



**UPDATE ON SUPREME COURT'S JUDGMENT DELCARING WEST
BENGAL HOUSING INDUSTRY REGULATION ACT, 2017 (WBHIRA)
AS UNCONSTITUTIONAL**

The Hon'ble Supreme Court of India, on 04 May 2021, delivered a landmark judgment in ***Forum for People's Collective Effort ("FPCE") and anr. v. State of West Bengal and anr.*** (W.P. No.116 of 2019), declaring the WBHIRA as repugnant to the RERA, and hence *ultra vires* the Constitution of India.

BACKGROUND

- The West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 ("**WB 1993 Act**") was enacted to regulate the relationship between the promoters and purchasers of real estate. The WB 1993 Act stood repealed with the enactment of the RERA in 2016.

- Subsequently, the State Legislature decided to enact WBHIRA, to govern the contracts pertaining to transfer of property between the purchaser and builder/developer *inter alia* repealing the WB Act, 1993. The enforcement of provisions of WBHIRA was set in motion by the assent of the Governor of the State of West Bengal by a notification dated 29 March 2018, and thereafter on 08 June 2018, the State of West Bengal framed rules for implementation of WBHIRA.

PRIMARY GROUNDS OF CHALLENGE TO THE WBHIRA

The constitutional validity of the WBHIRA, having received the assent of Governor on 17 October 2017, came to be challenged before the Hon'ble Supreme Court of India on the grounds that:

Legislative Competence

- **Contentions**

- a) WBHIRA is repugnant to RERA

- i. WBHIRA covers the field of regulating the contractual behaviour of promoters and buyers in real-estate projects, and is a replica of the RERA.
- ii. The subject matter of both these legislation cover the aspects of contractual relationship between the purchaser and the developer, and thereby falling under Concurrent List (Entry 6 & 7 of Schedule VII in the Constitution of India, and thereby giving the RERA primacy over the WBHIR.
- iii. RERA being an exhaustive code regulating the contractual relationships between promoters and buyers in the real-estate sector, WB-HIRA entrenches on an occupied field and is hence

repugnant and void under Article 254(2) of the Constitution.

- **Court Ruling**– Addressing the contentions at (a) and (b), the Apex Court having, **first**, observed that RERA is an exhaustive code, and, **second**, analysed the similarity between the provisions of the RERA and WBHIR, relying on earlier decisions of the Apex Court in rendered the WBHIR unconstitutional implicating the **doctrine of implied repeal** having relied on judgments of Supreme Court in ***Zaverbai Amaldas v. State of Bombay, Deep Chand v. State of Uttar Pradesh , M. Karunanidhi v. Union of India, State of Kerala v. Mar ApraemKuri Company .***

b) WBHIR regulates law governing ‘contract’ and ‘transfer of property’ amongst the purchaser and builder/developer

- i. The entire edifice of the legislation deals with laws governing contract’ and ‘transfer property’, a field which is already occupied by the RERA under the Concurrent List in Schedule VII of the Constitution of India.

- **Court Ruling**- Addressing the contentions at (c), the Apex Court held that:-

1. WBHIR does not fall under settled exposition of ‘Industry’ (State List) as contended by the State

relying on *Tika Ramji v. State of Uttar Pradesh, Calcutta Gas Co. (Proprietary) v. State of West Bengal, ITC Ltd. v. Agricultural Produce Market Committee.*

2. WBHIRA regulates ‘contract’ and ‘transfer of property’, a subject-matter falling under the domain of Concurrent List, thereby giving primacy to the RERA.

c) Effect of Section 88 and 89 of RERA

i. The expression “in addition to and not in derogation of” in Section 88 does not entitle the State Legislature to enact a parallel regime to undermine the provisions of RERA.

- **Court Ruling-** Addressing the contentions at (d) the Apex Court held that Parliament envisaged in Section 88 to ensure that remedies which are available under consumer legislation, including Consumer Protection Act, 2019, or any other beneficial legislation benefitting the consumers/purchasers are not ousted as a consequence of the operation of the RERA.

Addressing the contentions at (a),(b) & (c) the Apex Court held that :-

- a. invalidity of the provisions of WBHIRA will not revive the provisions of the WB 1993 Act, since it would stand impliedly repealed upon the enactment of the RERA.

- b. in exercise of the power of the Apex Court, the striking down of WBHIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment.

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