



UPDATE ON THE SUPREME COURT'S JUDGEMENT REGARDING RERA

The Hon'ble Supreme Court, on 11th November 2021, delivered a landmark judgment in **M/s Newtech Promoters and Developers v. State of Uttar Pradesh and Ors.** (Civil Appeal no(s). 6745-6749 of 2021). This judgment of the Apex Court comprehensively lays down the rights conferred on promoters, allottees and real estate agents as per Real Estate (Regulation and Development) Act, 2016 ('hereinafter referred to as RERA 2016 or 'the Act'). and has far-reaching implications on both developers and consumers.

FACTUAL BACKGROUND

- A batch of appeals were filed at the instance of promoters/ real estate developers assailing certain provisions of the Act. The Respondents are the home buyers/ allottees who were aggrieved by the Appellants' failure to hand over possession of property as per terms of the agreement. Multiple complaints were instituted by the home buyers for a refund of their respective investments along with interest under Section 31 of the Act.

The important principles of law laid down by this judgement are discussed hereinbelow.

IMPORTANT PRINCIPLES OF LAW AS LAID DOWN IN THIS JUDGEMENT

I. RETROSPECTIVE- RETROACTIVE APPLICABILITY: CONSTITUTIONAL VALIDITY OF RERA 2016

Background- The validity of RERA 2016 was challenged because of the retrospective nature of Sections 13, 18(1) and 19(4) of the Act.

Arguments by the Appellants –the impugned act has retrospective application on sale agreements that were formed before inception of the Act. Sections 13, 18(1), 19(4) of the Act, insofar as their retrospective application is concerned, is violative of Article 14 and 19 (1) (g) of the Constitution.

Arguments by the Respondents- The Act does not take away substantive jurisdiction and protects the interest of allottees when possession is delayed, The Act has retroactive application and hence permissible by law.

Held: The Supreme Court has delved into the scheme of the Act, and the legislative intent behind this statute which inter alia is to protect the inter se rights of the stake holders, allottees/home buyers, promoters, and real estate agents.

The statute is unambiguously retroactive in its operation. The act will be applicable to projects which were yet to commence after the Act became operational, and also to those projects which were ongoing during inception of the Act. The intention of the legislature makes it apparent that ongoing projects, as well as projects where completion certificate is not issued come within the ambit of the Act. However, projects already completed or projects where completion certificate have been issued do not come within the ambit of the Act and therefore, vested or accrued rights, if any, are not affected.

There is no violation of either Article 14 or 19 (1) (g) of the constitution of India due to the retroactive operation of the Act.

II. JURISDICTION OF RERA TO DIRECT REFUND OF AMOUNT TO ALLOTTEE UNDER THE ACT

Arguments by the Appellants – The jurisdiction of ‘Authority’ and ‘Adjudicating Officer’ to act upon complaints are distinct from each other and has been delineated explicitly within the statute. The jurisdiction to adjudicate upon complaints made under Sections 12,14,18 and 19 of the Act lie exclusively with the Adjudicating Officer.

Arguments by the Respondents – ‘Refund’ and ‘compensation are distinct rights under the Act and hence need to be determined separately. the Authority to determine claim for refund on demand rests with the Authority whereas the Authority to determine claims of compensation rest with the Adjudicating Authority.

Held: ‘Refund of amount’ and ‘compensation’ are 2 distinct reliefs available to an aggrieved allottee who has not been handed over possession by the promoter in accordance with the mechanism as laid down under the act. Claims of refund of amount on demand as under Section 18 (1) and 19 (4) vests with the Regulatory Authority. Whereas Section 71 stipulates that an Adjudicating Officer is to be appointed to adjudge compensation.

Jurisdiction of the Regulation Authority- Claims for refund of amount, interest on refund amount, direction to pay interest for delayed delivery of possession, and penalty and interest. The Regulatory Authority has the power to examine and determine the outcome of such complaints.

Jurisdiction of the Adjudicating Officer- complaints seeking relief of compensation and interest are within the sole jurisdiction of the Adjudicating Officer.

III. POWER OF THE REGULATING AUTHORITY TO DELEGATE POWER TO SINGLE MEMBER TO HEAR COMPLAINTS UNDER SECTION 31 OF THE ACT

Background- the Authority of the state of Uttar Pradesh, exercising its powers under Section 81, delegated its powers to a single member considering the high volume of complaints filed, to exercise and decide complaints under Section 31.

Arguments by the Appellants – Delegation of adjudicatory power of complaints to a single member of Authority is a complete abuse of power and wholly without jurisdiction, and not in compliance with Section 21 of the Act.

Arguments by the Respondents – the power conferred onto the single member is to only hear the complaints. Section 21 relates to composition of Authority and not with the minimum bench strength.

Held: The power exercised by the Regulatory Authority in deciding complaints under Section 31 is quasi-judicial in nature which is delegable if there is a provision for such delegation within the statute. The action of the Authority in delegating its power to a single member of the Authority to exercise and decide complaints under Section 31 of the Act is well defined and permissible by law, and not de-hors the provisions and mandate of the Act.

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