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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 24.07.2024

+ RERA APPEAL 4/2023

PARAS ARORA

.....Appellant

Through: Mr. Madhu Mukul Tripathi, Adv.
(through video conferencing)

versus

M/S AGGARWAL ASSOCIATESRespondent

Through: Mr. Divyakant Lahoti with Mr. Kartik Lahoti, Ms Vindhya Mehra, Mr. Adith Menon, Ms. Madhur Jhavar, Ms. Samridhi Bhatt and Ms. Anushka Awasthi, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J (ORAL)

CM APPL. 53175/2023 –Ex.

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 53177/2023 –Delay 26 days (RF).

3. This is an application preferred by the appellant seeking condonation of 26 days of delay in refiling the appeal.
4. For the reasons stated therein, the application is allowed and disposed of.

RERA APPEAL 4/2023 & CM APPL. 53176/2023 –Stay

5. The present appeal under Section 58 of the Real Estate (Regulation



and Development) Act, 2016 [hereinafter referred to as 'RERA] seeks to assail the order dated 16.06.2023 passed by the Real Estate Appellate Tribunal, Delhi [hereinafter referred to as 'the Appellate Tribunal'] in Appeal No. 105/REAT/2022 titled as "*Paras Arora vs M/s Agarwal Associates*".

6. We may note that the appellant had approached the Appellate Tribunal assailing the order dated 31.10.2022 passed by the Real Estate Regulatory Authority for NCT of Delhi [hereinafter referred to as 'the Authority'] dismissing his Complaint No. 03/2019 on the grounds that the Completion Certificate cum Occupancy Certificate for the project was issued by the Delhi Development Authority (DDA) in favour of the respondent on 08.03.2007 i.e., much before the RERA came into force, and that the Authority did not have jurisdiction to entertain the said complaint.

7. At the outset, we may note the brief factual matrix of the matter as emerging from the record. The appellant claims to have booked space no. SS-40 on the second floor of a building known as Aditya Mega Mall, Plot No.9D, Central Business District, East Delhi constructed by the respondent on 26.01.2003 for a total cost of Rs.8,75,270/-. The said building was completed in 2006 and a Completion Certificate was issued by the DDA to the respondent on 08.03.2007. It appears that the appellant had certain grievances regarding the payment demanded by the respondent and therefore, he approached the District Consumer Disputes Redressal Forum (District Forum) on 27.12.2010, which complaint came to be dismissed on 03.08.2012.

8. Being aggrieved, the appellant approached the State Consumer Disputes Redressal Commission (State Commission) by way of an appeal in



2012 itself, which was dismissed as withdrawn on 04.02.2019 with a liberty to approach the Authority. It is in these circumstances that the appellant initially approached the Adjudicating Officer under the RERA on 19.03.2019 and, therefore, approached the Authority by way of his complaint dated 17.02.2021. The said complaint came to be rejected by the Authority on 22.12.2021 by holding that in the light of the admitted position that the respondent had obtained Occupation/Completion Certificate for the project much before the RERA came into force, the complaint was not maintainable. Being aggrieved, the appellant approached the Appellate Tribunal, which had, vide the impugned order, rejected the appeal.

9. In support of the present appeal, Mr. Madhu Mukul Tripathi, learned counsel for the appellant submits that the RERA itself envisages that any person whose complaint in respect of matters covered under Sections 12, 14, 18 and 19 of the RERA was pending before the District Forum or the State Commission or the National Consumer Disputes Redressal Commission (National Commission) on or before the commencement of RERA, may with the permission of such Forum or Commission, withdraw the complaint and file an application before the Authority/Adjudication Officer under the RERA. He, therefore, contends that the appellant having followed the said course of action and having withdrawn his appeal before the State Commission with liberty to avail of remedies under the RERA, his complaint under the RERA was maintainable, which aspect, the Authority as also the Appellate Tribunal have failed to appreciate. He, therefore, prays that the appeal be allowed and the impugned order be set aside by remanding the matter back to the Authority for adjudication as per law.

10. In support of his plea, he seeks to place reliance on the decision of the



Apex Court in **New India Assurance Co. Ltd. Vs. Shanti Misra** (1975) 2 SCC 840.

11. On the other hand, Mr. Divyakant Lahoti, who appears on behalf of the respondent, supports the impugned order and submits that both the Authority and the Appellate Tribunal were justified in holding that the complaint filed by the appellant would not fall within the purview of the RERA. He submits that the RERA was not meant to apply to projects which were completed much before the same came into force. In the present case, the project was already completed in 2006, with the completion certificate having been issued to the respondents on 08.03.2007. The appellant's complaint did not fall within the ambit of RERA and was, therefore, rightly rejected. In support of his plea, he seeks to place reliance on a decision of the Apex Court in **New Tech Promoters and Developers Private Limited vs. State of Uttar Pradesh and Others** (2021) 18 SCC and submits that the Apex Court has categorically held that the application of the RERA is retroactive in character.

12. Having considered the submissions of learned counsel for the parties, we may begin by noting the relevant extracts of the impugned order, as contained in paragraphs 10 to 13, which read as under:

"10. The appellant had withdrawn his appeal filed by him before the State Consumer Disputes Redressal Commission on 04.02.2019 against the order passed by the District Consumer Disputes Redressal Forum, dismissing his complaint dated 03.08.2012. The withdrawal of appeal before the State Consumer Disputes Redressal Commission was on 04.02.2019 and the subsequent filing of the complaint before the Real Estate Regulatory Authority was on 17.02.2021, i.e. more than two years after the withdrawal of the appeal. The purport of the proviso to Section 71 (1) of the Act clearly is that any change of forum for adjudication of any dispute must happen at the base level of adjudication which in this case was the District Consumer



Disputes Redressal Forum and once that jurisdiction had been invoked, the concerned Appellate Authority should ideally be the next forum for adjudication. By withdrawing his appeal before the State Consumer Disputes Redressal Commission and thereafter filing a fresh complaint on the same grounds before another authority at the first level of adjudication, which in this case was the Real Estate Regulatory Authority, the appellant exercised each of the concurrent jurisdictions available to him in the two forums and, hence, abused the process of law. As noted above, we are not disputing the right of the respondent to invoke either of the jurisdictions available to him but having once decided upon invoking a certain jurisdiction available to him, he must pursue the remedies available to him under the same jurisdiction rather than changing jurisdiction to invite apprehensions of forum hunting especially when his first complaint before the District Consumer Disputes Redressal Forum had been dismissed. Thus, the plea being raised by the appellant that he had withdrawn his appeal against the order of the District Consumer Disputes Redressal Forum as also the appeal filed by him against the order dated 22.12.2021 before this Tribunal does not help his cause and, in fact, is indicative of his penchant for invoking forums having different jurisdictions. In no way does it confer jurisdiction on the Authorities established under the Real Estate (Regulation and Development) Act, 2016 to entertain the complaint of the appellant. Had his withdrawal of the complaint been at the first stage of adjudication itself, the appellant could still make a cause, but, at the appellate stage, having suffered a dismissal at the first stage before the District Consumer Redressal Forum, the shelter of proviso to Section 71 (1) of the Act cannot be resorted to.

11. There is another important reason as to why the Adjudicating Officer was right in dismissing the complaint viz. the reliefs sought by the complainant before the Adjudicating Officer were delivery of possession of the unit and grant of interest at the rate of 18% for the amount paid to the respondent. Very clearly, the said reliefs are outside the power of the Adjudicating Officer and could not have been granted by him. The reliefs claimed by the appellant in this appeal are identical.

12. We have also carefully gone through the judgments cited by the Ld. Counsel for the appellant at the Bar and we do not find them applicable to the facts before us.

13. The project with respect to which the appellant wishes to raise a complaint was admittedly completed in the year 2007, when the Completion-cum occupancy Certificate was issued by the DDA. The RERA rightly rejected the complaint of the complainant vide



order dated 21.12.2021 on the ground of lack of jurisdiction and the Adjudicating Officer also, by way of the impugned order dated 31.10.2022 rightly dismissed the complaint. We do not find any infirmity in either of these two orders, and accordingly, we find no merit in the appeal and the same is dismissed and keeping in view the conduct of the appellant, the appellant is burdened with cost of Rs.1 0,000/- to be deposited with the RERA.”

13. From a perusal of the aforesaid extracts of the impugned order, it is evident that the learned Authority as also the learned Tribunal have dismissed the appellant's complaint and appeal by holding that once the project stood completed in the year 2007, the Authority under the RERA would have no jurisdiction to entertain any complaint qua such a project. The learned Tribunal also found that the appellant had vigorously pursued his initial complaint before the District Forum and it is only at the stage when his appeal before the State Commission was pending adjudication that he chose to withdraw. This, according to the learned Tribunal amounted to forum hunting.

14. Further the learned Tribunal observed that it was an admitted position that the project had been completed in the year 2006 with the Completion Certificate by the DDA being issued on 08.03.2007, i.e., much prior to the RERA 2016 coming into force. In the light of this admitted position, the learned Tribunal was, in our view, correct in holding that the RERA cannot be applied to projects, which stood completed before the enactment thereof. If complaints pertaining to projects, which were completed before the RERA was enacted were to be entertained, the same would amount to giving retrospective effect to the RERA, which the Legislature never intended.

15. We may also note that the material provision with respect to the applicability of the RERA Act to the 'ongoing projects' is contained in



Section 3 of the RERA, which reads as under:-

“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.”

16. From a reading of theforesaid provision of RERA, it is clear that RERA projects would fall in two categories; (i) projects that are launched



after coming into force of the RERA and (ii) the projects which were launched before coming into force of RERA and for which Completion Certificate had not been issued i.e. the ‘ongoing projects’.

17. It is manifest from the first proviso to Section 3(1) of the RERA that the term ‘ongoing projects’ on the date of commencement of RERA would encompass only those projects where Completion Certificate had not yet been issued. Projects which had already been completed and had received a Completion Certificate were neither effected nor required any registration under RERA. Further, the provisions of RERA are applicable only to those projects which are required to be registered therein.

18. In this context, Section 31 of the RERA Act is also relevant. The same reads as under:-

“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 1 [prescribed].”

19. Section 31 of the RERA provides that a complaint under the Act for violation of any provision of the RERA can only be filed against a promoter, allottee or real estate agent. However, such a promoter has to be necessarily registered or is liable to get registered as per Section 3 of the RERA. In the present case, when it is evident that there was no requirement for the respondent to be registered under RERA, the appellant cannot seek any remedy against the respondent under RERA.



20. At this stage, we may also refer to the decision in the case of *New Tech Promoters & Developers vs. State of U.P.*, (2021) 18 SCC 1, where the Hon'ble Supreme Court once elaborated that RERA would not be applicable to projects which have been already completed with Completion Certificates having been issued before RERA came into force. The relevant observations of the Apex Court read as under:-

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 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.

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.

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.



21. In view of the above, the complaint of the appellant was in our view, per se not maintainable under the RERA as the project of the respondent had been completed with the Completion Certificate having been issued by DDA on 08.03.2007 i.e., much prior to RERA coming into force.

22. To deal with the appellant's plea that his case squarely falls under proviso to Section 71(1) of the RERA and therefore, the appellant had correctly sought liberty from the State Commission to approach the Authority under RERA, we may refer to the relevant extract of Section 71 of the RERA, which is reproduced herein below:-

"71. Power to adjudicate – (1) For the purposes of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of bearing heard: Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act."

23. No doubt, the above provision provides for withdrawal of a pending complaint under the Consumer Protection Act with the liberty to approach the authorities under RERA. This liberty, however, cannot clothe the appellant with a right to invoke RERA, which right, he otherwise does not have under RERA.

24. We are unable to find any such provision in the RERA, which grants



liberty to a person, who had been pursuing any remedy under the Consumer Protection Act to file a complaint under RERA in respect of a project, which stood completed before the Act came into force.

25. Having considered the above, we are of the view that the Real Estate Regulatory Authority, the adjudicatory officer / authority and the learned Tribunal have rightly rejected / dismissed the complaint of the appellant on the ground of lack of jurisdiction as the RERA itself was not applicable to the project, which not only was completed but also had received the Completion Certificate much before the enactment of the RERA.

26. We, therefore, find no merit in the appeal and the same is accordingly, dismissed.

**(SHALINDER KAUR)
JUDGE**

**(REKHA PALLI)
JUDGE**

JULY 24, 2024

SU/ss