen Crores Twenty Six Lacs Fifty Nine thousand three hundred eighty one only) and remaining area admeasuring 29 bigha 4 biswa is free from loan.

Sr. No. Name of village & Hadbast No. Khasra No. Area

Vide report No.93 dated 21.01.2019 Khasra No.2248 (8-4) having 109/164 share admeasuring 5 bigha 9 biswas and khasra No. 2249/1 (8-12) having 68/172 share admeasuring 3 bigha 8 biswa and khasra No.

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	2250 (2-12) having 1/52 share admeasuring 0 bigha 1 biswa and No. 2238/1(5-4) having 41/104 share ad-measuring 2 bigha 1 biswa and khasra No. 2246/2 (3-5) having 18/65 share admeasuring 0 bigha 18 biswa and khasra No.2247/2 (2-18) having 7/58 share admeasuring 0 bigha 7 biswa total rea 12 bigha 4 biswa situated at village Mullapur Garibdas No.342 Tehsil Kharar, District SAS Nagar is hypothecation by M/s Curo India Pvt. Ltd. in favour of GMADA PUDA Bhawan Sector 62 SAS Nagar in lieu of Rs.18,26,59,381/- (Rupees Eighteen Crores Twenty Six Lacs Fifty nine thousand three hundred eighty one only) and remaining area ad-measuring 29 bigha 4 biswa is free from loan. *That as per affidavit and report of area Patwari this property is free from encumbrance for the period 17.06.2007 to 16.06.2020.* ***That regarding report of this property, the area Patwari has not conducted inspection of records. This certificate is issued on the basis of affidavit/self declaration. This office has no liability/responsibility pertaining to any kind about the above mentioned property. Concerned Department may conduct inspection of original records at its own level before Bank loan.*** *Sd/-* *Joint Sub Registrar Majri* *16.06.2020*

10.3 From bare perusal of the above NECs, it becomes apparent that Rule 3 of the Rules of 2017 was not complied with while seeking registration of projects in question. As rightly contended by Mr. M. L. Sarin, ld. Sr. counsel, that as per rule 3, the NECs ought to have been issued through an Advocate with minimum ten years experience from a revenue authority, not below the rank of Tehsildar. Additionally, Rule 15 stipulates that the promoter must upload the NECs on the department's website when submitting the project registration application. The relevant text of the Rules 3 & 15 of 2017 rules would be as under:-

> ***3. Information and documents to be furnished by the promoter for registration of a real estate project.--****(1) The promoter shall furnish the following additional information and documents, along with those specified in Section 4 for registration of the real estate project with the Authority, namely:-*

(a) to (d)…………………………………………………

(e) details of encumbrances on the land on which development of project is proposed, including details of any rights, title, interest, dues, litigation and name of party in or over such land or non encumbrance certificate through an advocate having experience of atleast ten years from the revenue authority not below the rank of Tehsildar, as the case may be;

…………………………………………………………….

***3(2)** An application to the Authority for registration of real estate project shall be made in writing in Form'A' in triplicate until the procedure is made web based for filling of such application.*

CHAPTER IV

DETAILS TO BE UPLOADED ON THE WEBSITE OF THE AUTHORITY

***15. Details to be uploaded on the website**.-(1) The Authority shall ensure that the following information, as applicable, shall be made available on its website in respect of each project registered under the Act, namely:-*

A. to D.……………………………………………………..

E. Details of approvals, permissions, clearances, legal documents,-

(i) approvals,-

*(**a**) authenticated copy of the license or land use permission, building sanction plan and the commencement certificate from the competent authority obtained in accordance with the laws applicable for the project, and where the project is proposed to be developed in phases, an authenticated copy of the license or land use permission, building sanction plan and the commencement certificate for each of such phases;*

*(**b**) authenticated copy of the site plan or site map showing the location of the project land along with names of revenue estates, khasra/khautni numbers and area of each parcel of the project land;*

*(**c**) authenticated copy of the layout plan of the real estate project or the phase thereof, and also the layout plan of the whole real estate project as sanctioned by the competent authority and other specifications of the real estate project ;*

*(**d**) floor plans for each tower and block including clubhouse, amenities and common areas;*

*(**e**) any other permission, approval, or license that may be required under applicable law; and*

(f) authenticated copy of occupancy certificate and completion certificate including its application;

(ii) legal documents,-

*(**a**) details including the Performa of the application form, allotment letter, agreement for sale and the conveyance deed;*
*(**b**) authenticated copy of the legal title deed reflecting the title of the promoter to the land on which development of project is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;*
*(**c**) land title search report from an advocate having experience of at least ten years;*
*(**d**) details of encumbrances on the land on which development of project is proposed including details of any rights, title, interest and name of any party in or over such land or non encumbrance certificate through an advocate having experience of atleast ten years from the revenue authority not below the rank of Tehsildar, as the case may be;*
*(**e**) where the promoter is not the owner of the land on which development is proposed, details of the consent of the owner of the land along with a copy of the collaboration agreement, development agreement, joint development agreement or any other agreement, as the case may be, entered into between the promoter and such owner and copies of title and other documents reflecting the title of such owner on the land proposed to be developed;*
(f) details of mortgage or charge, if any, created on the land and the project.

10.4 In addition to above, keeping in view the laudable object and purpose of the Act of 2016, this Court will also take judicial notice of the latest instructions dated 08.02.2021, issued by the Government of Punjab, Department of Revenue, Rehabilitation & Disaster Management for issuance of the NEC and operative part of the same reads as under:-

1. After receiving report from the Halqa Patwaries regarding Non-encumbrance, the concerned CRO will verify the report *from the land records (i.e. latest Jamabandi) which is available online.*

2. Regarding the other previous Jamabandies which are not available online and which relates to the corresponding period the copies would be sought by the CRO along with the report of the Patwari.

3. The CRO will personally satisfy himself with respect to the revenue record before issuance of Non-encumbrance Certificate."

10.5 Thus, the NEC holds significance and serves a purpose; instead of mere formality. It is a crucial document in support of the application for registration of a real estate project. Through NEC, the allottee or stakeholder can verify the status of land owned by the promoter. However, NECs submitted by the respondent No.1, did not conform to the provisions of the Act of 2016 as well as Rules of 2017, and instructions issued by the revenue department from time to time. Rather these material documents are lacking required reports from concerned Patwari/ Revenue Official and as such the same were issued in a perfunctory manner. Above all, the NEC accompanying the application for commercial project is having no Date; or reference number to verify its veracity. Despite this, the Authority granted registration/revised registration without realising the impact of these material irregularities. .

10.6 Law is well settled since long that *"when a statutory power is conferred for the first time upon a Court, and the mode of exercising it is pointed out, it means that no other mode is to be adopted*". **(Taylor Vs. Taylor), (1875) 1 Ch. D 426)**.

The above legal proposition was duly followed by the privy council in '**Nazir Ahmad versus K Emperor 63 Indian Appeals 372**' in the following manner:-

> "*where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.*"

Reference can also be made to the judgment of the Hon'ble Supreme Court, reported as '**Babu Verguese Vs. Bar Council of Kerala', (1999) 3 SCC 422,** wherein it was held as under:-

> *"it is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all".*

10.7 After careful examination of the impugned orders passed by the Authority as well as ld. Tribunal, it is nowhere discernible that point of successive revision of registration certificates i.e. as well as the impact of NECs was considered while granting registration/revised registration for both the real estate projects. Again, Rule 15 of the Rules of 2017 explicitly emphasizes the promoter's obligation to upload legal documents, including NEC, on the website of the Authority. Even the Authority is also responsible for implementing the relevant provisions of the Act, Rules, and Regulations; but there is a complete failure in doing so while dealing with the present controversy.

Since the NEC is indispensable for safeguarding the interests of allottee(s), as it directly relates to the property's title, and verification of the land, therefore, its impact needs to be examined, properly by the Authority.

10.8 Furthermore, according to clause 8(vii) of the Agreement for Sale attached with the registration application, the respondents were under obligation to disclose that they had not entered into any agreements for sale, development, or any other arrangements with any person or party regarding the land in question, including the project and the apartment/plot, which could potentially impact the rights of the allottee under sale agreement. However, the respondents manipulated the language of clause 8(vii) as per their convenience, stating that there was no existing agreement between the promoter and any other person or party for sale, development, or any other arrangements related to the land, project, or property that could affect the rights of the allottee. In this way, the respondents, in their declaration submitted with the application form, diluted the language of clause 8 (vii) of the Agreement for Sale, which also went unnoticed by the Authority. Thus, it is apparently clear that neither the Authority; nor ld. Tribunal considered this aspect of the matter and passed the impugned orders on wholly wrong assumptions. As a result thereof, both the impugned orders are indefensible in law and deserve to be set aside.

Point No.(ii) is answered accordingly.

POINT (iii)

11. Before dealing with this point, it would be appropriate to enumerate Section 7 of the Act of 2016 and which reads as under:-

> ***"Section 7. Revocation of registration.--****(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—*
>
> *(a) the promoter makes default in doing anything*

required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation. — For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary."

A perusal of the above extract clearly reveals that in case the promoter makes default in doing anything required by or under the Act of 2016 or rules/regulations framed thereunder, the Authority is competent to take action even *suo-moto*, for revocation of the registration. Therefore, going forward, it is imperative for the Authority to ensure that the NEC is issued by the competent authority strictly in accordance with law.

11.1 Resultantly, in view of the conclusion recorded at Point (ii), this court is of the opinion that the Authority did not apply its mind while granting the registration as well as successive revised registration regarding both the projects namely, Curo One Part I Commercial (PBRERA-SAS80-PM0020) & Curo One Part II Residential (PBRERA-SAS80-PR0616) and the learned Tribunal also did not consider the same properly.

However, instead of delving any further on the point of revocation of registration, regarding both the projects, noticed here-in-above, this Court deems it appropriate to remit the matter back for its reconsideration by the Authority, in accordance with law.

Point No.(iii) is decided accordingly.

POINT (iv)

12. As a result of the conclusion recorded on point (ii) &(iii), there is no option except to allow the present appeal, subject to the observations made against appellant on point No.(i).

Consequently, the appeal is allowed; both the impugned orders are set aside; the matter is remanded back to the Authority with a direction to re-look the registration/ revised registration of both the real estate projects, namely, (i) Curo One Part I Commercial (PBRERA-SAS80-PM0020) & (ii) Curo One Part II Residential (PBRERA-SAS80-PR0616) and to pass fresh order in accordance with law; on or before 31st August 2023.

13. However, in view of the fact that there is no challenge to the impugned order dated 10.03.2022 at the instance of respondents, therefore, the liberty granted by the Tribunal to the effect that "*the appellant can still maintain his complaint against the respondent for non-disclosure of vital information*" shall remain intact, *dehors* the finding on point no. (i).

Pending application(s), if any, shall stand disposed off.

April 25th , 2023 **(MAHABIR SINGH SINDHU)**
SN **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No