



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CWP-4769-2020 (O&M)
Date of Decision: 20.03.2025

Anil Kumar Yadav and others

....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Raman Sharma, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. Deputy Advocate General, Punjab
for respondents No.1 and 4.

Ms. Anu Chatrath, Senior Advocate with
Mr. Nikhil Singh, Advocate
for respondents No.2 and 3.

Mr. Ankur Mittal, Additional Advocate General, Haryana
Mr. P.P.Chahar, Sr. Deputy Advocate General, Haryana
Mr. Saurabh Mago, Deputy Advocate General, Haryana
Mr. Gaurav Bansal, Deputy Advocate General, Haryana
Mr. Karan Jindal, Assistant Advocate General, Haryana
Ms. Kushaldeep Kaur, Advocate
Ms. Saanvi Singla, Advocate
for respondent No.5.

Ms. Madhu Dayal, Advocate and
Mr. Prince Pushpinder Rana, Advocate
for respondent No.6.

Sureshwar Thakur, J. (Oral)

1. During the pendency of the instant writ petition before this Court, vide order dated 01.06.2022, the hereinafter extracted observations were made by this Court:



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“It is to be observed by this Court that though this petition is only one seeking a direction to the Jalandhar Improvement Trust specifically, however, such like petitions are coming up on a daily basis in huge numbers before this Court, where this question would arise; and consequently, we consider it appropriate to take up this petition, exercising jurisdiction under Articles 226/227 of the Constitution of India, to get the response of all authorities concerned, in both the States, of Punjab and Haryana, as also the Union Territory, Chandigarh, with regard to the above.”

2. The said observations devolve upon, whether the instantly invoked writ remedy, is the befitting remedy for redressing the grievance of the present allottees, or whether the allottees are to be led to recourse the remedy, as contemplated in the Real Estate (Regulation and Development) Act, 2016, (hereinafter in short to be referred as ‘the Act of 2016’).

3. Mr. Ankur Mittal, the learned Additional Advocate General, for the State of Haryana; Mr. Maninder Singh, the learned Senior Deputy Advocate General, for the State of Punjab, and Ms. Madhu Dayal, Advocate, for U.T Chandigarh, have been heard at length on the supra aspect. Moreover, the learned counsel for the petitioners has also been heard at length.

4. This Court while deciding a writ petition bearing No.CWP-24591-2024 titled as ***“M/s Ramprastha Developers Private Limited and others Vs. State of Haryana and others”***, wherein, almost a similar issue arose for consideration, thus had ultimately concluded, that *viz-a-viz*, an aggrieved home buyer or an allottee, irrespective of the fact that the project, which is promoted by the Real Estate Agent or by the Promoter concerned,



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remains unregistered in terms of Section 3 of the Act of 2016, yet the remedy to the allottee/home buyer is the one, which is embodied in the Act of 2016.

5. For making a proper understanding of the reasons, which became advanced by this Court while rendering a decision on the supra titled case, but does require, *qua* the relevant facts as enclosed therein, becoming *in extenso*, thus becoming extracted hereinafter, so also the reasons, which became exposted by this Court, in the verdict supra, also require becoming extracted, and they are so done:

“1. The instant writ petition has been directed against the passing of the impugned order (Annexure P-1). Annexure P-1 is a decision recorded on 26.07.2024, thus by the Haryana Real Estate Regulatory Authority, Gurugram. The decision supra was made on various complaints which became instituted at the instance of Yuvraj Arora and Vivek Arora, rather against the present petitioners. All the complaints were decided through a common judgment(s) as becomes embodied in (Annexure P-1).

OBJECTIONS OF THE RESPONDENTS THAT THE INSTANT WRIT PETITION IS NOT MAINTAINABLE AS THE PRESENT PETITIONERS HAVE AN ALTERNATIVE REMEDY.

2. At the outset, the learned counsel appearing for the respondent has vigorously contended, that since the impugned annexure is appealable through a statutory appeal becoming made, thereagainst before the authority contemplated under Section 43(5) of the Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as RERA Act), provisions whereof becomes extracted hereinafter:-

43. Establishment of Real Estate Appellate Tribunal.

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“(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

3. *As such, the counsel for the respondents vigorously contends that therebys the instant writ petition is required to be declared as mis-constituted. Moreover, the counsel for the respondents also contends that therebys the instant challenge as becomes cast to Annexure P-1 but is required to be the rejected at the very threshold.*

4. *However, the learned counsel appearing for the petitioners, has vigorously argued before this Court, that the impugned decision is ridden with a jurisdictional defect, inasmuch as, the Real Estate Regulatory Authority, Gurugram (hereinafter referred to as ‘RERA’), rather has proceeded to assume jurisdiction over complaint(s), rather whereovers no valid jurisdiction was so assumable. Consequently he has argued that the impugned annexure is ridden with the vice of coram non judice.*

5. *The reasons which he so advances are inter alia i) no licence becoming granted to the present petitioners in terms of Section 3 of the RERA Act, whereas, the makings of the*



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registration of the subject project rather was a pre-requisite mandatory requirement, thus for the subject project becoming covered within the ambit of the RERA Act.

*ii) Annexure P-3 contents whereof becomes extracted hereinafter,
“Ramprastha Developers Pvt. Ltd.*

*Rgd. Office: Shop No. 10, C-Block Market, Vasant
Vihar, New Delhi.*

Receipt No. 671 Dated 23/08/06

*RECEIVED with thanks from M/s / Ms. / Mr. Yuvraj
Arora & Vivek Arora. R/o INR International E47/6
okhala Ind. Area Phase II Delhi.*

*A sum of Rs.24937500 (Rupees Two Crore Forty Nine
Lacs thirty Five Thousand Five Hundred Only).*

*Vide cheque(s) No.409900, 717917, 790502. Dated
28/06/06. Drawn on Karur Vyasa Bank.*

*Against your request for tentative Registration of 250 X
26 = 6500 Sq. Yds plot in our future potential projects.”*

*When but becomes confined to the receipts of
payments, vis-à-vis certain specific projects and when
they do not cover the instant project. Resultantly, it
is argued that the supra extracted contents of Annexure
P-3 also do not leverage right, if any, in the present
petitioners to avail the remedy under the RERA Act.*

6. *For determining the force of the supra submissions, it is
deemed imperative to extract the provisions as become carried in
Section 3 of RERA Act, the said provisions become extracted
hereinafter:-*

***“Section 3: Prior registration of real estate project with
Real Estate Regulatory Authority.***

*(1) No promoter shall advertise, market, book, sell or offer
for sale, or invite persons to purchase in any manner any
plot, apartment or building, as the case may be, in any real*



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estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in subsection (1), no registration of the real estate project shall be required-

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;



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(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.”

7. *For the reasons to be assigned hereinafter, the (supra) addressed submissions before this Court are rejected primarily, for the reason (1) that even if assumingly, the present petitioners were not granted a licence in terms of Section 3 of the RERA Act (supra), provisions whereof become extracted hereinabove. However, the non issuance of the relevant/apposite licence to the present petitioners, yet does not yet restrict the right of the home buyers, to access the remedy as contemplated under the instant specific statute, i.e. the RERA Act.*

8. *The reason for stating so emanates from the factum, that though the provisions embodied in sub-Section 1 of Section 3 of the RERA Act, though entail a statutory obligation vis-a-vis the promoter, rather against his advertising, marketing, booking, selling or offering for sale, or inviting persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, thus without the promoter registering, the real estate project with the RERA Authorities.*

9. *Moreover, though the first proviso to sub-Section 1 of Section 3 of the RERA Act, though makes contemplations that vis-à-vis projects that are ongoing, on the date of commencement of this Act, and for which the completion certificate has not been issued, thereupons the promoter becomes enjoined to make an application to the Authority, for causing the registration of the said project but within a period of three months from the date of commencement of this Act.*

10. *In addition the second proviso which occurs under sub-Section 1 of Section 3 of the RERA Act, further makes*



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speaking to the extent, that it casts a statutory obligation upon the competent authority, to if it in its profound wisdom it deems it necessary, but in the interest of allottees, to qua such projects, which are developed beyond the planning area, but with the requisite permission of the local authority, thus to make a direction upon the promoter of such a project, to register the same with the authority, whereupon the provision of the said provision or the rules and regulations made thereunders become further declared to apply to such projects from the date of registration.

11. *Consequently, though in terms of the second proviso to sub-Section 1 of Section 3 of the RERA Act, thus irrespective of the promoter rather omitting to thus with the RERA Authorities, but cause the apposite registration. Yet, when a statutory obligation becomes encumbered upon the authority, to in the interest of allottees, thus in respect of the apposite project(s), to yet, make a direction upon the promoter to ensure the registration of the relevant project with the authority concerned. Moreover, with the provisions as embodied in Section 59 (2) of the RERA Act, provisions become extracted hereinafter, making contemplations vis-a-vis the necessity of imposition of punishment upon the violator concerned, upon his/her making evident violations vis-à-vis the provisions embodied in sub-Section 1 of Section 3 of the RERA Act or upon his failing to comply with the order as become issued by the competent authority in terms of the statutory contemplations, as made in the second proviso to Section 3, rather for a term which may extend to 3 years or with fine which makes extend upto a further 10% per centum of the estimated cost of the Real Estate Project or with both.*

“Section 59:Punishment for non-registration under section 3.



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59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.”

12. Resultantly, on makings of combined and harmonious readings of statutory provisions supra, the conclusion therefrom, but is that, though prima facie there becomes an encumbered a statutory necessity, upon, a developer/promoter, to cause the apposite registration before his proceeding market, book, sell or offer for sale manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area. Moreover, the further ensuing inference therefrom, is that, there also is a statutory obligation cast upon the competent authority, to but in the interest of the allottees, yet in respect of the apposite projects developed beyond the planning area, but with the requisite permission of the local authority, thus make a direction upon the promoter to register the project with the competent authority, wherebys the provisions of this Act and of the thereunder regulations are declared to become applicable qua such projects from the date of registration. Moreover, the further inference therefroms, is that, since the sanction behind the lack of compliance qua the order rendered in the terms of the second proviso to sub-Section 1 of Section 3 of RERA Act, thus also



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becomes embodied in Section 51 of RERA Act, thereby the appositely made order requires adherence thereto becoming made, rather thus to avoid the imposition of the supra punishments.

“51. Officers and other employees of Appellate Tribunal—(1) *The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.*

(2) *The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.*

(3) *The salary and allowances payable, to and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.”*

13. *Consequently, though the learned counsel appearing for the petitioners, submits that when neither the provisions of sub-Section 1 of Section 3 of RERA Act supra, became complied with at the instance of the present petitioner(s) nor when in terms of the second proviso of sub-Section 1 of Section 3 of the RERA Act, the order ordained therein became made by the competent authority, whereas, only thereby, thus the provisions of sub-Section 2 of Section 59 of RERA Act would become galvanized, which however for the apposite omissions rather cannot become galvanised . Resultantly, thereby though there is prima facie some substance in the arguments raised today before this Court, by the learned counsel for the petitioners, that in the wake of respective non-issuance of the apposite licence, to the relevant project, besides, also for want of the provisions of the second proviso becoming activated, thereby there was no valid*



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assumption of jurisdiction by the RERA authority vis-a-vis the instant complaints.

14. *In other words, for the above omissions or for the above wants, it is argued before this Court by the learned counsel for the petitioners, that the assumption of jurisdiction over the subject complaints, whereons, the impugned verdict became recorded rather was an ill assumed jurisdiction there overs and also therebys the impugned order is non-est.*

15. *Furthermore, though, the learned counsel for the respondents refers to page No.311 of the paper-book, wherein, there are speakings, that the present petitioners had sought renewal of licence No.128 of 2012 dated 28.12.2012 for setting up of Residential Plotted Colony, over an area measuring 105.402 acres falling in Sector-37C & 37D, Gurugram, Manesar Urban Complex, wherefroms also it is abundantly clear, that the supra licence became not issued within the ambit of the contemplation made in sub-Section 1 of Section 3 of the RERA Act. However, yet for the further reasons to be assigned hereinafter rather the non-compliances, if any, or the non-workabilities if any, vis-à-vis sub-Section 1 of Section 3 of RERA Act, or non-activation of the second proviso of sub-Section 1 of Section 3, rather carry no consequential ill effects, so to forbid the present respondents, to agitate their claim against the present petitioners, thus before the RERA.*

16. *The reason for so stating becomes inter alia founded upon the factum (I) that the present petitioners have made a rigid dependence both upon the provisions which occur in sub-Section 1 of Section 3 of RERA Act and also upon the provisions as become embodied in the second proviso thereof. Moreover, the counsel for the petitioners but has also remained unmindful vis-à-vis, the fact that the said provisions were to be also read alongwith the other corresponding provisions which occur in the*



RERA Act.

17. *Therefore, all the hereafter alluded to provisions, as occur the RERA Act, are to be also read harmoniously alongwith the supra provisions, whereupon thus, for the further reasons to be assigned hereafter, rather the arguments addressed before this Court by the learned counsel for the petitioner, become rendered infirm and as such deserve becoming rejected. The said provisions are the ones which occur in Section 31 of the RERA Act, provisions whereof become extracted hereinafter.*

“31. Filing of complaints with the Authority or the adjudicating officer:-

(1) 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 this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.”

18. *A reading of the hereinabove extracted provisions, as carried in Section 31 of the RERA Act, reveal that, there is a bestowment of a statutory right in any aggrieved person to file a complaint with the authority or before the adjudicating officer, thus relating to any violations or contraventions qua any provisions of the Act or of the rules and regulations made thereunder, and, the said statutory endowment is stated therein to be ably raisable against any promoter, allottee or Real Estate Agent, as the case may be. Resultantly, therebys, the issue relating to the exercising of able jurisdiction, upon, the apposite complaint rather becomes more pointedly underpinned, on the supra provisions relating to the adjudicatory capacity of the RERA, than vis-a-vis respective omissions being made to either sub-Section 1 to Section 3 of RERA Act or to the second proviso to sub-Section 1 of Section 3 of RERA Act.*



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19. *The necessity of compliances being made vis-à-vis the provisions occurring in sub-Section 1 of the Section 3 of the RERA Act or vis-a-vis the provisions embodied in the second proviso to sub Section 1 of Section 3 of RERA Act, rather would be of immense consequential significance, but insofar as the instant case is concerned, the statute does not demand rigid compliances theretos, rather they but are to be read along with the Statutory vestment of adjudicatory competence in the RERA authorities. The reason for stating so, emanates from the factum, that the said provisions purportedly demanding absolute compliance, but do not underpin the issue relating to the vesting of adjudicatory competence in the RERA Authority. However, the apposite provision whereby becomes conferred the jurisdictional adjudicatory competence in the RERA authorities, rather is the one which become embodied in Section 31 of the RERA Act.*

20. *If so, in other words, the vesting of jurisdictional competence, in the RERA authority, is pinpointedly grooved upon the bestowment of a remedy to the aggrieved, thus through the statutory mandate enclosed in Section 31 of RERA Act, than upon, the necessity of compliances being made by the promoter, vis-a-vis the mandate which occurs in sub-Section 1 of the Section 3 of RERA Act. Moreover therebys wants if any of compliances rather even by the competent authority, vis-à-vis, the mandate enclosed in the second proviso to sub-Section 1 of Section 3 of RERA Act, thus is not the apposite statutory precursor rather for vesting the competent adjudicatory jurisdiction in the RERA Authorities.*

21. *Moreover, since the term ‘promoter’ as defined in Section 2 (zk) of the RERA Act, has been statutorily imparted an omnibus meaning whereby it covers “any person” who constructs or causes to be constructed, an independent building or a building consisting of apartments, or converts an existing building or a*



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part thereof into apartments, for the purpose of selling all or some of the apartments, to other persons and includes his assignees. In sequel, therebys if the said plenitude of statutory meaning, thus becomes assigned to “promoter” besides, when the term Real Estate Project, has been defined to cover the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings, as the case may be.

22. Resultantly, therebys the present respondent, qua whom the present petitioner uncontrovertedly issued Annexure P-3, contents whereof becomes extracted hereinbove, but becomes an allottee, inasmuch as, his falling within the ambit of the supra statutory meaning, as has been assigned to the coinage ‘allottee’ supra, besides when he would naturally through Annexure P-3, thus subsequent thereto hence acquire the therebys promised to him, thus allotment by sale, transfer or otherwise.

(zk) “promoter” means-

(i) Forgathering the definition of promoter it is obviously relevant to allude to the statutory definitions has become imparted to promoter who in the supra extracted provisions has been declared to be a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or



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without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots; or

(c) Since the present petitioner has constructed or has caused to be constructed a building or independent building or apartments. Besides who has developed the subject lands in the project thus for the purpose of selling then to other persons which he has to the promise to be done to the making of Annexure P-3. Moreover, when the present petitioner is has acted himself as a builder, coloniser, contractor, developer, estate developer. In respect of the subject projects which are so constructed or vis-à-vis the subject plots which are so developed for sale which has instantly happened. Therefore, when the person petitioner falls within the ambit of promoter thereby with the said employed statutory definitions to respectively to the terms allottee and to the promoter. Thus leads to further influence that the present respondents ill acts of the promoter. Resultantly, when thereby to the presently aggrieved the respondents from the purported ill acts of the present petitioner whose the promoter of the subject projects as become arouse though the makings of Annexure P-3. In sequel when the present respondent on becoming aggrieved as such becomes empowered to within the ambit of Section 31 (2) filed a complaint before the RERA



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authorities against the present promoter who is the present petitioner. The vesting of jurisdictional competence to decide the present subject complaints is to be becomes rested on the provisions embodied in section specially when the said provisions then the provisions incorporated in sub-Section 1 of Section 3 of RERA Act.. All the provisions incorporate in the second proviso Section 3 thus a linchpin or the nerve center for vestment of competent adjudicatory jurisdictional competence in the RERA authority. Wherebys, the subject complaints are declared to be competently instituted before the RERA Authority.

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

(zm)"real estate agent"

means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces,



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through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

23. *Consequently, if the supra imparted statutory definitions, to the supra statutory words, are read alongwith the endowment of a statutory privilege vis-à-vis an aggrieved, from any violations, as become stated in Section 31 supra. As such when therebys any aggrieved, thus becomes bestowed with the right, to in the event of any promoter, allottee or real estate agent, as the case may be rather making violations vis-a-vis any of the statutory provisions. Resultantly, when the makings of such violations by supra vis-a-vis, thus any of the statutory provisions as occur in the RERA Act or qua any of the rules as become formulated thereunders, when thus confers a right in the home buyer(s) to agitate his grievance before the RERA Authority.*

24. *Consequently, since the gamut of the apposite jurisdictional provisions, relating to the conferment of competent adjudicatory jurisdiction, upon the RERA vis-a-vis the instant controversy, when but also naturally covers promoter(s), who irrefutably also is the present petitioner, as he has evidently in terms of the definition of 'promoter', offered through Annexure P-3 rather the subject project for sale to the prospective buyers. Resultantly, when on makings of plain and literal interpretation of the supra provisions, but manifests that therebys the competent adjudicatory jurisdiction vis-a-vis complaints, as received from any ill act of even a promoter, as the present petitioner, thus is, hence becomes conferred upon the RERA authorities. In sequel both the filing of the complaints and also in the makings of decision(s) thereons, thus neither suffers from any inherent jurisdictional defect nor the exercising of adjudicatory*



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jurisdiction by the RERA authority, upon, the subject complaints, become ridden with the vice of coram non iudice nor also the exercising of writ jurisdiction by this Court, thus in the face of availability of remedy of appeal to the present petitioner, to therebys challenge Annexure P-1, thus is a well recoured remedy.

25. *Resultantly, also therebys the non registration of the subject project by the present petitioners with the RERA nor the passing of any order in terms of second proviso of sub-Section 1 of Section 3 of RERA Act, thus is completely meaningless nor therebys the complaints filed by the allottees concerned, can be argued to be not competently instituted complaints, thus by the aggrieved concerned, from the purported ill acts of the promoter, who is the present petitioner.*

26. *Furthermore, since Section 37 of the RERA Act, also confers a plenitude of jurisdiction upon the RERA authority to rather, for the purpose of discharging its function under the provisions of this Act or the rules or regulation thereunders, thus issue such directions as required from time to time vis-à-vis, promoters or allottees or real estate agents. Consequently, the supra plenitude of jurisdiction as envisaged in Section 37 of RERA Act when also covers promoters or allottees or real estate agents, therebys too, there was no requirement for the present petitioners as argued today before this Court, for theirs being registered with the RERA Authorities.*

“37. Powers of Authority to issue directions.—*The authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations amde thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.”*



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27. *Though the learned counsel for the petitioners has vehemently argued before this Court, that the present respondent is not an allottee, since it becomes displayed by Annexure P-3, contents whereof also become extracted hereinabove, that he has only tendered money in respect of prospective projects, and when evidently no prospective project have ever been floated at the instance of the present petitioners, therebys at this stage, there was no activated cause of action vesting in the present petitioners. However, the said argument is also rudderless nor has any telling effect vis-à-vis the locus standi of the present respondent to institute the subject complaints. The reason being that, when within the ambit of the statutory meaning assigned to an 'allottee', wherebys becomes covered also potential as well as prospective allottees, vis-a-vis the prospective projects, therebys not only in respect of ongoing projects, but also in respect of projects to be launched in future, rather, at the instance of the present petitioners, that therebys the present respondent but became an allottee. Conspicuously, also when in terms of Annexure P-3, he became promised to be made, the allotments vis-a-vis projects to be undertaken in future, wherebys also the present respondent was a person/allottee who would subsequently acquire the subject project through sale or transfer thereof being made in his favour.*

28. *In aftermath, this Court finds no merit in the submissions addressed before this Court by the Counsel for the petitioners, that the alternative remedy as available to the present petitioners, inasmuch, as its making an appeal against the impugned order, thus is not an efficacious remedy, as the jurisdiction assumed on the complaint was non-est or was coram non judice. Resultantly, the instant writ petition is dismissed.*

29. *In case, the petitioners statutory appeal is time barred, thereupon, on an application cast under Section 14 of the*



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Limitation Act, becoming appended therewith, thereupon the appellate body, shall pass a well reasoned decision thereon and shall subsequently register the appeal whereafter a well reasoned decision shall be made thereon, but after hearing all the affected parties.”

6. Now today, before this Court, the learned Additional Advocate General, for the State of Haryana; the learned Senior Deputy Advocate General, for the State of Punjab, and the learned counsel for U.T Chandigarh, submit that respectively, the HSVP and the Improvement Trust, Jalandhar, or other Improvement Trusts within the State of Punjab, are all creations of Statutes, more specifically, the Improvement Trusts functioning within the State of Punjab are the creation of a statute nomenclatured as the Punjab Town Improvement Act, 1922, (hereinafter in short to be referred as ‘the Act of 1922’).

7. For bringing the supra within the ambit of the RERA authorities, who are respectively functioning with the State of Punjab and the State of Haryana, they were required to be established to fall within the definition of a ‘promoter’, as defined in Section 2(zk) of the Act of 2016, provisions whereof become extracted hereinafter. Therefore, the relevant provision for deciding the instant conundrum, are the provisions embodied in Section 2(zk) (iii) (a) and (b) of the Act of 2016, provisions whereof becomes extracted hereinafter:

“Definition of “promoter” – Section 2(zk)

(zk) “promoter” means, -

(i) a person who constructs or causes to be constructed an independent building or a building consisting or apartments, or converts an existing building or a part



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- thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) *any development authority or any other public body in respect of allottees of*
- (a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;*
- (b) *plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots;*”

8. A keen reading of the supra underlined provisions reveals, that building or apartments, as the case may be, when become constructed by such authority or body on lands owned by them or placed at their disposal by the Government, besides when plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots, therebys, such buildings or apartments or such plots, which are respectively owned or constructed, or developed, thus by such authority or body, and or besides when plots become created on lands owned by the Government or by any authority or a body, therebys, the Government concerned, besides their instrumentalities or agencies or the statutory authorities, as, created under specific statute(s), but becoming covered within



the envisagings of a 'promoter' as defined in Section 2 (zk) (iii) (a) and (b) of the Act of 2016.

9. Now bearing in mind the above statutory signification afforded to the definition of promoter, therebys when the State Governments concerned, as well as their respective instrumentalities and agencies, besides also when the statutory authorities created under specific statutes, thus are to be declared to be promoters, in respect of constructions of buildings, or apartments, besides in respect of plots as, are owned respectively by the Government or by the instrumentalities or agencies of the State and or by the authorities/bodies who become mothered by specifically passed legislations. Resultantly, both the HSVP and the State of Haryana, as well as the GMADA, the Improvement Trusts concerned, the PUDA, and the State of Punjab, thus become "promoters". In sequel, any of the buildings or apartments, as become respectively raised by them on lands, which are owned by each of them, besides when plots are created by supra over lands owned by each of the supra, therebys, in respect of all supra, the supra bodies/entities are deemed to be promoters.

10. Consequently therebys, the provisions of the Act of 2016, are applicable, in the event of any grievance becoming sparked from any misfeasance and nonfeasance or malfeasance, becoming indulged into by all the supra, whereupons, the remedy available to such aggrieved, is to file a complaint in terms of Section 31 of the Act of 2016, before the RERA authorities provisions whereof, becomes extracted hereinafter.



“31. Filing of complaints with the Authority or the adjudicating officer.—

(1) 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 this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.”

11. Nonetheless, what is also required to be determined, is that, since the word ‘promoter’ also occurs in Section 3 of the Act of 2016, provisions whereof becomes extracted hereinafter, and when therebys, there is a peremptory statutory necessity *qua* the projects floated by all the above, thus being compulsorily registered, whether in the absence of registration of such projects, whether therebys, irrespective of the supra being promoters, thus within the ambit of the statutory envisagings of “promoter”, as finds mentioned in section supra, whether, yet the effect of non-registration of the relevant projects, does bring, the consequence *qua* therebys, rather complaints filed under Section 31 of the Act of 2016, being not maintainable.



“3. Prior registration of real estate project with Real Estate Regulatory Authority.—

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;



- (b) *where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*
- (c) *for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project. Explanation.— For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”*

12. The said issue is tacitly answered in the judgment supra passed by this Court. Moreover, the Hon’ble Apex Court in case titled “***M/s Newtech Promoters and Developers Private Limited Vs. State of Uttar Pradesh and others***”, while formulating the apposite question therein, and whereto an answer becomes made, question whereof, and the answer made thereto, become extracted hereinafter, but has declared that *viz-a-viz* projects, which commenced before the coming into force of the Act of 2016, and which became registered under Section 3 of the Act of 2016, thus, thereby making applicable theretos, hence the supra Act of 2016, and or thereby, to the said extent retroactivity becoming assigned to the Act of 2016.

“**Question 1:** *Whether the 2016 Act is retrospective or*



retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?

31. *The issue concerns the retroactive application of the provisions of the 2016 Act particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that Parliament in its wisdom after holding extensive deliberation on the subject thought it necessary to have a Central legislation in the paramount interest for effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25-3-2016.*

32. *Under Chapter II of the 2016 Act, registration of real estate projects became mandatory and to make the statute applicable and to take its place under sub-section (1) of Section 3, it was made statutory that without registering the real estate project with a Real Estate Regulatory Authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of the proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the Authority for registration of the said project within a period of*



three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by sub-section (2) of Section 3 of the Act, as a consequence, all such homebuyers agreements which have been executed by the parties inter se have to abide by the legislative mandate in completion of their ongoing running projects.

33. *The term “ongoing project” has not been so defined under the Act while the expression “real estate project” is defined under Section 2(zn) of the Act which reads as under:*

“2.(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or buildings, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

34. *The Act is intended to comply even to the ongoing real estate project. The expression “ongoing project” has been defined under Rule 2(1)(h) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 which reads as under:*

“2.(1)(h) “ongoing project” means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these Rules:

(i) *where services have been handed over to the Local Authority for maintenance;*



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- (ii) *where common areas and facilities have been handed over to the Association or the Residents Welfare Association for maintenance;*
- (iii) *where all development work have been completed and sale/lease deeds of sixty per cent of the apartments/houses/plots have been executed;*
- (iv) *where all development works have been completed and application has been filed with the competent authority for issue of completion certificate.”*

35. *The expression “completion certificate” has been defined under Section 2(q) and “occupancy certificate” under Section 2(zf) of the Act which read as under:*

“2.(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;

(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;”

36. *Looking to the scheme of the 2016 Act 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*



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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 stakeholders, including allottees/homebuyers, 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.

37. The emphasis of Mr Kapil Sibal, learned Senior Counsel for the appellant is that the agreement of sale was executed in the year 2010-11 i.e. much before the coming into force of the Act and the present Act has retrospective application and registration of ongoing project under the Act would be in contravention to the contractual rights established between the promoter and allottee under the agreement for sale executed which is impermissible in law and further submits that Sections 13, 18(1), 19(4) of the 2016 Act to the extent of their retrospective application is in violation of Articles 14, 19(1)(g) of the Constitution of India.

38. Mr Tushar Mehta, learned Solicitor General, on the other hand, submits that a bare perusal of the Objects and Reasons manifests that the Act does not take away the substantive jurisdiction, rather it protects the interest of homebuyers where project/possession is delayed and further submits that the scheme of the Act has retroactive application, which is permissible under the law. The provisions make it clear that it operates in future, however, its operation is based upon the character and status which have been done earlier and the presumption against retrospectivity in this case is ex facie rebuttable. The literal interpretation of the statute manifests that it has not made any distinction between the “existing” real estate projects and “new” real estate projects as has been defined under Section 2(zn) of the Act.



39. *The learned counsel further submits that the keyword i.e. “ongoing on the date of the commencement of this Act” by necessary implication, ex facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, the legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of the Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on “occupancy certificate” and not of “completion certificate”. In this context, the learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act.*

40. *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 allottees for an ongoing 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.*



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41. *What the provision further emphasises is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, the promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.*

42. *In State of Bombay v. Vishnu Ramchandra [State of Bombay v. Vishnu Ramchandra, 1960 SCC OnLine SC 33 : AIR 1961 SC 307], this Court observed that if the part of requisites for operation of the statute were drawn from a time antecedent to its passing, it did not make the statute retrospective so long as the action was taken after the Act came into force.*

43. *To meet out different nature of exigencies, it was noticed by Parliament that pan India, large number of real estate projects where the allottees did not get possession for years together and complaints being filed before different forums including under the Consumer Protection Act has failed to deliver adequate/satisfactory results to the consumer/allottees and their life savings is locked in and sizeable sections of allottees had invested their hard-earned money, money obtained through loans or financial institutions with the belief that they will be able to get a roof in the form of their apartments/flats/unit.*

44. *At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought*



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within the fold of the 2016 Act in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Article 14 or 19(1)(g) of the Constitution of India. To the contrary, Parliament indeed has the power to legislate even retrospectively to take into its fold the pre-existing contract and rights executed between the parties in the larger public interest.

45. *The consequences for breach of such obligations under the Act are prospective in operation and in case ongoing project, of which completion certificate is not obtained, are not to be covered under the Act, there is every likelihood of classifications in respect of underdeveloped ongoing project and the new project to be commenced.*

46. *The legislative power to make the law with prospective/retrospective effect is well recognised and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.*

47. *The distinction between retrospective and retroactive has been explained by this Court in Jay Mahakali Rolling Mills v. Union of India [Jay Mahakali Rolling Mills v. Union of India, (2007) 12 SCC 198], which reads as under:*

“8. “Retrospective” means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts



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occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights.”

48. *Further, this Court in Shanti Conductors (P) Ltd. v. Assam SEB [Shanti Conductors (P) Ltd. v. Assam SEB, (2019) 19 SCC 529 : (2020) 4 SCC (Civ) 409], held as under:*

“67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [Shanti Conductors (P) Ltd. v. Assam SEB, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive.”

49. *In the recent judgment of this Court rendered in Vineeta Sharma v. Rakesh Sharma [Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119] wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:*

“61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is



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the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.”

50. *Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*

51. *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.*

52. *That even the terms of the agreement to sell or homebuyers agreement invariably indicate 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/homebuyers or allottees, cannot shirk from*



their responsibilities/liabilities under the Act and implies their challenge to the 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.

53. From the scheme of the 2016 Act, 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. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the 2016 Act.”

13. In consequence, the arguments raised today before this Court by the learned counsel for the petitioner, that the present project was commenced before the coming into force, and that therebys, to the said project, the provisions embodied in the Act of 2016, are not applicable, thus is rejected. The reason being that the said project(s) became launched by corporate entities, which became mothered by the apposite specifically passed legislations, thus respectively by the State of Punjab and the State of Haryana. Consequently, if any of the federal units in the Union of India, proceed to pilot projects as promoters, either independently, or through their respective instrumentalities and agencies, besides through entities mothered by the respectively passed State legislations. Resultantly, *viz-a-viz*, all supra and to the projects piloted by the supra, there may not be any requirement of any registration in terms of Section 3 of the Act of 2016. In sequel, the State or its



instrumentalities and agencies besides, entities created under the respectively passed state legislations, thus *ipso facto*, become relieved from making the statutory registrations, and if assumingly they are required to be making the registration of the 'projects', yet again the said want of registration, rather not in terms of the expositions of law made by this Court in verdict supra, but in the least affecting the rights of the home buyers/allottees concerned, to access the remedies, as stipulated under the Act of 2016.

14. Moreover, the said inference is also lent strength through the provisions, which occur in Article 299 of the Constitution of India, provision whereof becomes extracted hereinafter.

“299. Contracts. -- (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them to personally liable in respect thereof.”

15. Since the said provision becomes embodied in the Constitution of India, which but is prime enforceable document, therebys when contracts entered into by the Union of India in the name of the President of India, or by



any of the federal units concerned, in the name of the Governors of such federal units, thus theretos constitutional sanctity becomes assigned. Moreover, when therebys all the assurances made thereunders to the vendees or the promisees, are also constitutionally assured to become meted the utmost deference. In sequel, therebys, any contract entered into by the State of Haryana, State of Punjab and or by their respectively created instrumentalities or agency(ies) and or by the corporate entities established under the state legislations concerned, thus become covered within the ambit of Article 299 of the Constitution of India. Resultantly, the thereunders made assurances to the promisees concerned, are required to become meted the declared constitutional sanctity, and as such unless strong compelling reasons comeforth qua the said promises meted to the promisees concerned, by all supra, being not enforceable, thereupon the apposite constitutional provisions require utmost deference becoming meted thereto. The vitals of the foremost regulatory document i.e. the Constitution of India, is to remain throughout in operation, rather than the said constitutional provisions becoming violated, and that too intentionally and willfully by all supra.

16. Furthermore, tritely and specifically the object and purpose of the Act of 2016, is to ensure the curbings of the menace of ill profiteerings by promoters/realtors, real estate agents, other than the supra, who otherwise also upon being mothered by the State legislations concerned, thus have sufficient funds to alleviate the grievances of the home buyers/allottees, whereas, the private realtors may not have such resources at their command, whereby, the grievances of the home buyers/allottees may become redressed. Therefore, to



redress the pain and grievances of the home buyers/allottees, thus under private realtor, promoters, rather strict envisagings become made under the Act of 2016.

17. The learned counsel for the petitioners submit, that since, the last sentence in paragraph 53 states, that the Act of 2016 will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the 2016 Act. However, the said sentence cannot be read in a manner so as to the defeat the objects and reasons, as carried in the Act of 2016, nor it can be read in a manner so as to preclude the availment of a remedy to the home buyer or allottee concerned, which is the purpose for the enactment of the Act of 2016. As such, the said has to be only read in context of the supra formulated question, thereby it becomes merely an obiter, and as such is not a ratio *decidendi* and nor is binding upon this Court.

18. Sections 88 and 89 of the Act of 2016, become extracted hereinafter:

“88. Application of other laws not barred.—*The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.*

89. Act to have overriding effect.—*The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”*

19. A close reading of the mandate enclosed in Section 88 of the Act of 2016, unfolds that if, alternative remedies become created, viz-a-viz the home buyers/allottees, thus, therebys, the said alternative remedies become preserved, as they are both complementary as well as supplementary to the



remedies envisaged in the Act of 2016. Therefore, the aggrieved concerned, are bestowed with the privilege to recourse remedies under the Act of 2016, or under some other statute, but there is no such permissibility to the aggrieved to simultaneously recourse remedies, in respect of a specific common grievance, thus, both before the authorities envisaged under the Act of 2016, or before the authorities envisaged in some other statute i.e. the Consumer Protection Act, 2019.

20. In addition, since Section 89 carried in the Act of 2016, assigns overriding effect to the provisions encapsulated therein, but the said over reach of the provisions enclosed in the Act of 2016, is restricted to prevalence becoming assigned to the provisions enclosed in the Act of 2016, but only if such provisions are inconsistent, with any other law being in force and the said law governing a field common to the Act of 2016. The said has been done with a legislative mindfulness, that in case any remedy become endowed to the aggrieved, and the said endowed statutory remedy other than the one endowed under the Act of 2016, but carries therein provisions, which are inconsistent with the provisions enclosed in the Act of 2016, thereupons, to the extent of such *inter se* inconsistency, rather preponderance becoming assigned to the Act of 2016.

21. In after math, it is open to the counsels concerned to, in respect of writ petitions, qua wherewith a remedy under the Act of 2016, is to be availed, thus to choose to withdraw such writ petitions and to subsequently institute them before the Real Estate Regulatory Authority concerned.

22. In view of the above, the learned counsel for the petitioners



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seeks, and, is permitted to withdraw the instant writ petition, but with liberty to avail the remedy before the Real Estate Regulatory Authority concerned.

23. Disposed of accordingly along with all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

March 20, 2025

Varinder

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No