

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.795 of 2024

Date of Decision: July 15,2025

M/s Vatika Limited, Unit No. 002, Ground Floor, Tower A,
Vatika INXT City Centre, Sector 83, Gurugram, Haryana
122012

Appellant.

Versus

HRERA Gurugram, F-22J+PJ6, PWD Guest House, Old Railway
Road, Civil Lines,Gurugram, Haryana 122001.

Respondent

Present: Mr. Kamaljeet Dahiya, Advocate for the appellant.
Mr. Sidhant Arora, Advocate for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

O R D E R:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against the order dated
01.07.2024, passed by the Authority¹. Operative part thereof
reads as under:

*“Ar. Neeraj Gautam, Associate Architectural
Executive and Sh. Ashish Dubey, Chartered
Accountant briefed about the facts of the project.*

*S/Shri Virender Dhar, Jitender Kumar and Rahul
Johari appeared on behalf of the promoter.*

*The matter regarding non-registration of the project
under the suo-motu case No. RERA-GRG-4053-2023
has been merged with the project registration case
vide proceeding dated 05.06.2024.*

*Keeping in view the above, the registration of the
project is approved as proposed subject to the*

¹ Haryana Real Estate Regulatory Authority, Gurugram

submission of penalty amounting to Rs.5 crores on account of violation of Section 3(1) of the Act of 2016.

Further, the promoter shall not sell any units falling under the HT lines passing through the project already frozen by DTCP till the powerlines are shifted. The registration is granted without prejudice to the right of allottees under Section 14 of Act of 2016.

The registration certificate shall be issued after the submission of penalty of Rs.5 crores and corrected copies of Form REP-I and DPI.”

2. The aforesaid order has been assailed on the ground that same has been passed without issuing show cause notice for alleged violation of Section 3(1) of the Act². Besides, the order is cryptic and non-speaking in nature having been passed without applying the principles of natural justice which violates Article 14 of the Constitution of India. This apart, penalty of Rs.5 crores imposed on the appellant is grossly disproportionate as it has been imposed due to procedural deficiencies in REP-I and DPI forms. The appellant claims that these deficiencies were promptly corrected by the appellant on 02.07.2024 just a day after passing of the impugned order. Registration Certificate was issued on 08.07.2024. Stand of the appellant is that penalty has been imposed in addition to late fee which is almost 550% of the registration fee, total being Rs.3,22,30,406/-.

3. Reply has been filed on behalf of respondent-Authority. It has been stated therein that penalty of Rs.5 crores has been imposed for alleged violation of Section 3(1) of the Act

² The Real Estate (Regulation and Development) Act, 2016

as *suo-motu* proceedings were initiated against the promoter for non-registration of the project under proviso to Section 3(1) of the Act and show cause notice dated 25.08.2023 was issued to the promoter as to why penal proceedings be not initiated against it. The promoter was asked to login on the web based online portal and make an application in REP (Part A-H) along with prescribed fee and other documents for registration. It was asked to supply other relevant information as contained in the format. As it was found that certain pre-RERA violations had been made, penalty as deemed fit was imposed, the same having been deposited with the Registry through RTGS.

4. We have heard learned counsel for the parties and given careful thought to the facts of the case.

5. A perusal of paragraph 16 of the project bearing brief shows that at the out-set late fee of Rs.3,22,30,406/- was imposed on the appellant-promoter. Paragraphs 16 and 17 are extracted hereunder for ready reference:

16.	Fee details	
	A) Registration fee for plotted area	Residential area-118.5325 acres x 4046.86 x 10 =Rs.47,96,844/- Commercial area-2.48 acres x 4046.86 x 20 = Rs.2,00,724/-
	B) Processing Fee	121.0125 acres x 4046.86 x 10=Rs.48,97,206/-
	C) Late Fee	550% of registration fees (on 98.60 acres)=Rs.2,23,35,632/-
	Total Fee (A+B+C)	Rs.3,22,30,406/-
17.	DD Details	
	Cheque No. and Date	Cheque no.014019 dated 20.12.2023 DD no.003076 dated 17.08.2022

		<i>DD no.003075 dated 17.08.2022</i> <i>RTGS</i> <i>No.0018062024103101002050008</i> <i>dated 18.06.2024</i>
	<i>Fees Paid</i>	<i>Rs.58,34,000/-</i> <i>Rs.40,61,500</i> <i>Rs.39,90,500/-</i> <i>Rs.1,83,44,406/-</i>

6. Shortly thereafter, *suo-motu* proceedings for alleged violation of Section 3(1) of the Act were initiated against the appellant. A perusal of the impugned order shows that *suo-motu* proceedings were merged with project registration case vide proceedings dated 05.06.2024 and penalty of Rs.5 crores was imposed on the appellant. Both the proceedings- one relating to project registration and other *suo-motu* in nature were merged. Despite merger of two separate proceedings and disposal thereof by a single order, there is no mention therein of late fee of Rs. 3,22,30,406/- deposited by the appellant. If there were valid reasons for merging two proceedings, then the punitive action already taken by levying late fee should have found mention in the order.

7. The case of the appellant is that penalty of late fee was punitive in nature. The approach of the Authority should be to facilitate initiation of project and not to stifle the same.

8. Even otherwise, a perusal of the order shows that the same is very sketchy and does not deal with all the issues which need to be addressed. A judicial or quasi-judicial order must contain detailed reasons. However, the order shows that the Authority merely relied upon a report submitted by the

Chartered Accountant and proceeded to impose penalty of Rs.5 crores, apart from late fee of Rs.3,22,30,406/- already paid by the appellant. The report submitted by the Committee comprising of Chartered Accountant and an Architect has also been perused. Same contains no recommendation for imposition of penalty. Relevant part of the report submitted by the said Committee is reproduced hereunder for ready reference:

“Recommendation: *The application submitted by the promoter for registration of project u/s 4 of the Act of 2016 has been examined and found to be in order except the corrections in form REP-I and online DPI, approval of service plans and estimates and power line shifting NOC.*

It is recommended that the Authority may consider for grant of registration subject to the submission of corrected copies of REP-I and online DPI prior to the issuance of registration certificate, approved service plans and estimates and power shifting NOC within 3 months from the date of grant of registration.”

9. In ***Brijmani Devi v. Pappu Kumar***³, Hon’ble Supreme Court, after reiterating the principles laid down in ***Kranti Associates Pvt. Ltd. V. Masood Ahmed Khan and others***⁴, held that a quasi-judicial authority must engage in a thorough examination of the issues and provide a reasoned decision. This is crucial for maintaining the integrity of the adjudicatory process.

10. This apart, we find that after having imposed late fee of Rs.3,22,30,406/-which admittedly is 550% of the registration fee,

³ (2022) 4 SCC 497

⁴ (2010) 9 SCC 496

imposition of another Rs.5 crores as penalty shortly thereafter is oppressive and would discourage investment in a project, which otherwise may be viable. In the project, where 70% amount is locked in escrow account for the purpose of raising construction, levying heavy penalty at the initial stage can have adverse impact and may unnecessarily halt a project and delay the same.

11. A perusal of the Objects and Reasons of the Act shows that the Authority has been established for regulation and promotion of the real estate sector to ensure sale of plot, apartments or buildings in an efficient and transparent manner, to protect the interest of consumers and to establish adjudicatory mechanism for dispute redressal. In case, the project is completed without unnecessary impediments, its timely completion would benefit to consumers as well. Thus, a fine balance has to be struck to achieve the objectives. In the instant case, however, the approach of the Authority appears to be punitive which runs counter to the objectives of the Act which contemplate timely completion of projects in fair and transparent manner.

12. Apart from the aforesaid observations, it is clear that the order passed by the Authority is wholly cryptic and bereft of reasons. The most glaring part is that two matters as regards non-registration of the project and *suo-motu* proceedings having been clubbed, yet the order contains no mention of late fee already imposed on the builder. Any attempt to justify non-speaking and cryptic order by an affidavit filed during course of appellate proceedings has to be rejected in view of the judgment of Orissa High Court in ***Binod Behera v. Tahasildar, Oupada***⁵. Paragraph 9 thereof is extracted below:

⁵ 2019 Supreme (Ori) 128

“9. In Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16, Justice Vivian Bose in his inimitable style held that the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

14. The Act provides for imposition of deterrent penalties in case of violation of its provisions. At the same time, it envisages promotion of a healthy real estate sector, perhaps for general development of the State and to provide housing for all sections of the society. In this context, penal provisions need to be applied judiciously and with due care and caution. Orders in this respect need to be speaking and well-reasoned.

15. In view of above, the appeal is allowed. The impugned order is, thus, set aside.

16. Copy of the order be sent to the parties/their counsel.

17. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

July 15,2025
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