IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11993 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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HIREN SURESHBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
MR AS VAKIL(962) for the Petitioner(s) No. 1
MS. MANISHA LAVKUMAR, GOVERNMENT PLEADER WITH MR. JAY . B. TRIVEDI, ASSISTANT GOVERNMENT PLEADER/PP for the Respondent(s) No. 1
MR YN RAVANI(718) for the Respondent(s) No. 2
PARTY IN PERSON(5000) for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 06/02/2023

CAV JUDGMENT

1 By way of this petition under Article 226 of the Constitution of India, the petitioner who is the Director of

one Landmark Harmony Project has challenged the order dated 19.01.2019 passed by the Adjudicating Officer under the Real Estate (Regulation & Development) Act, 2016 ("RERA" for short).

2 Facts in brief would indicate that the petitioner is one of the Directors in the Landmark Probuild Private Limited, a company registered under the Indian Companies Act. The Company had constructed a residential complex on the land bearing Block No. 633/2, Final Plot No. 80 admeasuring about 5139 sq.meters at Unvarsad, Taluka: Gandhinagar. Development permission for the land was granted on 19.07.2011 for constructing residential flats. The company started construction naming the Scheme as "Landmark Harmony" comprising of 120 flats. The construction was completed and a Building Use Permission for the constructed new building was granted on 27.07.2016.

2.1 A Banakhat i.e. an Agreement to Sell was entered into between one Shrimati Sulekha Shyamsundar and one Shri Shyamsundar Karhana on 06.11.2014. Shri Shyamsundar Karhana is the respondent No.3 in the present petition. Being unable to pay the amount as per the terms of the Agreement to Sell, the parties renegotiated and the total consideration of the property was reworked as Rs.30,24,700/- which amount the respondent No.3 together with his wife could not pay.

2.2 A Consumer Complaint No.78 of 2017 was filed by the respondent No.3 before the Consumer Disputes Redressal Forum. The respondent No.3 withdrew his consumer complaint on 13.08.2018. This, presumably was done as the respondent No.3 on 08.08.2018 filed an online application with RERA. The applicant / respondent No.3 before the RERA Authorities in the complaint filed before the Adjudicating Officer sought compensation from the petitioner for not handing over Flat No. F-304. By the impugned order dated 19.01.2019, the RERA authority i.e. the Adjudicating Officer passed an order against the petitioner and in favour of the respondent No.3 directing the respondent No.3 to pay the remaining amount of Rs.5,10,000/- and directing the petitioner to give possession on receipt of the balance amount. The impugned order further imposed and directed payment of compensation of Rs.10,000/- and Rs.5,000/- towards costs.

3 Mr.Apurva Vakil, learned counsel for the petitioner, would make the following submissions:

3.1 Mr.Vakil, learned counsel, would submit that the development permission was granted on 19.07.2011. The Banakhat i.e. the Agreement to Sell was entered into between the wife and the respondent No.3 as party on the one hand and the company Landmark Pro Build on the other hand. The petitioner was only a Director of the Company. Neither the wife Sulekha Shyamsundar Ghasitasingh was the complainant before the RERA Authorities, nor the Company was made a party respondent. The complaint therefore was not maintainable as it was bad for mis-joinder and non-joinder of parties.

3.2 Mr.Vakil, learned counsel, would submit that initially, if the consumer complaint filed before the Forum is perused, the prayers therein would indicate that the petitioner wanted to withdraw from the project and therefore had prayed for refund of the amount and compensation, whereas if the format of the application before the RERA is seen, the petitioner would submit that the respondent No.3 only made a claim for compensation under Sec.31 read with Sec.71 of the RERA Act.

3.3 In support of his submission, Mr.Vakil, learned counsel, would further submit that the application before the RERA Authorities filed on 08.08.2018 was filed without the leave of the court after withdrawing the consumer complaint on 13.07.2018 as provided under Sec.71 of the RERA Act. Mr.Vakil, learned counsel, would further submit that the scope of the complaint before the Commission and that filed before the RERA Authorities could not change inasmuch as, in the Consumer Complaint the petitioner had sought withdrawal from the Scheme and refund as well as compensation whereas by the impugned order, though the prayer in the application under Sec.71 was that of harassment compensation, the authority had passed an order of giving over possession of the flat, which the authorities had no jurisdiction under Sec.71 of the Act.

3.4 Mr.Vakil, learned counsel, would further submit that a specific reply was filed before the authorities that the petitioner was not required to obtain registration under RERA as the Completion Certificate was issued on 27.09.2016. The RERA Act came into force on 01.05.2017, hence, the RERA Authorities could not have passed an order and the authority's order was therefore without jurisdiction.

3.5 Mr.Vakil, learned counsel, would submit that reading the impugned order would indicate that the complainant changed his status inasmuch as, before the Consumer Commission Forum, the respondent No.3 wanted to withdraw from the contract of allotment as he wanted to exit from the project, whereas the impugned order would indicate that the Adjudicating Officer passed an order to hand over possession. The prayer was only for compensation as is evident from the application before the Adjudicating Officer. The respondent No.3 could not convert his application so as to bring it as an application for suit for specific performance.

3.6 Mr.Vakil, learned counsel, would invite the Court's attention to the provisions of the RERA Act, namely, Sec.2-A and 2(i), which define the terms "Adjudicating Officer" and "Authority". He would submit by reading sections 12, 14, 18, 19 and Sec.71 of the Act that depending on the subject matter, there are two fora before the RERA Authorities, one is that of the

Adjudicating Officer and the other which falls under the RERA Authorities. Inviting the Court's attention to the provisions of Rule 11 and Rule 12 of the Gujarat Real Estate (Regulation & Development) (Matters Relating to Real Estate Regulatory Authority) Rules, 2016, Mr.Vakil, learned counsel would submit that the manner of filing the complaint before the authority is provided under Rule 11 whereas for providing of filing of a complaint with the Adjudicating Officer is provided in Rule 12. There are separate forms "Form-A" and "Form-B" respectively. Mr.Vakil,learned counsel, would submit that as far as the Adjudicating Officer is concerned, in the format of the application filed in Form-B thereof, it is very clear that the jurisdiction of the Adjudicating Officer is restricted to providing for compensation as provided in the sections 12, 14, 18 and 19 of the Act. Reading Sec.71, Mr.Vakil, learned counsel, would submit that as is evident from reading the consumer complaint filed before the Forum which the respondent No.3 withdrew albeit without the leave of the Court as provided in the proviso to section

71, the only relief that could have been granted by the Adjudicating Officer was that of compensation. The Adjudicating Officer, could not have assumed the role of the authority which is a separate forum as provided under Sec.31 of the Act and what is also evident from the format of Form-A before the authority is that it is only when an application is filed before the authority in "Form-A" that such reliefs including the interim relief of restraining the promoter from handing over possession can be granted. He would invite the Court's attention to the formats annexed to the schedule of the Act and the reliefs that can be granted.

3.7 Mr.Vakil, learned counsel, would further submit that what is evident from the facts of the case is that a Completion Certificate was issued for the project on 27.09.2016. The Act came into force with effect from 01.05.2017, and therefore, once the Building Use Permission was granted, the petitioner's project fell out of the purview of the RERA Act. In support of his submissions, Mr.Vakil, learned counsel, would rely upon the decision of the Bombay High Court in the case of ***Neelkamal Realtors Suburban Pvt Ltd vs. Union of India.,*** reported in ***2017 SCC Online Bom 9302***. As far as the submission with regard to Building Use Permission and the other contention of the jurisdiction of the authorities is concerned, Mr.Vakil, learned counsel would rely on the decision of the Hon'ble Supreme Court in the case of ***New Tech Promoters And Developers Pvt Ltd. vs. State of Uttar Pradesh.,*** reported in ***2021 (13) Scale 466***. He would read out the relevant paragraphs of the decision to submit that the scope of the applications before the Adjudicating Authority and that of the RERA Authority are different. Once the Adjudicating Officer's jurisdiction is restricted to that of providing for compensation, no relief for handing over possession can be granted, much less in the facts of the present case when admittedly the respondent No.3 himself had not paid the entire amount. He would read the provisions of Sec.12, 14, 18 and sec.19 and submit that the A.O's role is only to decide compensation. He would therefore submit that the order of the Adjudicating Authority is bad and therefore must be quashed and set aside.

4 Mr.Yogesh Ravani, learned counsel appearing for respondent No.2 i.e. the Authority would submit that the order of the Adjudicating Authority was just and proper. A preliminary objection was raised that the petitioner ought to have filed an appeal before the Appellate Tribunal. He would therefore further submit that no error whatsoever has been committed by the Adjudicating Officer in passing the order concerned.

4.1 Mr.Ravani, learned counsel, would submit that the contention which is raised by the petitioner with respect to it not being within the purview of the RERA Act and that the complaint was filed only against the Director is an after thought not taken before the authorities. He would support the order of the authority by relying on a decision of the Hon’ble Supreme Court in the case of

Imperia Structures Ltd. vs. Anil Patni & Anr., reported in ***2020 (10) SCC 783.***

5 The party in person respondent No.3 herein also would support the order of the Adjudicating Officer and submit that the order is just and proper.

6 Having considered the submissions made by the learned advocates for the respective parties, the analysis of the arguments indicate the following circumstances.

6.1 Perusal of the Agreement to Sell entered into by the respondent No.3 would indicate that the Agreement to Sell was entered into not by the respondent No.3 only. The parties to the agreement were the respondent No.3's wife Sulekha Shyamsundar Ghasitasingh Karahana and the respondent No.3, Shyamsundar Ghasitasingh Karahana. The Agreement to Sell was entered with the Company Landmark Probuild Pvt Ltd. The signatory to the agreement was the present petitioner who was the

Director, Shri Hiren Sureshbhai Patel. What therefore comes out from the agreement is that the respondent No.3 was not the sole party in whose favour the agreement was entered into but Smt. Sulekha Shyamsundar Karhana, the wife of the respondent No.3 too was a signatory and the agreement was entered into by the Landmark Probuild Pvt Ltd. Obviously therefore, in light of the parties to the contract, before the Consumer Redressal Forum at Gandhinagar, the wife of respondent No.3 and the respondent No.3 himself were the complainants before the Forum. The complaint was filed against the Company, Landmark Probuild Pvt Ltd as respondent No.1 and the present petitioner as respondent No.2. This, was the right arraignment of parties in consonance with the contract entered into by and between them. Despite this clarification and a clarity of parties, perusal of the application before the Adjudicating Officer filed under Rule 12 of the RERA Act for claim for compensation indicates that the parties were only the respondent No.3, Shyamsundar Ghasitasingh Karhana and the Director- Hiren Sureshbhai Patel, the present petitioner. In the opinion of this Court, if the respondent No.3 had invoked the jurisdiction of the Adjudicating Officer under Sec.71 of the RERA Act, in light of its provisions by withdrawing the consumer complaint, the application clearly suffered from the defect of mis-joinder and non-joinder of parties inasmuch as, the wife was not a party applicant before the Adjudicating Officer and the Company Landmark Probuild Pvt Ltd., the company which was a party to the agreement was not the respondent. The Director in his individual capacity could not have been the sole respondent in the complaint so filed. For this reason alone, the order of the Adjudicating Authority impugned in this petition would become vulnerable.

6.2 However, there is more to this on merits of the matter. Dealing with the first contention on the question of the applicability of RERA, Sec.3 of the RERA Act, 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."

6.3 Reading Sec.3 of the Act would indicate that where the promoter has received a Completion Certificate for a real estate project prior to the commencement of the Act, he is not required to obtain a registration of his project under the RERA. The provisions of the RERA would apply where projects are on going on the date of commencement of this Act. In the facts on hand, what is evident is that the Completion Certificate has been issued on 27.09.2016 prior to coming into force of the RERA Act with effect from 01.05.2017. The Act, therefore, would not be applicable to the facts of the present case. The decision in the case of **Neelkamal (supra)** cited by the learned counsel for the petitioner Mr.Vakil, needs consideration. The relevant paragraphs of the decision which deal with the context of the applicability of the provisions have been considered by the Division Bench of the Bombay High Court. While analyzing the challenge to the validity of Sec.3 of the Act, the Bombay High Court held as under:

> *"88. Section 3 of RERA prevents the promoter to advertise, market, book, sell or offer for sale, or invite persons to purchase unit in the real estate project without getting registration under RERA. First proviso to Section 3(1) mandates that ongoing project on the date of commencement of RERA, of which completion certificate had not been issued, are covered under the provisions of RERA and such promoter shall make an application to the authority for registration of the project.*
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> *89. On behalf of the petitioners it was submitted that registration of ongoing project under RERA would be contrary to the contractual rights established between the promoter and allottee under the agreement for sale executed prior to registration under RERA. In that sense, the provisions have retrospective or retroactive application. After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature. What the provisions envisage is that a promoter of a project which is not complete/sans completion*

certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed. From the scheme of RERA and the subject case laws cited above, we do not find that first proviso to Section 3(1) is violative of Article 14 or Article 19(1)(g) of the Constitution of India. The Parliament is competent to enact a law affecting the antecedent events. In the case of State of Bombay v. Vishnu Ramchandra (Supra), the Apex Court observed that the fact that part of the requisites for operation of the statute were drawn from a time antecedent to its passing did not make the statute retrospective so long as the action was taken after the Act came into force. The consequences for breach of such obligations under RERA are prospective in operation. In case ongoing projects, of which completion certificates were not obtained, were not to be covered under RERA, then there was likelihood of classifications in respect of undeveloped ongoing project and the new project to be commenced. In view of the material collected by the Standing Committee and the Select Committee and as discussed on the floor of the Parliament, it was thought fit that ongoing project shall also be made to be registered under RERA. The Parliament felt the need because it was noticed that all over the country in large number of projects the allottees did not get possession for years together. Huge sums of money of the allottees is locked in. Sizable section of allottees had invested their hard earned money, life savings, borrowed money, money obtained through loan from various financial institutions with a hope that sooner or later they would get possession of their apartment/flat/unit. There was no law regulating the real estate sector, development work/ obligations of promoter and the allottee. Therefore, the Parliament considered it to pass a central law on the subject. During the course of hearing, it was *brought to notice that in the State of Maharashtra a law i.e. MOFA on the subject has been in operation. But MOFA provisions are not akin to regulatory provisions of RERA.*

90. The important provisions like Sections 3 to 19, 40, 59 to 70 and 79 to 80 were notified for operation from 1/5/2017. RERA law was enacted in the year 2016. The Central Government did not make any haste to implement these provisions at one and the same time, but the provisions were made applicable thoughtfully and phase-wise. Considering the scheme of RERA, object and purpose for which it is enacted in the larger public interest, we do not find that challenge on the ground that it violates rights of the petitioners under Articles 14 and 19(1)(g) stand to reason. Merely because sale and purchase agreement was entered into by the promoter prior to coming into force of RERA does not make the application of enactment retrospective in nature. The RERA was passed because it was felt that several promoters had defaulted and such defaults had taken place prior to coming into force of RERA. In the affidavit-in-reply, the UOI had stated that in the State of Maharashtra 12608 ongoing projects have been registered, while 806 new projects have been registered. This figure itself would justify the registration of ongoing projects for regulating the development work of such projects.

91. On behalf of the petitioners it was submitted that Parliament lacks power to make retrospective laws. Series of judgments cited above would indicate a settled principle that a legislature could enact law having retrospective/retroactive operation. It cannot be countenance that merely because an enactment is made retrospective in its operation, it would be contrary to Article 14 and Article 19(1)(g). We find substance in the submissions advanced by the learned counsel appearing for the respondents that

Parliament not only has power to legislate retrospectively but even modify pre-existing contract between private parties in the larger public interest. No enactment can be struck down merely by saying that it is arbitrary and unreasonable unless constitutional infirmity has been established. It is settled position that with the development of law, it is desirable that courts should apply the latest tools of interpretation to arrive at a more meaningful and definite conclusion. A balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6). The application of the principles will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

92. Legislative power to make law with retrospective effect is well recognized. In the facts, it would not be permissible for the petitioners to say that they have vested right in dealing with the completion of the project by leaving the proposed allottees in helpless and miserable condition. In a country like ours, when millions are in search of homes and had to put entire life earnings to purchase a residential house for them, it was compelling obligation on the Government to look into the issues in the larger public interest and if required, make stringent laws regulating such sectors. We cannot foresee a situation where helpless allottees had to approach various forums in search of some reliefs here and there and wait for the outcome of the same for indefinite period. The public interest at large is one of the relevant consideration in determining the constitutional validity of retrospective legislation.

93. The provisions of Section 3(2) states that notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be *required in cases falling under Clauses (a), (b) and (c). The RERA takes care of exclusion of certain projects/constructions which will not be governed under RERA."*

6.4 The concurring judgement of the Bombay High Court's Division Bench through the authorship of Justice R.G.Ketkar too also considering the validity of the first proviso to sec.3(1), opined that the Scheme of the Act would indicate that the applicability of RERA is only to the on going projects. The relevant paras 238 to 243 read as under:

"238. Real Estate Projects (for short, 'projects') can be divided into two parts, namely, (1) the projects that are launched after coming into force of RERA and (2) the projects launched before coming into force of RERA and for which completion certificate is not issued i.e. on going projects.

*(1) **the projects that are launched after coming into force RERA:***

239. The learned Counsel for the petitioners did not advance detail submissions in respect of these projects. Even otherwise in respect of these projects, the promoter has to make an application to the Authority for registration of the project by enclosing documents and information as per Section 4(2)(a) to (m). In particular, the promoter has to enclose an authenticated copy of the approvals and commencement certificate from the Competent Authority obtained in accordance with the laws as *may be applicable for the project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the Competent Authority for each of such phases [as per clause (c)]; the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the Competent Authority [as per clause (d)]; the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy [as per clause (e)]; the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project [as per clause (f)]; proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees [as per clause (g)]; the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any [as per clause (h)]; the number and areas of garage for sale in the project [as per clause (i)]; a declaration supported by an affidavit, which shall be signed by the promoter or any person, authorised by the promoter stating (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person; (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details; and (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be.*

240. The promoter has to deposit 70% of the amounts realised for the project from the allottees from time to time in the separate account to be maintained in a Scheduled Bank to cover the cost of construction and the land cost and shall be used only for that purpose. Interest accrued thereon is credited to that account. The promoter retains with himself 30% realised from the allottees. The provisions thereto enable the promoter to withdraw the amount subject to satisfying the conditions stipulated therein as per Section 4(2)(l)(D). As per Section 5(3) the registration granted under Section 5 is valid for a period declared by the promoter under Section 4 (2)(l)(C) for completion of the project or phase thereof, as the case may be. In short, when the project or phase is registered all the permissions are in place. The promoter is fully equipped with to start the construction.

241. Interplay between Sections 4 and 5 shows that it is entirely upon the promoter to prescribe the time period for completing the project or phase in terms of Section 4(2)(l)(C). It is for the promoter, depending upon the nature and size of the project, to prescribe the time period for completing the project or phase. If the promoter prescribes unreasonably long period or unrealistic time for completing the project or phase, the prospective buyers will not come forward. It, therefore, follows that the promoter will have to prescribe a reasonable time period keeping in mind the nature and size of the project. Having regard to the fact that all the permissions are in place, as also the promoter giving time period depending upon the nature and size of the project, it cannot be said that the provisions of Sections 3, 4 and 5 are in any way unreasonable in respect of the projects which are launched after the commencement of RERA.

(2) On going projects:

242. The learned Counsel for the petitioners have mainly advanced the submissions as regards first proviso to Section 3(1) and Sections 4(2)(l)(C), 4(2)(l)(D), 6, 7 and 8 of RERA. In my opinion, all these provisions are required to be construed harmoniously. When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief that it was intended to remedy. It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. Every clause of a statute has to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. To ascertain the meaning of a clause in a statute the Court has to look into the whole statute. To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. An isolated consideration of a provision leads to some other interrelated provision becoming otiose or devoid of meaning.

243. First proviso to Section 3(1) lays down that projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter has 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. Subsection (2) of Section 3 lays down that no registration of the real estate project shall be required in respect of clauses (a) to *(c). Explanation thereto lays down that for the purpose of Section 3, where the 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 the Act for each phase separately. Section 4 (2) requires the promoter to enclose documents set out in clauses (a) to (m).”*

6.5 What is therefore evident from the judgement in the case of **Neelkamal (supra)** is that in case of projects which have already been issued completion certificate, the rigors of the RERA Act are not applicable. Even in the case of **New Tech Promoters (supra)**, the Hon’ble Supreme Court while considering the retrospective application of the Act, in para 54 of the decision, held as under:

“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. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016. Question no.2: Whether the authority has jurisdiction to direct return / refund of the amount to the allottee under Section 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the

Act?"

6.6 Coming to the jurisdiction and the scope of the Adjudicating Officer in passing the impugned order, certain provisions of the RERA Act need reproduction. They are as under:

> *"12. Obligations of promoter regarding veracity of the advertisement or prospectus.—Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*
>
> *Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.*
>
> *XXX XXX XXX*
>
> *14. Adherence to sanctioned plans and project specifications by the promoter.—*
>
> *(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as*

approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or *equipment, etc.*

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

XXX XXX XXX

18. Return of amount and compensation.—
(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

19. Rights and duties of allottees.—

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical

possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

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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].

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71. Power to adjudicate.—

(1) For the purpose 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 being 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.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application: Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections."

Rules 11, 12 and Form -'A' and Form'B' reads as under:

*"**11. Manner of filing a complaint with the Authority and the manner of holding an inquiry by the Authority.-***
(1) Any aggrieved person may file a complaint with

the Authority for any violation under the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, as per Form 'A' which shall be accompanied by a fee of rupees one thousand in the form of a demand draft drawn on a nationalized bank in favour of regulatory Authority and payable at the main branch of that bank at the station where the seat of the said regulatory Authority is situated.

(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner:

(a) Upon receipt of the complaint the Authority shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;

(b) The notice shall specify a date and time for further hearing;

(c) On the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent:

(i) pleads guilty, the regulatory Authority shall record the plea, and pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;

(ii) does not plead guilty and contests the complaint the regulatory Authority shall demand and explanation from the respondent;

(d) Incase the Authority is satisfied on the basis of the submissions made that the complaint

does not require any further inquiry it may dismiss the complaint;

(e) In case the Authority is satisfied on the basis of the submissions made that the there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by it;

(f) The Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;

(g) On the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions is satisfied that -

(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or the rules and regulations made thereunder;

(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing.

(h) If any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

12. Manner of filing a complaint with the adjudicating officer and the manner of holding an inquiry by the adjudicating officer.-

(1) Any aggrieved person may file a complaint with the adjudicating officer for compensation under

section 12, 14, 18 and 19 as per Form 'B' which shall be accompanied by a fee of rupees one thousand in the form of a demand draft drawn on a nationalized bank in favour of Authority and payable at the main branch of that bank at the station where the seat of the said Authority is situated.

(2) The adjudicating officer shall for the purposes of adjudging compensation follow summary procedure for inquiry in the following manner:

(i) Upon receipt of the complaint the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the promoter;

(j) The notice shall specify a date and time for further hearing;

(k) On the date so fixed, the adjudicating officer shall explain to the promoter about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the promoter:

(iii) pleads guilty, the adjudicating officer shall record the plea, and award such compensation as he thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;

(iv) does not plead guilty and contests the complaint the adjudicating officer shall demand and explanation from the promoter;

(l) In case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry it may dismiss the complaint;

(m) In case the adjudicating officer is satisfied on the basis of the submissions made that the there is need for further hearing into the complaint it may order production of documents or other evidence on a date and time fixed by him;

(n) The adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;

(o) On the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the promoter is-

(iii) liable to pay compensation, the adjudicating officer may, by order in writing, order payment of such compensation, as deemed fit by the promoter to the complainant; or

(iv) not liable to any compensation, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing.

(p) If any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

FORM 'A'
[See rule 11(1)]
COMPLAINT TO REGULATORY AUTHORITY
Complaint under section 31 of the Act

For use of Regulatory Authority(s) office:

Date of filing:
Date of receipt by post: _
Complaint No.:
Signature:
Registrar:

IN THE REGULATORY AUTHORITIES OFFICE (Name of place)

Between
..Complainant(s)
And
...Respondent(s)
Details of claim:
1. Particulars of the complainant(s):
(i) Name of the complainant:
(ii) Address of the existing office / residence of the complainant:
(iii) Address for service of all notices:
2. Particulars of the respondents:
(i) Name(s) of respondent:
(ii) Office address of the respondent:
(iii) Address for service of all notices:
3. Jurisdiction of the regulatory Authority:
The complainant declares that the subject matter of the claim falls within the jurisdiction of the regulatory Authority.

4. Facts of the case:
[give a concise statement of facts and grounds for complaint]
5. Relief(s) sought:
In view of the facts mentioned in paragraph 4 above, the complainant prays for the following relief(s)
[Specify below the relief(s) claimed explaining the grounds of relief(s) and the legal provisions (if any) relied upon]
6. Interim order, if prayed for:
Pending final decision on the complaint the

complainant seeks issue of the following interim order:

[Give here the nature of the interim order prayed for with reasons]

7. Complainant not pending with any other court, etc.:

The complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other Authority or any other tribunal(s).

8. Particulars of bank draft in respect of the fee in terms of sub-rule (1) of rule 36:

(i) Amount

(ii) Name of the bank on which drawn

(iii) Demand draft number

9. List of enclosures:

[Specify the details of enclosures with the complaint]

Verification

I ....(name in full block letters) son / daughter of ....the complainant do hereby verify that the contents of paragraphs [1 to 9] are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place:

Date:

Signature of the complainant(s)

FORM 'B'
[See rule 12(1)]

APPLICATION TO ADJUDICATING OFFICER

Claim for compensation under section 31 read with section 71 of the Act

For use of Adjudicating Officers office:
Date of filing:................................
Date of receipt by post: ....
Application No.:................................
Signature:....................................
Authorized Officer:

IN THE ADJUDICATING OFFICER'S OFFICE (Name of place)

Between
.......................applicant(s)
And
......................Respondent(s)
Details of claim:
1. Particulars of the applicant(s):
(i) Name of the applicant:
(ii) Address of the existing office / residence of the appellant:
(iii) Address for service of all notices:
(iv) Details of allottees apartment, plot or building
2. Particulars of the respondents:
(i) Name(s) of respondent:
(ii) Office address of the respondent:
(iii) Address for service of all notices:
(iv) Registration no. and address of project:
3. Jurisdiction of the Adjudicating Officer:
The applicant declares that the subject matter of the claim falls within the jurisdiction of the adjudicating officer.
4. Facts of the case:
[give a concise statement of facts and grounds of claim against the promoter]
5. Compensation sought:
In view of the facts mentioned in paragraph 4 above, the applicant prays for the following compensation(s)..............
[Specify below the compensation(s) claimed

explaining the grounds of claim(s) and the legal provision (if any) relied upon]

6. Claim not pending with any other court, etc:

The applicant further declares that the matter regarding which this appeal has been made is not pending before any court of law or any other Authority or any other tribunal(s).

7. Particulars of band draft in respect of the fee in terms of sub-rule(1) of rule 36:

(i)Amount

(ii)Name of the bank on which drawn

(iii)Demand draft number

8. List of enclosures: [Specify the details of enclosures with the application]

VERIFICATION

I………………..(name in full block letters) son/daughter of ……………….. the applicant do hereby verify that the contents of paragraphs [1 to 8] are true to my personal knowledge and belief and that I have not suppressed any material fact(s).

Place:

Date:

Signature of the Applicant(s).”

7 A reiteration of facts may be appropriate. The respondent No.3 along with his wife being parties to an agreement, approached the Consumer Forum with a complaint so filed. Reading of the complaint would indicate that it was the case of the respondent No.3 that he no longer wanted to be a part of the project and therefore his intention was to withdraw from the Scheme.

It was in this context that the prayer was made for refund and compensation. The complaint was withdrawn on 13.07.2018 before the Consumer Forum and on 08.08.2018, a complaint in Form-B was filed under Sec.31 read with sec.71 read with Rule 12 before the Adjudicating Officer. The Adjudicating Officer's power to adjudicate disputes based on a complaint filed before it are governed by the provisions of Sec.71 of the Act. Reading sec.71 would indicate that such powers are only for the purposes of adjudging compensation under secs. 12, 14, 18 and 19. This obviously has to be read with the proviso inasmuch as, it is open for the complainant to approach the Adjudicating Officer after seeking permission to withdraw the complaint before the Commission i.e. the Consumer Forum under the Consumer Protection Act and therefore the role of the Adjudicating Officer is restricted to that of compensation. This particularly is because as is evident from the original complaint filed before the Consumer Forum by the respondent No.3, it was his case that he wanted to exit from the project and therefore had prayed for refund and compensation. The role therefore of the Adjudicating Officer and the jurisdiction vested in him only be limited to awarding of compensation only. That is even evident from the format of the application filed by the respndent No.3 in Form-B which is on record. The only relief was for compensation for harassment. Obviously therefore the respondent No.3 did not want to continue to be a part of the project and the intention was to withdraw therefrom.

7.1 That scope is also evident when section 12 of the Act is read with Sec.18 thereof which indicates that if a person wants to withdraw from the project, he shall be returned his entire investment with interest at such rate as may be prescribed and the compensation be paid in the manner provided under the Act. The title of Sec.18 thereof would also indicate that it deals with return of amount and compensation. Sub-clause B of Clause 1 of Sec.18 also talks about the wish of the allottee to withdraw from the project without prejudice to other remedy available. The power to adjudicate therefore flowing from the provisions of Sec.71 when read in light of the provisions of the Sections under which the Adjudicating Authority's role is prescribed would indicate that he had no other jurisdiction except to award compensation. Reading of the impugned order would indicate that the Adjudicating Officer has assumed the role of the Authority under the Act which it could not. The complexity and the area within which the Adjudicating Officer has acted is beyond the scope and the manner in which it had to adjudicate and the Adjudicating Officer assumed the role of the authority which it could not. The authority so constituted before whom a complaint in Form-A had to be filed under Rule 11 would indicate that it was only the authority which could have passed orders of restoring possession and the order of the Adjudicating Officer therefore is clearly exceeding the jurisdiction vested in it.

8 In the case of **New Tech (supra)**, the Apex Court

had the occasion of considering the Scheme of the Act and the roles of the Adjudicating Officer and the Authority and it was clearly observed that on a detailed reference to the Scheme of the Act, the power of adjudication is delineated with the regulatory authority and the Adjudicating Officer and any extension by the Adjudicating Officer to award relief other than compensation would intend to expand the powers and functions which would be against the mandate of the Act. It would be relevant to reproduce the paragraphs in the decision in the case of **New Tech (supra)**, which read as under:

> *"15. Chapter II of the Act relates to the registration of real estate projects. Section 3 mandates prior registration of real estate projects including ongoing projects with the Real Estate Regulatory Authority. Section 4 prescribes the ingredients of application by the promotor for registration of real estate projects. In particular, the promotor is required to state in the application under sub section 2(L)(c) of Section 4, the timelines for completion of the project. Section 5 relates to the grant of registration by the authority and inter alia states that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. As per Section 5(3) of the Act, the registration is co terminus with the*

completion of the project. Under Section 6, the authority can extend registration based on the facts of each case or the occurrence of the force majeure. Section 7 pertains to revocation of registration. As per Section 8, the authority is under obligation to inter alia carry out the remaining development work where there is lapse or revocation of the registration.

16. Chapter III lays down, 'functions and duties of promotor' which is relevant for the purpose of the present case. Section 11 thereof elaborates on the functions and duties of the promoters. Under sub-Section (4) of Section 11, several obligations have been casted upon the promoters. Under subsection (5) of Section 11, the promoter may cancel the allotment if the allottee/home buyer commits any breach of the terms of the agreement for sale, and in such case, the aggrieved allottee has the right to approach the authority.

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19. Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf.

20. Section 18(2) of the Act mandates that in case, loss is caused to allottee due to defective title of the land, on which the project is being developed or has been developed, the promoter shall *compensate the allottee and such claim for compensation under Section 18(2) shall not be barred by limitation provided under any law for the time being in force.*

21. Section 18(3) of the Act states that where the promoter fails to discharge any other obligation under the Act or the rules or regulations framed thereunder or in accordance with the terms and conditions of the agreement for sale, the promoter shall be liable to pay 'such compensation' to the allottees, in the manner as prescribed under the Act.

22. If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions *recognize right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.*

25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

26. If we turn to the power of the authority, it envisages under Section 31, the complaints can be filed either with the authority or adjudicating officer for violation or contravention of the provisions of the Act or the rules and regulations framed thereunder. Such complaint can be filed against "any promoter, allottee or real estate agent", as the case may be, and can be filed by "any aggrieved person", and it has to be read with an explanation, "person" includes an association of allottees or any voluntary consumer association registered under any law for the time being in force. The form and manner in which complaint is to be instituted has been provided under subsection(2) of Section 31.

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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. 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 Act 2016.

Question no. 2: Whether the authority has jurisdiction to direct return/refund of the amount to the allottee under Sections 12, 14, 18 and 19 of the Act or the jurisdiction exclusively lies with the adjudicating officer under Section 71 of the Act?

55. Before examining the question, we have to take a holistic view of the scheme of the Act along with the rules/regulations framed by the Authority in exercise of its powers under Sections 84 and 85 of the Act that postulates certain functions and duties to the promoter of the real estate project and its entailing consequences if the promoter fails to fulfil his obligations defined under Chapter III. Some of the obligations are spelt out in Sections 12, 14, 18 and 19 of the Act.

56. Section 12 which falls for consideration in these petitions reads as follows:

> *"12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, at the case may be, and sustains any loss or damage by reason of*

any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:" Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."

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78. This Court while interpreting Section 18 of the Act, in Imperia Structures Ltd. Vs. Anil Patni and Another5 held that Section 18 confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer's agreement in para 25 held as under: "25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation *where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment." (emphasis supplied)*

79. To safeguard the interests of the parties, on being decided by the regulatory authority/adjudicating officer, it is always subject to appeal before the Tribunal under Section 43(5) provided condition of predeposit being complied with can be further challenged in appeal before the High Court under Section 58 of the Act and, thus, the legislature has put reasonable restriction and safeguards at all stages.

80. The further submission made by learned counsel for the appellants that if the allottee has defaulted the terms of the agreement and still refund is claimed which can be possible, to be determined by the adjudicating officer. The submission appears to be attractive but is not supported with legislative intent for the reason that if the allottee has made a default either in making instalments or made any breach of the agreement, the promoter has a right to cancel the allotment in terms of Section 11(5) of the Act and proviso to subsection 5 of Section 11 enables the allottee to approach the regulatory authority to question the termination or cancellation of the agreement by the promotor and thus, the interest of the promoter is equally safeguarded.

81. The opening words of Section 71(1) of the Act make it clear that the scope and functions of the adjudicating officer are only for "adjudging *compensation" under Sections 12, 14, 18 and 19 of the Act. If the legislative intent was to expand the scope of the powers of the adjudicating officer, then the wording of Section 71(1) ought to have been different. On the contrary, even the opening words of Section 71(2) of the Act make it clear that an application before the adjudicating officer is only for "adjudging compensation". Even in Section 71(3) of the Act, it is reiterated that the adjudicating officer may direct "to pay such compensation or interest" as the case may be as he thinks fit, in accordance with provisions of Sections 12, 14, 18 and 19 of the Act. This has to be seen together with the opening words of Section 72 of the Act, which reads "while adjudging the quantum of compensation or interest, as the case may be, under Section 71, the adjudicating officer shall have due regards" to the broad parameters to be kept in mind while adjudging compensation to be determined under Section 71 of the Act.*

82. The further submission made by the learned counsel for the appellants that if the authority and the adjudicating officer either come to different conclusions on the same questions or in a single complaint, the person aggrieved is seeking manifold reliefs with one of the relief of compensation and payment of interest, with the timelines being provided for the adjudicating officer to decide the complaint under Section 71 of the Act. At least, there is no provision which could be referred to expedite the matter if filed before the regulatory authority. The submission may not hold good for the reason that there is a complete delineation of the jurisdiction vested with the regulatory authority and the adjudicating officer. If there is any breach or violation of the provisions of Sections 12, 14, 18 and 19 of the Act by the promoter, such a complaint straightaway has to be filed before the regulatory authority. What is being referable to the *adjudicating officer is for adjudging compensation, as reflected under Section 71 of the Act and accordingly rules and regulations have been framed by the authority for streamlining the complaints which are made by the aggrieved person either on account of violation of the provisions of Sections 12, 14, 18 and 19 or for adjudging compensation and there appears no question of any inconsistency being made, in the given circumstances, either by the regulatory authority or the adjudicating officer.*

83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

84. So far as submission in respect of the expeditious disposal of the application before the adjudicating officer, as referred to under subsection (2) of Section 71 is concerned, it presupposes that the adjudicatory mechanism provided under Section 71(3) of the Act has to be disposed of within 60 days. It is expected by the regulatory authority to dispose of the application expeditiously and not to restrain the mandate of 60 days as referred to under Section 71(3) of the Act.

85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the Courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016. Question no. 3: Whether Section

> *81 of the Act authorizes the authority to delegate its powers to a single member of the authority to hear complaints instituted under Section 31 of the Act?"*

9 What therefore is evident from reading the provisions of the section in light of the judgements of the Hon'ble Supreme Court including that of **Imperia (supra),** cited by Mr.Ravani, which is considered in the case of New Tech, the role of the Adjudicating Officer could not have been one of restoring possession and awarding particularly when admittedly even part of the contract was not complied with by the respondent No.3 inasmuch as he has not paid the entire amount stipulated under the Agreement. The directions issued by the Adjudicating Officer therefore in the impugned order directing the petitioner to restore possession on the respondent No.3 paying the remaining amount was also therefore beyond the ambit and the scope that the Adjudicating Officer is bound to act upon.

10 For the aforesaid reasons, the order dated

19.01.2019 passed in CMP / Ahmedabad 180808/000115 passed by the respondent No.2 is quashed and set aside and the petition is allowed.

(BIREN VAISHNAV, J)

BIMAL