



## **SUPREME COURT JUDGEMENT UPHOLDS VIRES OF ASPECTS OF RERA AND WIDENS ITS SCOPE**

The Hon'ble Supreme Court of India, while concurring with the view of the Rajasthan High Court, on 14 February 2022, delivered a landmark judgment in ***Union Bank of India, Jaipur v. Rajasthan Real Estate Regulatory Authority & Ors.*** (D.B. Special Leave Petition (Civil) No. 1861-1871/2021), which clarified relevant matters pertaining to the applicability of the provisions of RERA.

### **BACKGROUND**

- The appeal before the Apex Court arises out of a judgement passed by the Rajasthan High Court in (CW-13688/2021), which combined 70 petitions for common consideration. The Rajasthan High Court, in its judgement, focused on the facts of a specific case where the Petitioner was the Union Bank of India (“Bank”).
- The Bank, being aggrieved by an order passed by a single bench constituted under RERA, contended that RERA only has the jurisdiction to issue directions against a promoter, allottee or a real estate agent and that a bank is not under the purview of RERA’s jurisdiction.
- This case concerns a dispute arising out of the developers creating a mortgage in property already sold to the allottees, in favour of one bank. However, the allottees had already taken out a loan against the allotment through a tripartite agreement, thus, creating a security interest in favour of another bank.
- The Developer failed to pay the Bank against the mortgage. To redeem this amount, the Bank then tried to auction the homes. The Allottees, in an attempt

to prevent the auction, approached the DRT, followed by the DRAT, before finally approaching RERA. At this stage, the Bank contended that RERA had no jurisdiction over banks.

- RERA turned down the objections of the bank, identifying it as an assignee of the promoter, thereby bringing it under the definition of a promoter. The order passed by RERA subsequently, was challenged by the Bank before the High Court of Rajasthan in CW-13688/2021.
- The Bank filed the Civil Writ Petition against the Allottees and the RERA Authority.

#### **CONTENTIONS OF THE PARTIES BEFORE THE HIGH COURT**

##### CONTENTIONS RAISED BY THE PETITIONER:

- Regulation 9 of the Regulation of 2017, which allows for a single bench to decide specific issues, is ultra vires RERA, its parent Act.
- That the order passed by the single member, was done by way of a general delegation which is not provided for by the Regulation of 2017.
- That the power vested in single members to decide RERA complaints is arbitrary and is not envisaged by the parent Act.
- No complaint is maintainable against the Bank before RERA.
- The mortgage is not bound by the provisions of RERA as it was created before RERA was enacted and that RERA does not have retrospective effect.

##### CONTENTIONS RAISED BY THE RESPONDENTS:

- Regulation 9 of the Regulation of 2017, which allows for a single bench to decide specific issues, has been validly framed

- Banks, being an assignee of the Promoter are subject to the jurisdiction of RERA.
- The Writ Petition is not maintainable, as it cannot be entertained directly when the remedy of an appeal lies before the Appellate Authority, in orders passed by RERA.
- That RERA being a special act, confers certain rights on buyers, but does not take away the rights created under any of the existing statutes. Thus, in a conflict between the provisions of RERA and SARFAESI Act, the provisions of RERA should prevail.

#### **FINDINGS OF THE HON'BLE SUPREME COURT**

- The Apex Court upheld the vires of Regulation 9 of the Rajasthan Real Estate Regulatory Authority Regulations, 2017 (*“the Regulations of 2017”*). Regulation 9 provides for the manner of adjudication proceedings pertaining to complaints filed with the Authority, wherein the Authority has the discretion to pass an order directing specific matters to be decided by a single member.
- The delegation of the aforementioned powers to a single member is provided for in Section 81 of the Real Estate (Regulation and Development) Act, 2016 (RERA), which operates even in the absence of Regulation 9.
- The application of RERA on mortgages created prior to the enactment of the Act is subject to the transaction being fraudulent or collusive, i.e., instances where there has been large scale fraud that has been indulged in.
- In the event of a conflict between RERA and SARFAESI Act, RERA would prevail, as its provisions are envisioned to protect home buyers from fraudulent action.
- RERA Authority has the jurisdiction to decide upon a complaint brought by an aggrieved home buyer, against a bank (or financial institution) acting as a secured

creditor, if the bank resorts to the provisions contained in Section 13(4) of the SARFAESI Act, 2002.

#### **OUR COMMENT**

- The Hon'ble Supreme Court has increased the scope for addressing the grievances of defrauded home buyers by widening the scope of RERA with respect to banks and mortgages, while also specifying the instances wherein RERA would prevail over the SARFAESI Act. By virtue of these aspects and by upholding the validity of a single bench in RERA, the Apex Court has elucidated many facets pertaining to the interpretation of RERA.

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