IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 16th October, 2020

1. CWP Nos. 8548, 8550, 8557, 10087, 10095 to 10097, 10115 to 10118, 10124 and 10125 of 2020.

Janta Land Promoters Private Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

2. CWP Nos.3049 and 3054 of 2020

M/s ATS Estate Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

3. CWP Nos.11903 and 11918 of 2020

M/s Gupta Builders and Promoters Pvt. Ltd. and another

.....Petitioners

Versus

Union of India and others

.....Respondents

4. CWP No.32437 of 2019

Altus Space Builders Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

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5. RERA-APPL No.2 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Abhimanyu Singh Vinayak

.....Respondents

6. RERA-APPL No.8 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Suman Mann and Narendra Singh Mann and another

.....Respondents

7. RERA-APPL No.9 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Raznee Dewan and another

.....Respondents

8. RERA-APPL No.10 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Nikhil Kawatra and Ranjani G. and another

.....Respondents

9. RERA-APPL No.11 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Gagandeep Singh Walia and another

.....Respondents

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10. RERA-APPL No.13 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Anveeksha Varma and another

.....Respondents

11. RERA-APPL No.14 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Pradip Mehra and others

.....Respondents

12. RERA-APPL No.22 of 2020.

Janta Land Promoters Private Limited

.....Appellant

Versus

Deepanshu Garg and others

.....Respondents

CORAM: JUSTICE S.MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Arjun Pratap Atma Ram, Advocate
for the petitioner(s) in CWP Nos. 8548, 8550, 8557, 10087, 10095 to 10097, 10115 to 10118, 10124 and 10125 of 2020, RERA-APPL Nos.2, 8 to 11, 13, 14 and 22 of 2020.

Mr. Harsh Bunger, Advocate with
Mr. Paritosh Vaid, Advocate
for the petitioner(s) in CWP Nos.3049 and 3054 of 2020.

Mr. Rakesh Sobti, Advocate
for the petitioner(s) in CWP Nos.11903 and 11918 of 2020.

Mr. Ramandeep Pandher, Advocate
for the petitioner in CWP No.32437 of 2019.

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Mr. Sahil Sharma, DAG, Punjab.

Mr. Pradeep Bajwa, Advocate with
Mr. Vipul Joshi, Advocate for RERA-Punjab.

Ms. Manju Goyal, Advocate
for respondent No.1 in RERA-APPL No.10 and 14 of 2020.

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Shobit Phutela, Mr. Ajay Kalra, Mr. Tanvir Jain, Mr. Rajiv Sharma and Mr. Brijeshwar Singh Kanwar, Advocates,
for Union of India.

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Dr. S. Muralidhar, J.

Introduction

1. This batch of 26 matters, eight of which are appeals under Section 58 of the Real Estate (Regulation and Development) Act, 2016 ('Act') and the remaining are writ petitions under Article 226 of the Constitution of India, raise important questions of law concerning the interpretation of the Act. The writ petitions also seek the quashing of Regulations 7 and 8 of the Punjab Real Estate Regulatory Authority (Procedure for Handling Complaints and Related Matters) Regulations 2017 ('the Punjab RERA Procedure Regulations').

2. These petitions arise in the background of more or less similar facts and circumstances. Illustratively, therefore, the facts relating to a few of the writ petitions and some of the appeals will be discussed.

Relevant provisions of the Act

3. Before proceeding to note the facts, the relevant provisions of the Act and the Punjab RERA Procedure Regulations may be noticed. The Act envisages adjudication by both the Authority in exercise of the powers under Chapter V of the Act and in particular Sections 31, 32, 34, 35 and 40 of the Act and the Adjudicating Officer (AO) in terms of the powers under Chapter VIII of the Act and in particular Sections 71 and 72 thereof. Appeals against the orders passed by the Authority and the AO are maintainable before the Appellate Tribunal constituted under Section 43 of the Act. Against the orders of the Appellate

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Tribunal an appeal is provided to the High Court under Section 58 of the Act. This then completes the hierarchical arrangement of the adjudicatory mechanisms under the Act. Later in this judgment, the Court proposes to discuss the particular provisions of the Act pertaining to the constitution and functions of the Authority as well as the Appellate Tribunal, since that forms the central issue in these matters. However, in order to appreciate the scheme of the Act, and the remedies available thereunder, it is necessary to have an overview of some of its key provisions.

4. The Act spells out the obligations of the promoter of a real estate project and the consequences for failing to fulfil those obligations. Some of those obligations are spelt out in Sections 11, 12 to 18 of the Act. Section 18 of the Act talks of the consequence of the failure by the promoter to complete or to be unable to give possession of an apartment, plot or building either in terms of the agreement for sale or failure to complete the project by the date specified therein or on account of discontinuance of his business either on account of suspension or revocation of the registration under the Act or for any other reason. In the event of either of the above contingencies under Section 18 (1) (a) of the Act, the promoter is made liable on the demand of the allottee:

(i) in the event that the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of that apartment, plot, building, as the case may be, together with interest at such rate as may be prescribed “including compensation in the manner as provided under this Act”;

(ii) Where an allottee does not intend to withdraw from the project the promoter shall pay him for every month’s delay in the handing over of the possession, interest at such rate as may be prescribed.

5. Section 18 (2) of the Act mandates that in case loss is caused to an allottee due to the defective title of the land, on which the project is being developed or has been developed, the promoter shall compensate the allottee and that such

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claim for compensation under Section 18 (2) shall not be barred by limitation provided under any law for the time being in force. Section 18 (3) of the Act states that where the promoter fails to discharge any other obligations under the Act or the Rules or Regulations made 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 provided under the Act.

6. It appears on a reading of Section 18 of the Act as a whole that upon the contingencies spelt out therein, (i) the allottee can either seek refund of the amount by withdrawing from the project; (ii) such refund could be together with interest as may be prescribed; (iii) the above amounts would be independent of the compensation payable to an allottee either in terms of Sections 18 (2) or 18 (3) of the Act read with other provisions; (iv) the allottee who does not intend to withdraw from the project will be required to be paid by the promoter interest for every month's delay in handing over possession.

7. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19 (3) states that the allottee shall be entitled to claim the possession of the apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, in terms of the declaration by the promoter under Section 4 (2) (i) (C) of Act. Section 19 (4) of the Act states that in the event of the promoter failing to comply or being unable to give possession of the apartment, plot or building 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, the allottee shall be entitled: (a) to claim refund of the amount paid along with interest at such rate as has been prescribed ; and (b) the compensation in the manner provided under the Act. To that extent Section 19 (4) of the Act can be said to be a 'mirror provision' of Section 18 (1) to (3) of the Act. Both these provisions recognize a right of an allottee to distinct remedies, viz., refund of the amount together with interest, interest for delayed handing over of possession and compensation.

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8. When one turns to the powers of the Authority, it is seen that under Section 31 the complaints can be filed either with the Authority or the AO for violation or contravention of the provisions of the Act or the rules and regulations. Such complaint can be filed against "any promoter, allottee or real estate agent", as the case may be. Such complaint can be filed by "any aggrieved person". The Explanation to Section 31 (1) of the Act states that for the purposes of said sub-section "person" shall include an association of allottees or any voluntary consumer association registered under any law for the time being in force. Section 31 (2) states that the form, manner and fees for filing a complaint under sub-section (1) shall be such as may be prescribed.

9. Section 32 spells out the functions of Authority for promotion of the real estate sector. Section 34 (f) of the Act states that the functions of the Authority shall include ensuring "compliance of its regulations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder". Under Section 35 of the Act the Authority can, either on a complaint or *suo moto* by an order, call upon any promoter or allottee or real estate agent to furnish in writing such information or explanation relating to its affairs as the Authority may require.

10. Under Section 35 (1) of the Act the Authority can appoint one or more persons to make an inquiry into the affairs of any promoter or allottee or the real estate agent, as the case maybe. Under Section 35 (2) of the Act, the Authority is given all the powers vested in a civil court under the Code of Civil Procedure, 1908 (CPC) while trying a suit and this includes the discovery and production of books of account and other documents; summoning and enforcing the attendance of persons and examining them; issuing commissions for the examination of witnesses or documents and "any other matter which may be prescribed."

11. Section 36 of the Act recognizes the power of the Authority during an inquiry, to make interim orders restraining any promoter, allottee or real estate agent from carrying on any act in contravention of the Act until the conclusion

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of such inquiry and without giving notice to such party, where the Authority deems it necessary. Section 37 of the Act is widely worded and states that the Authority may, for the purpose of discharging its functions under the Act or Rules or Regulations "issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary" and such directions shall be binding on all concerned.

12. Section 38 of the Act talks about the power of the Authority to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents. Under Section 39, the Authority can within a period of two years from the date of an order passed by it, make amendments to such orders for rectifying any mistake apparent from record. Section 40 of the Act is a provision that enables enforcement of orders. It states that if a promoter or an allottee or a real estate agent, fails to pay any interest or penalty or compensation imposed on him by the AO or the Authority or the Appellate Tribunal, as the case may be, it is recoverable from such person as arrears of land revenue in the manner prescribed. Section 40 (2) of the Act is another enforcement provision.

13. Section 43 (5) of the Act envisages the filing of an appeal before the Appellate Tribunal, against the order of the Authority or the AO, by any "person". The Explanation appended thereto clarifies that for the purpose of Section 43 (5), 'person' shall include an association of allottees or any voluntary consumer association registered under any law for the time being in force". The proviso to Section 43 (5) of the Act applies only where the "promoter" intends to appeal against an order of the Authority or the AO. The word "promoter" has been further defined under Section 2 (zk) of the Act.

14. It is further seen that where the order appealed against imposes a penalty, the promoter has to deposit at least 30% 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 payment of an amount to the allottee, then what has to be deposited with the Appellate Tribunal is "the total amount to be paid to the allottee" by such promoter/Appellant "including

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interest and compensation imposed on him, if any, or with both, as the case may be." Further, such amount has to be deposited "before the appeal is heard."

15. The constitutional validity of the proviso to Section 43 (5) of the Act has been upheld by a decision dated 23rd September 2020, a co-ordinate Division Bench ('DB') of this Court in CWP No. 15205 of 2020 (O&M) (***M/s. Lotus Realtech Pvt. Ltd. v. State of Haryana***). This Court has perused the decision in ***M/s. Lotus Realtech Pvt. Ltd.*** *(supra)*, and finds that it has set out the relevant portions of the recent decision of the Supreme Court in ***M/s.Technimont Pvt. Ltd. v. State of Punjab AIR 2019 SC 4489***, and has held as under:

> "14. The law laid down by the Supreme Court in the aforesaid decisions is that the right of appeal is the creature of a statute and therefore, is and can be made conditional upon fulfilling certain conditions by the statute itself and therefore, any requirement of fulfillment of a condition imposed by the statute itself before a person can avail the remedy of appeal is a valid piece of legislation. It has further been held that the Appellate Authority does not have the inherent powers to waive the limitation or precondition prescribed by the statute for filing an appeal as the inherent incidental or implied powers vested in the Appellate Authority cannot be invoked to render a statutory provision nugatory or meaningless. The Supreme Court has also held that in genuine cases of hardship, an aggrieved person can take recourse to the remedy of filing a writ petition under Article 226 of the Constitution of India. However, even in such genuine cases of hardship, no relief of waiver of pre-deposit can be granted by the Appellate Authority. The challenge to the impugned provision of Section 43(5) proviso of the Act of 2016 on this ground, being meritless, is therefore, rejected."

16.The DB in ***M/s. Lotus Realtech Pvt. Ltd.*** *(supra)* also negatived the plea that requiring only the promoters who are in appeal to make the pre-deposit as a condition to entertaining their appeals by the Appellate Tribunal, was discriminatory. Specific to this contention, the DB observed that the treatment of promoters as a class different from other appellants satisfied the test of reasonableness laid down by several judgments of the Supreme Court explaining Article 14 of the Constitution of India. In this regard, it was observed by the DB in ***M/s. Lotus Realtech Pvt. Ltd.*** *(supra)* as under:

> "18. A perusal of the provisions of the Act make it clear that while limited and few rights and duties are prescribed for allottees under

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> Section 19 of the Act of 2016, several onerous duties and obligations have been imposed on the promoters, namely, registration, duties of promoters, obligations of promoters adherence to the sanctioned plans, insurance of real estate, payment of penalty, interest and compensation etc., under Chapter III and VIII of the Act of 2016. This classification between consumers and promoters is based upon intelligible differentia between the rights, duties and obligations of the allottees/consumers and the promoters and is in furtherance of the very object and purpose of the Act to protect the interest of the consumers viz.-a-viz. promoters in the real estate sector. It is for this reason that the duties, liabilities, obligations and penalties imposed on the promoters are much more onerous as against those imposed upon the allottees. A perusal of the provisions of the Act of 2016 makes it apparent that promoters and the allottees form two distinctly identifiable separate class of persons and have also been differently and separately dealt with under the various provisions of the Act of 2016, therefore, the question of discrimination between the promoters and the allottees as alleged by the petitioner does not arise as they fall under two distinct and different categories/classes.
>
> 19. From the object and purpose of the Act of 2016, it is further evident that the Act seeks to reduce fraud and delays resorted to by the promoters. For this purpose, adjudication through an authority established under the Act has been provided and thereafter with a view to deter promoters from protracting the dispute by involving the allottees/consumers in lengthy litigation and with a view to discourage them to file frivolous appeals only with an intention of delaying the delivery of possession to the allottees, the onerous condition of pre-deposit has been imposed upon the promoters in case they file appeals before the Appellate Tribunal against the orders passed by the authorities. Evidently, the condition of pre-deposit imposed upon the promoters is inconsonance with and in furtherance of the object and purpose of the Act which seeks to eradicate fraud and delays and ensure prompt delivery of the real estate to the allottees within the time frame prescribed.
>
> 20. We are of the considered opinion that as the promoters form a distinct and separate class and as the prescription of the condition of pre-deposit upon the promoters is in furtherance of the object of the legislation, therefore, the imposition of the condition of pre-deposit upon the promoters satisfies the test of Article 14 of the Constitution of India."

17. Yet another DB of this Court has in a judgment dated 6th October, 2020 in CWP Nos. 14623 and 14689 of 2020 (***M/s. Landmark Apartments Pvt. Ltd. v. Union of India***), come to the same conclusion viz., that it cannot be held that

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the condition of pre-deposit, as set out in the proviso to Section 43 (5) of the Act, is either illegal or onerous, thereby rendering the appeal illusory. The DB has also rejected the further contention that where the ground of appeal was that the order of the Authority was itself without jurisdiction since the complaint would lie only before the AO, the condition of pre-deposit would not apply. The Court in this regard has affirmed the view expressed by the learned Single Judge of this Court in ***Janta Land Promoters Pvt. Ltd. v. Abhimanyu Singh Vinayak, 2020 (1) RCR (Civil) 160***, holding that even in a case where "the Appellate Authority proceeds to decide the appeal on the ground of maintainability of the proceeding before the RERA Authority, that will also amount to hearing and taking a decision in the appeal" and that "the promoter would be liable to deposit the pre-requisite amount as per proviso to the Section 43 (5) of the Act".

18. It may be noted that this Court too has in a separate judgment delivered today in CWP No. 38144 of 2018 (***Experion Developers Pvt. Ltd. v State of Haryana and others***) (hereafter the '***Haryana RERA matters'***), *inter alia*, upheld the validity of the proviso to Section 43 (5) of the Act.

19. 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.

20. Section 71 of the Act titled 'Power to adjudicate' is specific to the AO. Sub-section (1) of Section 71 opens with the words "For the purpose of adjudging compensation under Sections 12, 14, 18 and Section 19". It states that the Authority shall appoint one or more judicial officers to be an AO for holding an inquiry in the manner prescribed." Section 71 (2) of the Act states that such application for compensation under Section 71 (1) shall be dealt with by the AO as expeditiously as possible, and the application should be disposed of within a period of 60 days from the date of its receipt. Under Section 71 (3) of the Act, while holding an inquiry the AO shall have the power to summon and enforce the attendance of persons acquainted with the facts and circumstances of the

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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. Section 71 (3) of the Act further states that where upon an inquiry, the AO is satisfied that the person has failed to comply with Sections 12, 14, 18 and Section 19 of the Act, then the AO may direct such person to pay compensation or interest, as the case may be, in accordance with any of those provisions. Section 72 of the Act lists out the factors that have to be taken into account by the AO while determining the quantum of compensation or interest, as the case may be, under Section 71 of the Act.

The Punjab RERA Procedure Regulations

21. On 12th July 2018, the Authority published the Punjab RERA Procedure Regulations by a notification issued in exercise of the powers conferred on it under Section 85 of the Act. Regulations 7 and 8 thereof read as under:

> "7. Entrustment of complaints:
>
> (1) Every complaint scrutinized under Regulation 6 shall be entrusted to a single-Member Bench of the Authority, or an Adjudicating Officer (I there are more than one), on random basis, for further proceedings.
>
> (2) If a single-Member Bench feels that a particular matter needs to be considered by the full Authority he shall refer it to the Chairperson for placing before the Authority.
>
> (3) The Chairperson may, on a request from a single-Member Bench or an Adjudicating Officer, or suo-motu for appropriate reasons order the transfer of a complaint from one Bench or Adjudicating Officer to another, and also direct that a particular matter be considered by the full Authority.
>
> 8. Maintainability of complaints:
>
> The Member or Adjudicating Officer to whom a complaint has been entrusted will satisfy himself about the maintainability thereof before issuing notice.
>
> Provided that complaint shall not be rejected unless an opportunity of hearing has been provided to the complainant.

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> Provided further that the maintainability of a complaint shall ordinarily be decided within 15 days of its entrustment."

22. In effect, what Regulations 7 and 8 of the Punjab RERA Procedure Regulations do is to delegate the adjudicatory functions of the Authority to a Single Member. Regulations 7 and 8 have been challenged in the present petitions as being *ultra vires* the Act.

Circulars issued by the Authority

23. On 21st November 2018, the Authority issued a Circular, the operative portion of which reads as under:

> "The matter regarding the jurisdiction of the Adjudicating Officer vis-à-vis that of the Authority was considered by the Authority in its 7th meeting held on 09.10.2018.
>
> After detailed discussions, the Authority noted that as made clear in Section 71 of the Real Estate (Regulation and Development) Act, 2016, the role of the Adjudicating Officer is confined to adjudging compensation under Sections 12, 14, 18 and 19 of the Act lays does the factors that the Adjudicating Officer is to consider while adjudging the quantum of compensation.
>
> Against this, an order for refund of money deposited by an allottee along with interest thereon, or one for payment of interest for delayed possession, does not require any determination on the basis of the factors enumerated in Section 72. The amount deposited is clearly known, and the rate of interest payable has been prescribed in the Rules itself. The interest claimed in such cases is not recompense for harassment and cannot be equated with the compensation envisaged in Sections 12, 14, 18 and 19 of the Act.
>
> Therefore, it has been decided that a claim for refund of the amount deposited by a complainant with the respondent, along with interest thereon; or a claim for payment of interest for the period of delay in handing over possession of a unit; is not a claim for compensation and complaints in which such relief is claimed should be filed in Form 'M' and will be decided by the Authority or its concerned Bench. The complainant shall be free to file a separate claim in form 'N' before the Adjudicating Officer for compensation envisaged in Sections 12, 14, 18 and 19 of the Act at the initial stage itself, in addition to his claim in Form 'M' for refund of amount deposited along with interest thereon or for interest for delay in handing over possession. Complainants should be advised and guided accordingly.

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> The Authority also noted that there would be cases where, despite the above clarification, the relief of compensation would be claimed in addition to the refund of the amount deposited and interest thereon, or in addition to the payment of interest thereon, or in addition to the payment of interest for delayed possession. It was decided that such complaints would still be filed in Form 'M'; and if the point of compensation was actually pressed during hearing the complainant would be advised to file a separate complaint before the Adjudicating Officer for this purpose.
>
> The Legal Branch should scrutinize the complaints received henceforth in accordance with the above decision."

24. However, subsequently on 19th March 2019, another Circular was issued by the Authority stating that the earlier Circular dated 21st November, 2018 would be held in abeyance till further orders.

The order of the Appellate Tribunal in Sandeep Mann's case

25. This was possibly occasioned by the order dated 27th February, 2019 passed by the RERA Appellate Tribunal, Punjab ('Appellate Tribunal') comprising the Chairperson and an Administrative Member, in Appeal No. 53 of 2018 (***Sandeep Mann v. RERA, Punjab and another***). The conclusions in the said order read as under:

> "(i) All violations and causes of action that give rise to multiple reliefs shall be placed before one forum for adjudication.
>
> (ii) Where the Act and or the Rules identify a particular forum as empowered to adjudicate a particular violation or a cause of action, the forum so named shall be empowered to decide the matter.
>
> (iii) A violation claiming relief of compensation can only be adjudicated by the Adjudicating Officer exercising power under Section 71 of the Act and Rule 37 of the Rules.
>
> (iv) Where the violation alleged leads to a relief of compensation or if compensation is a part of multiple reliefs like return of investment with interest and compensation or refund with interest including compensation, the complaint shall be placed before the Adjudicating Officer exercising power under Section 31 and 71 (1) of the Act read with Rule 37 in form N.
>
> (v) All other matters whatever be the nature of the violation/

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cause of action and the reliefs flowing therefrom shall be placed before the Authority, like interest under the proviso to Section 18 and 19 (7) of the Act.

(vi) All pending complaints/applications shall be forwarded by the Authority or the Adjudicating Officer to the appropriate forum as indicated above.

(vii) The parties shall be at liberty to amend their applications/complaints if the need so arises.

(viii) This order shall not apply to any matter that has attained finality."

Other developments

26. Meanwhile, on 25th April, 2019 the Authority, through a Single Member, passed an order in a complaint filed by one Abhimanyu Singh Vinayak, an allottee of an apartment in Falcon View Apartments. This was a project of Janta Land Promoters Pvt. Ltd. ('JLPPL'), a company stated to be engaged in the business of developing residential, commercial and/or industrial townships or parks primarily in the State of Punjab. It is stated that JLPPL has set up mixed use super industrial mega projects in SAS Nagar (Mohali) and is in the process of setting up some projects elsewhere in Punjab and in Himachal Pradesh.

27. The Authority directed JLPPL to pay interest to the said complaint, in terms of Section 18 (1) read with Section 2 (za) (ii) of the Act and Rule 6 of the Punjab State Real Estate (Development and Regulation) Rules, 2017 ('Rules') and further to pay interest from the date of order till the offer of possession with a further direction that the amount so paid would be adjusted against the final demand as on date of offer of possession. The Authority further held that the complainant was not entitled to any separate compensation under Section 18 (1) of the Act since he did not intend to withdraw from the project.

28. Against the said order dated 25th April, 2019 of the Single Member of the Authority, JLPPL filed Appeal No. 71 of 2019 before the Appellate Tribunal. This was taken up for hearing along with five other connected appeals filed by JLPPL against orders of the Authority in similar complaints by some of the other allottees. A Single Member of the Appellate Tribunal dismissed the

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appeals by a common order dated 20th January, 2020.

29. Against the said order of the Appellate Tribunal in Appeal. No. 71 of 2019, JLPPL filed RERA Appeal No. 2 of 2020 in this Court under Section 58 of the Act. A learned Single Judge of this Court while directing notice of motion in the said appeal on 11th February 2020, noted the principal submission of Mr. Rajiv Atma Ram, learned Senior counsel for the Appellant JLPPL that both orders of the Authority and the Appellate Tribunal were without jurisdiction as they had been passed by a Single Member whereas Section 21 of the Act (in the case of the Authority) and Section 43 of the Act (in the case of the Appellate Tribunal) mandated a minimum quorum of three (i.e. the Chairperson and two Members of the Authority) and two (a Judicial and an Administrative/Technical Member of the Appellate Tribunal) respectively. As far as interim directions were concerned, the learned Single Judge noted that the interest ordered by the Authority to be paid to the allottee had already been disbursed, and, therefore, the only question to be considered in that regard was whether the allottee should be asked to furnish an indemnity/surety bond during the pendency of the appeal.

30. On 19th February 2020, the learned Single Judge took up for hearing RERA Appeal No. 2 of 2020 along with the five connected RERA Appeal Nos. 8, 9, 10, 11 and 13 of 2020. This time the learned Single Judge ordered the execution proceedings consequent upon the impugned orders of the Authority, to be stayed. The learned Single Judge of the Court clarified in an order dated 18th March, 2020 that during the pendency of the appeals, the Authority would be bound by the aforementioned pronouncement of the Appellate Tribunal in ***Sandeep Mann*** *(supra).*

Facts in CWP 10087 of 2020

31. Now the facts in CWP No. 10087 of 2020, which also concerns JLPPL, may be noted. Respondent No.5 in the said writ petition, the husband of Respondent No. 7, applied for and was allotted an apartment in 'Sky Gardens' in Mohali, one of the super mega projects of JLPPL, by an allotment letter dated 10th June, 2014. The total price was Rs. 48 lakhs of which Rs. 12 lakhs

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was paid at the time of allotment. The balance Rs. 36 lakhs was to be paid as per a construction linked payment plan. It is stated that accepting their request, a fresh allotment letter in respect of the same property was issued by JLPPL jointly in favour of Respondent Nos. 5 and 7.

32. By a letter dated 10th March 2018, JLPPL informed Respondent Nos. 5 and 7 that the area of the apartment had increased and further that possession of part of the project was being handed over. It was stated that the Sky Garden Project was complete and that JLPPL was ready to hand over possession of the apartment to Respondent Nos. 5 and 7. By another letter dated 21st April 2018, JLPPL informed Respondent Nos. 5 and 7 that a sum of Rs. 1,63,800 was due against the enhanced area of 86 sq. feet. JLPPL claimed that 50% of the cost for the additional area was borne by JLPPL and the balance 50% was asked to be deposited by Respondent Nos. 5 and 7.

33. Respondent No. 5 filed a complaint against JLPPL under Section 31 of the Act on 1st September, 2019 before the Real Estate Regulatory Authority, Punjab ('Authority'), alleging delay in JLPPL handing over possession of the apartment. A perusal of the said complaint reveals that the following reliefs were sought:

(i) A direction to JLPPL to pay interest under provisions of the Act and rules for the period of delay in handing over the completion certificate i.e. with effect from 1st May, 2017 onwards on the total amount received by JLPPL;

(ii) To restrain JLPPL from charging any additional amount on account of increased area;

(iii) A penalty to be imposed and necessary action to be taken against JLPPL for violation of the Sections 14, 19 (10), 11(4) (e) and 16 of the Act; and

(iv) "any other relief deems fit and proper in the circumstances of the case."

34. Notice of the filing of the complaint was issued to JLPPL by the Authority on 17th September, 2019. JLPPL's replies to the said complaint were filed

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before the Authority on 21st October 2019, 3rd December, 2019 and 9th January, 2020. In the "preliminary submissions" in the replies filed, JLPPL raised the issue of jurisdiction of the Authority to entertain the complaint. Reference was made to the existence of an arbitration clause in the letter of allotment.

35. It was contended by JLPPL, *inter alia,* that in terms of the allotment letter, possession of the flat was to be handed over to the complainant by 10th June, 2017 and it was in fact delivered on 22nd October, 2018. According to JLPPL, the complaint was not maintainable since the Authority itself had granted a certificate of extension to JLPPL in order to complete the project till 31st December, 2018. The complainant had been handed over possession on 22nd October, 2018 i.e. within the extended time granted by the Authority. It was therefore contended that the complaint could have been entertained only where possession had not been handed over before the expiry of the extended period.

36. It was further pointed out by JLPPL that a sum of Rs.2,10,496/- was paid to the complainant in terms of Clause 2.24 of the allotment letter for the delayed handing over the possession and the said payment was accepted by the complainant without any objection. Therefore, the complainant was estopped from claiming any further amount on account of delay. It was contended that interest on account of delay was compensatory in nature and therefore the Authority had no jurisdiction to entertain the complaint.

37. JLPPL further contended that the Circular dated 21st November, 2018 issued by the Authority, extracted hereinbefore, was contrary to the Act. It was stated that that Circular has been kept in abeyance by the Authority itself by a subsequent circular dated 19th March, 2019. It was contended that adjudication of all the disputes arising from Sections 12, 14, 18 and 19 of the Act, had to be only by the AO and further that it was only the AO who had been given power to adjudicate the issue arising out contractual obligations in the terms of allotment.

38. JLPPL further contended that the provisions of the Act were prospective and therefore could not apply to "already executed contracts between the

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promoters and allottees". It was further contended by JLPPL that a Single Member cannot constitute the Authority. It was contended that Regulations 7 and 8 of the Punjab RERA Procedure Regulations were *ultra vires* the Act. Under Section 21 of the Act, the Authority had to mandatorily consist of the Chairperson and two whole-time members, one of whom had to be a Judicial Member and the other a Technical/Administrative Member. Reliance was placed on the judgment dated 1st October, 2019 of the learned Single Judge of the High Court of Bombay in Second Appeal Stamp No. (ST) 14845 of 2019 (***Man Global Limited v. Bharat Prakash Joukani***) and the subsequent order dated 17th October, 2019 by another learned Single Judge of the Bombay High Court in Second Appeal Stamp No.14061 of 2019 (***Larsen and Toubro Limited v. Ms. Rekha Sinha***) holding that a Single Member of the Appellate Tribunal under the Act could not hear the appeals.

39. JLPPL also drew the attention of the Authority to the interim orders passed by the learned Single Judge of this Court in RERA Appeal No. 2 of 2020 on 11th and 19thFebruary, 2020, 4th March, 2020 and 18th March, 2020 staying all the execution proceedings in the meanwhile. In some of the appeals, the Authority was directed to adjourn the cases pending before it, beyond the date fixed by this Court and in some other appeals the proceedings before the Authority and, where applicable, before the Appellate Tribunal were directed to be kept in abeyance.

40. The Authority, comprised of a Single Member Mr. Sanjiv Gupta, heard and decided the complaint filed by the Respondent No. 5 and passed the impugned order dated 25thJune, 2020 disposing of the preliminary objections raised by JLPPL. The conclusions reached in the impugned order read as under:

> "1. The complainant has not sought any relief of compensation U/s 12, 14(3), 18(1) proviso 1 and 19 (4) of the Act. The violations alleged by him fall U/s 11 (4) (e), 14(2), 16, 18 (1) proviso 2 and 19 (10) of the Act, which do not lead to a relief of compensation. Thus this matter falls entirely within the jurisdiction of the Authority.
>
> 2. All other violations alleged also fall under the exclusive jurisdiction of Authority.

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> 3. The present single bench has been duly constituted as per Regulation 7 "Entrustment of Complaints" of the Punjab Real Estate Regulatory Authority (Procedure for handling complaints and related matters) Regulations, 2017 duly approved by the State Government, as per the power of the authority to delegate its powers and functions as provided U/s 81 of the Act. Accordingly, this single bench can proceed further in the matter.
>
> 4. The stay granted by the Hon'ble Punjab and Haryana High Court is in respect of execution proceedings pending in regard to different project in which the proceedings had gained finality while the present proceedings are in respect of an entirely different project with different set of violations alleged."

41. Similar orders were passed by Mr. Sanjiv Gupta as a Single Member of the Authority in nine other complaints against JLPPL.

42. In the meanwhile, similar orders were passed by the same Single Member of the Authority, Mr. Sanjiv Gupta, on 9th June 2020, in three other complaints against JLPPL rejecting its contention that a Single Member Authority has no jurisdiction to entertain the complaint. The Single Member Authority also noted in the said order dated 18th March, 2020 that the orders passed by the learned Single Judge of this Court in RERA Appeal Nos.2, 8 to 11 and 13 of 2020 did not stay the matters pending before the Authority that had not attained finality. JLPPL then filed CWP Nos. 8548, 8550 and 8557 of 2020 challenging the orders of Mr. Sanjiv Gupta on the above grounds. Additionally, it was urged that he was not qualified to be appointed as a Member of the Authority. When these three writ petitions came up for hearing first before this Court on 24th June, 2020, while directing notice of motion to be issued, this Court directed the Authority to adjourn the case pending before it beyond the date fixed by this Court.

43. As far as the order dated 25thJune 2020 of the Authority was concerned, JLPPL approached this Court on 13th July, 2020 with CWP No. 10087 of 2020 praying *inter alia,* for quashing of the above order as well as Regulations 7 and 8 of the Punjab RERA Procedure Regulations, apart from seeking the quashing of the complaint itself. Additionally, a prayer was made for issuance of a writ

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of *quo warranto* to quash the appointment as Member of the Authority, of Mr. Sanjiv Gupta, Respondent No. 6, as being contrary to the provisions of the Act. Nine other writ petitions were filed challenging the nine identical orders of the Single Member Authority.

44. When CWP No. 10087 of 2020 and the nine other connected petitions were listed before this Court on 17th July, 2020, notice of motion was ordered. By a subsequent order dated 7th August, 2020, it was ordered that the interim orders already passed in CWP Nos. 8548, 8550 and 8557 of 2020 to the effect that the Authority would adjourn the case pending before it beyond the date fixed by this Court, would apply in all the 10 writ petitions as well.

Issues for consideration

45. Therefore, the issues that arise for consideration in the 13 writ petitions and the eight appeals by JLPPL are more or less similar. In the five other writ petitions in this batch, issues concerning the making of the mandatory pre-deposit in terms of the proviso to Section 43 (5) have been raised. The orders of the Appellate Tribunal declining to waive the pre-deposit are challenged and a prayer is made for a direction to the Appellate Tribunal to entertain the Petitioners' appeal without the pre-deposit.

46. The issues that arise for consideration are:

(a) Can a Single Member of the Authority validly pass orders on a complaint under the Act? Are Regulations 7 and 8 of the Punjab RERA Procedure Regulations *ultra vires* the Act?

(b) Can a Single Member of the Appellate Tribunal validly pass orders in the appeals before it?

(c) Should all the complaints under the Act be entertained in the first instance by the AO under Section 71 of the Act and in that context is the Circular dated 21st November, 2018 issued by the Authority valid?

(d) Is the appointment of Mr. Sanjiv Gupta as Member of the Authority valid?

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(e) Are the Appellate Tribunal's orders declining to waive the requirement of pre-deposit valid? Should this Court in exercise of its jurisdiction under Article 226 of the Constitution direct the Appellate Tribunal to entertain the appeals without the pre-deposit?

47. This Court has heard the submissions of Mr. Rajiv Atma Ram, learned Senior Counsel appearing for JLPPL, Mr. Satya Pal Jain, learned Additional Solicitor General of India, Mr. P.S. Bajwa, learned Additional Advocate General for the State of Punjab, Mr. Sanjiv Vashisht, learned Senior Counsel and Mr. Sanjay Kaushal, learned Senior Counsel on behalf of the complainants in some of the matters and Mr. Harsh Bunger, Mr. Rakesh Sobti and Mr. Ramandeep Pandher, Advocates for the other Petitioners.

Constitution of the Authority

48. In order to appreciate issue (i), a reference may be made first to the relevant statutory provisions. Under Section 2 (i) of the Act, the expression 'authority' means the Real Estate Regulatory Authority established under Section 20 (1) of the Act. The expression 'Chairperson' means, Chairperson of the Authority appointed under Section 21 of the Act.

49. Section 20 of the Act reads as under:

"Establishment and incorporation of Real Estate Regulatory Authority.

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

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> Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:
>
> Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.
>
> (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued."

50. It is significant that in terms of the proviso to Section 20 (1) of the Act, there could be a single Authority for two or more States or Union Territory. There could also be more than one Authority in a State or Union Territory. Under Section 20 (2), the Authority is expected to be a body corporate having perpetual succession and a common seal.

51. Under Section 21 of the Act, the Authority "shall consist of a Chairperson and not less than two whole time members to be appointed by the Government". The provision is unambiguous that the Authority is a multi-member body and that it fails to be an Authority if it is not comprised of its Chairperson and at least two whole time members. This has to be read along with Section 29 of the Act which deals with the meetings of the Authority. It reads as under:

> "29. Meetings of Authority.
>
> (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.

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> (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."

52. It is clear also from the wording of Section 29 of the Act that the Authority is meant to be a multi-member body and is expected to function as such. The Authority has power, under Section 29 (1) to make Regulations in regard to rules of procedure for transaction of its business and its meetings. It is trite that Regulations made under Section 29 (1) cannot possibly override Section 29 itself. In other words, it is not possible that in exercise of its powers under Section 29 (1), the Authority can make Regulations which permit its meetings to be held by a Single Member.

53. The contention on behalf of the Respondents that Section 29 concerns itself with the meetings of the Authority on the administrative side and not in exercise of its judicial functions and that for the purposes of administrative functions, the Authority cannot function as a Single Member but it can do so while discharging its judicial function, is contrary to the plain wording of Section 21 of the Act. There is no provision in the Act which envisages the Authority functioning as a Single Member while exercising quasi-judicial or adjudicatory functions.

54. Section 85 (2) (f) recognizes the power of the Authority to make

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Regulations in regard to transaction of business under Section 29 (1) of the Act. Regulation 15 of the Punjab RERA (General) Regulations, 2017 made under Section 85 of the Act, states that the quorum of the meetings of the Authority shall be two. Regulation 14 clarifies that this would apply to meetings of the Authority "other than those held in connection with adjudicatory proceedings of the Authority". However, even under Section 85 of the Act, the Authority cannot make regulations contrary to the provisions of the Act in so far as the adjudicatory functions of the Authority are concerned.

55. A reference has already been made to Regulations 7 and 8 of the Punjab RERA Procedure Regulations which are challenged in the writ petitions in this batch of matters. Regulation 7 envisages a Single Member Bench of the Authority being entrusted with a complaint to begin with. Under Regulation 7 (2) it is only when such Single Member considers necessary that a particular complaint is considered by the 'full' Authority. Regulation 8 also envisages a Single member of the Authority or the AO as the case may be satisfying himself about the maintainability of the complaint before issuing notice. The justification offered by the Authority for making the above regulations is traced to Section 81 of the Act which reads as under:

> "Delegation.
>
> 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."

56. The above justification is contrary to the very notification dated 12th July, 2018 under which the Punjab RERA Procedure Regulations have been made. The opening paragraph of the said notification clearly states that the Punjab RERA Procedure Regulations have been made under Section 85 of the Act. As already noticed, Section 85 (2) (f) only refers to the power to make regulations under Section 29 (1) of the Act. Even if, one would go by Section 85 (2) (f) of the Act, which is a general power to make Regulations to carry out the purposes of the Act, Section 85 (1) itself makes it clear that it has to be 'consistent with the Act and the rules made there under'. Consequently, in exercise of the

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powers under Section 85 of the Act, the Authority cannot possibly make Regulations authorising a Single Member Bench to discharge the judicial functions of the Authority and hear and dispose of complaints filed before the Authority.

57. Turning now to Section 81 of the Act, this does not talk of power to make the Regulations at all. The words in parenthesis "except the power to make regulation under Section 85" clearly envisages power under Section 81 being exercised in the form of a general or special 'order' in writing to be made by the Authority. This Court has not been shown any such general or special 'order' of the Authority permitting a Single Member to exercise the judicial or quasi-judicial functions of the Authority.

58. It was repeatedly urged by Mr. Bajwa, appearing for the Authority, that the Punjab RERA Procedure Regulations, 2017 themselves should be viewed as the general or special 'order' in writing issued by the Authority. It is not possible for the Court to accept this submission. The Punjab RERA Procedure Regulations 2017 clearly have been made under Section 85 of the Act and the power under Section 85 does not permit Regulations to be made inconsistent with the Act. Section 81 does not envisage making of Regulations but only of issuance of written orders, other than Regulations. Under Section 81 of the Act no written order either general or special can be issued by the Authority authorizing a Single Member of the Authority to hear complaints.

59. In support of the plea that it is possible to delegate the adjudicatory power of the Authority to a Single Member, reference is made by Mr. Bajwa to the decision of Allahabad High Court in ***M/s K.D.P. Build Well Pvt. Ltd. v. State of U.P.2020 (3) All LJ 39***. Having carefully perused the said decision, this Court is unable to agree with the conclusion reached therein that under Section 81 of the Act, the Authority could have delegated its adjudicatory functions to a Single Member. It further appears from the said decision, that the UP RERA Authority had at a meeting held on 5th December, 2018 taken a decision to delegate such powers. Therefore, it was not in the form of Regulations. Even otherwise, for reasons already mentioned, it is inconceivable that the Authority

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could issue a general or special written order, in exercise of the power under Section 81 of the Act to entrust the adjudicatory functions of the Authority to a Single Member contrary to the express wording of Section 21 of the Act requiring the Authority to comprise of a Chairperson and two members.

60. Unless there is an express provision in the Act itself permitting the Authority to sit in Benches with lesser number of members or a Single Member, it is not possible for the Authority, in exercise of its powers under either Section 81 or Section 85, to entrust its adjudicatory functions in relation to complaints to a Single Member. For e.g., under Section 43 (3) of the Act, it is possible that there are Benches of the Appellate Tribunal comprising of two of its members, one Judicial and the other Technical/Administrative. There is no such corresponding provision as regards the Authority.

61. This Court is therefore, unable to sustain the validity of Regulations 7 and 8 of the Punjab RERA Procedure Regulations, 2017 and hereby quashes them on the ground that they are *ultra vires* the Act.

62. Consequently the orders dated 18th March, 2020 and 25th June 2020 of the Single Member of the Authority rejecting the objections on the ground of jurisdiction are unsustainable in law and are hereby set aside.

Constitution of the Appellate Tribunal

63. The next issue is whether the Appellate Tribunal can function as a Single Member Bench? At the outset, it must be noted that although this question arises directly in the RERA appeals, it has not been specifically raised as such in the grounds of appeal. However, since it is a pure question of law that goes to the root of the matter, it can be permitted to be raised at any stage.

64. The relevant provision with regard to the Appellate Tribunal is Section 43 of the Act. Under Section 43 (1) of the Act, the appropriate Government can establish an Appellate Tribunal. Under Section 43 (2), the appropriate Government could establish one or more Benches of the Appellate Tribunal for various jurisdictions in the State or Union Territory as the case may be. Section

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43 (3) is important for the purposes of the question under consideration. It reads as under:

> "43. Establishment of Real Estate Appellate Tribunal.
> ….
> (3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member."

65. Section 43 (4) of the Act envisages the setting up of an Appellate Tribunal for two or more States or Union Territory. The proviso thereto permits the appropriate Government to designate any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act. Therefore, on a plain reading of Section 43 (3) of the Act, the Appellate Tribunal is envisaged to sit in Benches. Section 45 states that the Appellate Tribunal shall consist of "a Chairperson and two whole time members, one shall be judicial member and other an administrative or technical member".

66. Since Section 43 (3) of the Act itself provides the minimum quorum of the Bench of the Appellate Tribunal to be two, a harmonious construction of Sections 43 (3) and 45 of the Act leads to the conclusion that an Appellate Tribunal has to have at least two members, one of which has to be a judicial and other a technical or administrative member. Unlike Section 21 of the Act, which simply states that the Authority shall comprise of a Chairperson and not less than two whole time members, a combination of provisions, viz., Section 43 (3) read with Section 45 of the Act envisages there being Benches of the Appellate Tribunal subject however to the mandatory requirement that each such Bench shall have at least two members i.e. one judicial and another administrative or the technical member. There can, therefore, be no manner of doubt that the judicial functions of the Appellate Tribunal in the State of Punjab cannot be exercised by a Single Member Bench. Any order passed by such Single Member Bench of the Appellate Tribunal would be null and void in law.

67. A similar view was taken by the learned Single Judge of the Bombay High Court in ***Man Global Pvt. Ltd.*** *(supra).*Discussing these very provisions, the

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conclusion reached was that there cannot be a Single Member Appellate Tribunal under the Act. Reference was made to the decision of Division Bench of the Bombay High Court in ***Neelkamal Realtors v. Union of India 2018 SCC Online Bom 9302*** where in para 339, it was held that the Appellate Tribunal should always consist of two members, one judicial and another either administrative or technical. The decision in ***Man Global Pvt. Ltd.*** *(supra)* was followed subsequently by another learned Single Judge of the Bombay High Court in ***Larsen and Toubro Limited v. Ms. Rekha Sinha*** *(supra)*.

68. In this context, a reference was made to Section 55 of the Act which reads as under:

> "55. Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.
>
> No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—
>
> (a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal; or
> (b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or
> (c) any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case."

69. As rightly held in ***Larsen and Toubro Limited*** *(supra)*, an order passed by a Single Member of the Appellate Tribunal would not stand validated by Section 55 as that would violate the plain language of Section 43 (3) of the Act. Such an order would be a nullity, an illegality and not a mere irregularity. Reference in this context may also be made to the decision in ***Gulzari Lal Agarwal v. The Accounts Officer (1996) 10 SCC 590*** which holds that every provision of the Act needs to be construed harmoniously with the view to promoting the object and purpose of the Act and that by doing so no violence should be done to the plain language of the Section. Therefore, the plea of Mr. Sanjay Kaushal, with reference to Section 55 of the Act, that a Single Member exercising judicial functions of the Appellate Tribunal was merely a defect in the constitution of the Appellate Tribunal and, therefore, an irregularity, cannot be accepted. This goes to the very root of the jurisdiction of the Appellate Tribunal and cannot be said to be saved by reference to Section 55 of the Act.

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70. Further, as rightly noted by learned Single Judge of Bombay High Court in ***Larsen and Toubro Limited*** *(supra),* the issue in ***Gulzari Lal Agarwal*** *(supra)* was whether the absence of the President of National Consumer Disputes Redressal Commission (NCDRC) would render it non-functional. There it was held that as long as the other members on the Bench constituted the minimum quorum, the mere fact that the President is not present would not render the orders of the NCDRC illegal. The said decision is not an authority for the proposition that there could be a Single Member Bench of a tribunal even when the plain language of the statute constituting it mandates a Bench of at least two members, one judicial and the other administrative or technical.

71. For all the aforementioned reasons, the Court is unable to sustain the orders passed by the Single Member Appellate Tribunal, which form the subject matter of the RERA appeals in this Court. Only on that ground, and not on any other ground, the orders of the Appellate Tribunal assailed in the present appeals, are set aside for want of jurisdiction.

72. However, the orders of the Authority which stood challenged before the Appellate Tribunal were themselves passed by a Single Member of the Authority. In view of the conclusion already reached in this judgment, those orders of the Single Member of the Authority are also hereby set aside. Accordingly, the complaints would stand remanded to the Authority to be disposed of in accordance with law.

Powers of the Authority and the AO

73. The third issue for consideration is regarding the distribution of adjudicatory powers between the Authority and the AO. In this regard, the Court wishes to recapitulate what has been held in a separate judgment today in the ***Haryana RERA matters*** on the interpretation of the various provisions of the Act. Although in Haryana, Rules 28 and 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter 'the Haryana Rules') as amended makes the delineation of the respective powers between the Authority and the AO explicit and consistent with the provisions of the Act, there are no

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corresponding Rules in Punjab to the same effect. Nevertheless, the conclusions reached by this Court in the ***Haryana RERA matters*** on the interpretation of the various provisions of the Act concerning this issue will hold good for the Punjab matters as well.

74. The following conclusions in the judgment delivered by this Court today in the ***Haryana RERA matters*** regarding the respective adjudicatory powers of the Authority and the AO are relevant for the present matters as well:

> "63. Although, the Act does use distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a collective reading of provisions makes it apparent 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 Authority which has the power to examine and determine the outcome of a complaint. When it comes to question of seeking the relief of compensation or interest by way of compensation, the AO alone has the power to determine it on a collective reading of Sections 71 and 72 of the Act."

75. Further, this Court affirms the order passed by the Punjab Appellate Tribunal in ***Sandeep Mann's case*** (*supra*) as well as the validity of the Circular dated 21st November 2018 issued by the Authority insofar as it is not inconsistent with the said decision and the present judgment of this Court. Nevertheless, the Authority would do well to issue a fresh Circular to substitute the one dated 21st November 2018 containing instructions consistent with the decision of Appellate Tribunal in ***Sandeep Mann's case*** (*supra*) as well as the present judgment of this Court.

76. As regards the merits of the individual complaints, the Court leaves all the contentions, other than those covered in the above issues, open to be urged before the Authority by the parties when the matters are considered afresh by it in accordance with law.

Validity of the appointment of Mr. Sanjiv Gupta as Member of the Authority

77. The fourth issue that arises is regarding the qualification of Mr. Sanjiv Gupta to exercise judicial functions as Single Member of the Authority and whether he was qualified to be appointed as such. Section 22 of the Act reads as

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under:

> "22. Qualifications of Chairperson and Members of Authority.
>
> The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:
>
> Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:
>
> Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government."

78. There are two elements to the challenge to Mr. Sanjiv Gupta's appointment. One is that he does not possess the requisite 'professional experience' in the disciples enumerated thereunder. Secondly, that in terms of the second proviso to Section 22 of the Act, he has not held the post of Secretary to Government or any equivalent post in the State Government and therefore is also disqualified on that ground.

79. Mr. Rajiv Atma Ram, learned Senior counsel for JLPPL laid much emphasis on the word 'professional' qualifying the word 'experience' used in Section 22 of the Act. He drew a comparison with Section 46 (1) (c) of the Act which talks of qualification of the technical and administrative members of the Appellate Tribunal. The submission is that the word 'professional' does not qualify the word 'experience' in Section 46 (1) (c) whereas it does in Section

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22. The submission is that inasmuch as Mr. Gupta is a former IPS Officer he cannot be said to have 'professional' experience in 'public affairs' or 'administration' and, therefore, is not qualified.

80. This Court is unable to agree with the above submission. Although the word 'professional' could in a literal sense mean professions like law, medicine or architecture, clearly when it comes to administrative services, a former IAS or IPS Officer cannot be said to lack 'professional' experience in 'public affairs' or 'administration'. An officer belonging to the IPS, as he climbs the organizational ladder, is invariably entrusted with increasing administrative functions that he has to discharge apart from his routine duties as a police officer. The Court is, therefore, unable to agree that Mr. Sanjiv Gupta, a former IPS officer, did not satisfy the requirements set out in the main Section 22 of the Act.

81. Coming now to the second proviso to Section 22 of the Act, an affidavit has been filed by the Special Secretary, Department of Urban and Housing Development, Government of Punjab in CWP No. 8548 of 2020 clarifying that Mr. Sanjiv Gupta served at the rank of Director General of Police (DGP), a post equivalent to the post of a Secretary to the State Government. Although JLPPL in its replication to the said affidavit sought to contest the claim of equivalence of the two posts, this Court does not propose to question the veracity of the affidavit of the Special Secretary of the Government of Punjab, who is expected to have a more intimate knowledge on this aspect. In other words, the Court accepts the plea of the Respondents that Mr. Gupta satisfies the requirements of the second proviso to Section 22 of the Act as well. For the aforementioned reasons, this Court negatives the challenge to Mr. Sanjiv Gupta's appointment as member of the Authority.

The requirement of pre-deposit

82. As regards the issue regarding requirement of the pre-deposit under the proviso to Section 43 (5) of the Act, it has been dealt with in sufficient detail in a separate judgment delivered today by this Court in the ***Haryana RERA matters***. The following observations therein would equally apply to the present

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case:

> "15. Typically, where the Appellate Tribunal rejects the plea of the Appellant for waiver of pre-deposit, then it grants one more opportunity to the Appellant to make the pre-deposit within a reasonable time failing which it will proceed to dismiss the appeal on the following date that is has fixed for the hearing of the appeal. This is what has happened in each of the cases here. There cannot be an indefinite postponement of the date by which the pre-deposit has to be made as that would defeat the very object of the Act providing a mechanism for expeditious redressal of the disputes. As explained by the Supreme Court in ***M/s. Technimont Pvt. Ltd.*** (*supra*), the Appellate Tribunal has no power to waive the requirement of the making of a pre-deposit as mandated by the proviso to Section 43 (5) of the Act. This Court has held likewise in ***Neo Developers Pvt. Ltd. v. Union of India*** (decision dated 19th August 2020 in CWP No. 12154 of 2020) and ***Shri Mohan Singh v. Haryana Real Estate Regulatory Authority*** (decision dated 6thMarch 2020 in RERA Appeal No. 6 of 2020). Further, as explained by the Supreme Court in ***Union Bank of India v. Rajat Infrastructure Pvt. Ltd.*** (decision dated 2nd March 2020 in CA No. 1902 of 2020), even the High Court cannot issue any direction in that regard contrary to the Act, since it does not the powers vested in the Supreme Court under Article 142 of the Constitution of India. In other words, if the Appellant fails to make the pre-deposit within the time granted for that purpose once by the Appellate Tribunal, the Appellate Tribunal would be justified in proceeding to dismiss the appeal for failure to make the pre-deposit.
>
> 16. Therefore, the challenge in these writ petitions on the abovementioned ground, to all such orders of the Appellate Tribunal, where the request of Petitioners to be granted further time beyond the date as stipulated by the Appellate Tribunal or where the appeals have been rejected on account of the Petitioners' failure to make the pre-deposit as directed, is hereby rejected."

83. The incidental issue regarding the Court exercising its discretion under Article 226 of the Constitution of India also does not impress the Court. In this context, the following observations in the Court's judgment delivered today in the Haryana RERA matters are as under:

> "19. The above submissions, though attractive, are not impressive. In each of the individual writ petitions before this Court, where the order of the Appellate Tribunal declining to waive the requirement of pre-deposit has been challenged, this Court finds that in the facts and circumstances of the individual

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> cases, no grounds have been made out to persuade this Court to exercise its writ jurisdiction under Article 226 of the Constitution to grant any relief in respect thereof. In none of the cases is the Court satisfied that a case of 'genuine hardship' has been made out."

84. One of the arguments by the Petitioners is that the Authority exercised jurisdiction that it did not possess and therefore, in the corresponding appeal filed against such order of the Authority there would be no requirement to make a pre-deposit. The following conclusion of this Court in the ***Haryana RERA matters*** would equally apply here in this regard:

> "20. Further, on the interpretation of the provisions of the Act, and the conclusions drawn by this Court in this judgment on the scope of jurisdiction of the Authority and the AO respectively, and given the prayers in the individual complaints from which these writ petitions arise, none of the impugned orders of the Authority can be said to be without jurisdiction. In other words, the Authority cannot be held to have exercised a jurisdiction that it totally lacked. Whether on the facts of the individual cases the Authority ought to have decided the complaints differently is a matter of challenge on merits for which a remedy is in any event available by way of an appeal before the Appellate Tribunal."

85. Even where according to the party aggrieved the Authority lacked jurisdiction to decide the complaint, it would be for the Appellate Tribunal to decide that issue in light of the legal position explained in this judgment on the respective adjudicatory powers of the Authority and the AO. In such event, in view of the decision of this Court in ***M/s Landmark Apartments Pvt. Ltd.*** (*supra*), and which is further affirmed in the decision of this Court in the ***Haryana RERA matters***, for the purposes of the appeal before the Appellate Tribunal the making of the pre-deposit in terms of the Act would be mandatory. The Appellate Tribunal would order the keeping of that amount in a fixed deposit pending the final decision in the appeal. If it were to order release of the whole or part of the amount to the allottee, that would have to be upon the furnishing of adequate security. This would be necessary as in the event of the appellant succeeding the amount pre-deposited would be required to be refunded. Therefore, it cannot be said that great prejudice is going to be caused to the Petitioners on that score.

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86. The Court notices that in some of these petitions, where the Appellate Tribunal had granted an extension of time to make the pre-deposit, the Petitioners did not make such pre-deposit, even within the extended time. An interim order was passed by this Court restraining the Appellate Tribunal from dismissing the appeal on the ground of failure to make the pre-deposit. This Court hereby vacates all such interim orders. However, as a one-time measure this Court grants time to the Petitioners to make the pre-deposit in all these cases in the manner indicated hereafter.

Conclusions and directions

87. The conclusions in this judgment may be summarized thus:

(a) A Single Member of the Authority cannot validly pass orders on a complaint under the Act. Regulations 7 and 8 of the Punjab RERA Procedure Regulations are struck down as being *ultra vires* the Act.

(b) A Single Member of the Appellate Tribunal cannot validly pass orders in the appeals before it.

(c) The orders passed by the Single Member Appellate Tribunal, which form subject matter of the RERA appeals in this Court, are hereby set aside only on that ground viz., for want of jurisdiction and not on any other ground.

(d) The orders of the Single Member of the Authority forming the subject matter of the appeals before the Single Member of the Appellate Tribunal and which also are challenged in the present RERA appeals, are also set aside. The result would be that the complaints would stand remanded to the Authority to be disposed of in accordance with law.

(e) Where the relief sought in a complaint under the Act is for 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 Authority which has the power to examine and determine the outcome of such complaint. When it comes to the question of seeking the relief of compensation or interest by way of compensation, the AO alone has the power to

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determine it on a collective reading of Sections 71 and 72 of the Act.

(f) The order passed by the Appellate Tribunal, Punjab in ***Sandeep Mann's case*** (*supra*) is affirmed. The Authority is directed to issue a fresh Circular, in substitution of the Circular dated 21st November 2018, containing instructions consistent with the decision of Appellate Tribunal in ***Sandeep Mann's case*** (*supra*) as well as the present judgment of this Court.

(g) The challenge to the validity of the appointment of Mr. Sanjiv Gupta as Member of the Authority is rejected.

(h) The orders of the Appellate Tribunal declining to waive the pre-deposit are upheld. No case is made out for a direction to the Appellate Tribunal to entertain the appeal without insisting on the pre-deposit.

(i) Given the nature of the reliefs sought in the complaints filed in these cases, it cannot be said that the orders of the Authority are without jurisdiction and no case is made for interference therewith under Article 226 of the Constitution.

(j) Even where according to the party aggrieved the Authority lacked jurisdiction to decide the complaint, it would be for the Appellate Tribunal to decide that issue in light of the legal position explained in this judgment on the respective adjudicatory powers of the Authority and the AO. In such event too, for the purposes of the appeal before the Appellate Tribunal the making of the pre-deposit in terms of the Act would be mandatory.

88. It is clarified that the above summary of the conclusions have to be read with the main text of the judgment in the preceding paragraphs. It is further clarified that the above declaration of the law would be applicable to all the pending matters and would not result in reopening of the already concluded matters where orders passed by the Authority or the Appellate Tribunal have not been challenged.

Orders in the individual petitions

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CWP Nos. 3049, 3054, 11903 and 11918 of 2020

89. In these four petitions, the prayers are more or less common and are as under:

(i) That the order of the Authority be quashed as being without jurisdiction.

(ii) The order of the Appellate Tribunal directing the Petitioners to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act without deciding the application for waiver filed by the Petitioners be set aside.

(iii) A direction be issued to the Appellate Tribunal to entertain the Petitioners' appeal without requiring the Petitioners to make the pre-deposit.

90. For the reasons set out in this judgment, the above prayers are all rejected. As a one time opportunity, time is granted to the four Petitioners to make the pre-deposit before the Appellate Tribunal in terms of the proviso to Section 43 (5) of the Act not later than 16th November 2020, failing which it will be open to the Appellate Tribunal to pass appropriate orders in the appeals. If the Petitioners make the pre-deposit within the time granted, the Appellate Tribunal will then proceed to hear the appeals on merit, which would include the challenge to the order of the Authority in accordance with law. The writ petitions are dismissed in the above terms. No order as to costs. The interim orders stand vacated.

CWP No. 32437 of 2019

91. The prayers in the writ petition are:

(i) For quashing of the order dated 4th July, 2019 of the Authority as being without jurisdiction.

(ii) For setting aside the order dated 23rd September, 2019 of the Appellate Tribunal dismissing the application of the Petitioner for waiver of the pre-deposit.

(iii) For a direction to the Appellate Tribunal to entertain the Petitioner's appeal against the order of the Authority, without

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insisting on any pre-deposit.

92. For the reasons stated in the present judgment, all the above prayers are hereby rejected. Time is granted to the Petitioner, as a one-time measure, to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal not later than 16th November, 2020, failing which it will be open to the Appellate Tribunal to pass appropriate orders in the appeal in accordance with law. If the Petitioner makes the pre-deposit within the time granted, the Appellate Tribunal will then proceed to hear the appeals on merit, which would include a challenge to the order of the Authority in accordance with law. The writ petition is dismissed in the above terms. The interim orders stand vacated.

CWP Nos. 8548, 8550 and 8557 of 2020

93. The prayers in these writ petitions are as under:

(i) Quashing of the summons in the complaint before the Authority.

(ii) Quashing the appointment of Mr. Sanjiv Gupta as Member of the Authority by issuing a writ of *quo warranto*.

(iii) Quashing the order dated 18th March, 2020/9th June, 2020 passed by the Authority.

94. For the reasons stated in this judgment, the orders dated 18th March, 2020 and 9th June, 2020 of the Authority are hereby quashed for lack of jurisdiction. The complaint in question is remanded to the file of the Authority to be now proceeded with in accordance with law. The prayer for quashing the appointment of Mr. Sanjiv Gupta as member of the RERA is hereby rejected. The Authority constituted in terms of the Section 21 of the Act as explained in this judgment, will proceed with the complaint in accordance with law.

CWP Nos. 10087, 10095, 10096, 10097, 10115, 10116, 10017, 10018, 10124 and 10125 of 2020

95. The prayers in the present petitions are as under:

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(i) Quashing the order dated 25th June, 2020 of the Single Member of the Authority.

(ii) Quashing the Regulations 7 and 8 of the Punjab RERA Procedure Regulation, 2017.

(iii) Quashing the appointment of Mr. Sanjiv Gupta as Member of the Authority by issuing a writ of *quo warranto*.

96. The writ petitions are disposed of by directing that:

(i) The order dated 25th June, 2020 passed by the Single Member of the Authority shall stand quashed as being without jurisdiction;

(ii) The complaint shall stand remanded for disposal by the Authority, constituted in terms of Section 21 of the Act, in accordance with law;

(iii) Regulations 7 and 8 of the Punjab RERA Procedure Regulations, 2017 are hereby quashed for being *ultra vires* the Act;

(iv) The prayer for quashing the appointment of Mr. Sanjiv Gupta as member of the Authority is rejected.

RERA-APPL Nos. 2, 8, 9, 10, 11, 13, 14 and 22 of 2020

97. In all these appeals, the common prayer is for quashing of the impugned order of the Appellate Tribunal passed by the Single Member of the Authority as being without the authority of law.

98. For the reasons stated in this judgment, the impugned orders of Appellate Tribunal are quashed as being without jurisdiction since they have been passed by a Single Member of the Appellate Tribunal contrary to Section 43 (3) read with Section 45 of the Act. Further, since the orders of the Authority which were challenged before the Appellate Tribunal are also without jurisdiction since they were passed by a Single Member of the Authority, they too are quashed. The complaint in question is remanded to the Authority, constituted in

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accordance with Section 21 of the Act, to be proceeded with in accordance with law.

99. The appeals are disposed of in the above terms with no orders as to costs. The interim orders, if any, in these appeals stand vacated. The amounts, if any, deposited by the Appellant with the Appellate Tribunal or paid to the allottee pursuant to the order of the Authority or the Appellate Tribunal shall be refunded to the Appellant.

100. A copy of this judgment shall be placed in each of the connected cases.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

16th October, 2020
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Whether speaking/reasoned: Yes
Whether Reportable: Yes

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