

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.3-MT of 2024

Date of Decision: January 07,2025

Elan Avenue Limited, 15th Floor, Two Horizon Centre, DLF
Phase 5, Sector 43, Golf Course Road, Gurugram-122002

Appellant.

Versus

Haryana Real Estate Regulatory Authority, Gurugram, PWD
Guest House, Old Railway Road, Civil Lines, Gurugram,
Haryana-122001

Respondent

Present : Mr. Aashish Chopra, Senior Advocate assisted by
Mr. Yashpal Sharma, Advocate for the appellant.
Mr. Siddhant Arora, Advocate for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN

The present appeal is preferred against order dated
04.09.2023 passed by the Authority¹, which reads as under:

“The matter was considered by the Authority. The applicant promoter has applied for refund of late fees deposited vide DD No. 061307 dated 14.11.2022 for an amount of Rs.1,31,21,352/-under protest. In this regard, registration was granted to the promoter for the project namely “Elan The Presidential” after compliance of the requisite formalities including deposit of late fee and subject to certain conditions.

¹ Haryana Real Estate Regulatory Authority, Gurugram

Order of the Authority has achieved finality and in view of the Authority, the Authority cannot review its own decisions. Therefore, at this stage the request of the promoter applicant does not merit consideration and is therefore, declined. The applicant be informed accordingly.”

2. Learned counsel for the appellant has assailed the order. As per him, the late fee imposed on the appellant is totally arbitrary in nature. The order under challenge is totally cryptic. As per him, in similar circumstances, the Authority has refunded late fee relating to ‘Elan Imperial’. As per its stand, late fee has been wrongly fastened on the appellant at a stage when neither the project was even conceptualized nor advertisement or marketing thereof. Besides, licence of the project had been renewed upto 16.08.2024 and building plans had been submitted for approval on 04.10.2022. Soon after receiving approval of the plans, the appellant applied with the Authority for registration of the project along with application fee of Rs.46,36,000/-. However, it received letter dated 10.11.2022 stating that there were certain deficiencies and imposed late fee. The appellant contested this imposition vide its letter dated 11.11.2022 raising various pleas. However, it deposited the amount of Rs.1,31,21,352/- under protest by way of a demand draft. The contention is that the impugned order has been passed without affording opportunity of hearing to the appellant.

3. Short reply has been filed on behalf of the Authority wherein order dated 04.09.2023 has been reproduced. As regards plea of the appellant, it has been admitted that for the project, namely, Elan Imperial Pvt. Ltd., late fee amounting to

Rs.3,31,50,000/- had been refunded. The relevant part of the reply is reproduced hereunder for ready reference:

“With regard to the query raised by the Hon’ble Appellate Tribunal it is submitted that the authority has refunded the late fee amounting Rs.3,31,50,000/- for the project namely “Elan Imperial” being developed by M/s Elan Imperial Pvt. Ltd. in Sector 82, Gurugram. The late fee was refunded based on representation submitted by the promoter which was placed before the authority as per the directions during the final project hearing dated 19.02.2024. The relevant portion of the order dated 19.02.2024 is reproduced as under:

“The AR of the promoter states that they are submitting the deficit fee including late fee and simultaneously request to consider the representation to waive off the late fee as the building plans and other statutory approvals are obtained or being obtained recently except licenses and zoning plan approval. The authority decides that the representation submitted by the promoter be put up on file along with AG opinion obtained in such cases for taking the decision by the authority regarding applicability of late fee on the project registration application.”

The order dated 19.02.2024 is enclosed as Annexure-R3.

Subsequently, the representation was examined on file and a decision was taken by the Authority that as no project was conceptualized nor construction was undertaken on the licensed land and no third-party rights were created prior to registration and BIP was granted by DTCP on 28.12.2023 and no building plans were approved, the late fees is not applicable in the matter. In view of the above late fees was refunded.

8. That keeping in view above stated facts, the present appeal may be disposed of.”

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

5. It is evident that the appellant is undertaking development of Group Housing Colony under the name and style of Elan The Presidential, Sector 106, Gurugram. Licence for the project is stated to have been granted by the competent authority vide its order dated 17.08.2012. Same was renewed upto 16.08.2024 vide renewal order dated 29.03.2022. It is stand of the appellant that no development activity had been carried out, even building plans were submitted for approval on 04.10.2022 which were subsequently approved on 26.10.2022. This plea has not been controverted in the reply filed by the Authority. It appears that in terms of provisions of Section 4 of the Act², the appellant sought registration of the project along with application fee of Rs.46,36,000/-. However, it was asked to deposit late fee which the appellant deposited under protest. There is nothing on record to show that prior to imposition of late fee any opportunity of hearing was afforded to the appellant. At the time of final hearing of the case, the appellant sought to file supplementary affidavit in view of the stand taken by the Authority in its reply. Paragraphs 4 and 5 of the affidavit read as under:

“4. That the Ld. Authority in the short reply of Secretary, Haryana Real Estate Regulatory Authority, Gurugram dated 18.10.2024 has submitted that the

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

Ld. Authority has refunded late fee amounting to Rs.3,31,50,000/- for the Project namely, 'Elan Imperial' being developed by Elan Imperial Private Limited in Sector 82, Gurugram. The late fee was statedly refunded on the basis of AG opinion obtained in such cases where no project was conceptualized nor construction undertaken on the licensed land and no third-party rights were created prior to registration and no building plans were approved. The Ld. Authority had hence decided that late fee is not applicable in the matter of Elan Imperial and hence, the same was refunded.

It is further stated that the said project being developed by the appellant is apparently at parity with the project 'Elan Imperial' as even in the case of the said project, no project was conceptualized and/or construction or development undertaken on the licensed land, or any third-party rights created prior to grant of registration, and the building plans were approved only on 26.10.2022. Hence, no late fee can be said to be applicable in the case of the appellant as well, in line with the decision of the Ld. Authority in the case of 'Elan Imperial'.

5. That it is further stated that the proceedings of the project hearing dated 19.02.2024 annexed with the reply submitted by the Ld. Authority as Annexure R-3 pertain to the project 'Elan Imperial' being developed by Elan Imperial Pvt. Ltd. and not the said project being developed by the appellant. Hence, the impression which was sought to be given during the hearing dated 10.12.2024 before this Hon'ble Tribunal that Annexure R-3 was the order passed in the case of the appellant is false and misleading."

6. A perusal of the aforesaid affidavit as well as the stand taken by the Authority in its reply, there is no room for doubt that with regard to another project i.e. Elan Imperial, the

Authority refunded late fee of Rs.3,31,50,000/- after obtaining opinion of the Advocate General. It took this decision on the basis that neither any project had been conceptualized nor construction undertaken on the licensed land and no third-party rights had been created, thus, late fee was not applicable. It appears that the appellant is similarly placed as the project 'Elan Imperial' and is entitled to the same relief. The entire proceedings pertaining to the project 'Elan Imperial' have been annexed by the Authority as R-3 along with short reply. The Authority has taken a stand that late fee in case of project 'Elan Imperial' was refunded based on representation made by the promoter and decision in this regard was taken in the final project hearing on 19.02.2024.

7. In view of the peculiar facts and circumstances of the case and stand taken by the Authority that in another project being developed by Elan Imperial Pvt. Ltd. in Sector 82, Gurugram, late fee has been refunded, there is no plausible reason why two projects be treated on different footing, the factual and legal aspects of both being almost similar. Besides, there is nothing on record to show that before imposition of penalty any opportunity of hearing was afforded to the appellant.

8. Under these circumstances, the appeal is hereby allowed and the imposition of Rs.1,31,21,352/-, stated to be late fee, is hereby set aside. Same be refunded to the appellant as done in the case of 'Elan Imperial'.

9. It is made clear that instant order has been passed keeping in view the facts and circumstances of the instant case, thus, it shall not act as a precedent.

10. Copy of the order be communicated to the parties/Authority for information.

11. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)

January 07,2025.
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