RERA TIMES

Real Estate

(Regulation and Development) Act, 2016

(A Journal on Real Estate Bye Laws)

Volume-VI | Part - II | March - April - 2022

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REAL ESTATE
(REGULATION AND DEVELOPMENT) ACT, 2016
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FROM THE EDITOR'S DESK…..

Dear Readers,

The ongoing conflict between Russia and Ukraine have major ramifications for the global economy, which is just recovering from the stress of the coronavirus pandemic.

The International Monetary Fund (IMF) had pointed out that both Russia and Ukraine are major commodity producers, and disruptions there have resulted in soaring global prices, especially that of oil and natural gas. With Ukraine and Russia accounting for up to 30% of the global exports for wheat, food prices, too, have jumped. The entire global economy is facing the effects with slower growth and faster inflation. We just hope that both the countries settle their issues peacefully so that more damage to the lives of people and world economy is stopped.

In a sudden move, Reserve Bank of India has increased repo rate - the rate at which the RBI lends to commercial banks - to 4.40 per cent from a record low of 4 per cent is the first since August 2018 to tame inflation that has remained stubbornly above target in the past few months.

GST collections continue to break new records with monthly mop-up breaching Rs 1.5 lakh crore for the first time ever in almost five years. The government in April 2022 collected the highest ever GST revenue of Rs 1,67,540 crore, which is 20% more than the collection in the same month last year which is a sigh of relief for the government in such turbulent scenario.

In a landmark judgment by Hon'ble Rajasthan High Court in matter of Sanjay Ghiya v/s Union of India & ors vide order dated 04.03.2022 held that CHARTERED ACCOUNTANTS Or COMPANY

SECRETARIES Or COST ACCOUNTANTS are authorised to present case on behalf of applicant or appellant or respondent before Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be. This judgement has brought clarity and is beneficial for the professionals.

In another judgement by Punjab & Haryana High Court, Hon'ble held that: The 'occupation certificate' cannot be treated as 'completion certificate' .Also, obtaining of an occupancy certificate or having applied for such certificate in terms of the Haryana Building Code, 2017 shall not serve the purpose and shall not oust the requirement of registration. This issued will be settled by the Upper Court in future.

Prices of residential real estate have started inching upward across the country as improving demand has supported the optimism among developers to increase rates. The combination of revival in demand and rising cost pressure has resulted in housing prices moving higher as developers attempt to protect their margins.

Wish all of you a very happy summer vacation.

With Regards
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HIGH COURT JUDGEMENT

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12706/2020
Order dated: 02/03/2022

M/S SANKALP BUILDMART PRIVATE LTD

------ PETITONER

VERSUS

1. RAJASTHAN REAL ESTATE REGULATORY AUTHORITY
2. SMT. BABITA JAIN W/O RITESH JAIN

--------- RESPONDENTS

Gist of case: Petitions disposed off in view of order passed by Rajasthan High Court in Union Bank of India Case.

Learned counsel for the parties informed this Court that the subject-matter of challenge in the present writ petition is the order dated 30.09.2020 passed by the Rajasthan Real Estate Regulatory Authority. However the Division Bench of this Court in D.B.Civil Writ Petition No.13688/2021 (Union Bank of India vs. Rajasthan Real Estate Regulatory Authority & Ors.) and other connected writ petitions vide order dated 14.12.2021, has directed the aggrieved parties to file appeal before the Appellate Authority.

The operative portion of the order dated 14.12.2021 passed by the Division Bench in the case of Union Bank of India (supra) is quoted hereunder:-

> "37. With these conclusions we would leave the parties to pursue individually the cases before appropriate authorities. In some of the petitions the petitioners have approached the High Court at a stage where the authority has yet to pass final orders. These proceedings have been stayed. In some cases as in case of Union Bank of India, the petitioner has challenged the final order passed by the authority. We would therefore divide our directions in two parts. Wherever challenge is made to the pending proceedings, the stay orders are lifted. If any of the petitioners have not filed reply before the authority, they would have time upto 15.01.2022 to file such replies. Wherever the petitioners have challenged the orders passed by the authority, they are relegated to the appellate forum for which they would have time upto 15.01.2022 to file their appeals. If such appeals are filed by such date, the same shall be decided on merits without raising question of limitation.

In Civil Writ Petition the petitioners had approached the High Court since the appeals they have filed were not being heard by the Appellate Tribunal since chairman and members were not appointed. Learned Advocate General stated that such appointments have been made which is also supported by the Counsel for the petitioners. These petitions are disposed of to enable the petitioners to pursue such appeals before the appellate forum on merits.

With these observations, all petitions stand disposed of.

Pending applications if any also stand disposed of. "

Learned counsel for the petitioner submitted that permission may be granted to withdraw this writ petition with liberty to avail alternative remedy provided under law of filing appeal.

This Court in view of the order passed by the Division Bench does not require to adjudicate the present writ petition on merits and accordingly, the petitioner is permitted to avail the alternative remedy provided under the law.

Accordingly, the present writ petition is dismissed as withdrawn, with liberty, as prayed for.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Civil Writ Petition No. 18078/2018
Order dated: 04/03/2022

SANJAY GHIYA

------ APPELLANT

VERSUS

UNION OF INDIA & ORS

------ RESPONDENTS

For Appellant(s): Mr. Siddharth Ranka, Adv.

For Respondent(s): Mr. Anand Sharma, Adv. & Ors.

Gist of case: *CHARTERED ACCOUNTANTS Or COMPANY SECRETARIES Or COST ACCOUNTANTS are authorised to present case on behalf of applicant or appellant or respondent before Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.*

By way of filing this writ petition, a challenge has been given to Section 56 of the Rajasthan Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act or Act of 2016') which reads as under:-

> "56. Right to legal representation- The applicant or appellant may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.
> Explanation—For the purposes of this section,-

a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the chartered accountants act, 1949 (38 of 1949) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that act;

b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the company secretaries act, 1980 (56 of 1980) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that act;

c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the cost and works accountants act, 1959 (23 of 1959) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that act; (d) "legal practitioner" means an advocate, vakil or an attorney of any high court, and includes a pleader in practice."

d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice."

Brief facts of the case are that one Suresh Chand Jain submitted an appeal before the Real Estate Regulatory Authority Tribunal (hereinafter referred to as 'the Tribunal') on 26.06.2018 against the Jaipur Development Authority (hereinafter referred to as 'JDA') for redressal of his grievance. The Tribunal issued notices to JDA for its appearance before it on 17.07.2018. JDA appointed the petitioner as its counsel to appear before the Tribunal to defend the case on behalf of the JDA. The petitioner is a Chartered Accountant (C.A).

Acting under the instructions of JDA, he prepared a written submission and appeared before the Tribunal on 01.08.2018 but the same was not taken on record by saying that Chartered Accountant is barred from appearing before the Tribunal. Thereafter, the JDA in order to safeguard its interest communicated one Tejram Meena, Advocate

to represent its case before the Tribunal but vide order dated 02.08.2018, the Tribunal passed the following orders which is as under:-

> *"Another authorisation letter on behalf of OSD, Jaipur Development Authority, Jaipur, authorizing Mr. Sanjay Ghiya and Mr. Ashish Ghiya Chartered Accountant(s) under Section 56 of the Real Estate (Regulation and Development) Act, 2016 filed by Mr. Sanjay Ghiya (C.A).*
>
> *In view of the order dated 01.08.2018 of this Tribunal authorisation of Mr. Sanjay Ghiya and Mr. Ashish Ghiya (C.A) is not maintainable before the Tribunal.*
>
> *JDA as respondent should have avoided it.*
>
> *Another set of written submissions on behalf of the JDA submitted today by Mr. Sanjay Ghiya (C.A). Written submissions having been signed and verified by the authority of JDA. Therefore, they cannot be taken on record. It is just and proper to mention here that, in veiw of specific order dated 01.08.2018 of this Tribunal, Mr. Sanjay Ghiya should not have dare to submit this. Conduct of JDA authorities in this regard cannot be appreciated.*
>
> *However, Mr. Tej Ram Meena, Advocate has filed power on behalf of the JDA. If, JDA as respondent wants to file any reply or objection to the averments made in the appeal, they may do so as per the rules with proper verification by appropriate authority. This Tribunal is constrained to observe that hitherto been no serious effort has been made by JDA to contest this appeal. Be it so, it is upon the wisdom & discretion of JDA to contest it properly or not. In the interest of justice one more opportunity is given to JDA for proper representation as per rules."*

Bare perusal of Section 56 clearly indicates that Right of legal representation has been given only to the applicant/appellant to appear in person or the applicant/appellant can authorise one or more Chartered Accountants or Company Secretaries or Cost Accountants or Legal Practitioners or any of the officer to present before the Appellate Tribunal or the Regulatory Authority or the Adjudicating Officer as the case

may be. But no such right of representation has been given to the respondent against whom the proceedings have been initiated before the Appellate Tribunal or before the Regulatory Authority or the Adjudicating Officer.

It is noteworthy to mention here that though Section 56 does not permit the legal practitioner to appear on behalf of the respondent but still the Tribunal allowed the JDA to appear through Advocate and denied the Chartered Accountant like the petitioner to appear on behalf of the respondent.

Being aggrieved by the impugned orders dated 01.08.2018, 02.08.2018 passed by the Tribunal and also being aggrieved by the impugned exclusion of the word "Respondent" to Section 56 of the RERA Act, the petitioner has challenged the legality and validity of Section 56 of the Act of 2016 by filing this writ petition with the following prayers:-

That the petitioner prays that this Hon'ble Court may be pleased to:-

a) *Your Lordships may be pleased to issue any writ, order or direction to declare that Section 56 of the Real Estate (Regulation and Development) Act, 2016 as unconstitutional as it denies the Chartered Accountant the right to represent the respondent(s) before the authorities;*
b) *Your Lordships may be pleased to issue any writ, order or direction to read down Section 56 of the Real Estate (Regulation and Development) Act, 2016 wherein the words 'applicant or appellant' are to be read as 'applicant or appellant or respondent';*
c) *Pending admission, hearing and till final disposal of this petition, your Lordships may be pleased to pass an order of stay of the operation of the impugned order dated 01.08.2018 and 02.08.2018 passed by the RERA Tribunal to the extent it restricts the Chartered Accountant to appear on behalf of the respondent;*
d) *Your Lordships may be pleased to award the cost of the present petition from the respondents;*

e) *Your Lordships may be pleased to grant any other relief or reliefs and pass such further order or other orders in the facts and circumstances of the present case as may be deemed fit by this Hon'ble Court."*

The validity of Section 56 of the Act of 2016 has been challenged mainly on the ground that it is hit by Articles 14, 19(1) (g) and 21 of the Constitution of India.

Learned counsel for the petitioner submitted that Section 56 of the Act suffers from constitutional infirmity because it gives the right of legal representation only to the applicant or appellant. This right of representation before the authority has not been given to the respondent and the same is in violation of Articles 14 and 19 of the Constitution of India. Counsel submitted that non inclusion of the word 'the respondent' under Section 56 of the Act is bad and discriminatory. The classification made among the applicant/appellant and respondent is not rational. As such the classification made is in contravention of Articles 14 and 19 of the Constitution of India.

On the other hand, learned counsel for the respondent No.1 supported the provisions contained in Section 56 of the Act and submitted that no constitutional provision has been violated. The stand taken by the Union of India in its reply is as under:-

"(v) The grievance of the petitioner is that he is Chartered Accountant by profession and in an appeal filed by one Shri Suresh Chand Jain before the RERA Appellate Tribunal in which the petitioner put in appearance in the capacity of Chartered Accountant on behalf of respondent JDA. The petitioner has come out with a case that his authorization to appear on behalf of JDA (respondent in the case) before the Appellate Tribunal has not been acknowledged and rather rejected by the Appellate Tribunal on the ground that as per Section 56, only the appellant/applicant can be allowed to be represented by Chartered Accountants/Company Secretaries and such similar profession has not been made for the respondent in the case. Hence, as the petitioner was seeking permission to represent respondent in the above case, therefore, vide order dated 01.08.2018 RERA Appellate Authority has not permitted the petitioner to appear on behalf of the respondent.

(*VI) That it is respectfully submitted that provision of Section 56 are absolutely clear and having no ambiguity whatsoever. Only on the basis of question of wrong interpretation by any authority or for the reason that the provision is likely to be construed differently, the petitioner cannot assail the validity of the provision itself. At the cost of repetition, it is respectfully submitted that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. Petitioner in the instant case has utterly failed to discharge his burden, hence, writ petition filed by him is liable to be rejected.*

(VII) That the aforesaid Real Estate (Regulation and Development) Act, 2016 has been enacted by the Parliament in exercise of its legislative powers flowing from the provisions of Constitution of India. Such provisions are causing no discrimination amongst any class of persons; nor can such provisions be termed as patently arbitrary, therefore, petitioner has got no right to challenge the validity of aforesaid provisions.

(VIII) That it appears from bare perusal of the contents of the writ petition that the petitioner is more aggrieved by a particular order passed by RERA Appellate Tribunal restraining him to appear on behalf of the respondents. Such order of RERA Appellate Authority can be assailed by the petitioner independently without questioning the validity of the provisions of Section 56 of the Act of 2016. It is settled preposition of law that in case action of any Authority is claimed to be not in consonance with the provisions of the Act, in such cases it is not necessary to examine the validity of the provisions. Under these circumstances, the writ petition filed by the petitioner is totally misdirected and is liable to be rejected."

The State-respondent No.2 has not submitted any reply to the writ petition. The Real Estate Regulatory Authority (i.e. respondent No.3) submitted its reply and took objection that no notice for demand of justice was served before filing this writ petition and except denial, no other argument has been raised.

The Institution of Chartered Accountant of India (i.e. respondent No.4) submitted its reply and supported the stand of the petitioner by saying that Section 56 of the RERA Act is per-se violation of the basic structure of the Constitution as it prohibits and takes away the right of the representation of the respondents before the forums established under the Act of 2016. The respondent No.4 submitted that the provision of Section 56 of the Act of 2016 be suitably read down as "the applicant or appellant or respondent may either appear in person or authorised one or more Chartered Accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be" and accordingly declare that Chartered Accountants are eligible to appear and represent appellants, applicants as well as respondents before the Appellate Tribunal or Regulatory Authority or the adjudicating officer, as the case may be

Heard learned counsel for the parties.

The RERA Act was enacted by the legislature with an object to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be or sale of real estate projects, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.

Chapter 'V' of the Act deals with establishment and composition of the Real Estate Regulatory Authority and its powers and functions. Similarly, Chapter 'VII' of the Act deals with establishment, composition, powers and functions of the Real Estate Appellate Tribunal. The complete procedure has been prescribed under Sections 43 to 58 of the Act. Section 53 deals with establishment of Real Estate Appellate Tribunal. Section 44 deals with the provision of filing an application for settlement of disputes and appeals to Appellate Tribunal. Section 45 deals with provision of composition of Appellate Tribunal. Section 53 deals with powers of the Tribunal likewise Section 54 deals with administrative powers of the Chairpersons of Appellate Tribunal and Section 56 deals with right to legal representation. Section 57 deals with powers of the

Appellate Tribunal to be executable as a decree and Section 50 deals with provision of filing appeal to the High Court.

Section 84 of the Act empowers the State Government to make rules to carry out the objects and purposes of the Act. Exercising this power, the State of Rajasthan framed the Rajasthan Real Estate (Regulation and Development) Rules of 2017 (hereinafter referred to as 'the Rules of 2017). Chapter 'VI' of the Rules of 2017 deals with the entire procedure of establishment of the Real Estate Regulatory Authority and Chapter 'VII' deals with the procedure of establishment of Real Estate Appellate Tribunal. In pursuance of Chapter 'VII' of the Rules of 2017, Real Estate Regulatory Authority of Rajasthan was constituted to discharge functions assigned under the Act and Rules.

The RERA Act and the Rules made thereunder play a significant role to protect the interest of the consumers in the real estate sector and it provides a mechanism for speedy dispute redressal. The Appellate Tribunal has been established to hear the appeals from the decisions, directions and orders of the Regulatory Authority and the adjudicating officer. For proper assistance, right of representation has been given under Section 56 of the Act to the applicant or the appellant to appear in person or authorise one or more Chartered Accountants of company secretaries or Cost Accountants or legal practitioner of any of its officer to present its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer but the framers of the Act forgot to provide this Right of legal representation to the respondent to authorise any of the above persons to present their case before the Appellate Tribunal or the Regulatory Authority or the Adjudicating Officer.

The State of Rajasthan in its wisdom framed the Rules of 2017 in exercise of its powers under Section 84 of the Act and framed rules for carrying out the provisions of Act. Even the State never intended to frame the rules against the interest of any of the party who is being represented as a respondent to the proceedings before the Appellate Tribunal or Regulatory Authority. The right of legal representation has been given to both parties to the appeal and opposite to appear in person or by an authorized person.

Rule 27 (5) & (6) of Rules of 2017 are reproduced as under:-

"27 Form for filing appeal and the fees payable:-

(5) Whether a party to the appeal is represented by an authorised person, as provided under Section 56, a copy of the authorisation to the act as such and the written consent thereto by such authorized person, both the original, shall be appended to the appeal or the reply to the notice of the appeal, as the case may be.

(6) On the date of hearing or any other date to which hearing could be adjourned, it shall be obligatory on the parties or their agents, as the case may be, to appear before the Appellate Tribunal:

Provided that where the appellant or his authorized person, as the case may be, fails to appear before the Appellate Tribunal on such date, Appellate Tribunal may in its discretion either dismiss the appeal for default or decide it on the merits and where the opposite party or his authorized person fails to appear on the next date of hearing, the Appellate Tribunal may decide the appeal ex-parte."

Even the procedural rule contained under sub-Rule (5) and (6) of Rule 27 of the Rule of 2017 does not discriminate between the applicant/appellant and the respondents. It gives equal right of legal representation to the party to the appeal and the opposite party to appear in person or through authorised person. The right to representation has been accorded to both parties to the proceedings. The party to the proceedings include the appellant, applicant and the respondent as well. The party to the proceedings can either appear in person or through their authorities. Similar provisions have been incorporated in the regulations framed by other States in view of the power granted to them under Section 84 of the RERA Act like:-

(a) Rule 24(5) & (6) of National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016;

(b) Rule 25 (5) & (6) of Dadra and Nagar Haveli Real Estate (Regulation and Development) (General) Rules, 2016;

(c) Rule 25(5) & (6) of Daman and Diu Real Estate (Regulation and development) (General) Rules, 2016;

(d) Rule 25 (5) & (6) of Andaman and Nicobar Islands Real Estate (Regulation and Development) (General) Rules, 2016;

(e) Rule 25 (5) & (6) of Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016;

(f) Rule 25 (5) & (6) of Lakshadweep Real Estate (Regulation and Development) (General) Rules, 2016.

There are various statutes which permit Chartered Accountants/Company Secretary/Cost Accountant/Lawyer to appear before the quasi-judicial and judicial authorities/Tribunals constituted under there statutes.

Section 432 of Companies Act also allows Chartered Accountants/ Company Secretaries/ Cost Accountants/Legal Representation/ any other person to appear on behalf of the parties before the Tribunal or the Appellate Tribunal. For ready reference, Section 432 of the Companies Act, 2013 is reproduced as under:-

> ***"432. Right to legal representation***
>
> *A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more Chartered Accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be."*

Similar provisions are there under Section 116 of the Central Goods and Services Tax Act which also gives the right to representation to both parties to appear before the authority in connection with any proceedings either in person or through his relative advocate, Chartered Accountants, Company Secretary or Cost Accountant. For ready reference, Section 116 of the Act of 2017 is reproduced as under:-

> **"Section 116- Appearance by Authorised representative-**
>
> *(1)Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this*

Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

(2)For the purposes of this Act, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being-

a) his relative or regular employee; or
(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group -B Gazetted officer for a period of not less than two years:"

Bare perusal of the aforesaid provisions of various Acts makes it absolutely clear that chartered accountants/company secretaries/cost accountants/lawyers are allowed to appear before the Tribunals and authorities constituted and function under these enactments.

The right of legal representation through chartered accountants/company secretaries/cost accountants/lawyers is a part of principles of natural justice in any proceedings before the Tribunal or the regulatory authority.

The concept of natural justice though not provided in Indian Constitution but it is considered as necessary element for the administration of justice. Natural justice is a concept of common law which has its origin in on 'jua natural' which means a law of nature. Natural justice has a very wide application in administrative discretion. It aims

to prevent arbitrariness and injustice towards citizen with an act of administrative authorities.

Initially, the concept of natural justice was confined to judicial proceedings only but with passage of time, this concept is applicable even in quasi-judicial proceedings.

According to traditional law, natural justice is classified into two principles i.e. (1) 'nemo judex in causa sua' which means (rule against bias). (2) 'Audi alteram partem'- (rule of fair hearing).

'Audi Alteram Partem' means "hear the opposite side" or "let the other side heard as well."

This is the significant rule of natural justice which says that that no one should be condemned unheard. When a person against whom any action is sought to be taken and his right or interest is being affected, he shall be given an equal opportunity of being heard and defend himself. It gives right to the party to respond to the evidence against him and to choose legal representative of his own choice. Any adjudicating authority while deciding a dispute between the parties has to take into consideration the principles of natural justice as they form a part of the fundamental fair procedure amongst the parties. It is the duty of every person or body exercising judicial or quasi-judicial function to act in good faith and to listen fairly to both the sides before passing any order. No party should be made to suffer in person without giving any fair opportunity of being heard; in case, if any authority proceeds without giving a fair opportunity of hearing to the other party, then such action would be violative of principles of natural justice of fair hearing as well as violative of Articles 14 and 21 of the Constitution of India. The sole purpose of rule of fair hearing is to avoid failure of justice. Thus, the essence of this principle is right of fair hearing or the right to be heard. The main motive of the principles of natural justice is to prevent the miscarriage of justice.

The Supreme Court has held in A.K. Roy v. U.O.I, reported in AIR 1982, SC 710 a case under the NSA, that no party, neither the government nor the detaining authority, nor the detenu, would be entitled to have legal representation before the advisory board. But if the government has it, then the detenu also must have it. The

Constitution does not contemplate that while the government has the facility of legal representation before the board, the same is to be denied to the detenue. If the government or the detaining authority is represented through a legal practitioner or legal adviser before the advisory board, the detenue must also have a similar right because or Arts. 14, 21 and 39A.

The Court emphasized: "Every person whose interest is adversely affected as a result of the proceedings which have a serious import, is entitled to be heard in those proceedings and be assisted by a friend." The advisory board must grant such a facility whenever demanded.

Article 14 guarantees equality before law. Denial of hearing to an affected person may amount to denial of equality before law which may amount to an infringement of Art. 14.

Hence, non-providing the opportunity of right of legal representation to the respondent through Chartered Accountant/Company Secretary/Cost Accountant/Lawyer amounts to denial of fair opportunity to participate in the proceedings and the same amounts to violation of natural justice.

Section 56 of the RERA Act confers a right upon the applicant/appellant to appoint CA/CS/Cost Accountant/Lawyer whereas it curtails the right of the respondent. Both parties before the Tribunal/Authority have equal rights and no differential treatment can be given to one set of person over the set of persons. No reason or rationale has been provided under the RERA Act to give such differential treatment.

In order to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question.
Non-inclusion of the word "Respondent" under Section 56 of the RERA Act sound harsh, unreasonable and contrary to constitutional spirit. Taking into consideration the object, purpose and scheme of RERA, which was enacted in the larger public interest,

we have placed our interpretational aspects of Section 56 with a balance approach so as to advance the object and purpose of RERA.

It is the settled principle of law that two equals should be treated as equal. Both appellant/applicant and the respondents are equal for the authorities hearing the matter. When once right or legal representation through CA/CS/Cost Accountant and lawyer has been given to the applicant then deprivation of his right to the respondent amounts to violation of right of equality of the respondent contained under Article 14 of the Constitution of India.

Thus, the clarification made by the legislature in not providing the right and legal representation to the respondent is not in conformity with the provisions of the Constitution. The provision under challenge violates the fundamental rights of the respondent citizens. Thus, this provision is arbitrary and discriminatory. Hence, in view of the settled position of law, as held by the Hon'ble Supreme Court in the case of the Independent Thought Vs. Union of India & Anr. reported in 2017 (10) SCC 800, Court can either hold the law to be totally unconstitutional and strike down the law or the Court may read down the law in such a manner that the law read down does not violate the Constitution. For ready reference, para 168 of the Judgment of Hon'ble Supreme Court in case of Independent Thought (supra) is reproduced as under:-

> *"168. Therefore, the principle is that normally the Courts should raise a presumption in favour of the impugned law; however, if the law under challenge violates the fundamental rights of the citizens, the law is arbitrary, or is discriminatory, the Courts can either hold the law to be totally unconstitutional and strike down the law or the Court may read down the law in such a manner that the law when read down does not violate the Constitution. While the Courts must show restraint while dealing with such issues, the Court cannot shut its eyes to the violations of the fundamental rights of the citizens. Therefore, if the legislature enacts a law which is violative of the fundamental rights of the citizens, is arbitrary and discriminatory, then the Court would be failing in its duty if it does not either strike down the law or read down the law in such a manner that it falls within the four corners of the Constitution."*

In the case of Independent Thought (supra), the issue before the Hon'ble Apex Court was "whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape?"

In the above case, the legality and constitutional validity of following exception S.375 of the Indian Penal Code was under challenge:-

S.375 Rape- A man is said to commit rape who, except in the case hereinafter excepted has sexual intercourse with a woman under the circumstances falling under any of the six descriptions:-

> *"Firstly:- Against her will.*
> *Secondly:- Without her consent.*
> *Thirdly:- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly:- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*
> *Fifthly:- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*
> *Sixthly:- With or without her consent, when she is under sixteen years of age.*

The Hon'ble Apex Court in the case of Independent Thought (supra) struck down the age of 15 years and read it down to 18 years in Para Nos. 196 and 197 by observing thus:-

> *"196.Since this Court has not dealt with the wider issue of "marital rape", Exception 2 to Section 375 IPC should be read down to bring it within the four corners of law and make it consistent with the Constitution of India.*

> *197. In view of the above discussion, I am clearly of the opinion that Exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:–*
> *(i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India;*
> *(ii) it is discriminatory and violative of Article 14 of the Constitution of India and;*
> *(iii) it is inconsistent with the provisions of POCSO, which must prevail. Therefore, Exception 2 to Section 375 IPC is read down as follows: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape". It is, however, made clear that this judgment will have prospective effect."*

Hence, exercising the power of judicial review the Hon'ble Apex Court read down age of 15 years to 18 years in exception to of Section 375 IPC.

In the case of Pinki Devi Vs. State of Uttarakhand reported in 2019 SCC Online Utt. 937 the constitutional validity of Section 8(1)(r), Section 8(8) (1) (d) and Section 10-C of the Uttarakhand Panchayati Raj (Amendment) Act were under challenge and the Division Bench dealt with the scope of procedure of reading down any law and finally read down of above provision by giving following reasoning's in Para Nos. 2, 88, 89, 90, 91, 92, 93 and 94 by observing thus:-

> *"2. Section 8(1)(r), as inserted by the 2019 Act, stipulated that a person shall be disqualified for being appointed, and for being a Pradhan, Up-Pradhan and a member of the Gram Panchayat, if he has more than two living children. The newly inserted Sub-Section (8) prescribes a further bar on holding two posts simultaneously and, under Sub-Section (1)(d) of Section 8(8) of the 2019 Act, a person shall be disqualified for holding the office of a Pradhan, Up-Pradhan or a Member of the Gram Panchayat if he is the Chairman, Vice-Chairman or a Member of any Cooperative Society.*

88. It is submitted, on behalf of the petitioners, that applying the said provision, i.e. Section 8(1)(r), prospectively, and stipulating that it shall apply only to persons who give birth to a third child or more after the 2019 Act was brought into force on 25.07.2019, would save the provision from unconstitutionality.

89. It is well settled that, with a view to save a provision from being declared unconstitutional, it may be read down. The creases may be ironed out (Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd. to ensure that it does not fall foul of Part III of the Constitution, and, only if it cannot, to then strike down legislation (plenary or subordinate) as ultra-vires Part III of the Constitution of India. If the law is arbitrary, discriminatory and violates the fundamental rights guaranteed to the citizens of the country, then the law can either be struck down or can be read down to bring it in consonance with the Constitution of India. (Independent Thought).

90. As the Court must start with the presumption that the impugned provision is intra vires, the said provision should be read down only to save it from being declared ultra vires, if the Court finds, in a given case, that the presumption stands rebutted. (J.K. Industries Limited & another v. Union of India & others; Hindustan Zinc Limited v. Rajasthan Electricity Regulatory Commission). A provision of an Act is read down to sustain its constitutionality (Pannalal Bansilal Patil and others v. State of U.P. & others; Delhi Transport Corporation v. D.T.C. Mazdoor Congress), and by separating and excluding that part of the provision which is invalid, or by interpreting the word in such a fashion as to make it constitutionally valid. (B.R. Enterprises v. State of U.P. & others). The question of reading down a provision arises if it is found that the provision is ultra vires as they stand. (Electronics Corporation of India Ltd v. Secretary, Revenue Department, Govt. of Andhra Pradesh and Ors.). In order to save a statute or a part thereof, from being struck down, it can be suitably read down. But such reading down is not permissible where it is negatived by the express language of the statute. (C.B. Gautam v. Union of India & others).

91. An attempt should be made to make the provision of the Act workable and, if it is possible, to read down the provision. (Balram Kumar Wat v. Union of India & others;ANZ Grindlays Bank Ltd and Ors. v. Directorate of Enforcement and Ors.). If a provision can be saved by reading it down, it should be done, unless the plain words are so clear as to be in defiance of the Constitution. This interpretation springs out of the concern of Courts to salvage a legislation. Yet, in spite of this, if the impugned legislation cannot be saved the Courts shall not hesitate to strike it down. (B.R. Enterprises).

92. In order to sustain Section 8(1)(r), an appropriate reading down of the said provision to save it from the vice of unreasonableness and arbitrariness should be resorted to. If it is not so read down, then Section 8(1)(r)would obviously fail on the touchstone of reasonableness, and would become void and inoperative. (Hyderabad Karnataka Education Society v. Registrar of Societies and Others).Section 8(1)(r)can be read down by giving it prospective application, meaning thereby that the disqualification under the said provision can be held to apply only to those who give birth to a third child or more after 25.07.2019 when Section 8(1)(r), inserted by the 2019 Amendment to the 2016 Act, came into force. The said provision can, thereby, be saved from being declared unconstitutional. It is only by so reading down Section 8(1)(r), and applying it prospectively from the date the 2019 amendment Act came into force on 25.07.2015, can the said provision be saved from unconstitutionality.

93. We, therefore, read down Section 8(1)(r) and declare that the disqualification from contesting elections to Panchayati Raj Institution, in terms of the said provision, would apply only to cases where persons, having two children or more, have a third child or more after 25.07.2019. The said provision shall not be understood as disqualifying those who already have three or more children before 25.07.2019

> *94. The challenge, to the constitutional validity of the newly inserted Section 10-C of the 2019 Amendment to the 2016 Act, must fail. Section 8(1)(r) shall be read down as a disqualification, from contesting elections to Panchayati Raj Institutions, only to those who give birth to a third child or more after the 2019 Amendment to the 2016 Act came into force on 25.07.2019."*

The writ petition, in view of the discussion made, deserves acceptance, thus the same is allowed. The distinction made for non-inclusion of the word "Respondent" under Section 56 of the RERA Act is declared illegal.

As a consequence of the declaration above, the Section 56 of the Act of 2016 stands read-down as under:-

> **"56. Right to legal representation- The applicant or appellant or respondent may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be."**

In the light of inclusion of the word "Respondent" under Section 56 of the Act of 2016, the respondent would also have the right of representation (like the applicant or appellant) to either appear in person or authorize one or more Chartered Accountants or Company Secretaries or Cost Accountants or Legal Practitioner or of its officer to present his or its case before the Appellate Tribunal or Regulatory Authority or the Adjudicating Officer, as the case may be.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Civil Second Appeal No. 72/2022
Order dated: 06/04/2022

TREHAN APNA GHAR BUILDWELL PRIVATE LIMITED

------ APPELLANT

VERSUS

MUNISH RANJAN SAHAY

------ RESPONDENTS

For Appellant(s): Mr. Pradeep Kumar Choudhary and Ors

For Respondent(s): Mr. Rubal Tholia for
Mr. Harshal Tholia

Gist of case: Appeal under section 58 of RERA Act to be filed with Rs 5,000 court fees.

Both these appeals have been filed under the provision of Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "RERA Act"). **The registry has registered both appeals as second appeals and Court fees of Rs.1000/- in both appeals paid by appellants has been reported as sufficient.**

Since Section 58 of the RERA Act, 2016 do not specifically provide the nature of appeal as to second appeal and further under the provision of RERA Act and Rajasthan Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the RERA Rules, 2017"), there is no provision for making valuation of

dispute and for quantum of Court fees payable on appeal filed under Section 58 of the RERA Act, hence, two issues fall for consideration by this Court:-

"(1) The appeal filed under Section 58 of the RERA Act, 2016 be registered under which category of appeals before the High Court of Judicature for Rajasthan.

(2) How much Court fees is payable on appeal filed under Section 58 of the RERA Act, 2016 before the High Court?"

From perusal of provision of Section 58 of the RERA Act, it stands clear that the appeal can be entertained by the High Court only on the ground as specified under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred as "the Act of 1908"). The High Courts are ad idem that according to provision of Section 58 of the RERA Act, the appeal can be maintained/entertained only on the grounds as specified under Section 100 of the Act of 1908, it means on involvement of any substantial question of law in the appeal.

The Appellate Tribunal established under the RERA Act, 2016 is judicial form and creature of a special statute. It is well known principle of law that the Tribunal established under any special Act cannot be called a Court like Civil Court as there is a clear distinction between the Tribunal and the Court.

According to procedure prescribed under the RERA Act, provision of the Code of Civil Procedure, 1908 are not strictly applicable. Although under Section 58 of the RERA Act, the order or decision of Appellate Tribunal has not been termed as decree, however, by virtue of section 57 of the RERA Act, the order or decision passed under the RERA Act is executable and enforceable as a decree of Civil Court. Hence, a elaborate discussion about the aspect that the final order or decision under RERA Act falls within category of decree or not, is not required to be made, to decide the issue involved herein.

In the opinion of this Court, that appeal arises against the decision or order of the Appellate Tribunal under the RERA Act, by virtue of Section 58 of the

RERA Act, be registered before this Court as "Civil Misc. Appeal" to be heard by the Judge sitting alone.

Since in the High Court of Rajasthan, as per the High Court Rules, the category "Civil Misc. Appeal" is already available to register the appeals, this Court finds that instead of creating a separate category of Civil Misc. Appeals under the RERA Act, appeals arising under Section 58 of the RERA Act may be and should be registered in the category of broader head of "Civil Misc. Appeal".

This Court is of the opinion that against the decision or order passed by the Appellate Tribunal under the RERA Act, the appeal filed under Section 58 of the RERA Act can be maintained/entertained only on the grounds specified under Section 100 of the Act of 1908 i.e. on involvement/formulation of substantial question of law.

The another issue No.2 regarding payment of Court fees on appeals filed under Section 58 of the RERA Act, 2016 is concerned, it is clear that under the provision of RERA Act or under the RERA Rules, 2017, there is no specific provision prescribing quantum of payment of Court fees for filing the appeal before the High Court under Section 58 of the RERA Act, 2016.

As per Rule 35(i) of the RERA Rules, 2017, a fixed Court fees of Rs.1000/- is payable to bring dispute before the RERA Authority.

This Court finds that where there is no specific provision available for payment of Court fees on appeals filed under Section 58 of the RERA Act, 2016 before the High Court, as a general principle of law, the Court fees of Rs.5000/- as required to be paid before the Appellate Tribunal under Rule 37 of the RERA Rules, 2017, be paid on appeal filed under Section 58 of the RERA Act, 2016 before the High Court.

IN THE HIGH COURT OF JUDICATURE FOR PUNJAB AND HARYANA
CWP No. 7852/2022
Order dated: 20/04/2022

M/s EXPERION DEVELOPERS PRIVATE LTD

------ PETITIONER

VERSUS

STATE OF HARYANA AND ORS

------ RESPONDENTS

For Petitioner: Mr. Kamal Sehgal Adv.

For Respondent(s): Mr. Ankur Mittal, Adv & Ors

Gist of case: The 'occupation certificate' cannot be treated as 'completion certificate'. Also, obtaining of an occupancy certificate or having applied for such certificate in terms of the Haryana Building Code, 2017 shall not serve the purpose and shall not oust the requirement of registration.

Learned counsel for the petitioner, other than arguing on the merits/demerits of the impugned orders passed by the Haryana Real Estate Regulatory Authority , has raised a basic issue on the jurisdiction of that Authority to pass the orders, with the contention being that the petitioner having received an occupancy certificate in respect of at least that part of the project as respondents no.2 and 3 would be concerned with, on 02.03.2017, and the RERA Act having come into effect (as regards Section 3 thereof) only from 01.05.2017, the project has to be treated to be a completed project and therefore there was no requirement for even registration of the project by the petitioner with the RERA authority in terms of Section 3; and consequently if the said respondents had any grievance qua any action of the petitioner, the appropriate forum for redressal of any such grievance would not be the respondent authority.

In that context Mr. Sehgal refers to Rules 2(1)(n) and 2(1)(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017, which read as follows:-

"2(1)(n) "layout plan" means a plan of the colony depicting the division or proposed division of land into plots, roads, open spaces, etc. and other details, as may be necessary; 2(1)(o) "ongoing 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 Authority on or before publication of these rules; and

(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."

The argument therefore is that the petitioner having already applied for and obtained an occupation certificate as referred to above in terms of the Haryana Building Code, 2017, prior to 01.05.2017, there was no requirement at all to get itself registered with the Authority, it thereby being outside the purview of its jurisdiction.

Even prior to notice of motion having been issued, on an advance copy of the petition received, Mr. Ankur Mittal, Advocate, appears for respondent no.4, i.e. the Haryana Real Estate Regulatory Authority, and submits that there is an obvious anomaly between Section 3(2)(b) of the Act of 2016 and the aforesaid Rules of 2017, in as much as Section 3(2)(b) reads to say that it is only after a completion certificate has been obtained by a developer in respect of any particular project, before the said Act came into effect, that it would not be required to get such project registered with the Authority; but with the petitioner having obtained only an occupancy certificate and not a completion certificate, necessarily it was required to get its project registered and therefore the jurisdiction of the Authority is very much existent qua the project.

We agree with learned counsel appearing for the respondent HRERA and also wish to point out that Section 2(q) of the Act, which defines a completion certificate, states as follows:-

> *"(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;"*

On the other hand, an occupancy certificate is also specifically defined under the said Act itself, with clause (zf) of Section 2 of the Act, reading as follows:-

> *"(zf) "occupancy certificate" means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;"*

Thus, in opinion of Hon'ble Court, there being a difference carved out in the Act itself as to what is a completion certificate and an occupancy certificate, unless the petitioner had obtained a completion certificate for the project in question, prior to the date that Section 3 of Act came into effect, i.e. 01.05.2017, it was necessarily required to get itself registered with the respondent authority; but with a completion certificate still not having been obtained, simply obtaining of an occupancy certificate or having applied for such certificate in terms of the Haryana Building Code, 2017, court would not consider the petitioner to be outside the purview of the jurisdiction of the respondent Authority and therefore, if the petitioner is aggrieved in any manner of the impugned orders passed on the merits thereof, obviously it has its remedy of appeal before the Tribunal constituted under the said Act

As regards that factual aspect and specifically with regard to as to whether the petitioner was allowed to complete the project in different phases in terms of the

license granted to it, and therefore whether that occupancy certificate for any particular phase as has been completed (if so), is to be treated to be a completion certificate in terms of Section 2(q) of the Act, is left to the appellate authority under the Act to decide on merits, keeping in view of course the judgement of the Supreme Court in M/s Newtech Promoters and Developers (supra), and any other law laid down on the subject.

PART-II
REPORTING OF CASE LAWS

RAJASTHAN REAL ESTATE APPEALLATE TRIBUNAL

APPELLEANT: M/s. Avalon Projects
RESPONDENT: Amarjit Kaur
CORAM: Shri. Justice Veerendr Singh Siradhana (Retd.), Hon'ble Chairperson, Shri Brijesh Kumar Dangra and Shri B.D Jat
ORDER DATE: 11th March, 2022
Appellant Representative: Mr. Harshal Tholia
Respondent Representative: Ms. Neha Gyamlani

Gist of Case: Adjudicating Officer is empowered to transfer case to RERA authority.

Learned counsel for the parties not in dispute on the proposition that the issue raised in the instant appeal is one and same, that has been adjudicated upon by this Tribunal on 04th March, 2022 in Appeal No.15/2022 (Unique Builders Ganesh Vs. Devendra Kumar Indore).Hence, prayed that the same order may also be made in the instant appeal.

The short controversy raised in the instant appeal, is with regard to transfer of the application instituted by the non-appellant before the Adjudicating Officer which vide order dated 09th December, 2021, has been transferred to the Authority observing that after pronouncement by the Apex Court of the land in the case of M/s. Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP & Ors. in Appeal No.6749/2021, the Adjudicating Officer became functus officio to grant any relief to either of the parties, rather, Rajasthan-RERA, Jaipur, is the Competent Authority to adjudicate upon the matter, and therefore, transferred the claim/application, to be laid before Raj-RERA, Jaipur.

Learned counsel for the appellant reiterating the pleaded facts and grounds of the appeal, mainly contended that under the Real Estate (Regulation and Development) Act, 2016 (for short "Act of 2016), there is no enabling power of transfer of matters instituted before Raj-RERA, Jaipur to Adjudicating Officer or vice a versa. Moreover, Adjudicating Officer appointed under Section 71 of the Act of 2016, has exclusive jurisdiction. Learned counsel for the appellant has relied upon the opinion of the Apex Court of the land in Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP & Ors. in Appeal No.6749/2021.

Learned counsel also referred to the opinion of the Single Bench of the High Court of Judicature for Rajasthan, at Jaipur Bench, Jaipur, in SBCWP No.7980/2021 (Avalon Projects Vs. U01 & Ors.) where a final order made by the Adjudicating Officer was challenged and the High Court, relying upon the opinion of the Apex Court of the land in the case of M/s. Newtech Promoters & Developers Pvt. Ltd. (supra), quashed and set aside the order made by the Adjudicating Officer. However, leaving the litigant therein, to initiate proceedings before Rajasthan-RERA, Jaipur, afresh in accordance with law.

Per contra, Mr. Ridhvick Dosi, Advocate, contended that the Adjudicating Officer committed no illegality in transferring the matter to the Rajasthan-RERA, Jaipur, for the Adjudicating Officer became functus officio in view of opinion of the Supreme Court in the case of M/s. Newtech Promoters & Developers .Pvt. Ltd. (Supra).

Having considered the rival submissions, we have no doubt in our mind that the issue of jurisdiction was specifically raised, considered and has been dealt with and decided by Supreme Court in the case of M/s. Newtech Promoters & Developers Pvt.`` Ltd. (Supra) while answering question No.2.

As to the relief of compensation and interest thereon claimed under Sections 12, 14, 18 nd 19; the Adjudicating Officer, exclusively has the power to determine, keeping in view a conjoint reading of Section 71 and 72 of the Act of 2016. At this juncture, it may be relevant to take note of the contents of para 86 of the opinion while answering question No.2, in the case of M/s. Newtech Promoters & Developers Pvt. Ltd. (Supra), which reads thus:

"Question no.2: Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interests for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, ***when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act.*** *If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicatin6 officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act of 2016."*

Once the Adjudicating Officer concluded that the matter could not be entertained in view of exclusive limited jurisdiction that has been taken note of by the Apex Court of land in the case of M/s. Newtech Promoters & Developers Pvt. Ltd. (Supra); he could not have transferred the matter with the direction to be laid before the Raj-RERA, Jaipur, for the simple reason that the jurisdiction-of the Adjudicating Officer has been exclusively limited to matters under Section.12, 14, 18 and Section 19 of the Act of 2016.

For the reasons aforesaid; the appeal merits acceptance. In the result, impugned order dated 09th December, 2021 is hereby quashed. However, the non-appellant will be at

liberty to institute proceedings afresh before the appropriate forum, in accordance with law.

MAHARASHTRA REAL ESATTE APPEALLATE TRIBUNAL

APPELLEANT: Mrs. Jayshree Sathyanarayan & Ors
RESPONDENT: M/s Atmosphere Realty Pvt Ltd
CORAM: Shri Indira Jain & Dr. K Shivaji
ORDER DATE: 4th March, 2022

Gist of Case: Order must be speaking one & should follow principal of natural justice.

Appellants are flat purchasers and complainants before MahaRERA. Respondent is the developer, who is constructing the said project.

For convenience, appellants and respondent will be addressed hereinafter as complainants and promoter respectively.

Brief background giving rise to the instant appeal is as under:

(i) On 17th November 2014, complainants booked flat number 1001 on 10th floor in project known as "Atmosphere, the tower to be known as "VERA", for a total consideration of Rs 1, 35, 00,000. Allotment letter was also issued on 17th September 2015.

(ii) Complainants made initial payments. But they could not pay further as demanded by promoter, on account of unforeseen circumstances faced by them, namely unfortunate death in complainants family, suffered heavy losses to their properties in Kerala due to severe flood. On account of default in payment by the complainants, promoter terminated the allotment on 4th May 2019 and deducted certain amount.

(iii) Being aggrieved by this termination letter, allottees filed above complaint before MahaRERA, seeking various reliefs including for refund without making unreasonable and illegal deductions.

(iv) Upon hearing parties, MahaRERA disposed of the complaint through its order dated October 17 2019, stating that ,,1, y/e w of the above facts, since the complainants have already withdrawn from this said project, refund shall be guided by the terms and conditions of the allotment/ booking letter.

(v) Dissatisfied by this order of MahaRERA, complainants have filed the instant appeal, seeking various reliefs inter alia to set aside the impugned order and refund of eligible amount on various grounds enumerated in the appeal memo.

Complainants submit inter alia that MahaRERA erred in not passing the impugned order by mentioning that complainants have withdrawn from the said project. But fact is that promoter has terminated booking of the flat and has sent cancellation letter on 19th January 2016. MahaRERA in its impugned order has not considered the submissions of complainants that deduction by the promoter is unjustified and has not gone into the terms and conditions of the allotment letter.

Promoter submits inter alia that after granting ample opportunities to complainants and after a series of correspondence between parties over 5 years for making payments, promoter was constrained to terminate their booking, not only once but twice, in 2016 and 2019. In spite of several reminders, complainants have defaulted in making payments since inception. In 2016, promoter withdrew its cancellation letter and allowed complainants to continue with the project but complainant's consistency defaulted in making payment for another 3 years. Whereas, promoter has completed its obligations by completing construction of the building and obtained occupancy certificate on 23d February 2019. MahaRERA has passed the impugned order after careful examination of the relevant facts and after hearing both parties at length. Therefore, impugned order does not require any interference.

Reasons for Order:

Section 38 of the Act stipulates that impugned order is expected to be passed following the principle of natural justice. It is apposite to reproduce the relevant abstract of the Section 38 (2).

> *"The authority shall be guided by the principles of the natural justice and subject to other provisions of the Act and the rules made there under the Authority shall have powers to regulate its own procedure.",*

Whereas, perusal of impugned order reveals that there is hardly any reason before arriving at findings mentioned in para 3. The case in question is a statutory appeal filed by the complainants under the Act. It does not even refers to the grounds mentioned in complaints for various reliefs. In the absence of reason, impugned order is practically a nonspeaking order.

It is well settled that reasons are heart and soul of any order and these set out fundamental foundation for conclusions. are essential prerequisites and sine qua non for any sound speaking order. In their absence, such orders become vulnerable.

Final Order

In view of the foregoing observations, the impugned order warrants reconsideration of the matter afresh to pass an appropriate order in accordance with the law after revisiting all the underlying relevant facts. Therefore, without going into the merits of the case, we remand the matter back to MahaRERA

APPELLEANT: M/s. Spenta Builders Pvt Ltd
RESPONDENT: Ashlesh Gosain
CORAM: Shri. Shriram R Jagtap and Shri S.S Sandhu
ORDER DATE: 11th March, 2022
Appellant Representative: Adv Declan Fernandez

Respondent Representative: Adv Nilesh Motavani

Gist of Case: While computing the period of limitation, the period spent for obtaining certified copy of the order required to be excluded.

The applicant, who is a Promoter, has moved this application for condonation of delay on the grounds enumerated in the application mainly on the grounds that the applicant is supposed to file appeal within 60 days from the date of receipt of copy of order. **The applicant had applied for certified copy of impugned order on 28.11.2019 and got it on 24.2 2020.**

The grounds put forth by the applicant for condonation of delay only point that arises for our consideration is whether there is delay in preferring appeal? To this, our answer is in the negative.

It is not in dispute that impugned order was passed on 13.11.2019. As per provisions of Section 44 of RERA the applicant was supposed to file appeal within 60 days from the date of receipt of copy of impugned order or from date of receipt of intimation of impugned order. Applicant has produced on record the certified copy of impugned order. A perusal of certified copy of Impugned order would show that applicant had applied for certified copy of impugned order on 28.11.2019 and he got on 24.02.2020. **The applicant has filed appeal on 4.3.2020. Section 12 of Limitation Act 1963 talks about exclusion of time in legal proceedings' Sub Section 2 of Section 12 of Limitation Act 1963 speaks that in computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgement, the date on which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.**

As per Section 44(2) of RERA the period of limitation would start running from the date on which a copy of order passed by the authority is received by the aggrieved person. In the present case the certified copy of impugned order itself discloses that the applicant has received the certified copy of impugned order on 24.2.2020. **As per provisions of Section 12 of Limitation Act 1963, while computing the period of**

limitation the period spent for obtaining certified copy of impugned order is required to be excluded. lf the said period is excluded then it can be said that the appeal is within limitation. Therefore we are of the view that there is no delay as such in preferring appeal.

TAMIL NADU REAL ESATTE APPEALLATE TRIBUNAL

APPELLEANT/APPLICANT: P. Anadasundaresan
RESPONDENT: M/s Akshay Pvt Ltd
CORAM: Shri. B. Rajendran and Ms Leena Nair
ORDER DATE: 7th March, 2022

Gist of Case: Validity of document has to be decided only after the reception of document.

This application has been preferred by the homebuyer against the promoter for the relief of receiving additional document under Order 41 Rule 27 CPC and in support of his application the homebuyer filed an affidavit and stated that he is having sufficient proof to establish that the building has not been completed in 2014. **The promoter has filed a false document to mislead this forum. Therefore, it is just and necessary to receive this document as additional evidence on the side of homebuyer.**

The Ld counsel for the promoter would submit that the document relied by the homebuyer is the email given by the promoter and it is not disputed. But, that letter is not sufficient to disapprove the completion certificate issued by the competent authority.

Perused contention of both the parties

On the perusal of the homebuyer relied the email sent by the promoter which was not produced by the homebuyer before the adjudicating officer hence sought for reception of that document. The promoter has admitted the document which was issued by the promoter. In such circumstances, the validity of the document has to be analysed.

In the above said document dated 13.11.2017 email in which it has been stated as followed: "with reference to your email on apartment, readiness the apartment will be ready for handing over by end of Dec 201. Once the apartment is ready, we will be inviting you for the final inspection and will proceed with handing over. Looking forward for your extended cooperation." According to the homebuyer, completion means handing over the apartment to him. Therefore, the homebuyer relied this document. In such circumstances, this tribunal comes to the conclusion that the document relied by the homebuyer has to be received or not alone has to be considered in this application and validity of that document has to be decided only after the reception of document. Hence, this tribunal comes to the conclusion that application is allowed.

RAJASTHAN REAL ESATE REGULATORY AUTHORITY

COMPLAINANT: VBHC Delhi Value Homes Pvt. Ltd
RESPONDENT: Nitya Nand Sinha
CORAM: Hon'ble Shri Salvinder Singh Sohata, Member
ORDER DATE: 04.03.2022
Complainant Representative: Mr. Samkit Jain
Respondent Representative: Himself through VC

Gist of Case: Allottee cannot be pressured to get the possession of flat without occupancy certificate

The brief facts of the case are that promoter-complainant filed an application against allottee-respondent that in the project "VBHC GREENFIELDS" bearing registration No.RAJ/P/2017/319, a unit E-607 flat was booked and agreement for allotment on dated 15.04.2014 was executed in between the parties. In the light of schedule-I and II (pricing and payment schedule), respondent paid Rs. 25,89,825/- against consideration amount of Rs. 25,86,583/-. Respondent claims only last installment for Rs. 1,35,679/- is outstanding which is to be paid at the time of delivery of possession of the impugned unit. It is strange to note that applicant-promoter averred none of the contents in the application with regard to payment by allottee-respondent**. Promoter-applicant alleges that irrespective of Completion Certificate issued by the Competent Authority, project completed within stipulated time and allottee-**

respondent is not inclined to take over the possession. Therefore, it is prayed to direct respondent-allottee to pay remaining due amount against the sale consideration along with interest on delayed payment and registration of the covenant deed. Accordingly, it is also requested to impose holding charges against the allottee-respondent @ Rs. 2 per sq. ft. for delay of every month after expiry of the due date for delivery along with compensation for Rs. 10 lac for harassment and mental torture of the promoter.

Respondent allottee filed his reply along with documents and stated that without obtaining Occupancy Certificate from Competent Authority, allottee may not be compelled to take over the possession as it was mentioned at item No.20 of the Lay out Approval of Building Plan. Respondent-allottee made available various documents with reply and in addition some more documents were added in the docket of the file. Respondent through counter-claim prayed for refund and interest and various ancillary reliefs.

After careful examination of the record and submissions made by rival parties we observe as under:-

1. It is found after browsing the website of the project; status of the project is "lapsed" one. Office of the registry was consulted and copy of the completion certificate dt. 21.03.2018 for block-C, D and E and copy of completion certificate dt. 29.12.2017 for block-A and B is made available which is annexed with the file. The allotted unit to respondent-allottee is situated in block-E. Therefore, it is established that completion certificate was obtained on 21.03.2018 for Block 'E' but it is not proved by the promoter-applicant before the Authority whether the copy of the aforesaid completion certificate is transmitted to the allottee with an offer for possession of the impugned unit, inter alia, an e-mail dt. 29.07.2019 reflects otherwise narration and promoter-applicant himself has agreed upon to explore the option for getting part occupancy certificate. The excerpts of e-mail reads, as under:-

   "……However, as you are insisting for occupancy certificate, we would like to re-instate that we are not constructing B-Block immediately which part of the whole scheme, for which we have applied for extension of timeless. Under the

given situation, we shall explore an option of getting part occupancy certificate for the completed blocks and keep you posted on the updates."
After going through the aforesaid contents of message, it is paramount that the promoter-applicant was very much aware for obtaining the occupancy certificate. It is well established that the application before the Authority is submitted prior to filing the criminal complaint, lodged before the S.H.O., Khushkhera, Police District, Bhiwadi on dated. 10.07.2020.

2. It is strange that intention of the applicant was bona fide and allottee was having faith in promoter. Accordingly, allottee remitted Rs. 25,89,825/- against consideration of the aforesaid unit and only Rs. 1,35,679/- is outstanding balance to be paid at the time of delivery of possession of the unit which proves that more than 95% of the consideration is already paid. The promoter has demanded interest against consideration. the outstanding dues which is a meager amount against consideration.. Therefore, the contention of the promoter is not proved that applicant-respondent is harassing to the promoter due to non-payment of the outstanding amount against consideration. Clause 4.3 of the agreement for allotment which reads, as under:-

"4.3 The Company shall endeavor to complete the construction of the Flat/Apartment within a period of 30 months from the date of provisional allotment or from the start of the construction of tower in which the said Flat/Apartment is allotted, whichever is later subject to timely payment by the Applicant(s)/Allottee(s) of the sale price, stamp duty and other charges due and payable according to the payment plan opted by the Applicant/Allottee(s) or as may be revised by the Company. If the Company fails to complete construction within 30 months as aforesaid, then the Company shall pay to the Applicant/Allottee a compensation @ Rs.2/- (Rupees Two only) per sq. ft per month for the delayed period, for the delay beyond 180 days after the expiry of the said 30 months. The Company on obtaining certificates for occupation and use from the competent regulatory authorities shall hand over the possession of the Flat/Apartment to the Applicant/Allottee."

The aforesaid clause itself stipulates that occupancy certificate is to be obtained by the promoter himself prior to delivery of the possession, whereas, promoter-

applicant is insisting before the Authority for issuance of direction against the allottee without abiding the terms and conditions of the agreement. The claim of the promoter-applicant is contrary to the provisions of section 115 of the Indian Evidence Act, 1872. The promoter is stopped to contest the issue accordingly.

In view of the aforesaid observations, the application submitted by the promoter deserves to be dismissed with cost.

In the light of the aforesaid discussions, it is directed as under:-

(i) Application submitted by the promoter-complainant is dismissed and directed to remit Rs.20,000/- in "Rajasthan High Court Advocates Welfare Fund" within 30 days.

(ii) Cross-objection submitted by the respondent allottee are allowed and the respondent is directed to pay interest @ 7.3% of MCLR of SBI+2%, totaling to 9.3% w.e.f. date of delivery till actual delivery of the unit.

(iii) Respondent is directed pursue for obtaining Occupancy Certificate in terms of clause No. 4.3 of the agreement and hand over the possession along with copy of Completion Certificate and Occupancy Certificate to allottee within 60 days.

COMPLAINANT: Narender Datt (Decree Holder)
RESPONDENT: Genesis Infratech Pvt. Ltd.
CORAM: Hon'ble Shri Salvinder Singh Sohata, Member ORDER
DATE : 11.03.2022
Appellant Representative: Mr. Narender Datt
Respondent Representative: Ms Shruti Rai and Director in person

Gist of Case: Promoter stopped from disposing of properties.

Decree Holder prayed for execution of order dated 23.04.2019 as per the terms and conditions enumerated in the aforesaid order. Subsequently, a penalty for Rs.100/-

per day w.e.f. dated 29.04.2019 was also imposed for non-compliance of earlier direction of the Authority. Decree holder insists that the operative account related to the project is to be seized or unencumbered property is to be attached for compliance of the orders of the Authority. **Promoter himself insists that he is not in a position to comply with the directions for refund upto six months. Learned Advocate on behalf of respondent submits that a last opportunity shall be awarded to have a settlement with decree holder.**

In view of the prayer made by the respondent a last opportunity is being provided to the respondent. Meanwhile, a list for two properties provided by the promoter is taken on record and promoter is directed not to dispose the properties mentioned in the list till further directions of the Authority or compliance of earlier directions from the Authority.

COMPLAINANT: Satya Narayan Gupta
RESPONDENT: Abhinandan Land Developers Pvt. Ltd
CORAM: Shri Shailendra Agarwal, Hon'ble Member
ORDER DATE : 15.03.2022
Appellant Representative: None
Respondent Representative: Ms. Abhilasha Sharma

Gist of Case: No interest payment for delay if flat offered for possession.

The instant case pertains to a project by the name "Anukampa Platina Terraces" promoted by the respondent. The complainant Satya Narain Gupta appeared before this Authority, argued the case on his own behalf and submitted that the original date of completion of this project was 31.12.2019 and he was offered possession only on 22.09.2020. **He further stated that the work of the club house, installation of transformer and garden work are still pending, because of**

which, the children of the residents playing in the premises often get hurt and desired that these work be completed at the earliest.

Advocate Abhilasha Sharma, appearing on behalf of the respondent mentioned that the complaint filed by the complainant has sought in his prayer the possession of the flat to be given to the complainant and none else what has been stated by him in his arguments. **She contended that the possession of the flat has duly been handed over to the complainant and, therefore, no ground for the complaint remains. She further argued that the delay in possession of the flat by about 9 months was because of the death of one of the partners due to which the formalities regarding signing Authority had to be completed which was completed in 3 to 4 months**. She also argued that nowhere in the original complaint the complainant has prayed for anything beyond possession of the flat which has been done and, therefore, the complaint should be dismissed. She also brought on record that the completion certificate from the empanelled architect has been obtained on 22.11.2021 and an application for completion certificate from the Jaipur Development Authority has been submitted in the Jaipur Development Authority on 13.10.2020. She further submitted that the flat has not only been handed over to the complainant but the registration of the sale deed has also been done on 22.02.2021. She brought a signed letter from the complainant on record which stated clearly that the flat has been completed in all respects by the respondent.

Arguments of both the parties were heard and the documents were examined. **It is clear that the complainant prayed only for taking over possession of the flat and the consequent loss of EMI which he was suffering as a result of delay in possession. None of the relief mentioned by the complainant in the arguments today were mentioned in the original complaint by the complainant.** Also, the complainant had handed over a signed letter to the respondent that he is taking over possession of the flat which was complete in all respects. In the circumstances, when the complainant in his original complaint did not pray for anything else except

for the handing over the possession of the flat and a letter written in his own hand confirming that the flat is complete in all respects, there does not appear to be any reason for the complainant to now raise further demands. However, if he feels that the project has not been completed as per the brochure and all the formalities promised by the respondent has not been given by the builder, he is free to seek compensation for the same under section 12 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 for which he has the full liberty to apply to the Adjudicating Officer in the Form "O".

Accordingly, the complaint is dismissed with liberty to the complainant to apply before the Adjudicating Officer for any compensation whatsoever which he might think is due to him as a result of the amenities not having been provided by the respondent to the complainant.

COMPLAINANT: Karunakar Sharma
RESPONDENT: Fairwealth Housing Pvt. Ltd
CORAM: Shri Shailendra Agarwal, Hon'ble Member
ORDER DATE : 15.03.2022
Complainant Representative: In Person
Respondent Representative: None

Gist of case: Order given to attach properties due to non-execution of order.

The aforementioned matter was listed before this Bench on an execution application filed by the complainant for non-compliance of the order dated 10.02.2021 passed by this Authority and prayed that proceedings may be initiated against the respondent promoter under section 40(1) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') for the recovery of the ordered amount of Rs.23, 68,134 along with interest at the rate of 9.30%. The complainant submitted a list of the properties owned by the respondent promoter.

We have heard the arguments of the advocate on behalf of the complainant and perused the record of the case. We had passed an order dated 10.02.2021, the operative portion of the same is reproduced hereunder:

> *"Accordingly, we direct the respondent promoter to pay an interest on the amount of Rs. 23,68,134/- deposited by the complainant at the rate of SBI Highest MCLR rate (07.30%) + 2%, i.e 09.30 percent per annum from the promised date of possession to the date of this order within 45 days from the date of issue of this order and then continue to pay the interest at the rate mentioned above on a monthly basis till the offer of possession is made to the complainant."*

It is amply clear that the respondent has not made the compliance of the order of this Authority though a period of more than one year has passed.

None present before this Authority today on behalf of the respondent despite service of notice both by email as well as by speed post. This is a clear inference that the respondent did not pay any heed to the order dated 10.02.2021 passed by this Authority. It leaves with no alternative but to take a harsh action against the respondent promoter and invoke provisions of section 40(1) of the Act which states that "**If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue"**

Accordingly, the Registrar of this Authority is directed to initiate proceedings under section 40 of the Act attaching the unsold part of the present project in question of the respondent promoter and move to District Collector, Alwar for

appropriate penal action and to recover the due amount as arrears of land revenue.

COMPLAINANT: Chhagan Lal Phoolwaria
RESPONDENT: Advance India Builders and Promoters Pvt Ltd
CORAM: Shri Salvinder Singh Sohata, Hon'ble Member
ORDER DATE : 25.03.2022
Complainant Representative: Mr. Jatin
Respondent Representative: Adv Anurag Jain

Gist of case: Applicant/complainant is entitled to get al benefits of assured return plan.

Complainant submits that two shops S-02 and Kiosk-02 were booked respectively in the project "Advance Saaga Castel" and having registration No. RAJ/P/2017/521. Originally, the validity of registration was upto 12.06.2020 and further extension of validity for registration was granted upto 12.06.2022. Delivery of possession is not made. Therefore, complainant claimed for refund.

Respondent filed a detailed reply and made averment that complainant opted for Assured Return Plan (ARP) to get 12% assured return per annum after deduction of TDS on quarterly basis for 3 years. He had mentioned there in reply that despite, payment was not made as per the terms and conditions of the plan, the complainant was allowed to avail the benefit of Assured Return Plan. Due to various grounds, project was not completed within the specified period mentioned in the agreement. The project is likely to be completed. Therefore, prayed for dismissal of the application.

It is worthless to mention here that once in the receipt date i.e. 06.03.2014, promoter-respondent himself has mentioned with regard to benefit of Assured Return Plan, the contention of the respondent in this regard are not required to be

looked into on the ground that deposit was not made as per the terms and conditions of the aforesaid application.

In view of the provisions of section 58 of the Indian Evidence Act, admitted facts need not to be proved. The receipt date 06.03.2014 reads as under:-

> **"Against which Company will provide 12% Assured Return per annum on BSP after deducting TDS on quarterly basis. The first cheque of the payment will be released after 3 months, further subject to terms and conditions."**

In view of the aforesaid excerptions of the receipt document promoter-respondent is estopped to contest the documentary proof under the provisions of section 115 of the Indian Evidence Act.

In view of the aforesaid legal provisions, the deposit made by the complainant for the impugned units is to be treated under the Assured Return Plan irrespective of the claims advanced by the promoter-respondent before the Authority. Accordingly, applicant was entitled to get all benefits of the Assured Return Plan for the impugned units.

Promoter-respondent has made contention that applicant has concealed the facts through his application with regard to Assured Return Application and remittance of the funds. The aforesaid contentions are worthless and does not have any substance, once it is categorically mentioned in the receipt date i.e. 06.03.2014 that all the benefits of Assured Return Application are available to the applicant.

The allotment letter is executed on 01.05.2013 promoter himself has mentioned in his reply actually the execution of allotment letter was made in the month of

February, 2014 or March, 2014. Once, promoter himself is not certain with regard to execution of the aforesaid allotment letter, Authority may not take any view.

Respondent promoter prayed for providing benefit under the provisions of force majeure for non-completion of the project. It is particularly mentioned in view of section 6 of the Act, maximum one year grace period is to be allowed under the force majeure provisions, the Authority vide order dated 13.05.2020 has provided the benefit for one year. The project was likely to be completed in the month of December, 2016. Accordingly, with effect from January, 2018 applicant is having entitlement to claim interest thereupon.

In view of the specific circumstances, it is not a fit case for allowing refund. Accordingly, only interest under the provisions of section 18 of the Act is liable to be paid in favour of the applicant by the promoter.

Promoter has already provided the benefit of Assured Return Plan. Therefore, upto December, 2017, no interest is payable to the applicant in view of benefits already availed by him. Applicant is entitled to get interest w.e.f. 01.01.2018 excluding moratorium period (13.05.2020 to 31.03.2021). A lucrative option for refund may not be appropriate in the specific circumstances of the case.

In the light of aforesaid directions the application is partly allowed and promoter is directed as under:-

1. Respondent shall pay the interest on the deposit for respective units w.e.f. 01.01.2018 till actual delivery of possession excluding moratorium period. Interest @ 9.3% per annum be paid within 45 days.

2. Promoter is having liberty to adjust the aforesaid taxation amount against the accrual of interest on deposit made by the applicant.

3. Interest is to be paid by 10th of every calendar month till actual delivery of the units.

COMPLAINANT: Satya Narayan Agarwal, Aslam Khan & Seema Khan
RESPONDENT: Balajidham Buildstate Pvt Ltd
CORAM: Shri N.C Goyal, Hon'ble Chairman
ORDER DATE : 28.03.2022
Complainant Representative: Adv. RS Mehta
Respondent Representative: None

Gist of Case: When a liquidation order has been passed by NCLT, no suit or legal proceedings can be initiated.

The present complaint has been filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act') on 29.07.2020. In the complaint, the complainants have submitted a scheme for completion of the stalled project 'Nishant Nupur Residency' and sought orders of this Authority for implementation and execution of the said scheme so that the complainants and other allottes of the said project can get possession of the flats allotted/sold to them.

A reply has been filed on behalf of the respondent stating that, under the orders of NCLT, Jaipur Bench, the respondent company is under liquidation; and, therefore, a moratorium under section 33(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) applies to the present matter and the present proceedings must be stayed. The present complaint cannot be proceeded with except with the leave of the Hon'ble NCLT.

Adv R.S. Mehta, appearing on behalf of the complainants, states that as per the well-known ruling of the Hon'ble Supreme Court in the matter of "Pioneer Urban Land and Infrastructure Ltd. and Anr. v/s Union of India and Ors.", the Act, the IBC and the Consumer Protection Act, 1986 provide concurrent remedies to the allottees

in real estate projects; and, therefore**, the Authority should provide relief to the complainants, notwithstanding the matter pending in the NCLT. The provisions for getting a stalled project completed are provided under section 8 of the Act; and, therefore, this Authority is competent to grant the relief sought in the complaint.**

Having heard the counsel of the complainants and having perused record of the case, authority find that a liquidation order was passed by the NCLT, Jaipur Bench on 06.09.2019, whereby section 33(5) of the IBC has come into play, which provides that "when a liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the corporate debtor".

In view of the above position of law, the present proceedings are stayed until the liquidation proceedings get concluded or the NCLT grants leave to enable this Authority proceed with the present matter of completion of the project under section 8 of the Act. The complainants are, therefore, advised to approach the NCLT with their prayer to grant leave and get this particular project completed under the provisions of the Act and the directions of this Authority, so that the allottees in the project can get possession of the flats allotted/sold to them and the completed flats remaining unsold after completion of the project can be handed over to the liquidator.

COMPLAINANT: Alok Tandon
RESPONDENT: F.S Housing Pvt Ltd
CORAM: Shri N.C Goyal, Hon'ble Chairman
ORDER DATE : 11.04.2022
Complainant Representative: Adv. Siddant Pabuwal
Respondent Representative: CA Himanshu Vijay

Gist of case: Authority ordered to take possession of movable properties of developer & ordered to pay to allottee out of sale proceeds. Further, project to be completed by third party.

An application for execution of this Authority's aforesaid order dated 08.07.2020 was filed on behalf of the complainants, whereupon a notice for imposition of penalty and for execution of the said order was issued to the respondent on 26.10.2020. But, as it appears, the respondent has not complied with the said order of this Authority till date nor has any reply been filed on behalf of the respondent as to why the action proposed to be taken for non-compliance of the said order should not be taken against it in terms of the aforesaid notice for execution dated 26.10.2020.

Having heard counsels of the parties and having perused record of the case, authority found that that the respondent has utterly failed in complying with this Authority's order dated 08.07.2020. **The appeal filed before the Hon'ble Rajasthan Real Estate Appellate Tribunal and the writ petition filed before the Hon'ble Rajasthan High Court by the respondent having been dismissed, the default in complying with the order of this Authority is taken to be without any good reason and without any excuse.**

In view of the above observations and findings, we do hereby issue the following directions:

1. Under section 40(2) of the Act, Registrar of the Authority is directed to attach some movable or immovable properties of the respondent (other than incomplete flats in the project), auction the attached property and pay to the complainants the principal amount and interest due to be paid to them, in terms of order dated 08.07.2020. Registrar shall do so within 30 days from the date of issue of this order;

2. A per-day penalty of Rs. 500/- is imposed on the respondent under section 63 of the Act for non-compliance of the Authority's aforesaid order dated 08.07.2020.

Accordingly, the Registrar shall simultaneously also recover the per-day penalty amount reckoned from 09.07.2020 till the date recovery is made under direction (1) above;

3. The respondent shall pay further interest to the complainants, i.e., to the legal heirs of the complainants @ 9.30% on principal amount from 01.06.2021, i.e., after discounting one year of extension of registration granted on account of the force majeure conditions of Corona pandemic, till the date the principal amount of Rs. 1, 75, 00,000/- along with interest upto 31.05.2020 is recovered from the respondent under direction (1) above. Accordingly, the Registrar shall recover this amount of further interest along with the amount to be recovered under direction (1) above. This direction to recover further interest on principal amount from the respondent is given under section 38(1) of the Act;

4. As the project has lapsed on 31.05.2021, Registrar of the Authority shall oust the promoter from the project and take possession of the whole project to enable the Authority proceed under section 8 of the Act for getting the remaining development works of the project completed with the assistance of a third party; and

5. Compliance report shall be submitted by the Registrar before 23.05.2022.

BIHAR REAL ESATE REGULATORY AUTHORITY

COMPLAINANT: RERA Authority
RESPONDENT: Delcon Homes Pvt Ltd
CORAM: Shri Naveen Verma And Mrs Nupur Banerjee
ORDER DATE : 24.03.2022

Gist of Case: Project cannot be registered if maps are not approved.

Real Estate Regulatory Authority, Bihar issued a show-cause notice to Delcom Homes Pvt. Ltd. through its Partner, Mr. Naresh Mahto, on 14.02.2022 as to why the application for registration of the Project HI-TECH TOWN (Application No. RERAP275201800419-2), filed by the promoter with the Real Estate Regulatory Authority (RERA), Bihar, on 25.06.2021, should not be rejected under Section 5 (1) (b) of the Real Estate (Regulation & Development) Act, 2016. **The ground for rejection was that the applicant failed to furnish copy of map approved by the competent authority.**

Mr. Sharad Shekhar, Learned Counsel for the promoter submits that the project area is beyond the planning area and that the consent of Zila Parishad has been obtained on the map approved by Mukhiya. He further placed before the Bench that the land on which project is proposed belongs to the promoter and in case of rejection of application for registration of the real estate project HI-TECH TOWN, development of the project would be at stake. He requested that the Authority may urge the State Government to determine the competent authority to approve maps beyond planning area.

The Authority takes note of the fact that in response to letter dated 03.03.2021, sent by Secretary, RERA to the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, a letter from that Department dated 18.08.2021 was received stating therein that the matter was under consideration with regard to grant of powers of local authorities in non-planning areas for real estate project. **Therefore, Mukhiya of Gram Panchayat lacks the power of approval of building plan in their respective panchayat areas. It also notes that the Urban Development and Housing Department, Government of Bihar, has urged RERA to ensure that the provisions of Bihar Building Bye Laws are being enforced when maps are submitted to it before projects are registered.**

The Authority observes that an application filed under section 4 of the Act must fulfil the requirements of sub-section 2 of Section 4 of the Act as well as Rule 3 and 4 of the Bihar Real Estate (Regulation and Development) Rules, 2017.

In the light of facts and circumstances mentioned above the Authority observes that it is apparent that the building map plan of the proposed project has not been approved by the competent authority in terms of section 4 (2) (d) of the Act and construction of building which are not being regulated cannot be allowed putting the interest of allottees in jeopardy. **Therefore, the real estate project 'HI-TECH TOWN' is rejected as the promoter has failed to submit the requisite documents with the Authority as stipulated by Section 4 of the Real Estate (Regulation and Development) Act, 2016 and Rule 3 of the Bihar Real Estate (Regulation and Development) Rules, 2017, with the liberty that promoter may apply again for the registration of same project in future along with requisite documents and no fees would be charged from them.**

PART-III
NOTIFICATION & CIRCULARS

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No.: F.1(31) RJ/RERA/2019/550 Date – 8th March, 2022

Sub.: Requirement of Registration of Real Estate Projects.

In the 9th meeting of the Rajasthan Real Estate Regulatory Authority, the provisions of section 3, particularly clause (a) of sub-section (2) of section 3 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'), were discussed in detail. In this context, observations of the Authority in its order dated 05.08.2020 passed in the matter of "Suo Moto vs. Shivaaz Developer LLP" (File No. F.15(44)RJ/RERA/C/2019) were also noted. Having taken into account the intent and purposes of the Act and the fact that the threshold for the requirement of registration has been mentioned in Proviso to the said clause (a) as "five hundred square meters or eight apartments", the Authority has taken the following decision:

1 All such real estate projects are required to be registered under the Act where the area of land proposed to be developed exceeds five hundred square meters or the number of apartments proposed to be developed exceeds eight (inclusive of all phases). That is to say that a real estate project is required to be registered under the Act, if it satisfies either of the following two conditions:

(i) The area of land proposed to be developed exceeds five hundred square meters; or

(ii) The number of apartments proposed to be developed exceeds eight.

Conversely, a real estate project is not required to be registered under the Act, if it satisfies both the following conditions:

(i) The area of land proposed to be developed is less than or equal to five hundred square meters; and

(ii) The number of apartments proposed to be developed is only eight or less than eight. Thus, if either of these two conditions is not met, the real estate project is not exempt from registration under clause (a) of sub-section (2) of section 3 of the Act.

2. For the purpose of determining whether a real estate project requires to be registered under section 3 or should be treated as exempt under clause (a) of sub-section (2) of section 3 of the Act, the area of land and the number of apartments proposed to be developed in the project will be reckoned on the basis of the project as it is marketed, not so much on the basis of how it is physically being constructed or developed on the ground. To illustrate —

(i) If a promoter proposes to develop a project comprising nine or more plots, apartments or buildings, on a piece of land having an area of 500 sq. mtr. or less and advertises, markets, books, sells or offers for sale all or any of the plots, apartments or buildings in that project, the project is liable to be registered under the Act.

(ii) And, even if a promoter proposes to develop a project comprising only one or less than nine plots, apartments or buildings, but on a piece of land having an area of more than 500 sq. mtr. and advertises, markets, books, sells or offers for sale all or any of the plots, apartments or buildings in that project, the project is liable to be registered under the Act.

(iii) Further, even if only one or less than nine plots, apartments or buildings are proposed to be constructed or developed on a piece of land having an area of 500 sq. mtr. or less, but advertised, marketed, booked, sold or offered for sale as part of a group of more than eight such plots, apartments or buildings, whether adjoining or not, the group of plots, apartments or buildings so advertised, marketed, booked, sold or offered for sale, is a project liable to be registered under the Act, even though individually such plots, apartments or buildings, being less than nine in number and constructed/developed on independent pieces of land having an area of 500 sq. mtr. or less, may not require to be registered.

(iv) In none of the above 3 cases, or any other case where the project is otherwise required to be registered, if the , promoter does not ever advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or

building in that project, he is not required to register such project, because the requirement of registration under section 3 of the Act is triggered only if and when the promoter proposes to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in the project that he proposes to develop or is in the process of developing.

All concerned are hereby directed to comply with the aforesaid decision of the Authority and obtain prior registration of their projects that accordingly require to be registered under section 3 of the Act.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No.: F.1(31) RJ/RERA/2019/593 Date – 16th March, 2022

Sub: REGISTRATION OF PROJECTS

In pursuance of the decisions taken in 11th meeting of the Authority, held on 10th March, 2022, the following directions are hereby issued for compliance by all concerned:

1. Registration of Power of Attorney

For the purpose of registration of a plotted development project where the promoter is not the owner of the project land, the Authority will, in lieu of a registered development agreement, accept a Power of Attorney duly executed by such owner in favour of the promoter, if and only if such Power of Attorney is registered under the Indian Registration Act, 1908. This decision will be applicable from 1st April, 2022, i.e., on the applications for registration filed from 1st April, 2022 onwards.

2. Submission of structural drawings for registration of projects (other than plotted development projects)

For registration of projects other than plotted development projects, it shall be mandatory for the promoter to upload, as part of the online application, the structural drawings, including foundation details, column schedule, retaining wall details, slab and beam structural details, etc., duly sealed and signed by a qualified civil engineer. This decision shall be effective from 1st April, 2022, i.e., for online applications filed from 1st April, 2022 onwards, for registration of projects other than plotted development projects.

3. Registration of Partnership Firms

Only such partnership firms shall be allowed to apply for registration of a real estate project under the RERA Act as are registered with the Registrar of Firms. With effect from 1st April, 2022, any application from a partnership firm for registration of a real estate project will be processed for approval only if such firm is registered with the Registrar of Firms and its Registration Certificate is uploaded as a part of promoter profile.

This issues with the approval of Hon'ble Chairman.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

No. MahaRERA/ Secy/ File No. 27/ 76 /2022 Date – 17th March, 2022

Sub- Submission of Certificate to the Schedule bank operating the separate account and copies thereof to MahaRERA Authority.

Whereas, Circular No. 39/2O21 bearing No. MahaRERA/Secy/File No 27 /285/2021 has come into force with effect from28.12.2021.

And whereas, based on inputs received from stakeholders, it is felt desirable and necessary to supplement the last paragraph of the said Circular by adding the following after the words "by Promoters to MahaRERA Authority.

"In the event, the said three certificate as submitted to the schedule bank operating the separate account entitles a promoter to withdraw a particular amount and if the promoter chooses to withdraw the said amount in tranches, then for every such withdrawal fresh certificates from project architect, project engineer and charted accountant in practice need not be submitted. The copy of same certificates that entitled the promoter to withdraw the amount upto the limit as stated in the said three certificates will have to be submitted for every withdrawal along with letter from promoter recording therein the dates of the said certificates and the details of the withdrawal made and copies thereof shall be submitted online by promoters to MahaRERA Authority."

The last paragraph of the Circular No. 39 / 2021 bearing No. MahaRERA/Secy/File No.27 /285/2021 dated 28.12.2021 shall now read as follows:

In view of the provisions of the Act, the rules and regulation made thereunder, referred to herein above, promoter henceforth shall submit the said three certificates to the schedule bank operating the separate account at the time of every withdrawal from the separate account irrespective whether such real estate project is a new project or an ongoing project to the occupancy certificate/completion certificate as the case may be, in respect of the said project is obtained and the copies thereof shall be submitted online by promoters to MahaRERA Authority. In the event, the said three certificate as submitted to the schedule bank operating the separate account entitles a promoter to withdraw a particular amount and if the promoter chooses to withdraw the said amount in tranches, then for every such withdrawal fresh certificates from project architect project engineer and charted accountant in practice need not be submitted. The copy of same certificates that entitled the promoter to withdraw the amount upto the limit as stated in the said three certificates will have to be submitted for every withdrawal along with letter from promoter recording therein the dates of the said certificates and the details of the withdrawal made and copies thereof shall be submitted online by Promoters to MahaRERA Authority.

This Circular shall be read along with Circular No.39/202l dated28.12.2021.

This Circular shall come into force with immediate effect.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

No. MahaRERA/ Secy/ File No. 27/ 108 /2022 Date – 25th March, 2022

Sub: - Standard Operating Procedure for filing cases arising from regulatory functions of MahaRERA

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Acr,2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017.

And whereas, the Government of Maharashtra vide Notification No.23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority, hereinafter referred to as "MahaRERA" or as 'the Authority".

And whereas, the Government of Maharashtra has also notified the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeals, etc.) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purpose of the Act.

And whereas, Section 34 of the Act, specifies the functions of the Authority to include such of the functions as more specifically enumerated therein.

And whereas, the Authority under Section 37 of the Act, and Regulation 38 of the Regulations is vested with the powers to issue directions to the promoters, real estate agents and allottees from time to time as it may be considered necessary.

And whereas, the Chairperson MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act.

And whereas, the Authority under Sub-section 2 of Section 38 of the Act is to be guided by the principles of natural justice and subject to the provisions of the Act and the Rules made thereunder has the Power to regulate its own procedure.

And whereas, while performing the regulatory functions, at times MahaRERA has to adjudicate matters and in some of such regulatory matters that require hearing, MahaRERA issues notices to other stakeholders/ persons for ascertaining their views, interest and/or submissions or to espouse their case since their interest could be vitally affected and in this, MahaRERA is guided by the principles of natural justice.

And whereas, the procedure in respect of these regulatory matters are not stipulated under any subordinate legislation and the same has been evolved as and by way of practice which MahaRERA is following since its inception by giving the regulatory matters the nomenclature "suo moto".

And whereas, in Writ Petition (L) Nos. 8713 to 8717 of 2022 the Hon'ble High Court was of the view that in regulatory matters that take the form of adversarial litigation use of nomenclature "suo moto" is not appropriate.

And whereas, it is therefore necessary to alter the Practice of giving the nomenclature “suo moto" to the regulatory matters adversarial in nature and accordingly the following directions are issued: -.

a) Regulatory matters that that take the form of adversarial litigation shall be filed in the manner as detailed out in Annexure- A'
b) The statement of facts contained in any filing shall be supported by a duly notarized affidavit which affidavit shall be in Form-I.
c) The letter notifying defects if any in the filing of the regulatory matters shall be in Form -II.

d) Until a digital module is made available for the purpose of filing such regulatory matters, hard copies in the manner as stated above shall be accepted by MahaRERA.
e) These directions shall not apply to complaints filed under Section 31 of the Act.
f) Regulatory matters which are not adversarial in nature, the practice of using the nomenclature "suo moto" shall continue.

The above directions will come into force with immediate effect.

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
No. MahaRERA/ Secy/ File No. 27/ 88 /2022 Date – 28th March, 2022

Sub: - In the matter of new modified version for filing Online Complaints.

Whereas, Government of India has enacted the Real Estate (Regulation and Development) Act, 2016 (the Act) and all sections of the Act have come into force with effect from 01.05.2017.

And whereas, the Government of Maharashtra vide Notification No. 23 dated 08.03.2017 has established the Maharashtra Real Estate Regulatory Authority (MahaRERA).

And whereas, the Government of Maharashtra has also notified the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaint and Appeal etc) Rules, 2017 (the Rules) for carrying out the provisions of the Act.

And whereas, the Authority has notified the Maharashtra Real Estate Regulatory Authority (General) Regulations, 2017 (the Regulations) to carry out the purposes of the Act.

And whereas, the Chairperson MahaRERA is vested with the powers of general superintendence and directions in the conduct of the affairs of MahaRERA under Section 25 of the Act.

And whereas, under Section 31 of the Act, any aggrieved Person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or contravention of the provisions of the Act or the Rules and Regulations made thereunder against any Promoters, allottee or real estate agent as the case may be.
And whereas, Section 56 of the Act enables the complainant to appear and plead his/her/its case in person or authorize one or more chartered accountants or company secretaries of cost accountants of legal practitioners or any of its officers (hereinafter referred to as "the authorized representatives") to present his/her/their case before the Authority or the Adjudicating Officer, as the case may be.

And whereas, the 1st proviso of Regulation 26 of the Regulations mandates that the authorized representative appearing on behalf of any person in any proceeding before the Authority shall file a " Memorandum of Authorisation" in Form 6 as provided in the Regulations.

And whereas, Rule 6 of the Rules and the proviso thereunder details the manner of filing of complaints, manner of holding an enquiry by MahaRERA and the provision for filing of complaints web-based.

And whereas, https:// maharera.mahaonline.gov.in is the login page of MahaRERA portal which has to be accessed for the purpose of filing complaints online.

And whereas, based on inputs received from various stakeholders and experience of MahaRERA over the years it has been noticed that in the present system of filing online complaints, the authorized representatives of the complainants while writing the complaints give their personal user name/ login id/email id and password, resulting in complainants not having any access to their complaints as well as not having any information about the status of their complaints, unless such access/ information is passed on to them by their authorized representatives.

And whereas, the above on numerous occasions results in complainants requesting MahaRERA to permit them to change the login ID and password of their complaints, creating serious administrative issues.

And whereas, in order to ensure that the above stated issues do not arise, MahaRERA proposes to implement a new modified version for filing online complaints (hereinafter referred to as "the new modified version").

The salient features of the new modified version shall be as under.

A. The new modified version, shall now ask the complainants while creating a new registration for "Complainant Name", "Complainant Middle Name", "Complainant Last Name", "Complainant Mobile Number" and "Complainant Email ID" In addition to such other details. It shall be noted that once the above mentioned data is entered, the system shall freeze and lock the said data which shall then be automatically captured as complainants proceed further to create their respective profile as well as while writing/ filing complaints.

B. Further in the new modified version an exclusive field has been created namely "Advocate Contact details if any" wherein while writing / filing complaints, the details of the authorized representatives representing the complainants are required to be filed such as their "Name" "Mobile No'" and "Email Address". This field further enables complainants to attach and upload the Vakalatnama / Memorandum of Authorisation issued in favour of the authorized representatives.

C. The emails intimating to the complainants the date of hearing of the complaints as well as the link for virtual hearing of the complaints shall be generated and sent to the complainants as well as to their authorized representatives under the new modified version.

The new modified version 30.03.2022.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

No.: F.1 (31) RJ/RERA/2019/1067 Date – 18th April, 2022

Sub:- Registration of Projects-Registration of Power of Attorney

Vide this Authority's order no. 593 dated 16.03.2022, it was directed that for the purpose of registration of a plotted development project where the promoter is not the owner of the project land, the Authority will, in lieu of a registered development agreement, accept a Power of Attorney (POA), duly executed by such owner in favor of the promoter, if and only if such POA is registered under the Indian Registration Act, 1908.

In this context, it is further directed that in such cases, POA Holder must be authorized to execute an agreement for sale with the allottees and get the same registered. That is to say that it must be a POA with POA Holder given the power to sell plots in the project.

This bears the approval of Hon'ble Chairman.

PART-IV
RERA NEWS

THE ECONOMIC TIMES
Dated: 01.03.2022

Crisis hits home: Builders may hike prices

An unlikely casualty of the Russia-Ukraine war could be India's housing industry - and surging cost of energy is the culprit. As oil prices shoot past triple digits in dollars for the first time since 2014, the housing industry faces the challenge of tackling surging input costs. The question is: Can they pass on the increase in costs to end consumers?

Oil prices have continued to rise over the last couple of months owing to concerns in disruptions of the global supply chain amid the crisis," said Harshvardhan Patodia, president, Confederation of Real Estate Developers' Associations of India (CREDAI). "Additionally, the oil surge will further impact Indian cement makers that were already reeling under the pressures of rising costs of raw material and energy."

He expects cement makers will inevitably have to pass on the burden of this cost push as over 60% of their business is either directly or indirectly linked to crude prices.

BULLYINSIDE.COM
Dated: 11.03.2022

Property Industry Applauds Maharashtra Government Budget Proposals Focused On Infrastructure Development

On March 11, the Maharashtra government announced the third Maha Vikas Aghadi (MVA) Budget, which prioritised infrastructure development with a Rs 28,000 crore allocation for transportation infrastructure. It has also recommended an amnesty for buyers by extending the time period for stamp duty set-off from one to three years.

Stamp Duty Amnesty Scheme 2022: Amnesty Scheme under Stamp Act is proposed from April 1, 2022, to November 30, 2022 for pending penalty dues. Due to this concession under Amnesty Scheme 2022, there will be a shortfall of Rs 1,500 crore out of outstanding penalty dues, it said. Maharashtra Chief Minister Uddhav Thackeray said the budget was aimed at an all-around development of the state, which was in a revival mode after the impact of the COVID-19 pandemic, and a step towards becoming a $1 trillion economy.

"The amnesty scheme will enable those who have not earlier registered documents to make the payment without penalty. This is a positive move by the government and will bring additional revenue and result in no shortfall in revenue collection," said Niranjan Hiranandani, vice-chairperson NAREDCO and MD, Hiranandani Group, adding that the move augurs well for investors and it will result in documents being registered.

MONEYCONTROL.COM
Dated: 23.03.2022

SWAMIH Fund achieves completion of Panchsheel Greens 2 in Greater Noida

Tasked with funding stuck projects across the country, the government's Rs 25,000-crore stressed-asset fund SWAMIH has achieved completion of Panchsheel Greens 2 in Greater Noida, the finance ministry said on March 21.

Today, Government of India (GOI)-sponsored SWAMIH Fund achieved another landmark with the completion of Phase 2 of Panchsheel Green 2, Greater Noida, it tweeted.

Within eight months of project receiving SWAMIH funding, Phase 2 launched in 2012 of Panchsheel Greens 2 with 760 units across four towers and villas have been delivered. The keys were handed over to homebuyers, the ministry said.

MINT
Dated: 31.03.2022

Realty set for record in FY22, rough FY23

The good news for investors in shares of the residential real estate sector is that key listed companies are expected to clock robust sales growth in the March quarter of FY22 (Q4FY22). Despite the third covid wave causing some disruption at the start of the quarter, residential property projects have seen increased demand

However, if the size of the price increase is more than double digits, volumes could take a hit in the initial quarters of FY23, cautioned the analyst. That said, listed developers can be expected to raise prices gradually instead of raising them by a lot in one go.

THE HINDU BUSINESS LINE
Dated: 15.04.2022

Realty project getting completion certificate after GST implementation not to face profiteering

The National Anti-profiteering Authority (NAA) says a real estate project launched and getting completion certificate post introduction of GST will not face

profiteering charges. This is the first ruling after a gap of over a year due to lack of quorum.

Disposing an application filed against Mumbai-based Lodha Developers (Respondent), NAA observed that the Letter of Intent of Development, Commencement Certificate of the project, launching of the project and receipt of the payments has taken place in the post-GST regime and so there was no pre-GST rate or ITC (Input Tax Credit) structure which could be compared with the post-GST tax rate and ITC.

"On this basis, it would emerge that the Respondents (Lodha Developers) had neither benefitted from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it does not qualify to be a case of profiteering," NAA said in its order dated April 8.

MONEYCONTROL.COM
Dated: 25.04.2022

ICRA revises FY23 residential real estate outlook to Stable from Negative

Credit rating agency ICRA has revised the FY23 outlook for residential real estate to Stable from Negative, owing to multi-year high sales, which, in turn, is driven by increasing preference for homeownership, improved affordability, and all-time-low home loan interest rate, among other factors.

The sales momentum is expected to sustain, with the sales in the top seven cities expected to grow by 3 percent in FY23, on a high base of FY22. The growth in volumes in FY22 has been complemented by improvement in average realisation as a result of changing product mix and price hikes implemented, it said.

THE HINDU BUSINESS LINE
Dated: 26.04.2022

Homestays, holiday homes see 40% spike in bookings; new players check in

As the travel and tourism market starts to open up post Covid-19, the homestay segment is seeing an uptick in bookings. The alternative accommodation segment has seen an uptick of at least 30 per cent to 40 per cent, according to hospitality industry players. Experts believe this segment will see a boost in investments.