2021 INSC 716

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6745 - 6749 OF 2021
(Arising out of SLP(Civil) No(s). 3711-3715 OF 2021)

M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. .....APPELLANT(S)

VERSUS

STATE OF UP & ORS. ETC. .....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 6750 OF 2021
(Arising out of SLP(Civil) No(s). 14733 OF 2020)

CIVIL APPEAL NO(S). 6751 OF 2021
(Arising out of SLP(Civil) No(s). 2647 OF 2021)

CIVIL APPEAL NO(S). 6752 OF 2021
(Arising out of SLP(Civil) No(s). 3185 OF 2021)

CIVIL APPEAL NO(S). 6753 OF 2021
(Arising out of SLP(Civil) No(s). 3426 OF 2021)

CIVIL APPEAL NO(S). 6754 OF 2021
(Arising out of SLP(Civil) No(s). 6199 OF 2021)

CIVIL APPEAL NO(S). 6755 OF 2021
(Arising out of SLP(Civil) No(s). 6671 OF 2021)

CIVIL APPEAL NO(S). 6756 OF 2021
(Arising out of SLP(Civil) No(s). 6711 OF 2021)

CIVIL APPEAL NO(S). 6757 OF 2021
(Arising out of SLP(Civil) No(s). 1670 OF 2021)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The present batch of appeals are filed at the instance of promoter/real estate developer assailing the common issues and certain provisions of The Real Estate(Regulation and Development) Act, 2016(hereinafter being referred to as "the Act"), The Uttar Pradesh Real Estate(Regulation and Development) Rules, 2016 (hereinafter referred to as "the Rules") and the functioning of the Uttar Pradesh Real Estate Regulatory Authority (hereinafter referred to as "the Authority"), although being decided by separate orders by

the High Court of Allahabad, since the self-same questions are involved with the consent are being decided by the present judgment.

3. The respondents herein are the allottees/home buyers who have made their substantial investment from their hard earned savings under the belief that the promotor/real estate developer will hand over possession of the unit in terms of home buyer's agreement but their bonafide belief stood shaken when the promotors failed to hand over possession of a unit/plot/building in terms of the agreement and complaints were instituted by the home buyers for refund of the investment made along with interest under Section 31 of the Act.

4. The impugned orders came to be passed by the single member of the authority on the complaint instituted at the instance of the home buyers/allottees after hearing the parties with the direction to refund the principal amount along with interest(MCLR + 1%) as prescribed by the State Government under the Act. In the ordinary course of business, the order passed by the authority is appealable under Section 43(5) of the Act provided the statutory compliance of

pre-deposit being made under proviso to Section 43(5) before the Appellate Tribunal but the promoter/real estate developers approached the High Court by filing a writ petition under Articles 226 and 227 of the Constitution questioning the order passed by the authority holding it to be without jurisdiction as it has been passed by a single member of the authority who according to the appellants holds no jurisdiction to pass such orders of refund of the amount as contemplated under Section 18 of the Act and have also challenged the condition of pre-deposit as envisaged under proviso to Section 43(5) of the Act for filing of a statutory appeal and raised certain ancillary questions for consideration in writ jurisdiction of the High Court of Allahabad. Being aggrieved by the orders passed by the High Court dismissing their writ petitions, the present batch of appeals have been preferred at the instance of the promoters/real estate developers.

5. Before adverting to the legal submissions made before us, we consider it appropriate to take a bird's-eye view of the scheme of the Act 2016 which may be apposite for proper appreciation of the submissions made by the parties.

Object and Reasons of the Act 2016

6. Over the past two decades, with the growth of population and the attraction of the people to shift towards urbanization, the demand for housing increased manifold. Government also introduced various housing schemes to cope with the increasing demand but the experience shows that demands of the housing sector could not be meted out by the Government at its own level for various reasons to meet the requirement, the private players entered into the real estate sector in meeting out the rising demand of housing. Though availability of loans, both from public and private banks, become easier, still the High rate of interest and the EMI has posed additional financial burden on the people.

7. At the given time, the real estate and housing sector was largely unregulated and the consequence was that consumers were unable to procure complete information for enforced accountability towards builders and developers in the absence of an effective mechanism in place. Though, The Consumer Protection Act, 1986

was available to cater the demand of home buyers in the real estate sector but the experience shows that this mechanism was inadequate to address the needs of the home buyers and promoters in the real estate sector.

8. At this juncture, the need for Real Estate(Regulation) Bill was badly felt for establishing an oversight mechanism to enforce accountability to the real estate sector and providing an adjudicating machinery for speedy dispute redressal mechanism and safeguarding the investments made by the home buyers through legislation to the extent permissible under the law.

9. The statement of object and reasons of the Act indicates that the primal position of the regulatory authority is to regulate the real estate sector having jurisdiction to ensure compliance with the obligation cast upon the promoters. The opening statement of objects and reasons which has a material bearing on the subject reads as follows:-

> "The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though

> the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation, has been a constraint to the healthy and orderly growth of industry. Therefore, the need to regulating the sector has been emphasised in various forums.
>
> 2. In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013, in the interest of the effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority."

10. It was introduced with an object to ensure greater accountability towards consumers, to significantly reduce frauds & delays and also the current high transaction costs, and to balance the interests of consumers and promoters by imposing certain responsibilities on both, and to bring transparency of the contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. It also proposes to induct professionalism and standardization in the sector, thus

paving the way for accelerated growth and investments in the long run.

11. Some of the relevant Statement of Objects and Reasons are extracted as under:-

> "4...
>
> (d) to impose liability upon the promoter to pay such compensation to the allottees, in the manner as provided under the proposed legislation, in case if he fails to discharge any obligations imposed on him under the proposed legislation;
>
> (f) the functions of the Authority shall, inter alia, include – (i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (ii) to publish and maintain a website of records of all real estate projects for which registration has been given, with such details as may be prescribed; (iii) to ensure compliance of the obligations cast upon the promoters, the allotees and the real estate agents under the proposed legislation.
>
> ...
>
> (i) to appoint an adjudicating officer by the Authority for adjudging compensation under sections 12, 14 and 16 of the proposed legislation.
>
> ..."

12. The Bill provides for establishment of the authority for regulation and promotion of real estate sector, to ensure sale of plot, apartment or building or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and provide the adjudicating

mechanism for speedy dispute redressal mechanism by establishing the regulatory authority and the adjudicating officer and in hierarchy, the Appellate Tribunal for early and prompt disposal of the complaint being instituted primarily by the home buyers for whom this Act has been enacted by the Parliament in 2016.

13. To examine the matter in this perspective, consider what a house means in India. The data shows that about more than 77% of total assets of an average Indian household are held in real estate and it's the single largest investment of an individual in his lifetime. The real estate in India has a peculiar feature. The buyer borrows money to pay for a house and simultaneously plays the role of a financer as building projects collect money upfront and this puts the buyer in a very vulnerable position-the weakest stakeholder with a high financial exposure. The amendment to the Insolvency and Bankruptcy Code, 2018 recognised the home buyers as financial creditors and the present enactment is the most important regulatory intervention in favour of the home buyers and it's had an impact and with passage of time, has become a yardstick of laying down minimum standards in the market. Earlier, the real estate

sector was completely unregulated and there was no transparency in their business profile and after the present enactment, it is open for the potential home buyers to check if a project is approved under the Act, 2016 that at least gives a satisfaction to a person who is coming forward in making a lifetime investment.

14. That apart from the project being statutorily regulated, it attaches certain authenticity with regard to completion of the project and a statutory obligation upon the developer and home buyer to abide by the terms and conditions of the home buyers agreement and statutory compliance to the mandate of law. In addition, any project which is approved under the Act, 2016 helps the promoter in raising funds from banks and statistics shows that buyers express their satisfaction in approved projects which is beneficial not only to the home buyers but to the promoters and real estate agents as well.

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 sub-section (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.

17. Section 12 provides that if any default being committed by the promoter, either in reference to the information contained in the notice, advertisement or prospectus or on the basis of the model apartment, plot or building which causes any loss or damage to the allottee/home buyer by reason of any incorrect or false statement or wants to withdraw from the project, he shall be compensated by the promoter in the manner as prescribed under the Act.

18. Section 14 relates to adherence to Sanctioned Plans & Project specification by the promoters and Section 14(3) empowers the allottee to receive compensation in the event where there is any structural defect.

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 sub-sections (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 sub-section(2) of Section 31.

27. Section 32 refers to functions of the authority for promotion of real estate sector and Sections 34 to 38 of the Act recognize different nature of powers and functions of the authority regarding compliance of its regulations cast upon the promoters, allottee or the real estate agents and to appoint one or more persons to make an inquiry into the affairs of any promoter, allottee or the real estate agent and to pass any interim orders, if the promoter, allottee or real estate agent is failing in discharging of its functions under the Act, rules or regulations, and to issue directions from time to time to the promoter, allottee or real estate agents, if considered

necessary can impose penalty or interest if failed to carry out its obligations.

28. At the same time, Chapter VIII of the Act talks about offences, penalties and adjudication. Various kinds of penalties are set out in Sections 59 to 68. Each of these provisions clearly states that the penalty thereunder is required to be determined by the authority.

29. We are concerned with Section 71 of the Act titled 'power to adjudicate' which is specific to the adjudicating officer. Sub-section(1) of Section 71 opens with the words "for the purpose of adjudging compensation under Sections 12, 14, 18 and 19", the Authority has to appoint in consultation with the appropriate Government, a judicial officer not below the rank of the District Judge, as an adjudicating officer, to hold inquiry in the prescribed manner after giving a person concerned a reasonable opportunity of hearing. At the same time, sub-section (2) casts an obligation upon the adjudicating officer that while adjudging compensation under sub-section (1), the application has to be dealt with expeditiously as possible and to be disposed of within 60 days. If there is a delay being caused exceeding the statutory period of 60 days, in disposal

of the application, reasons are to be recorded for extension of the period.

30. Under sub-section (3) of Section 71, the adjudicating officer has been empowered not only to summon and enforce the attendance of persons acquainted with the facts and circumstances of the case to give evidence or to produce any document which may be useful and relevant for adjudication, is supposed to take note of the various parameters as referred to under Section 72 which still is illustrative and not exhaustive while adjudging the quantum of compensation payable to the person aggrieved and interest, as the case may be.

31. After we have heard learned counsel for the parties at length, the following questions emerges for our consideration in the present batch of appeals are as under:-

1. Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?

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?

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?

4. Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law?

5. Whether the authority has power to issue recovery certificate for recovery of the principal amount under Section 40(1) of the Act?

Question 1:- Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?

32. The issue concerns the retroactive application of the provisions of the Act 2016 particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that the Parliament in its wisdom

after holding extensive deliberation on the subject thought it necessary to have a central legislation in the paramount interest for effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25th March, 2016.

33. Under Chapter II of the Act 2016, registration of real estate projects became mandatory and to make the statute applicable and to take its place under sub-Section (1) of Section 3, it was made statutory that without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to

Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by sub-section (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has been executed by the parties inter se has to abide the legislative mandate in completion of their ongoing running projects.

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

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

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

> "2(h) "Ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these rules:
>
> > (i) where services have been handed over to the Local Authority for maintenance.
> >
> > (ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.
> >
> > (iii) where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.
> >
> > (iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate."

36. The expression "completion certification" has been defined under Section 2(q) and "occupancy certificate" under Section 2(zf) of the Act which reads as under:-

> "2(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and

> specifications, as approved by the competent authority under the local laws;
>
> 2(zf) "occupancy certificate" means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;"

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

38. The emphasis of Mr. Kapil Sibal, learned senior counsel for the appellant is that the agreement of sale was executed in the year

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

39. Mr. Tushar Mehta, learned Solicitor General, on the other hand, submits that a bare perusal of the object and reasons manifest that the Act does not take away the substantive jurisdiction, rather it protects the interest of homebuyers where project/possession is delayed and further submits that the scheme of the Act has retroactive application, which is permissible under the law. The provisions make it clear that it operates in future, however, its operation is based upon the character and status which have been done earlier and the presumption against retrospectivity in this case is ex-facie rebuttable. The literal interpretation of the statute manifest that it has not made any

distinction between the “existing” real estate projects and “new” real estate projects as has been defined under Section 2(zn) of the Act.

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

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

42. What the provision further emphasizes is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, promoter is under an obligation to prescribe fresh

timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. The Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.

43. In ***State of Bombay (Now Maharashtra) versus Vishnu Ramchandra***[1], this Court observed that if the part of requisites for operation of the statute were drawn from a time antecedent to its passing, it did not make the statute retrospective so long as the action was taken after the Act came into force.

44. To meet out different nature of exigencies, it was noticed by the Parliament that Pan India, large number of real estate projects where the allottees did not get possession for years together and complaints being filed before different forums including under the Consumer Protection Act has failed to deliver adequate/satisfactory results to the consumer/allottees and their life savings is locked in and sizable sections of allottees had invested their hard-earned

1 AIR 1961 SC 307

money, money obtained through loans or financial institutions with the belief that they will be able to get a roof in the form of their apartments/flats/unit.

45. 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 Act 2016 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 Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the 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.

46. 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.

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

48. The distinction between retrospective and retroactive has been explained by this Court in ***Jay Mahakali Rolling Mills Vs. Union of India and Others***[2], which reads as under:-

> "**8.** "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

2 2007(12) SCC 198

49. Further, this Court in ***Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others***[3], held as under:-

> "**67.** Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.
>
> **68.** In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [*Shanti Conductors (P) Ltd.* v. *Assam SEB*, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."

50. In the recent judgment of this Court rendered in the case of ***Vineeta Sharma Vs. Rakesh Sharma and Others***[4] wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:-

> "**61.** The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites

3 2019(19) SCC 529

4 2020(9) SCC 1

> which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.”

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

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

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that

any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. 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 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** ***<u>in the manner as provided under this Act:"</u>***

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 <u>the manner provided under this Act."</u>***

57. Section 14 relates to adherence to sanctioned plans and project specifications by the promoter. Section 14(3) empowers the allottee to receive compensation in the event there is any structural defect or any other defect in workmanship etc. Section 14(3) reads as under:

"(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** ***<u>in the manner as provided under this Act."</u>***

58. Section 18 starts with the marginal note "Return of amount and compensation". The two aspects namely 'return of amount' and

'compensation' are distinctly delineated. Section 18 reads as follows:

> 18.(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.***
>
> (emphasis supplied)

59. Chapter IV deals with the rights and duties of the allottees and in particular, Section 19(4) entitles the allottees to a refund of the amount paid. Section 19(4) reads as follows:-

> "(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."

60. Section 31 relates to the filing of complaints to the authority and reads as follows:

> **Filing of complaints with the Authority or the adjudicating officer—**
>
> (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.
>
> Explanation—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.
>
> (2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.

61. Section 71 relates to Power to Adjudicate vested with the adjudicating officer while adjudging compensation which reads as follows:

> **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.

62. The broad factors to be considered while adjudging compensation have been provided under Section 72 which reads as under:-

> **"72. While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—**
>
> (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
>
> (b) the amount of loss caused as a result of the default;
>
> (c) the repetitive nature of the default;
>
> (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."

63. The Uttar Pradesh Real Estate Regulatory Authority in exercise of its power under Section 85 of the Act 2016 has framed its regulations on 27th February, 2019 called as Uttar Pradesh Real Estate Regulatory Authority(General) Regulations, 2019(hereinafter being referred to as "Regulations 2019").

64. Regulations 18 to 23 deal with meetings of the authority, other than adjudication proceedings. Regulation 24 falls in the chapter of "Adjudicatory Proceedings" and reads as follows:-

> "**24(a)** For adjudication proceedings with respect to complaints filed with the Authority, the Authority may, by order, direct that specific matters or issues be heard and decided by a single bench of either the Chairperson or any Member of the Authority.
>
> **(b)** The Authority, in consultation with the state government, will appoint Adjudicating Officers on the Panel of U.P. RERA for the purposes of adjudicating the matters of compensation admissible under the Act.
>
> **(c)** The aggrieved persons will be required to file complaints before the Authority online in form – M. The Claims of compensation will also be included in form – M itself. While the Authority will decide all the questions of breaches of the Act, Rules and Regulations, it will refer the question relating to the adjudication of compensation to one of the Adjudicating Officers on the Panel of U.P. RERA who will then decide the matter expeditiously and preferably within 60 days.
>
> **(d)** The Adjudicating Officers on the Panel of U.P. RERA will hold their courts at Lucknow or Gautam Buddhnagar as decided by the chairman. The complaints relating to the districts of NCR will be heard at Gautam Buddhnagar whereas complaints from the remaining districts of the State will be heard at Lucknow.

65. The complaint before the regulatory authority for any violation of the Act or rules or regulations made thereunder by an aggrieved person has to be submitted in Form (M) as per the procedure prescribed under Rule 33(1) which the regulatory authority has to

follow. At the same time, any person who is aggrieved to claim compensation under Sections 12, 14, 18 and 19 has to submit his compliant in Form (N) for adjudging compensation as per the procedure provided under Section 71(3) of the Act taking into consideration the factors indicated under Section 72 and in the manner provided under Rule 34(1) of the Rules 2016.

66. Rules 33(1) and 34(1) of the Uttar Pradesh Real Estate(Regulation and Development) Rules, 2016 which is relatable to the adjudicatory powers of the regulatory authority/adjudicating officer reads as follows:-

> "**33(1)** Any aggrieved person may file a complaint with the regulatory 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, in Form 'M' 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. Explanation:- For the purpose of this sub-rule "person" shall include the association of allottees or any voluntary consumer association registered under any law or the time being in force.
>
> **34(1)** Any aggrieved person may file a complaint with the adjudicating officer for compensation under Sections 12, 14, 18 and 19 in Form N 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 rest of the said regulatory authority is situated."
>
> (emphasis supplied)

67. Rule 33(2) of the Rules 2016 delineates the procedure which the authority has to follow in making inquiry to the allegations or violations of the provisions of the Act, rules and regulations. At the given time, Rule 34(2) delineates the procedure to be followed by the adjudicating officer while adjudging quantum of compensation and interest which the person aggrieved is entitled for under the provisions of the Act.

68. Mr. Kapil Sibal, learned senior counsel for the appellants submits that both the 'authority' and the 'adjudicating officer' operate in completely distinct spheres. The authority and the adjudicating officer are defined under Sections 2(i) and 2(a) of the Act and are, therefore, creature of statute and their powers and respective jurisdiction(s) are explicitly delineated in the statute itself.

69. The adjudicating officer under Section 71 is specifically vested with the jurisdiction to adjudicate complaints under Sections 12,14,18 & 19 of the Act 2016. In disposing of such complaints, the adjudicating officer alone is empowered under Section 71(3) to

conduct enquiry and direct the payment of refund as well as compensation and interest, as the case may be, in taking note of the broad parameters enumerated in Section 72 and such complaints are to be statutorily disposed of within 60 days failing which the reasons are to be recorded.

70. According to the learned counsel for the appellants, proviso to Section 71(1), the jurisdiction to adjudicate complaints under Sections 12, 14, 18 and 19 which were earlier pending before the authority established under the Consumer Protection Act, 1986 stands vested with the adjudicating officer. According to him, the legislative intent is clear and unambiguous that the complaints emanating from the bundle of rights which flow from Sections 12, 14, 18 and 19 including the cause of action for refund and interest be withdrawn from the forums established under the Consumer Protection Act and in turn be filed before and adjudicated by the Adjudicating Officer under this Act and that being the legislative intent, matters arising under Sections 12, 14, 18 and 19 would be examined and adjudicated exclusively by the adjudicating officer as mandated by law.

71. Per contra, Ms. Madhavi Divan, learned senior counsel for the respondents while supporting the findings recorded by the High Court in the impugned judgment submits that the Act provides distinct remedies, i.e., 'return of amount/investment' on the one hand and 'compensation' on the other, to be determined separately. According to her, the right to refund on demand is a statutory right, fundamentally, contextually and conceptually distinct from the right to receive compensation. While the right to refund emanates from the Legislature's recognition of the fact that homebuyers are "**out of pocket**" financial creditors, the right to compensation seeks to make amends for injury or loss.

72. Thus, refund and compensation are two distinct rights under the Act and cannot be conflated. The manner in which the two are to be determined would require a different process and involve different considerations. According to her, the determination of compensation involves a full-fledged adjudicatory process which is more complex than that involved in determining refund. To do so, it would tantamount to regressing into the very malaise that the legislature intended to liberate the allottees-homebuyers. The

result of conflating the rights and/or relegating the allottees to the adjudicating officer would amount to a compromise of the timeliness of the right to refund on demand. It would also deter and daunt allottees from seeking compensation because in the process the remedies would be clubbed and the availability of refund would get relatively delayed as compensation requires a more elaborate adjudication process (even though the same is required to be completed in 60 days). The authority to determine a claim for refund on demand while the adjudicating officer to determine the claim for compensation.

73. The expression "on demand" which follows the right to "return of amount" is indicative of the priority, immediacy and expediency which is accorded to the right to refund. Thus, according to her, the expressions "refund" and "return of amount" is an act of restitution, and the obligation to restitute lies on the person or the authority that has received unjust enrichment or unjust benefit.

74. Learned counsel further submits that in order to give full effect to the letter and spirit of the right to refund in the context explained above, there can be no doubt that the determination of the right to

refund must be left to the authority whereas the adjudication for adjudging compensation with the adjudicating officer as reflected under Section 71 of the Act. According to the learned counsel, the authority is fully seized with the standard agreements entered into between the promoters and the allottees, and therefore, is best equipped to determine the extent of delay, if any. Therefore, refund claims can most conveniently and effectively be dealt with by the authority and interest on refund is available at the rate prescribed by the appropriate Government. In the instant batch of matters, the prescribed rate of interest is (MCLR + 1%), which has been notified by the Government of Uttar Pradesh.

75. The legislature in its wisdom has made a specific provision delineating power to be exercised by the regulatory authority/adjudicating officer. "Refund of the amount" and "compensation" are two distinct components which the allottee or the person aggrieved is entitled to claim if the promoter has not been able to hand over possession with a nature of enquiry and mechanism provided under the Act. So far as the claim with respect to refund of amount on demand under Sections 18(1) and

19(4) of the Act is concerned, it vests within the jurisdiction of the regulatory authority. Section 71 carves out the jurisdiction of the adjudicating officer to adjudge compensation under Sections 12, 14, 18 and 19 after holding enquiry under Section 71(3) of the Act keeping in view the broad contours referred to under Section 72 of the Act.

76. The submission made by learned counsel for the appellants that the proviso under Section 71(1) empowers the adjudicating officer to examine the complaints made under Sections 12, 14, 18 and 19 pending before the Consumer Disputes Redressal Forum/Commission is in different context and it was one time mechanism to provide a window to the consumers whose composite claims are pending before the Consumer Forum/Commission to avail the benevolent provision of the Act 2016 for the reason that under the Consumer Protection Act, there is no distinction as to whether the complaint is for refund of the amount or for compensation as defined under Section 71(1) of the Act, but after the Act 2016 has come into force, if any person aggrieved wants to make complaint for refund against the promotor or real estate agent

other than compensation, it is to be lodged to the regulatory authority and for adjudging compensation to the adjudicating officer, and the delineation has been made to expedite the process of adjudication invoked by the person aggrieved when a complaint has been made under Section 31 of the Act to be adjudicated either by the authority/adjudicating officer as per the procedure prescribed under the Act.

77. The further submission made by the learned counsel for the appellants is that the return of the amount adversely impacts the promotor and such a question can be looked into by the adjudicating officer in the better prospective. The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if the promoter is unable to handover possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promotor wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the regulatory

authority with summary nature of scrutiny of undisputed facts may determine the refund of the amount which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act, as in the instant case, the State of Uttar Pradesh has prescribed MCLR + 1% leaving no discretion to the authority and can also claim compensation as per the procedure prescribed under Section 71(3) read with Section 72 of the Act.

78. This Court while interpreting Section 18 of the Act, in ***Imperia Structures Ltd.*** ***Vs.*** ***Anil Patni and Another***[5] 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**

5 2020(10) SCC 783

> **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 pre-deposit 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 sub-section 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 sub-section (2) of Section 71 is concerned, it pre-supposes 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?

87. It is the specific stand of the respondent Authority of the State of Uttar Pradesh that the power has been delegated under Section 81 to the single member of the authority only for hearing complaints under Section 31 of the Act. To meet out the exigency, the authority in its meeting held on 14th August 2018, had earlier decided to delegate the hearing of complaints to the benches comprising of two members each but later looking into the volume of complaints which were filed by the home buyers which rose to about 36,826 complaints, the authority in its later meeting held on 5th December, 2018 empowered the single member to hear the

complaints relating to refund of the amount filed under Section 31 of the Act.

88. Mr. Gopal Sankarnarayanan, learned counsel for the appellants submits that if this Court comes to the conclusion that other than adjudging compensation wherever provided all other elements/components including refund of the amount and interest etc. vests for adjudication by the authority, in that event, such power vests with the authority constituted under Section 21 and is not open to be delegated in exercise of power under Section 81 of the Act to a single member of the authority and such delegation is a complete abuse of power vested with the authority and such orders passed by the single member of the authority in directing refund of the amount with interest are wholly without jurisdiction and is in contravention to the scheme of the Act.

89. Learned counsel further submits that the order passed by the single member of the authority is without jurisdiction and it suffers from coram non-judice. Section 21 of the Act clearly provides that the authority shall consist of a Chairperson and not less than two whole time members to be appointed by the Government.

Regulation 24(a) of the Regulations 2019 framed by the authority is in clear contravention to the parent statute that the delegation of power can be of class, category of cases, specific to the member of the authority but a general delegation of power to the single member of the authority in exercise of power under Section 81 is not contemplated under the Act and delegation to a single member of the authority in adjudicating the disputes under Sections 12, 14, 18 and 19 is without jurisdiction and that is the reason for which the appellants have approached the High Court by filing a writ petition under Article 226 of the Constitution and in furtherance to this Court.

90. Learned counsel further submits that from the plain reading of the statute itself, the role of the authority is of a quasi-judicial body forms its underpinning. The adjudicatory role of the authority is specifically recognized under Sections 5, 6, 7(2), 9(3) and 31 where the authority is supposed to hear the other side, after compliance of the principles of natural justice, is supposed to pass an order in accordance with law.

91. Section 31 allows the aggrieved person to file a complaint with the authority or the adjudicating officer for any violation or breach or contravention to the provisions of the Act or the rules and regulations made thereunder and this being a quasi-judicial power to be exercised by the authority could not be delegated to a single member of the authority under the guise of Section 81 of the Act, that apart, there are certain provisions where authority alone holds power to initiate action or make inquiries like Sections 35(1), 35(2), 36 or 38, the powers are exclusively exercised by the authority and the tests for determining whether an action is quasi-judicial or not are laid down in ***Province of Bombay Vs. Kushaldas S Advani and Others***[6] which has been consistently followed by the Constitution Bench in its decision in ***Shivji Nathubhai Vs. Union of India and Others***[7]; ***Harinagar Sugar Mills Limited Vs. Shyam Sunder Jhunjhunwala and Others***[8].

92. Learned counsel further submits that according to him, the powers which have been exercised by the authority under Sections

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6 1950 SCR 621
7 1960(2) SCR 775
8 1962(2) SCR 339

12, 14, 18 and 19 of the Act have the trappings of the judicial function which in no manner can be delegated without being expressly bestowed. Placing reliance on two decisions of the Queen's Bench in ***Barnard Vs. National Dock Labour Board***[9] and ***Vine Vs. National Dock Labour Board***[10] and taking assistance thereof, learned counsel submits that the judgments indicated above makes it clear that the delegation of judicial power must be express; that a provision of quorum for a quasi-judicial body is distinguishable from the delegation of power to the exclusion of other members of that body; and the reasons of workload cannot trump the legal requirement. These principles have been adopted by this Court consistently in ***Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary***[11]; ***Sahni Silk Mills(P) Ltd. and Another Vs. Employees State Insurance Corporation***[12]; ***Jagannath Temple Managing Committee Vs. Siddha Math and Others***[13].

9 1953(2) QB 18
10 1956(1) QB 658
11 1965(2) SCR 929
12 1994(5) SCC 346
13 2015(16) SCC 542

93. Learned counsel submits that it has been consistently held by this Court that the power being quasi-judicial in nature, the presumption is that it ought to be exercised by the authority competent and no other, unless the law expressly or by clear implication permits it.

94. Learned counsel further submits that even by necessary implication, the judicial power of the authority cannot be delegated by the multi-member authority to any of its members. If at all there are practical considerations of workload, the Government can always establish more than one authority in terms of the second proviso to Section 20(1).

95. Per contra, Mr. Devadatt Kamat, learned senior counsel for the respondents submits that the complaint of the appellants has been primarily on the issue that a single member is not competent to exercise power to hear complaints under Section 31 of the Act and the delegation of its power by the authority invoking Section 81 is beyond jurisdiction.

96. Learned counsel submits that as a matter of fact the entire functioning of the authority has not been delegated to the single

member. It is only the hearing of complaints under Section 31 that the single member of the authority has been empowered to deal with such complaints, keeping in view the overall object of speedy disposal of such complaints mandated under the law. According to him, it is factually incorrect to say that the other functions of the authority like imposition of penalty under Section 38, revocation of registration under Section 7 or functions of the authority under Sections 32 or 33 have been delegated to a single member of the authority.

97. Learned counsel further submits that the question is not whether the delegation per se to a single member is bad, but the question is whether the power to hear complaints in reference to Sections 12,14,18 and 19 delegated to a single member is permissible under the law. It may be noticed that the authority has been vested with several other powers and functions under the Act, which the authority has consciously not delegated to a single member.

98. Learned counsel further submits that pursuant to the delegation of power under Section 81 by the special order dated 5th

December, 2018 read with Regulation 24, a single member has been authorized by the authority to hear the matters related to refund of the amount under Section 31 of the Act.

99. Learned counsel further submits that almost in a pari materia scheme, Section 29-A of the SEBI Act gives the power to delegate and Section 19 of the SEBI Act empowers the board to delegate its power to any member of the Board has been examined by this Court in ***Saurashtra Kutch Stock Exchange Ltd. Vs. Securities and Exchange Board of India and Another*** [14]. This Court has approved the power of delegation to a single member of the respective authority and held that such delegation is always permissible in law unless specifically prohibited and as long as there is a legislative sanction for delegation of even judicial power, there is no illegality as held in ***Bombay Municipal Corporation***(supra); ***State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another***[15] ***Heinz India Private Limited and Another Vs. State of Uttar Pradesh***[16]; and taking assistance

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14 2012(13) SCC 501
15 1978(2) SCC 102
16 2012(5) SCC 443

thereof, learned counsel submits that such delegation of power to a single member of the authority in deciding application for refund of the amount and interest under Section 18 of the Act is well within the jurisdiction of the authority to its delegatee more so when the power to delegate under Section 81 has not been questioned in either of the pending appeals before the Court.

100. Learned counsel further submits that Section 21 of the Act relates to the composition of the authority and does not deal with minimum bench strength. At the given time, the legislature has consciously avoided prescribing any minimum bench/quorum strength to hear complaints by the authority. At the same time, the Act only prescribes a bench/quorum only of the Appellate Tribunal under Section 43(3) of the Act and further submits that in the absence of the minimum bench/quorum strength being fixed by statute, it is impermissible to treat the composition of the authority itself as a minimum bench strength.

101. Learned counsel further submits that Sections 29 and 81 are not in derogation to each other and operate in different fields. Section 29 is concerned with the meetings of the authority and does

not envisage in its fold the quasi-judicial functions which the Act casts upon the authority. The term "meetings" under Section 29 does not deal with the performance of quasi-judicial functions which are referred to the authority under Section 31. It can only refer to meetings on policy/regulatory issues and invited attention to Sections 32 and 33 of the Act which are in the nature of policy/regulatory decisions the authority is mandated under the Act. It can be further noticed from Section 29(3) and (4) which talks about 'questions' before the authority, to be disposed off within 60 days of receiving the 'application' and there is no reference to any 'complaints' as indicated in Section 31 of the Act.

102. To examine the scheme of the Act it may be relevant to take note of certain provisions add infra:-

> "**21.** The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.
>
> **29.** (1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.
>
> (2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall 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 Authority shall record its reasons in writing for not disposing of the application within that period.

31. (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 specified.

81. The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary.

103. Section 21 of the Act relates to the composition of the authority which consists of a Chairperson and not less than two whole time members to be appointed by the appropriate Government but conspicuously it does not mention minimum

bench strength at the same time consciously prescribes minimum bench/quorum while constituting the Real Estate Appellate Tribunal as reflected under Section 43(3) of the Act.

104. The emphasis of the appellants was on Section 29 of the Act which indicates the quorum of meetings of the authority. There is a specific provision that there shall be a meeting of the authority with the minimum quorum being prescribed, such business of the meeting of the authority indeed could not be delegated to a single member of the authority in exercise of power under Section 81 of the Act.

105. The term meeting under Section 29 of the Act does not deal with the performance of the authority in quasi-judicial matters which are referred to under Section 31 of the Act. It only refers to meetings, policy/regulatory issues that the authority is mandated to discharge under the Act. It may be noticed that Sections 32 and 33 are in the nature of policy/regulatory directions which the authority is mandated to be discharged indisputably have to be undertaken by the authority while functioning as a whole body under Section 29 of the Act.

106. To add it further, Section 29(3) and (4) of the Act talks about the questions before the authority which are to be disposed of within 60 days on receiving the applications. It may be noticed that there is no reference to any complaint referred to under Section 31 of the Act. To buttress it further, Section 29 and Section 81 of the Act are not in derogation to each other. To the contrary, both operate in different fields. Section 29 deals with the meetings of the authority to be held for taking policy/regulatory decisions in the interest of the stake holders and does not envisage in its fold quasi-judicial functions which the Act casts upon the authority. The legislative intention as reflected from Section 29 is a recognition of the rationale that policy matters ought to be considered and decided by the entire strength of the authority so that the policy decisions reflect the acquired experience of the members and Chairman of the authority.

107. It may be relevant to note that the authority in its meeting held on 5th December, 2018 in exercise of its power under Section 81 of the Act for disposal of complaints under Section 31 delegated its power to a single member of the authority. The extract of the

minutes of the meeting dated 5th December, 2018 relevant for the purpose is extracted as under:-

Sl. No.	Agenda
5.01	Both the benches of Uttar Pradesh Real Estate Regulatory Authority in the month of December 2018 and subsequently also while working as single benches as per the requirement, proposal for disposal of complaint cases at Lucknow and Gautambudh Nagar on same dates
-	-
-	-

Point wise decision on agenda is as under:-

Agenda point no. 1:

Regarding hearing by both the benches of Uttar Pradesh Real Estate Regulatory Authority in the month of December 2018 and subsequently also while working as single benches as per the requirement, for disposal of complaint cases at Lucknow and Gautambudh Nagar on same dates.

Decision:

Proposal was approved by the authority.

..

..”

108. Pursuant to the delegation of power to the single member of the authority, complaints filed by the allottees/home buyers for refund of the amount and interest under Section 31 of the Act came to be decided by the single member of the authority after hearing the parties in accordance with the provisions of the Act.

109. This Court, while examining the pari materia provisions of delegation of power under Section 29A and Section 19 of the SEBI Act which empowered the board to delegate its power to any member of the Board held that the board may in writing delegate its power to any member of the board and such is valid in law as held by this Court in ***Saurashtra Kutch Stock Exchange Ltd.***(supra) as under:-

> “**6.** The High Court dismissed the special civil application vide order dated 19-11-2007 [*Saurashtra Kutch Stock Exchange Ltd.* v. *SEBI*, Special Civil Application No. 23902 of 2007, decided on 19-11-2007 (Guj)] and considered the submission of the appellant in the following manner:
>
> “Section 29-A is reproduced hereunder:
>
>> ‘**29-A.** ***Power to delegate***.—The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under Section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).’
>
> Notification dated 13-9-1994 issued by the Central Government reads as under:
>
>> ‘In exercise of powers conferred by Section 29-A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government hereby directs that the powers exercisable by it under Section 3, sub-sections

(1), (2), (3) and (4) of Section 4, Section 5, sub-section (2) of Section 7-A, Section 13, sub-section (2) of Section 18, Section 22 and sub-section (2) of Section 28 of the Act shall also be exercisable by the Securities and Exchange Board of India.'

Section 19 of the SEBI Act, 1992 reads as under:

'**19.** ***Delegation***.—The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under Section 29) as it may deem necessary.'

Thus, the above Notification dated 13-9-1994 issued in exercise of power under Section 29-A of the SCR Act of 1956, read with Section 19 of the SEBI Act, would mean that the Board may in writing delegate its power to any member of the Board and, therefore, the power exercised by the Full-Time Member of the Board under Section 11 of the SEBI Act, 1992, or even withdrawal or recognition under Section 5 of the SCR Act of 1956, cannot be said to be unjust or arbitrary or dehors the provisions of the statute and, therefore, the contention of Mr Shelat that no remedy of appeal is available to the petitioner cannot be accepted."

9. In Para 2 of the civil appeal, the following question of law has been framed:

"Whether the whole-time single member of SEBI has no jurisdiction to cancel or withdraw recognition granted to a stock exchange on the principle that delegate cannot further delegate its power, and whether the order under challenge is without jurisdiction?"

In our view, it is not necessary to go into the above question as we find that this very question was raised by the appellant before the High Court in

> extraordinary jurisdiction under Article 226 of the Constitution of India. The High Court, as noted above, in its order dated 19-11-2007 [*Saurashtra Kutch Stock Exchange Ltd.* v. *SEBI*, Special Civil Application No. 23902 of 2007, decided on 19-11-2007 (Guj)] held that the withdrawal of recognition under Section 5 of the 1956 Act by the Full-Time Member of SEBI under Section 11 of the Securities and Exchange Board of India Act, 1992 cannot be said to be dehors the provisions of the Act. The special leave petition from the above order of the High Court came to be dismissed by this Court on 10-3-2008 [*Saurashtra Kutch Stock Exchange Ltd.* v. *SEBI*, SLP (C) No. 5197 of 2008, decided on 10-3-2008 (SC)] . The same question cannot be allowed to be reopened in the present appeal."

110. The express provision of delegation of power under the SEBI Act is akin to Section 81 of the Act 2016. This Court observed that if the power has been delegated by the competent authority under the statute, such action, if being exercised by a single member cannot be said to be dehors the provisions of the Act.

111. In ***Heinz India Private Limited and Another***(supra), the revisional powers were conferred upon the State Agricultural Market Board under Section 32 of the state law to examine the orders passed by the market committee. Section 33 thereof empowered the Board to delegate its powers to the Director. In the facts of the case, an objection was taken to the exercise of revisional

powers not by the Director himself but by some officer lower in the hierarchy. This Court, while taking note of the definition of 'Director' as provided in Section 2(h) to include "any other officer authorized by the Director to perform all or any of his functions under this Act" held as under:-

> "**34.** Now, it is true that the stakes involved in the present batch of cases are substantial and those called upon to satisfy the demands raised against them would like their cases to be heard by a senior officer or a committee of officers to be nominated by the Board. But in the absence of any data as to the number of cases that arise for consideration involving a challenge to the demands raised by the Market Committee and the nature of the disputes that generally fall for determination in such cases, it will not be possible for this Court to step in and direct an alteration in the mechanism that is currently in place. The power to decide the revisions vests with the Board who also enjoys the power to delegate that function to the Director. So long as there is statutory sanction for the Director to exercise the revisional power vested in the Board, any argument that such a delegation is either impermissible or does not serve the purpose of providing a suitable machinery for adjudication of the disputes shall have to be rejected."

112. Section 81 of the Act 2016 empowers the authority, by general or special order in writing, to delegate its powers to any member of the authority, subject to conditions as may be specified in the order, such of the powers and functions under the Act. What has been excluded is the power to make regulations under Section 85, rest of the powers exercised by the authority can always be

delegated to any of its members obviously for expeditious disposal of the applications/complaints including complaints filed under Section 31 of the Act and exercise of such power by a general and special order to its members is always permissible under the provisions of the Act.

113. In the instant case, the authority by a special order dated 5th December, 2018 has delegated its power to the single member for disposal of complaints filed under Section 31 of the Act. So far as refund of the amount with interest is concerned, it may not be considered strictly to be mechanical in process but the kind of inquiry which has to be undertaken by the authority is of a summary procedure based on the indisputable documentary evidence, indicating the amount which the allottee/home buyer had invested and interest that has been prescribed by the competent authority leaving no discretion with minimal nature of scrutiny of admitted material on record is needed, if has been delegated by the authority, to be exercised by the single member of the authority in exercise of its power under Section 81 of the Act, which explicitly

empowers the authority to delegate under its wisdom that cannot be said to be dehors the provisions of the Act.

114. What is being urged by the learned counsel for the appellants in interpreting the scope of Section 29 of the Act is limited only to policy matters and cannot be read in derogation to Section 81 of the Act and the interpretation as argued by learned counsel for the promoters if to be accepted, the very mandate of Section 81 itself will become otiose and nugatory.

115. It is a well-established principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such a manner as to render it to some extent otiose. Section 81 of the Act positively empowers the authority to delegate such of its powers and functions to any member by a general or a special order with an exception to make regulations under Section 85 of the Act. As a consequence, except the power to make regulations under Section 85 of the Act, other powers and functions of the authority, by a general or special order,

if delegated to a single member of the authority is indeed within the fold of Section 81 of the Act.

116. The further submission made by learned counsel for the promoters that Section 81 of the Act empowers even delegation to any officer of the authority or any other person, it is true that the authority, by general or special order, can delegate any of its powers and functions to be exercised by any member or officer of the authority or any other person but we are not examining the delegation of power to any third party. To be more specific, this Court is examining the limited question as to whether the power under Section 81 of the Act can be delegated by the authority to any of its member to decide the complaint under Section 31 of the Act. What has been urged by learned counsel for the promoters is hypothetical which does not arise in the facts of the case. If the delegation is made at any point of time which is in contravention to the scheme of the Act or is not going to serve the purpose and object with which power to delegate has been mandated under Section 81 of the Act, it is always open for judicial review.

117. The further submission made by learned counsel for the appellants that Section 81 of the Act permits the authority to delegate such powers and functions to any member of the authority which are mainly administrative or clerical, and cannot possibly encompass any of the core functions which are to be discharged by the authority, the judicial functions are non-delegable, as these are the core functions of the authority. The submission may not hold good for the reason that the power to be exercised by the authority in deciding complaints under Section 31 of the Act is quasi-judicial in nature which is delegable provided there is a provision in the statute. As already observed, Section 81 of the Act empowers the authority to delegate its power and functions to any of its member, by general or special order.

118. In the instant case, by exercising its power under Section 81 of the Act, the authority, by a special order dated 5th December, 2018 has delegated its power to the single member of the authority to exercise and decide complaints under Section 31 of the Act and that being permissible in law, cannot be said to be de hors the mandate of the Act. At the same time, the power to be exercised by the

adjudicating officer who has been appointed by the authority in consultation with the appropriate Government under Section 71 of the Act, such powers are non-delegable to any of its members or officers in exercise of power under Section 81 of the Act.

119. That scheme of the Act, 2016 provides an in-built mechanism and any order passed on a complaint by the authority under Section 31 is appealable before the tribunal under Section 43(5) and further in appeal to the High Court under Section 58 of the Act on one or more ground specified under Section 100 of the Code of Civil Procedure, 1908, if any manifest error is left by the authority either in computation or in the amount refundable to the allottee/home buyer, is open to be considered at the appellate stage on the complaint made by the person aggrieved.

120. In view of the remedial mechanism provided under the scheme of the Act 2016, in our considered view, the power of delegation under Section 81 of the Act by the authority to one of its member for deciding applications/complaints under Section 31 of the Act is not only well defined but expressly permissible and that cannot be said to be dehors the mandate of law.

Question no. 4:- ***Whether the condition of pre-deposit under proviso to Section 43(5) of the Act for entertaining substantive right of appeal is sustainable in law***?

121. Before we examine the challenge to the proviso to Section 43(5) of the Act of making pre-deposit for entertaining an appeal before the Tribunal, it may be apposite to take note of Section 43(5) of the Act, 2016. Section 43(5) reads as follows:-

> “**43. Establishment of Real Estate Appellate Tribunal-**
>
> …….
>
> (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:
>
> Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.
>
> *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.”

122. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal

against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed on him, if any, or with both, as the case may be, before the appeal is to be instituted.

123. The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of authority/adjudicating officer cannot remain dependent on fulfilment of pre-deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre-deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.

124. Learned counsel further submits that if the entire sum as has been computed either by the Authority or adjudicating officer, is to be deposited including 30 per cent of the penalty in the first place, the remedy of appeal provided by one hand is being taken away by the other since the promoter is financially under distress and incapable to deposit the full computed amount by the authority/adjudicating officer. The right of appreciation of his defence at appellate stage which is made available to him under the statute became nugatory because of the onerous mandatory requirement of pre-deposit in entertaining the appeal only on the promoter who intends to prefer under Section 43(5) of the Act which according to him is in the given facts and circumstances of this case is unconstitutional and violative of Article 14 of the Constitution of India.

125. The submission in the first blush appears to be attractive but is not sustainable in law for the reason that a perusal of scheme of the Act makes it clear that the limited rights and duties are provided on the shoulders of the allottees under Section 19 of the Act at a given time, several onerous duties and obligations have

been imposed on the promoters i.e. registration, duties of promoters, obligations of promoters, adherence to sanctioned plans, insurance of real estate, payment of penalty, interest and compensation, etc. under Chapters III and VIII of the Act 2016. This classification between consumers and promoters is based upon the intelligible differentia between the rights, duties and obligations cast upon the allottees/home buyers and the promoters and is in furtherance of the object and purpose of the Act to protect the interest of the consumers vis-a-viz., the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been differently and separately dealt with under the various provisions of the Act.

126. Therefore, the question of discrimination in the first place does not arise which has been alleged as they fall under distinct and different categories/classes.

127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later

stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allotee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him.

128. At the same time, it will avoid unscrupulous and uncalled for litigation at the appellate stage and restrict the promoter if feels that there is some manifest material irregularity being committed or

his defence has not been properly appreciated at the first stage, would prefer an appeal for re-appraisal of the evidence on record provided substantive compliance of the condition of pre-deposit is made over, the rights of the parties inter se could easily be saved for adjudication at the appellate stage.

129. There are multiple statutes which provide a condition of pre-deposit of a stipulated statutory amount to be deposited before an appeal is entertained by an appellate forum/tribunal for re-appraisal of facts and law at the appellate stage and it has been examined by this Court as well. Proviso to Section 18 of SARFAESI Act, 2002 of the Act which provides pre-deposit is as follows:-

> "**18. Appeal to Appellate Tribunal**
> ....
>
> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso."

130. The intention of the legislature appears to be to ensure that the rights of the decree-holder (the successful party) is to be protected and only genuine bona fide appeals are to be entertained. While interpretating Section 18 of SARFAESI Act, this Court in ***Narayan Chandra Ghosh Vs. UCO Bank and Others***[17] observed as under:-

> "**8.** It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

131. In ***Har Devi Asnani Vs. State of Rajasthan and Others***[18], the validity of proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 came up for consideration in terms of which no revision application could be entertained unless it was accompanied by a

17 (2011) 4 SCC 548
18 (2011) 14 SCC 160

satisfactory proof of payment of 50 per cent of the recoverable amount. Relying on the earlier decisions of this Court including in ***Government of Andhra Pradesh and Others Vs. P. Laxmi Devi (Smt.)***[19], the challenge was repelled and the view expressed in ***P. Laxmi Devi***(supra) was repeated in ***Har Devi Ashani***(supra) wherein this Court held as under:-

> "In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248] . Hence, the party is not remediless in this situation."

132. At the same time, Section 19 of the Consumer Protection Act, 1986 prescribes a condition for pre-deposit which provides that an appeal shall not be entertained unless 50 per cent of the amount awarded by the State Commission or Rs. 35,000/- whichever is less is deposited before the National Consumer Disputes Redressal Commission(NCDRC). This Court while placing reliance on ***State of***

19 (2008) 4 SCC 720

Haryana Vs. Maruti Udyog Ltd. and Others[20]; in ***Shreenath Corporation and Others Vs. Consumer Education and Research Society and Others***[21] held that such a condition is imposed to avoid frivolous appeals.

> "**7.** Section 19 of the Consumer Protection Act, 1986 deals with the appeals against the order made by the State Commission in exercise of its power conferred by sub-clause (*i*) of clause (*a*) of Section 17 and the said section reads as follows:
>
> > "**19.** ***Appeals***.—Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (*i*) of clause (*a*) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:
>
> Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:
>
> Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less."
>
> On plain reading of the aforesaid Section 19, we find that the second proviso to Section 19 of the Act relates to "pre-deposit" required for an appeal to be entertained by the National Commission.
>
> **9.** The second proviso to Section 19 of the Act mandates pre-deposit for consideration of an appeal before the National

20 2000(7) SCC 348
21 2014(8) SCC 657

> Commission. It requires 50% of the amount in terms of an order of the State Commission or Rs 35,000, whichever is less for entertainment of an appeal by the National Commission. Unless the appellant has deposited the pre-deposit amount, the appeal cannot be entertained by the National Commission. A pre-deposit condition to deposit 50% of the amount in terms of the order of the State Commission or Rs 35,000 being condition precedent for entertaining appeal, it has no nexus with the order of stay, as such an order may or may not be passed by the National Commission. The condition of pre-deposit is there to avoid frivolous appeals."

133. Similarly, under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, any appellant, other than the supplier, is required to make a pre-deposit of 75 per cent to maintain an appeal against any decree, award or order made either by the Micro and Small Enterprises Facilitation Council or by any institution or center providing alternate dispute resolution services to which a reference is made by the Council. Section 19 reads as follows:-

> "**19. Application for setting aside decree, award or order**.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court: Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

134. Similarly, the condition of pre-deposit has been examined recently by this Court in ***Tecnimont Pvt. Ltd. (Formerly Known As Tecnimont ICB Private Limited) Vs. State of Punjab and Others***[22], where the validity of Section 62(5) of the Punjab Value Added Tax Act, 2005 (PVAT) which imposes a condition of 25 per cent of pre-deposit for hearing of first appeal has been upheld. Section 62(5) of the PVAT Act reads as follows:-

> "**62. First Appeal**
> ……
>
> (5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any.
>
> ……..."

135. To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.

136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an

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absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi- judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of pre-condition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.

Question No.5 ***:-Whether the authority has the power to issue recovery certificates for recovery of the principal amount under Section 40(1) of the Act?***

138. To examine this question, it will be apposite to take note of Section 40 that states regarding the recovery of interest or penalty or compensation to be recovered as arrears of land revenue, and reads as under:-

> **40. Recovery of interest or penalty or compensation and enforcement of order, etc.—**
>
> (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.
>
> (2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed."

139. The submission of the appellants/promoters is that under Section 40(1) of the Act only the interest or penalty imposed by the authority can be recovered as arrears of land revenue and no

recovery certificate for the principal amount as determined by the authority can be issued. If we examine the scheme of the Act, the power of authority to direct the refund of the principal amount is explicit in Section 18 and the interest that is payable is on the principal amount in other words, there is no interest in the absence of a principal amount being determined by the competent authority. Further the statute as such is read to mean that the principal sum with interest has become a composite amount quantified upon to be recovered as arrears of land revenue under Section 40(1) of the Act.

140. It is settled principle of law that if the plain interpretation does not fulfil the mandate and object of the Act, this Court has to interpret the law in consonance with the spirit and purpose of the statute. There is indeed a visible inconsistency in the powers of the authority regarding refund of the amount received by the promoter and the provision of law in Section 18 and the text of the provision by which such refund can be referred under Section 40(1). While harmonising the construction of the scheme of the Act with the right of recovery as mandated in Section 40(1) of the Act keeping in mind the intention of the legislature to provide for a speedy recovery

of the amount invested by the allottee along with the interest incurred thereon is self-explanatory. However, if Section 40(1) is strictly construed and it is understood to mean that only penalty and interest on the principal amount are recoverable as arrears of land revenue, it would defeat the basic purpose of the Act.

141. Taking into consideration the scheme of the Act what is to be returned to the allottee is his own life savings with interest on computed/quantified by the authority becomes recoverable and such arrear becomes enforceable in law. There appears some ambiguity in Section 40(1) of the Act that in our view, by harmonising the provision with the purpose of the Act, is given effect to the provisions is allowed to operate rather running either of them redundant, noticing purport of the legislature and the above-stated principle into consideration, we make it clear that the amount which has been determined and refundable to the allottees/home buyers either by the authority or the adjudicating officer in terms of the order is recoverable within the ambit of Section 40(1) of the Act.

142. The upshot of the discussion is that we find no error in the judgment impugned in the instant appeals. Consequently, the batch of appeals are disposed off in the above terms. However, we make it clear that if any of the appellant intends to prefer appeal before the Appellate Tribunal against the order of the authority, it may be open for him to challenge within 30 days from today provided the appellant(s) comply with the condition of pre-deposit as contemplated under the proviso to Section 43(5) of the Act which may be decided by the Tribunal on its own merits in accordance with law. No costs.

143. Pending application(s), if any, stand disposed of.

……………………………….J.
(UDAY UMESH LALIT)

……………………………….J.
(AJAY RASTOGI)

……………………………….J.
(ANIRUDDHA BOSE)

NEW DELHI
NOVEMBER 11, 2021