

PROCEEDINGS OF THE DAY		21
Day and Date	Thursday and 10.02.2022	
Complaint No.	CR/3189/2021 Case titled as M/s Padampur Nirman Pvt Ltd V/s M/s Emaar MGF Land limited	
Complainant	M/s Padampur Nirman Pvt Ltd	
Represented through	Shri Ravinder Singh Advocate	
Respondent	M/s Emaar MGF Land limited	
Respondent Represented through	Shri J.K.Dang Advocate S/Shri Divyam Agarwal and Ashish Joshi Advocates	
Last date of hearing	03.02.2022	
Proceeding Recorded by	H R Mehta and Naresh Kumari	

Proceedings through V.C.

The respondent through its counsel has moved an application today seeking adjournment of the present proceedings for two weeks so as to enable it to challenge order dated 03.02.2022 passed by the authority. It is pleaded in the application that vide order dated 03.02.2022 passed by the authority deferment of the proceedings of the case was disallowed. However, the order in this regard was uploaded on the website of the authority only on 09.02.2022. So, the respondent seeks some time to challenge that order before the Haryana Real Estate Appellate Tribunal, Chandigarh. Secondly, even after pronouncement of judgement in case ***M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP [civil appeal nos. 6745-6749 of 2021]*** by the Hon'ble Supreme Court, the matters of similar nature pending before the Hon'ble High Court and the Haryana Real Estate Appellate Tribunal, Chandigarh respectively are being adjourned sine die. But the plea advance in this regard on behalf of the respondent is devoid of merit. First of all, it has been admitted by both the parties that neither there is any stay with regard to continuation of proceedings before this authority from any higher authority nor there is any



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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

bar for proceeding further in the matter. No doubt, the matters of similar nature were being adjourned sine die but the issue with regard to applicability of the Act of 2016 being retrospective or retroactive in its operation has been settled by the Hon'ble Apex Court in the above-mentioned case by observing in paras 37, 41, 52 to 54 as under:

*"37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. **It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects** and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority....*

41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation Rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism Under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case...

*52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future Under Section 3(1) of the Act, **the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.***

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, Rules and Regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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violation of the provisions of the Act and it negates the contention advanced by the Appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

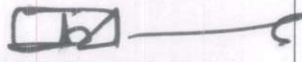
54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected..." (emphasis supplied)

Thus, the Hon'ble Apex Court of the land has interpreted the provisions of section 3 of the Act and also observed that the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. Though the Hon'ble Apex Court has not yet dealt with some issues raised by different parties with regard to certain rules framed by the State of Haryana under the Act of 2016 but interpretation of the main Act i.e., w.r.t to the provisions of section 3 of the Act 2016 has already been made. Even a division bench of Hon'ble Punjab and Haryana High Court in case titled as **Ramprastha Promoters and Developers Pvt. Ltd. Versus Union of India and Ors. [CWP no. 6688 and ors. of 2021]** decided on 13.01.2022 though on some different issues, followed the law laid down by the Hon'ble Apex Court in the case stated above. Lastly, the respondent would have an opportunity to challenge the order passed by this authority if its rights are infringed in any manner while passing the final order. So, taking into consideration all these facts, no case for deferment is made out and as such, the application filed in this regard is hereby ordered to be rejected.

The complaint and attached documents, reply filed by the respondent and annexed documents were considered and detailed arguments were heard. The learned counsels for both the parties want to file a written submissions to substantiate the arguments advanced by them. They are allowed to submit the same by 17.02.2022 in the registry for taking them on record.

Matter to come up on 22.02.2022 for pronouncement of order.

V.I - S
Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
10.02.2022