

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.338 of 2020  
Date of Decision: 02.08.2022**

Advance India Projects Limited through its Authorised Signatory Gurbinder Singh, The Masterpiece, Golf Course Road, Sector-54, Gurugram-122002, Haryana, India.

Appellant

Versus

Haryana Real Estate Regulatory Authority, Gurugram, PWD Rest House, Civil Lines, Gurugram.

Respondent

**CORAM:**

Shri Inderjeet Mehta (Retd)	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

**Argued by:** Ms. Sugandha Kundu, Advocate, Id. Counsel for appellant.

Ms. Geeta Rathi, Id. Senior Legal Officer for respondent (Through WhatsApp).

**ORDER:**

**ANIL KUMAR GUPTA, MEMBER (TECHNICAL):**

The present appeal has been preferred by the appellant-promoter under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called, 'the Act') against the Order dated 17.08.2020 passed by the Haryana Real Estate Regulatory Authority, Gurugram

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(hereinafter called, 'the Authority'). The above said order dated 17.08.2020 reads as under:

*“Subject: Project hearing regarding the registration of project “AIPL Joy Gallery” at Sector 66, Gurugram developed by M/s Advance India Projects Ltd.”*

*The Promoter submit the copy of meeting of SIEAA dated 22.07.2020 for environmental clearance and a copy of communication of service plan and estimates send to DTCP by HSVP. Fire scheme approval to be submitted.*

*It is pertinent to note here that neither building plans were approved under the said license nor any development work was undertaken at the project land till 1<sup>st</sup> May, 2017. The building plan was approved vide ZP-572/SD(DK)/2020/8094 dated 14.05.2020.*

*The matter was referred to the committee relating to the representation by promoter for non-applicability of late fee. It is submitted that the Project Land was granted benefit under Transit Oriented Development Policy and accordingly, Revised Zoning Plan was issued vide Drg.No.DTCP-7386 dated 02.03.2020 as per which the FAR on the Project Land was increased from 175% to 350%.*

*But the license was granted before 1<sup>st</sup> May, 2017, as the project is ongoing. The Authority has decided to impose the late fee on the FAR 175% i.e. 16,42,692/-.*

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*The Authority decided to grant the registration certificate on the condition that the promoter shall submit the approved Service estimates and plans within 3 months, otherwise penal proceedings may be initiated.”*

2. The brief facts of the case are as under:-

License No.197 dated 05.12.2008 was granted in favour of R.C. Sood & Company Private Limited, registered office at 10<sup>th</sup> floor, Eros Corporate Tower, Nehru Place, New Delhi (hereinafter referred to as the 'Land Owner') for development of a commercial colony, over land admeasuring 4.418 acres, located in the revenue estate of Village Badshahpur, Sector 66, Gurugram. As per the appellant, the land owner and the appellant entered into a Development Agreement dated December 31, 2018.

3. That the appellant applied for registration vide application dated 14.05.2020 for the Real Estate Commercial Project 'AIPL Joy Gallery' over the licensed land under Section 4 of the Act, read with Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as 'the Rules'). The learned Authority vide the impugned order dated August 17, 2020 granted the registration certificate to the promoter on the condition that the promoter shall submit

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service estimates and plans within three months, otherwise penal proceedings may be initiated. The registration certificate is valid for a period commencing from August 17, 2020 and ending on May 13, 2025. Through the above said order, it was also decided to impose late fee on FAR 175%, amounting to Rs.16,42,692/-.

4. The appellant, though has made the payment of Rs.16,42,692/- to the learned Authority, however, has preferred to challenge the impugned order dated August 17, 2020 against the imposition of the above said late fee of Rs 16,42,692/-. Hence, the present appeal.

5. We have heard Ms. Sugandha Kundu, learned counsel for the appellant, Ms. Geeta Rathi, learned Senior Legal Officer of the respondent-Authority and have also perused the case file. Both the parties have also filed their respective written submissions.

6. Learned counsel for the appellant-promoter has contended that license no.197 of 2008 was granted in favour of R.C. Sood & Company Private Limited ('Land Owner') for development of the commercial colony over land admeasuring 4.418 acres, located within the revenue estate of Village Badshahpur, Sector-66, Gurugram on 05.12.2008. The

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'Zoning Plan' of the said project was approved on 07.04.2011. However, due to financial constraints and prevailing market conditions, the process of obtaining the approval of building plan was not initiated. The appellant and the land owner entered into a development agreement on 31.12.2018. The change of developer in the name of appellant was made by the Director, Town and Country Planning ('DTCP') on October 01, 2018 and in-principal approval was granted on December 18, 2018. The approval for the change of developer in the name of the appellant was granted by DTCP on 14.05.2019. The approval of the building plan for the project for the first time was approved by DTCP on 14.05.2020. Immediately, after the approval of the building plans by the DTCP, the appellant, intending to commence the development works with regard to the project 'AIPL Joy Gallery' over the licensed land, applied for registration vide application dated May 14, 2020 with the learned Authority under Section 4 of the Act. The learned Authority on 05.06.2020 intimated certain deficiencies in the application of the appellant for registration of the project and directed the appellant to remove those deficiencies. The major deficiency was alleged deficit fee of an amount of Rs.71,70,260/-, which was comprised of two distinct amounts of Rs.67,29,400/- and Rs.4,40,860/-. It was also intimated by

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the learned Authority that since the date of license from the DTCP was December 05, 2008, the project would be treated as 'ongoing project'. The appellant addressed a detailed representation dated 11.06.2020 intimating grounds for non-applicability of the alleged deficit fee of Rs.67,29,400/- to the learned Authority. It was intimated that there was no intentional default on the part of the land owner and the appellant in getting the project registered, and it was only due to technical reasons and an honest interpretation of law that the land owner did not get the project registered. The learned Authority on 18.06.2020 without taking note of the representation dated June 11, 2020, sent another communication and reiterated that the deficit fee of Rs.67,29,400/- is payable as per rules and the project would be treated as an 'ongoing project'. The learned Authority went on to issue show cause notice to the appellant to show cause as to why the application of the appellant should not be rejected and the process fee paid in respect thereof should not be forfeited following the due process as provided under Section 5(1)(b) of the Act and Rule 5 of the Rules. The learned Authority granted registration certificate on 17.08.2020 to the appellant/promoter on the condition that the promoter shall submit service estimates and plans within three months

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otherwise penal proceedings may be initiated. However, the learned Authority also decided to impose late fee on FAR 175%, amounting to Rs.16,42,692/-. The mentioning of late fee was, for the first time brought to the notice of the appellant by the Authority and instead of issuing any show cause notice qua imposition of late fee, the Authority erroneously and illegally proceeded to impose the same on the appellant. The registration certificate is valid for a period commencing from August 17, 2020 and ending on May 13, 2025. The appellant, though has made the payment of Rs.16,42,692/- on 29.08.2020 to the learned Authority, but is challenging the order dated August 17, 2020 to the extent of imposition of the said amount being referred to as late fee.

7. It is contended by the appellant that the learned Authority has not considered the submissions made by them regarding the non-applicability of the late fee. The learned Authority acted in excess of its jurisdiction and adopted a procedure unknown to law by appointing a Committee and referred the matter raised in the representation for the decision of the Committee.

8. It is also contended that the decision of the Committee has not even seen light of the day, the learned

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Authority, on its own, ought to have taken a decision that too by recording reasons. The learned Authority has acted without jurisdiction illegally and arbitrarily in the matter of imposition of alleged late fee for getting the project registered.

9. It is also contended that the late fee has been sought to be imposed by the learned Authority under the provisions of the 'Haryana Real Estate Regulatory Authority Gurugram (Late Fees for Registration of On-going Real Estate Projects) Regulations, 2018' (hereinafter referred to as 'Regulations, 2018'), which have been notified vide notification December 05, 2018. The said regulations have ostensibly been made by the learned Authority by exercising powers conferred upon it under Section 85 of the Act, though Section 85 of the Act requires that the regulations made by the learned Authority shall be consistent with the Act and the Rules made thereunder to carry out the purposes of the Act. Neither the Act nor the Rules envisage the concept of 'late fee'. However, on the contrary Section 4 of the Act, though earlier provided that fee at the time of registration could be specified by the regulations made by the learned Authority, but the same provision was substituted by Real Estate (Regulation and Development) Removal of Difficulties Order, 2016 stipulating that fee at the time of registration would be 'prescribed'. It is



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pertinent to mention that 2016 Act defines 'prescribed' as prescribed by the Rules. Evidently, the Authority does not have a power to regulate registration fee much less impose any late fee at the time of application for registration of the project.

10. It is also contended that the appellant cannot be made liable to be in violation of Section 3 of the Act when the development work with respect to the project has not even commenced, and even building plans with regard to the same have not been sanctioned, and therefore, requirement of measures such as registration of the project for the protection of the interest of any third party does not arise. The Authority has misconstrued the provisions of the Act and Rules, and interpreted the main provision of the Act in the manner which is not only inconsistent with the scheme of the Act but also runs counter to the well settled law.

11. It is also contended that it is a well settled law that a proviso must necessarily be read in conjunction with the main provision and cannot travel beyond the provision to which it is attached. Further, a proviso is to remain subservient to the main provision and cannot nullify the effect of the main provision, and where the language of the main

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enactment is explicit and unambiguous; the proviso cannot expand or limit the principle provision.

12. It is also contended that the word 'ongoing' in the popular sense means something that is continuing and still in progress. An ongoing project would imply a project which has commenced, and the activities of advertising, marketing, selling etc. have already taken place, though the project has yet not been completed/concluded.

13. It is also contended that the rationale for carving out the first proviso to Section 3 of the Act is to protect the promoters of ongoing projects that may already have undertaken the activities that have been specified under Section 3 from the penal liability sought to be imposed by a subsequent legislation, being the 2016 Act.

14. The appellant-promoter, in view of the aforesaid submissions, prayed that the project was not liable to be levied with late fee amounting to Rs.16,42,692/- as imposed by the learned Authority and sought the amount deposited by the appellant to be refunded to them along with reasonable rate of interest from the date of deposit till realization and further prayed for setting aside the impugned order.

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15. Per contra, Ms. Geeta Rathi, the learned Senior Legal Officer of the respondent-Authority contended that the appellant on 29.05.2020 had submitted an application for registration of commercial real estate project 'AIPL Joy Gallery' under Section 4 of the Act. After completing the planning, scrutiny, legal scrutiny and financial scrutiny on 30.05.2020 and 02.06.2020 respectively by the concerned department of the Authority, the deficiencies (including deficit fee of Rs.67,29,400 (late fee) + Rs.4,40,860/-) was conveyed to the appellant through deficiency notice no. HARERA /GG/ RPIN/ 248 to remove the aforementioned deficiencies. It was intimated that since the date of issuance of license is 05.12.2008; therefore, the project shall be treated as an 'ongoing project'. Through the above said communication, an opportunity of personal hearing (as per principles of natural justice) was also granted to the appellant for 15.06.2020. The appellant on 12.06.2020 submitted its reply dated 11.06.2020, wherein it was stated that their project does not qualify to be an 'ongoing project' as the development works cannot be started at the project site as the building plans are not approved and development works cannot be started at the project without building plans, hence, their project cannot be considered as an 'ongoing project'. In the proceedings dated

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15.06.2020, the authorised representative of the promoter Mr. Nishit Khandelwal and Asmita Mehrotra were directed to submit complete set of requisite documents along with necessary approvals and a representation regarding imposition of late fee. The concerned planning executive was also directed to send a show cause notice for rejection and forfeiture of processing fee if the promoter fails to remove all deficiencies as conveyed to it time and again. In compliance to the directions of the learned Authority dated 15.06.2020, a show cause notice was sent to the appellant giving an opportunity to remove all deficiencies, else the application for registration shall be rejected. The appellant was also given another opportunity of personal hearing in the matter, fixed for 20.07.2020.

16. It was also contended that the appellant submitted reply to the above said show cause notice on 16.07.2020 wherein the appellant re-submitted the same representation regarding deficit fee as was earlier submitted by it on 12.06.2020, along with other requisite documents/approval. The learned Authority on 04.08.2020 decided to refer the matter relating to the representation of the appellant for non-applicability of late fee to the Committee consisting of Secretary (Chairman), Chartered Accountant (Shri Naresh

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Kamboj) and Legal Officer (Smt. Geeta Rathee Singh). The above said committee on 06.08.2020 submitted that “the project land was granted benefit under TOD policy and accordingly revised zoning plan was issued vide DRG.No.DTCP-7387 dated 02.03.2020 as per which the FAR on the project land was increased from 175% to 350%. But the licence was granted before 01.05.2017 as the project is ongoing. Accordingly, it was also submitted by the Committee that a late fee be imposed on 175% FAR based on the following formula:

“Total Area of Project= 4.418

Floor Area @ 175%=31289.38 Sqm

Registration Fee=31289.38x1.75x20=Rs.1095128

\*Late Fee is 150% of the registration fee (As per the Haryana Real Estate Regulatory Authority Gurugram (Late Fees for Registration of On-going Real Estate Projects) Regulations, 2018)

Accordingly, a late fee of Rs.16, 42,692/- be imposed on 175% FAR.”

17. It was further contended that as per the decision of the Committee, the Authority decided to impose the late fee on the FAR 175% i.e. 16,42,692/- instead of Rs.67,29,400/- as the building plan was approved vide ZP-

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572/SD(DK)/2020/8094 dated 14.05.2020 under Transit Orient Development Policy after the 1<sup>st</sup> May, 2017. The registration certificate was also granted on the condition that the promoter shall submit the approved service plan and estimates within three months, otherwise, penal proceedings shall be initiated. The appellant submitted the deficit fee of Rs.16,42,692/- on 31.08.2020.

18. It was contended that the project is well within the ambit of the definition of ongoing project as provided under Rule 2(o) of the Act as the DTCP granted licence before 01.05.2017. It was further contended that the learned Authority is well within its power/jurisdiction under Section 85 read with Section 34(e) of the Act to deal with such ongoing projects and to formulate regulations. The learned Authority formulated "The Haryana Real Estate Regulatory Authority Gurugram (Fixing of Standard Fees to be levied on the promoter) Regulations, 2021', in the supersession of the "The Haryana Real Estate Regulatory Authority Gurugram (Late Fees for Registration of On-going Real Estate Projects) Regulations, 2018". The 'Regulations 2018' is regarding guidelines for applicability of late fee for registration of on-going real estate projects where applications have been

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submitted after the expiry of three months from the date of commencement of the RERA Act i.e. 31.07.2017.

19. It was further contended that the power to impose penalty as vested with the Authority also includes penalty for late fee for violation/non-adherence of the provisions of the Act. She relied upon the view taken by the Excise and Service Tax Appellate Tribunal in the case titled as Head Post Office vs. CCE and ST, Udaipur, Service Tax Appeal No.53605 of 2018 (SM), wherein the Excise and Service Tax Appellate Tribunal confirmed the penalty on the appellant and the penalty as that of the late fee.

20. It was contended that the appellant submitted an application for registration of its ongoing real estate project "AIPL Joy Gallery" on 29.05.2020, long after 28.10.2018, therefore, the appellant is liable to pay the late fee.

21. It was contended that initially the learned Authority in its deficiency notice dated 05.06.2020 has calculated the late fee as Rs.67,29,400/- on increased FAR of 350% (under TOD policy). However, the learned Authority passed the impugned order dated 17.08.2020 after considering all facts and circumstances of the case and after giving reasonable opportunity to the appellant and decided to impose the late fee on FAR 175% i.e.Rs.16,42,692/- instead of Rs.67,29,400/- on

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FAR 350% (as per TOD permission) as the building plan was approved vide ZP-572/SD(DK)/2020/8094 dated 14.05.2020 under Transit Orient Development Policy after 01.05.2017.

22. With the above said contentions, the learned Senior Legal Officer of the respondent prayed for dismissal of the appeal being without any merits.

23. After giving the due opportunity to the appellant and appreciating the material on record, the learned Authority passed the impugned order dated 17.08.2020.

24. We have duly considered the aforesaid contentions as well as written submissions of both the parties.

25. The case in brief is that License No.197 dated 05.12.2008 was granted in favour of R.C. Sood & Company Private Limited, New Delhi (the 'Land Owner') for development of a commercial colony, over land admeasuring 4.418 acres, at Sector 66, Gurugram. As per the appellant, the land owner and the appellant entered into a Development Agreement dated December 31, 2018. The appellant applied for registration vide application dated 14.05.2020 of the Real Estate Commercial Project 'AIPL Joy Gallery' over the licensed land under Section 4 of the Act, The learned Authority vide the impugned order dated August 17, 2020 while granting registration certificate to the promoter also imposed late fee on



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FAR 175%, amounting to Rs.16,42,692/-.The appellant, though has made the payment of Rs.16,42,692/- yet it has proffered to file the present appeal against the imposition of the late fee.

26. It is the contention of the appellant that the learned Authority has acted in excess of its jurisdiction and adopted a procedure unknown to the law by appointing a committee and referring the matters to it for decision of the Committee, whereas, the learned Authority on its own, ought to have taken a decision that too by recording reasons. In addition to it, it was also contended that the decision taken by the Committee has also not been provided to them. Per contra, the respondent Authority contended that the Authority decided to refer the matter relating to the representation by promoter for non-applicability of late fee for which change of developer (COD) has been allowed by DTCP, Haryana, vide memo no.LC-1313-II-JE (VA)/2019/11830 dated 14.05.2019 to the 'committee' under the chairmanship of Secretary and members comprising of CA (Mr. Naresh Kamboj) and Legal Officer (Smt. Geeta Rathee Singh). The committee on 06.08.2020 submitted that "the project land was granted benefit under TOD policy and accordingly revised zoning plan was issued vide

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DRG.No.DTCP-7387 dated 02.03.2020 as per which the FAR on the project land was increased from 175% to 350%.

27. The learned Authority appointed a Committee under the Chairmanship of Secretary and other members being Chartered Accountant (Shri Naresh Kamboj), Legal Officer (Smt. Geeta Rathee Singh) and referred the matter of representation of the appellant regarding non-applicability of the late fee. The Committee submitted its recommendation to the Authority intimating therein that the project is an 'ongoing project' and the late fee, therefore is applicable. It was also recommended by the 'Committee' that the late fee is applicable on FAR of 175% instead of FAR of 350%. The learned Authority has appointed the 'Committee' of the officers working in its office and sought its assistance and recommendation as per its own procedure. The assistance of such officials is essential as there is no other party 'respondent' to assist the authority in the cases relating to the registration of the project. Therefore, the assistance of the 'committee' was required to the Ld. Authority to adjudicate the correct amount required for registration and for arriving at a decision which is correct and as per Act, rules and regulations. Thus, in our view by appointment of such a 'Committee' consisting of its own officers/ official for its

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recommendations to aid and assist the learned Authority in determining the quantum of registration fee/ Late fee for registration of the project of the appellant is not violation of any provision in the Act, rules and regulations. In addition to it, the impugned order has been passed by considering the submissions of the appellant and the 'Committee' by the learned Authority under its own signatures. Thus, there is no merit in the aforesaid contention of the appellant that the Authority could not have referred the matter to the 'Committee' as this is unknown to the law.

28. The other contention of the appellant is that the late fee has been imposed by the learned Authority under the provisions of 'Regulations 2018' which have been notified vide notification dated December 05, 2018. The learned Authority has framed the regulations under Section 85 of the Act and under this Section the regulations consistent with Act and rules can only be made. It is also contended that as per Section 4 of the Act, the fee at the time of registration would be prescribed. The act defines 'prescribed' as prescribed by rules. Therefore, on these reasons, it is contended that neither the Act nor the Rules envisage the concept of late fee and the learned Authority could not have made regulation for

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registration/ late fee and has erred in framing the regulations for late fee.

29. To adjudicate upon the controversy over the powers of the Ld authority in framing the regulations for Late fee for registration, a few definitions and sections of the Act, rules and regulations are reproduced as under:

Definition of 'Prescribed' 2 (zi) reads as under:

"2 (zi) "prescribed" means prescribed by rules made under this Act;

Section 3 of the Act reads as under:

*"3. Prior registration of real estate project with Real Estate Regulatory Authority.—(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act."*

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Section 4 of the Act reads as under:

*“4. Application for registration of real estate projects.—(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.”*

Section 34 (e) of the Act reads as under:

*“34. Functions of Authority.—The functions of the Authority shall include—*

*“(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;”*

Section 85 (h) of the Act reads as under:

*85. Power to make regulations.—*

*“(1) The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.*

*“(2)In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—*

*“(h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34;”*

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Rule 3 sub section (2) reads as under:-

*“(2) The promoter shall pay a registration fee at the time of application for registration by way of a demand draft or a banker’s cheque in favour of “Haryana Real Estate Regulatory Authority” drawn on any Scheduled bank or through online payment mode, as the case may be, for a sum calculated at the rate mentioned in Schedule-1.”*

Schedule-1 of rules reads as under:”

*“SCHEDULE-I  
“(See Rule 3(2))*

*“Rates of Registration Fee for Promoter (Rs. per sq. meter)*

S. No.	Category of uses	Hyper/High Potential I & II	Medium/Low Potential
1.	Residential/Industrial	10	5
2.	Commercial/ Cyber Park	20	10

The conjoint reading of Section 3 and 4 of the Act stipulates that the promoter is to make an application to the authority for registration of its project within a period of three months of the commencement of the Act accompanied by the Registration fee as ‘prescribed’. The ‘prescribed’ rate of registration is given in ‘Schedule 1’ of the rules in accordance with Rule 3(2). The Act came into force with effect from

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01.05.2017. The period of three months from the commencement of the Act expired on 31.07.2017. There is a penal provision in the Act for the projects which were not registered within the above said period of three months from the enactment of the Act i.e. 01.05.2017. The Act was a new legislation and to those promoters who had not registered their projects in time, 'Regulation 2018' was introduced to avoid undue penal proceedings against them for delay in registration of their project. In this regard the relevant part of the 'regulation 2018' is reproduced as under:

1. *"Title, objects, Commencement and Extent:*

(a) *\*\*\*\*\**

(b) *The purpose of the Haryana Real Estate Regulatory Authority Gurugram (Late Fees for Registration of On-going Real Estate Projects) Regulations, 2018 is to establish procedures and guidelines regarding applicability of late fee for registration of on-going real estate projects where applications have been submitted after the expiry of three months from the date of commencement of the Act i.e. 31.07.2017.*

(c) *The Real Estate (Regulation and Development) Act, 2016 provides for penal proceedings in case of non-registration of real estate projects. The Real Estate (Regulation and Development) Act, 2016 is a new legislation and there are large number of issues regarding registration which are to be properly understood by the promoters. To avoid large number*

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*of cases from penal proceedings it shall be worthwhile if the regulations relating to applicability of late fee are made, as such these regulations shall provide for applicability of late fees for registration of on-going real estate projects in different time intervals after the commencement of relevant provisions of the Act and the rules made thereunder.*

*(d) These regulations have been framed to prescribe the late fee payable by the promoters/developers for registration of on-going real estate projects after 31<sup>st</sup> July, 2018. These regulations will come into force from the date of their publication in the official gazettee;*

2.       \*\*\*\*\*

3.       *Applicability of normal fee:*

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*“As the Haryana Real Estate (Regulation and Development) Rules, 2017 were notified on 28.07.2017, hence the promoter could only apply after notification of rules. Hence, three months period after publication of rules is justified for making an application for registration of on-going real estate projects so as to comply with the provisions of section 3(1) of the Act *ibid*. However, to facilitate the promoters and to give them enough time to understand and submit their applications for registration of project according to the provisions of the Act and rules made thereunder the authority has though it proper to give further extension of one year for registration of ongoing real estate*



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*projects i.e. before 28<sup>th</sup> October 2018 with the fee as prescribed in schedule I of the said rules.*

4. Liability to pay Late fees:

*“For the projects where applications are submitted after 28<sup>th</sup>October 2018, the promoter /developer shall be liable to pay the prescribed registration fee alongwith the late fee @ of 50% of the registration fee as prescribed and schedule 1 for the first six months thereafter the late fee shall be increased to 50% of the registration fee for every next six months or part thereof.”*

From the above provisions in the regulations, it will be seen that these regulations were framed so that no penal proceedings as envisaged in the Act are initiated for the defaulting promoters up to 28.10.2018. So, these regulations are basically in the interest of the promoters to their benefit who have delayed the registration of the project. Regulation at para 4 of the ‘Regulations 2018’ provides for late fee w.e.f. 28.10.2018 for the project where applications are submitted after 28.10.2018. Thus, the late fee imposed on the Appellant is in fact a concession, otherwise penal proceedings which are much harsher would have been initiated against it.

As per section 34 (e) of the Act the learned authority is competent to make to fix, through regulations for each area under its jurisdiction, the standard fees to be levied on the promoter. As per section 85 (h) of the Act, the learned

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authority is competent to make regulations for standard fee to be levied on promoters. Now, instead of standard fee, late fee as alleged by the appellant has been imposed on it. The late fee as per 'regulation 2018' is a standard fee applicable equally on all defaulting promoters and can be termed as standard fee for delay in registration of the project. In the regulation for fixing standard fee to be levied on the promoters issued on 21<sup>st</sup> August, 2021, vide which the 'regulation 2018' has been repealed along with other regulations, the 'late fee' has been termed as standard fee payable for delay in registration of ongoing projects. This clarifies that the 'late fee' is the standard fee payable for delay in registration of ongoing projects for which the learned authority is fully competent to fix standard fee and make regulations under section 34 (e) and 85 (h) respectively of the Act. Thus, we find no merit in the contention of the appellant that the learned Authority was not competent to make regulations for fixing the late fee payable for the ongoing real estate projects for delay in submission of application for registration of the project.

30. The other contention of the appellant is that it cannot be held liable to be in violation of Section 3 of the Act as before the date of application for registration of the project before the learned Authority, the development works with

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respect to the project have not even commenced, and even building plans were not sanctioned, and therefore, requirement of registration of the project for protection of third party interest does not arise. Further contended that the word 'ongoing' in the popular sense means something that is continuing and still in progress. An ongoing project would imply a project which has commenced, and the activities of advertising, marketing, selling etc have already taken place, whereas in the present case no such activity of advertising, marketing and selling etcetera has taken place.

31. To adjudicate upon this controversy, it is important to bring out the definition of 'ongoing projects' as given in Rule 2(1)(o) which reads as under:-

*“(o) “on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:*

*(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent*

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*Authority on or before publication of these rules  
and*

*(ii) (ii) that part of any project for which part  
completion/completion, occupation certificate or  
part thereof has been granted on or before  
publication of these rules.”*

32. From the above definition of the ‘ongoing projects’, it is clear that ‘ongoing projects’ mean for which a license was issued for development under the Haryana Development and Regulation of Urban Areas Act, 1975, on or before 01.05.2017, and where the development works are yet to be completed on the said date. It is an admitted fact that license no.197 dated 05.12.2008 was granted in favour of R.C. Sood and Company Private Limited (“Land-Owner”) for the development of the said project on 05.12.2008 by the competent authority and the development works are yet not complete. It is also an admitted fact that the appellant and the above said licensee entered into the development agreement on 31.12.2018, so the project of the appellant comes within the definition of the ‘ongoing project’ and the project was required to be got registered as per the Act, rules and regulations. The registration of the project has been delayed by Appellant and therefore, the late fee imposed by the learned Authority vide the impugned order

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is correct and well within the ambit of the Act, rules and regulations.

33. Thus, in view of our aforesaid findings, there is no merit in the present appeal. Hence, the appeal is dismissed.

34. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

35. File be consigned to the record.

Announced:  
August 02, 2022

Inderjeet Mehta  
Member (Judicial)  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Anil Kumar Gupta  
Member (Technical)

CL