IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 16th October, 2020

1. CWP No. 38144 of 2018

Experion Developers Pvt. Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

2. CWP No. 9216 of 2019

M/s Jasmine Buildmart Private Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

3. CWP No. 34244 of 2019

Wg. Cdr. Sukhbir Kaur Minhas

.....Petitioner

Versus

State of Haryana and others

.....Respondents

4. CWP Nos.23669 & 35219 of 2019

SS Group Private Limited

.....Petitioner

Versus

State of Haryana and others

.....Respondents

5. CWP No.37671 of 2019

Bestech India Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

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6. CWP Nos.30068, 30069, 30070, 30071, 30072, 30793, 30812, 34320, 34342 & 34347 of 2019

M/s. Ansal Housing Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

7. CWP No.32215 of 2019

Parsvnath Developers Limited and another

.....Petitioners

Versus

Union of India and others .....Respondents

8. CWP No.37502 of 2019

Parsvnath Hessa Developers Private Limited

.....Petitioners

Versus

Union of India and Ors

.....Respondents

9. CWP No.37549 of 2019

Parsvnath Developers Pvt. Ltd. and another

.....Petitioners

Versus

Union of India and others

.....Respondents

10. CWP No.37552 of 2019

Parsvnath Hessa Developers Private Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

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11. CWP Nos. 3921 and 3975 of 2020

Parsvnath Hessa Developers Private Limited and another

.....Petitioners

Versus

Union of India and others

.....Respondents

12. CWP Nos. 34449, 34622, 34656 & 35209 of 2019

M/s. Pioneer Urban Land and Infrastructure Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

13. CWP Nos. 32110, 32272, 32274, 32275, 35623, 35683, 35735 37163, 37164, 37232, 37241, 37365, 37477, 37594 & 37601 of 2019

Athena Infrastructure Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

14. CWP Nos. 33125, 33404 ,33406, 33417, 33495, 33687, 33702, 34017, 34020, 34021, 35599, 35600, 35618, 35636, 35653 & 35679 of 2019

Athena Infrastructure Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

15. CWP Nos. 32276 and 33140 of 2019

Varali Properties Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

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16. CWP No. 35836 of 2019

Varali Properties Ltd.

.....Petitioner

Versus

State of Haryana

.....Respondent

17. CWP Nos. 36172 & 36417 of 2019

Selene Construction Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

18. CWP Nos. 4329, 5402, 5403, 5405, 5406, 5407, 5439, 5441, 5445, 5574, 5576, 5577, 5584 to 5586, 5608, 5609, 5618 & 5753 of 2020

M/s. Ferrous Infrastructure Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

19. CWP Nos. 37497 & 37596 of 2019 and CWP Nos. 66 & 3093 of 2020,

M/s. Ferrous Infrastructure Pvt. Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

20. CWP Nos. 35769, 35777, 36475, 36493, 36526, 36593, 36684, 36696, 36699, 36756 & 37157 of 2019

M/s. Shree Vardhman Infra Home Pvt. Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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21. CWP No. 9664 of 2020

M/s Imperia Wishfield Private Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

22. CWP No. 9689, 9692, 9703, 9705, 9706, 9726, 9727, 9730 & 9737 of 2020

M/s. Imperia Wishfield Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

23. CWP No. 729 of 2020

M/s. Spaze Tower Private Limited and another

.....Petitioners

Versus

Union of India and others

.....Respondents

24. CWP No. 36433 of 2019 and CWP Nos. 1090, 1091, 1092, 1129, 3569, 3570, 3600, 3601, 3602, 3603, 3604, 3605, 3606, 3609, 3615, 3616 & 3617 of 2020

Emaar MGF Land Pvt. Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

25. CWP Nos. 2286 and 2345 of 2020

Saera Auto India Pvt. Ltd. .....Petitioner

Versus

State of Haryana and others

.....Respondents

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26. CWP No. 32999 of 2019

Sweta Estates Private Limited

.....Petitioner

Versus

State of Haryana and others .....Respondents

27. CWP No. 14752, 14759, 14766, 14776, 14797, 14805, 14806, 14815, 14827, 14829 14842 & 14860 of 2020

M/s. Apex Buildwell Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

28. CWP Nos.9206 & 9313 of 2020

M/s. Almond Infrabuild Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

29. CWP No.6027 of 2020

M/s. Splendor Landbase Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

30. CWP Nos.4455 & 4463 of 2020

M/s. VSR Infratech Private Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

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31. CWP Nos.10019, 10060 & 10066 of 2020

M/s. ALM Infotech City Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

32. CWP No.10063 of 2020

The CMD (Mr. Alumuddin Rafi Ahmed),
M/s. International Land Developer (ILD)

.....Petitioner

Versus

Union of India and others

.....Respondents

33. CWP No.10023, 10038 & 10110 of 2020

M/s. ILD Millennium Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

34. CWP No.9658 of 2020

M/s Supertech Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

35. CWP No.37039 of 2019

M/s BPTP Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

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36. CWP No.12237 of 2019

M/s Countrywide Promoters Pvt. Ltd. and others

.....Petitioners

Versus

Union of India and others

.....Respondents

37. CWP No.10704 of 2020

M/s BPTP Ltd. and others

.....Petitioners

Versus

Union of India and others

.....Respondents

38. CWP No.15647 of 2019

M/s TDI Infrastructure Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

39. CWP No.1554 of 2020

M/s Mapsko Builders Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

40. CWP No.3059 of 2020

M/s ATS Meadows Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

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41. CWP Nos.9121, 9391 & 13426 of 2020

CHD Developers Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

42. CWP No.33867 of 2019

Dimple Cineplex

.....Petitioner

Versus

Union of India and others

.....Respondents

43. CWP No.35937 of 2019

Ashiana Landcraft Realty Private Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

44. CWP No.34271 of 2019

M/s Sana Realtors Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: JUSTICE S.MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Ashok Aggarwal, Sr. Advocate with Mr. Alok Kumar Jain, Advocate for the petitioner in CWP No.2345 of 2020.

Mr. Ashish Chopra, Advocate
for the petitioner(s) in CWP Nos. 9216, 23669, 35219 & 37671 of 2019.

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Mr. Chetan Mittal, Sr. Advocate with Mr. Alok Kumar Jain, Advocate for the petitioner in CWP No.2286 of 2020.

Mr. Puneet Bali, Sr. Advocate with Mr. Gunjan Rishi, Advocate for the petitioner(s) in CWP Nos.30068 to 30072 of 2019, CWP-30812-2019, CWP-32215-2019, CWP-30793-2019, CWP-34320-2019, CWP-34342-2019, CWP-34347-2019, CWP-37502-2019, CWP-37549-2019, CWP-37552-2019, CWP-3921-2020 & CWP-3975-2020.

Mr. Amit Jhanji, Advocate
for the petitioner (s) in CWP Nos. 34449, 34656, 34622 & 35209 of 2019.

Mr. Ajiteshwar Singh, Advocate
for the petitioner(s) in CWP Nos. 32110, 32272, 32274 to 32276, 33125, 33140, 33404, 33406, 33417, 33495, 33687, 33702, 34017, 34020, 34021, 35599, 35600, 35618, 35636, 35653, 35679, 35836, 36172 & 36417 of 2019.

Mr. Gaurav Chopra, Advocate with Mr. Reshabh Bajaj, Advocate,
for the petitioner(s) in CWP Nos. 66, 3093, 4329, 5402, 5403, 5405, 5406, 5407, 5439, 5441, 5445, 5574, 5576, 5577, 5584 to 5586, 5608, 5609, 5618, 5753 of 2020 & CWP Nos. 37497 & 37596 of 2019.

Mr. Anurag Jain, Advocate with
Mr. Shalabh Singhal & Ms. Preeti Taneja, Advocates,
for the petitioner(s) in CWP Nos.35769, 35777, 36475, 36493, 36526, 36593, 36684, 36696, 36699, 36756 & 37157 of 2019.

Mr. Sehajbir Singh, Advocate with
Mr. Chandandeep Singh, Advocate,
for the petitioner(s) in CWP Nos.9664, 9689, 9692, 9703, 9705, 9706, 9726, 9727, 9730 and 9737 of 2020.

Mr. Rajeev Anand, Advocate
for the petitioner(s) in CWP Nos.35623, 35683, 35735, 37163, 37164, 37232, 37241, 37365, 37477, 37594, 37601 of 2019 and CWP No.729 of 2020.

Mr. R.S. Rai, Sr. Advocate with Mr. Alok Mittal, Advocate,
for the petitioner(s) in CWP No.36433 of 2019, CWP Nos.3569, 3570, 3600 to 3606, 3609, 3615 to 3617 of 2020.

Mr. Rana Gurtej Singh, Advocate
for the petitioner in CWP No.34244 of 2019.

Mr. V.S. Bhardwaj, Advocate
for the petitioner(s) in CWP No.32999 of 2019 and 38144 of 2018.

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Mr. Rahul Rampal, Advocate with Mr. Sandeep Choudhary, Advocate, for the petitioner(s) in CWP Nos. 14752, 14759, 14766, 14776, 14797, 14805, 14806, 14815, 14827, 14829, 14842 & 14860 of 2020.

Mr. Harsh Bunger, Advocate with Mr. Paritosh Vaid, Advocate
for the petitioner(s) in CWP Nos. 9206 & 9313 of 2020.

Mr. Shubhnit Hans, Advocate
for the petitioner(s) in CWP Nos.6027, 4455 & 4463 of 2020.

Mr. Navdeep Kalair, Advocate with Mr. Venkat Rao, Advocate,
for the petitioner(s) in CWP Nos.10019, 10023, 10038, 10060, 10063, 10066 & 10110 of 2020.

Mr. Hemant Saini, Advocate with
Mr. Pragyan Pradip Sharma, Advocate
for the petitioner in CWP No.12237 & 37039 of 2019.

Mr. Pragyan Pradip Sharma, Advocate
for the petitioner in CWP No.10704 of 2020.

Mr. Rajnish Singh, Advocate
for the petitioner in CWP No. 15647 of 2019.

Mr. Himanshu Raj, Advocate
for the petitioner in CWP No.1554 of 2020.

Mr. Vivek Sethi, Advocate
for the petitioner in CWP No.3059 of 2020.

Mr. Alok Mittal, Advocate
for the petitioner in CWP Nos. 1090, 1091, 1092 & 1129 of 2020.

Mr. Shubankar Baweja, Advocate
for the petitioner in CWP Nos. 9121, 9391 & 13426 of 2020.

Mr. Gunjan Rishi, Advocate
for the petitioner in CWP Nos. 33867 & 35937 of 2019.

Mr. Manu K. Bhandari, Advocate
for the petitioner in CWP No.34271 of 2019.

Mr. Amit Jain, Advocate
for the petitioner in CWP No.9658 of 2020.

Mr. S.P. 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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Mr. Ankur Mittal, Additional A.G., Haryana.
Mr. Ankur Mittal, Advocate with
Mr. Kushaldeep K. Manchanda, Advocates for HRERA.

Mr. Aftab Singh Khara, Advocate for the Respondent Nos. 5 and 6 in CWP No. 9658 of 2020.

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Dr. S. Muralidhar, J.

Introduction

1. These writ petitions under Article 226 of the Constitution raise several important questions of law concerning the interpretation of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter 'the Act') as well as the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter 'the Haryana Rules').

2. In some of these petitions, a challenge has been raised to the constitutional validity of the proviso to Section 43 (5) of the Act and correspondingly the orders passed by the Real Estate Appellate Tribunal (hereinafter 'Appellate Tribunal') rejecting the prayer of the Petitioners for waiver of the pre-deposit for entertaining the appeal against an order of either the Real Estate Regulatory Authority ('Authority') or the Adjudicating Officer ('AO'), as the case may be. The Appellate Tribunal has, while rejecting such prayer, extended the time for making the pre-deposit. The further prayer in these petitions is that given the undue hardship faced by the Petitioners, the aforesaid orders of the Appellate Tribunal should be interfered with by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, and the Appellate Tribunal be directed to entertain the Petitioners' appeals without insisting on the pre-deposit.

3. In some of the petitions, a challenge has been laid to Rules 28 and 29 of the Haryana Rules as well as to forms CRA and CAO as amended by the Haryana Real Estate (Regulation and Development) Amendment Rules, 2019 notified on 12th September, 2019 ('Haryana Amendment Rules 2019') as being *ultra vires* the Act. The further issue urged in these petitions concerns the scope and jurisdiction of the Authority and the AO respectively in relation to complaints

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under the Act. In these petitions there is a corresponding prayer for quashing the orders passed by the Authority as being without jurisdiction.

4. Lastly, an issue is raised as regards to the applicability of the Act retroactively to 'ongoing' projects. It is sought to be contended by some of the Petitioners that the relevant provisions of the Act insofar as they seek to apply retroactively to 'ongoing' projects are bad in law.

Challenge to the proviso to Section 43 (5) of the Act

5. The Court first proposes to address the challenge to the proviso to Section 43 (5) of the Act which mandates the making of a pre-deposit, in the circumstances outlined therein, for the Appellate Tribunal to entertain an appeal against the order of either the Authority or the AO. Section 43 (5) reads thus:

> "43 (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 percent 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 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.

6. It must be noticed straightway that while 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

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Section 2 (zk) of the Act as under:

"2. Definitions—In this Act, unless the context otherwise requires—

……

(zk) "promoter" means—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

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

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

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

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

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

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

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as

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> such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder"

7. 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 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."

8. As regards the challenge to the constitutional validity of the proviso to Section 43 (5) of the Act, it is seen that by a decision dated 23rd September 2020, a co-ordinate Division Bench ('DB') of this Court has in CWP No. 15205 of 2020 (O&M) (***M/s. Lotus Realtech Pvt. Ltd. v. State of Haryana***) negatived a similar challenge.

9. 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

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meritless, is therefore, rejected."

10. 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 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

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> 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."

11.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 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 lacked 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".

12. Having carefully perused the judgments of the DBs of this Court in ***M/s Lotus Realtech Pvt. Ltd.*** *(supra)* and ***M/s Landmark Apartments Pvt. Ltd.*** *(supra)*, this Bench finds no reason to take a different view in the matter. As observed by the Court in the aforesaid judgments, the requirement of pre-deposit of the amount, as set out in the proviso to Section 43 (5) of the Act, cannot be held to be unreasonable or arbitrary in light of the legal position explained in several decisions of the Supreme Court, including ***M/s Technimont Pvt. Ltd. v. State of Punjab*** *(supra).* It is plain, therefore, that the challenge to the proviso to Section 43 (5) of the Act must fail. The prayer in

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that regard is hereby rejected.

13. Incidental to this issue is the challenge to the orders of the Appellate Tribunal rejecting the plea of the Petitioners for waiver of pre-deposit or for grant of further time, beyond what was already granted by the Appellate Tribunal, to make the pre-deposit. It was urged that there exists a distinction between 'entertaining' an appeal in terms of the proviso to Section 43 (5) of the Act and passing orders by the Appellate Tribunal after 'receipt of an appeal' under Section 44 (1) of the Act. The specific contention is that Section 44 (3) of the Act obliges the Appellate Tribunal to pass orders in the appeal after it is filed, notwithstanding the failure of the promoter, where the promoter is the Appellant, to make the mandatory pre-deposit before the Appellate Tribunal, as required by the proviso to Section 43 (5) of the Act.

14. The Court is unable to agree with the above submission. Sections 43 and 44 of the Act are to be read harmoniously. On such reading, the Court finds there to be no inconsistency in the wording of Section 43 (5) and Section 44 of the Act. Both envisage the filing of appeals by any person and this would include the promoter. However, when it comes to an appeal filed by the promoter, the requirement under the proviso to Section 43 (5) of the Act, will have to be mandatorily fulfilled, even for the purposes of the Appellate Tribunal having to pass orders in terms of Section 44 of the Act. The proviso to Section 43 (5) of the Act clearly states that the pre-deposit is required to be made "before the said appeal is heard." In other words, the Appellate Tribunal is not obliged to proceed to 'entertain' or hear an appeal that has been filed before it, if the promoter, who has filed such appeal, fails to comply with the direction for making the pre-deposit in terms of the proviso to Section 43 (5) of the Act.

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

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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 6th March 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 have 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, rejecting 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.

Exercise of the discretionary jurisdiction under Article 226

17. On the second issue whether in exercise of its jurisdiction under Article 226 of the Constitution, this Court should, in the facts and circumstances of the individual cases, waive the requirement of pre-deposit, this Court notes that even in ***M/s Technimont Pvt. Ltd.*** *(supra)*, the Supreme Court had noted that the power of a High Court under Article 226 of the Constitution, in rare cases of genuine hardship, to waive the requirement of pre-deposit either wholly or in part, continued. It was held that while there is no discretion conferred by the statute in question upon the Appellate Authority to grant a waiver of pre-deposit, as explained in ***Shyam Kishore v. Municipal Corporation of Delhi (1993) 1 SCC 22,*** in cases of extreme hardship, the High Court could, in

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exercise of its power under Article 226 of the Constitution, grant appropriate relief in that regard. This legal position that in genuine cases of hardship a writ petition could be a remedy was reiterated in the subsequent decisions of the Supreme Court in ***Government of Andhra Pradesh v. P. Laxmi Devi (2008) 4 SCC 720*** and ***Har Devi Asnani v. State of Rajasthan, (2011) 14 SCC 160***.

18. It was argued on behalf of the Petitioners, that a distinction had to be drawn between an order of the Authority which was wholly without jurisdiction i.e. exercising a jurisdiction not vested in it in law viz., 'an error of jurisdiction' and an order which could be viewed as an 'error in jurisdiction' viz., the order is erroneous on grounds other than lack of jurisdiction. The argument, particularly on the strength of the Supreme Court decision in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka 2019 SCC OnLine SC 1542***, was that while in the latter instance, this Court may decline to exercise its discretionary writ jurisdiction to judicially review the order, it could not decline to do so in the former instance. In other words, it was sought to be urged that since the orders of the Authority challenged in some of these writ petitions was an 'error of jurisdiction' since the complaint had to be dealt with only by the AO and not the Authority, the existence of an alternative remedy of an appeal against such order before the Appellate Tribunal would not be a bar to the entertaining by this Court of a writ petition under Article 226 of the Constitution seeking judicial review of such order.

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 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.

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

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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.

21. It must be noted at this stage that against any order of the Appellate Tribunal there is a second appeal to the High Court provided for under Section 58 of the Act, which reads as under:

> "**58. Appeal to High Court**—
>
> (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):
>
> Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.
>
> *Explanation*.—The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.
>
> (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

22. It is clear that an appeal can be filed in this Court "against any order of the Appellate Tribunal". Therefore, an order declining the prayer for waiver of pre-deposit and the consequential order of dismissal of the appeal itself by the Appellate Tribunal can also be appealed against before this Court. It is only a consent order passed by the Appellate Tribunal that cannot be appealed against as per Section 58 (2) of the Act. However, it is reiterated that in view of the legal position explained hereinbefore, the Appellate Tribunal has no power, in terms of the proviso to Section 43 (5) read with Section 44 of the Act, to waive

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the pre-deposit requirement.

23. 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 by this judgment, for the purposes of the appeal before the Appellate Tribunal the making of the pre-deposit in terms of the Act would be mandatory. In any event, in all the appeals before it, the Appellate Tribunal would order the placing of the pre-deposit 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.

24. 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. While in some cases, the Appellate Tribunal proceeded to pass the consequential order dismissing the appeal, it had not done so in some others. In many of the writ petitions arising from such cases, 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. Yet in some cases the registry of the Appellate Tribunal did not process the appeals for failure to make the pre-deposit. In all these petitions, as a one-time measure this Court grants time to the Petitioners to make the pre-deposit in the manner indicated in paras 94 and 95 of this judgment.

25. For all the aforementioned reasons, the contentions in these writ petitions concerning the constitutional validity of the proviso to Section 43 (5) of the Act, the orders of the Appellate Tribunal declining to waive the pre-deposit

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requirement or to grant further time to make the pre-deposit and, seeking to persuade this Court to exercise its jurisdiction under Article 226 of the Constitution to interfere with such orders of the Authority or the Appellate Tribunal, as the case may be, are rejected.

Challenge to Rules 28 and 29 of the Haryana Rules, as amended

26. The Court next turns to the issue regarding the respective powers of the Authority and the AO in regard to adjudication of the complaints made under the Act, and in that context to the challenge laid to the validity of Rules 28 and 29 of the Haryana Rules, 2017 as well as the amendments made thereto and to forms CRA and CAO by the Haryana Amendment Rules, 2019 notified on 12th September, 2019.

27. In this context it requires to be noticed that one of the writ petitions in this batch was CWP No. 34244 of 2019 (*Wing Commander Sukhbir Kaur Minhas v. State of Haryana and others*) which had challenged the amendments to Rules 28 and 29 and forms CRA and CAO vide notification dated 12th September, 2019.

28. It requires to be noticed here that the Haryana Amendment Rules 2019 made several other amendments to the Haryana Rules apart from the amendments to Rules 28 and 29 and forms CRA and CAO. Nevertheless, when CWP No. 34244 of 2019 was taken up first for hearing on 25th November, 2019, while issuing notice of motion, the entire notification dated 12th September, 2019 was directed by this Court to be stayed. The State of Haryana then filed CM-901 of 2020 seeking a vacation of the stay by pointing out that the challenge in the writ petition was to a limited extent and that, therefore, there was no necessity for the entire notification to be stayed. However, by the time any order could be passed in this application, similar interim orders were passed in a large number of petitions in this batch staying the entire notification. It was only on 11th September, 2020 that this Court vacated the said interim order dated 12th September 2019 in CWP No. 3244 of 2019. This Court noted that the Petitioner in that case was contending that her complaint seeking the relief against the promoter for refund and compensation ought not

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to be entertained by the Authority but only by the AO. This Court clarified in its order dated 11th September, 2020 that no final order would be passed by the AO on the Petitioner's complaint.

29. Certain facts leading up to the aforementioned amendments to Rules 28 and 29 of the Haryana Rules may now be adverted to. The Act was enacted in 2016. The Statements of Objects and Reasons set out in the Bill preceding the Act read thus:

> "**Statement of Objects and Reasons**. - 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 standardization 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 standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for 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 interests of effective consumer protection, uniformity and standardization 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. 3. The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run."

30. 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 AO in terms of the powers under Chapter VIII of the Act

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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 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.

31. The Act spells out the obligations of the promoter of a real estate project and the consequence of the promoter failing to fulfil those obligations. Some of those obligations are spelt out in Section 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.

32. Section 18 (2) of the Act mandates that in case loss is caused to 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 claim for compensation under Section 18 (2) shall not be barred by limitation provided under any law for the time being in force.

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33. 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 there under 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.

34. 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 of handing over possession.

35. 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 a 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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36. 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.

37. 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.

38. 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."

39. 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 of such inquiry and without giving notice to such party, where the Authority

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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.

40. Section 38 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.

41. 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.

42. 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.

43. Section 71 of the Act titled 'Power to adjudicate' is specific to the AO. Sub-section (1) of Section 71 once 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

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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. 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.

44. Rule 21 (4) of the Haryana Rules is relatable to the adjudicatory powers of the AO and it reads as under:

> "For the purpose of adjudging the compensation under Section 12, 14, 18 and 19, the Authority shall in consultation with Government appoint one or more officers, who shall not be below the rank of Class-1 Officer/Additional District Judge who have sufficient expertise and experience for holding judicial/quasi-judicial court/enquiry. The adjudicating officer shall give a reasonable opportunity of hearing to the parties before determining the compensation."

45. Rules 28 and 29 of the Haryana Rules deal with the procedure for filing of complaints before the Authority and the AO respectively. In a decision dated 2nd May 2019 in a batch of appeals, the lead case of which was Appeal No.6 of 2018 (***Sameer Mahawar v. MG Housing Private Ltd.***), the Appellate Tribunal held that the compensation payable for the violations of the Act in terms of Section 12, 14 and 18 of the Act was "within the exclusive competence" of the AO. According to the Appellate Tribunal, the Authority had specific powers to levy penalties and set aside an order cancelling the allotment but not to grant any relief enumerated under Sections 12, 14, 18 and 19 of the Act. It was held that the mere fact that multiple reliefs may arise and awarded in relation to the same cause of action could not be a valid ground to justify the filing of complaints in two different fora. According to the Appellate Tribunal, "the segregation of the violations and causes of action on the basis of relief is not legally permissible." The Appellate Tribunal noted that in terms of the proviso to Section 71(1) of the Act, a person whose complaint in respect of matters

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covered under Sections 12, 14, 18 and 19 of the Act was pending before any of the dispute redressal fora under the Consumer Protection Act, 1986 ('CPA') on or before commencement of the Act, may with the permission of such forum withdraw the complaint and file an application before the AO under the Act. The Appellate Tribunal concluded that the Authority had no jurisdiction to adjudicate upon the issue regarding the refund and directed that the complaints filed by the allottees should stand transferred to the AO for adjudication.

46. Thereafter, the Haryana Amendment Rules 2019 were notified on 12th September, 2019 whereby *inter alia* amendments were made to Rules 28 and 29 of the Haryana Rules. The unamended and amended Rules 28 and 29 read as under:

Rule 28 (Pre-Amendment)	Rule 28 (Post-Amendment)
Filing of complaint with the Authority Section 31	Filing of complaint with Authority (Section 31) *and inquiry into allegations of contravention or violations (Section 35) and disposal of complaint (Section 36, Section 37 and Section 38*
28. (1) Any aggrieved person may file a complaint with the Authority for any violation of the provisions of the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'CRA', in triplicate, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority".	28. (1) Any aggrieved person may file a complaint with the Authority for any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, *against any promoter, allottee or real estate agent as the case may be in Form 'CRA', or in the form specified in the regulations,* which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank or online payment in favour of "Haryana Real Estate Regulatory Authority". (a) Complaint under section 31 may be filed by any aggrieved person, in case of violation or contravention of the provisions of the Act by the promoter, allottee or the real estate agent, as the

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	case may be, and such violation or contravention has been established after an inquiry made by the Authority under section 35. (b) In case, in the complaint, only an allegation has been made regarding contravention or violation of the provisions of the Act or the rules or regulations made thereunder, then the Authority shall conduct an inquiry in relation to the affairs of the promoter or the allottee or the real estate agent, as the case may be, for establishing the veracity of the allegations of the contravention/violation of the provisions of the Act or the rules or regulations made thereunder. (c) If after an inquiry it is not established that contravention/violation of the provisions of the Act or the rules or regulation made thereunder had been committed by the promoter or the allottee or the real estate agent, as the case may be, then the Authority shall drop the allegations of contravention/violation of the Act. (d) In case, it is established that contravention or violation of the provisions of the Act or the rules or regulations has been committed by the promoter or the allottee or the real estate agent, as the case may be, the Authority shall pass such orders or issue directions or grant relief as per provisions of the Act. (e) Where the allottee is the aggrieved person and the promoter has violated the provisions of the Act or the rules

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	or the regulations made thereunder as established on inquiry by the Authority under section 35 and in the complaint compensation has been sought by the allottee, the complaint for adjudging quantum of compensation as contained in sections 12, 14, 18 and 19, shall be referred to the adjudicating officer by the Authority and the adjudicating officer shall conduct an inquiry to adjudge the quantum of compensation as per the provisions mentioned in sub section (3) of section 71 by taking into consideration the factors mentioned in section 72, in the manner as prescribed in rule 29.
(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry in the following manner, namely:-	(2) The Authority shall for the purposes of deciding any complaint as specified under sub-rule (1), shall follow summary procedure for inquiry in the following manner, namely: —
(a) upon receipt of the complaint, the Authority shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent specifying date and time of hearing;	(a) upon receipt of the complaint, the Authority shall issue a notice along with particulars of the alleged violation or contravention and the relevant documents to the respondent specifying date and time of hearing and by order in writing *and recording reasons thereof call upon the respondent to furnish in writing such information or explanation relating to its affairs as the Authority may require;* [section 35(1)]
(b) the respondent against whom such notice is issued under clause (a) of subrule (2), shall file his reply in respect of the complaint within the period as specified in the notice;	(b) the respondent against whom such notice is issued under clause (a), *shall file his reply in respect of the complaint along with information or explanation relating to its affairs* within the period as specified in the notice;

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(c) the notice shall specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;	(c) the notice shall specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;
(d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent.	(d) on the date so fixed, the Authority shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent: —
(i) pleads guilty, the Authority shall record the plea, and pass such orders including imposition of penalty as it deems fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;	(i) pleads guilty, the Authority shall record the plea, and pass such orders as it thinks fit in accordance with the provisions of the Act or the rules and regulations, made thereunder;
(ii) does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;	(ii) does not plead guilty and contests the complaint, the Authority shall demand an explanation from the respondent;
(e) in case the Authority is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, it may dismiss the complaint with reasons to be recorded in writing;	(e) in case the Authority is satisfied on the basis of the information and explanation and other submissions made that the complaint does not require any further inquiry, it may dismiss the complaint with reasons to be recorded in writing;
(f) in case the Authority is satisfied on the basis of the submissions made that there is a need for further hearing into the complaint, it may order	(f) in case the Authority is satisfied on the basis of the information, explanation and other submissions made that there is need for further hearing into

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production of documents or other evidence(s) on a date and time fixed by it;	the complaint *or matter taken up suo-motu*, it may order production of documents or other evidence on a date and time fixed by it;
(g) the Authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;	(g) the authority shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions, *the Authority may appoint any person or expert agency to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be*;
(h) the Authority shall have the 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 documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence, the Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (11 of 1872);	(h) the Authority for making inquiry shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit, in respect of matters mentioned in sub-section (2) of section 35;
(i) on the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions, is satisfied that,	(i) on the date so fixed, the Authority upon consideration of the evidence produced before it and other records and submissions is satisfied that, —
(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall pass such orders including imposition of penalty as it thinks fit in accordance with the provisions of the Act or	(i) the respondent is in contravention of the provisions of the Act or the rules and regulations made thereunder, it shall record its findings accordingly;

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the rules and regulations made thereunder; (ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing; (j) if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.	(ii) the respondent is not in contravention of the provisions of the Act or the rules and regulations made thereunder, the Authority may, by order in writing, dismiss the complaint, with reasons to be recorded in writing; (j) having come to the conclusion that the respondent has committed contravention of the provisions of the Act or the rules or the regulations made there-under or the provisions of the agreement for sale, it shall pass such orders and directions for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder to the respondent as it may consider necessary and such directions shall be binding to all concerned. In addition, the Authority may order relief as deemed fit keeping in view the provisions of the Act or the rules or regulations made thereunder or the terms of the agreement and also keeping in view the principles of natural justice. (k) the Authority may provide relief in such form as deemed appropriate including return of the amount to the allottee received by the promoter along with interest at the rate as prescribed in rule 15. (l) if the complaint in form 'CRA' filed before the authority for interim orders, directions for compliance of obligations, relief

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	and initiating penalty proceedings the complaint shall be admissible from the stage of concluding inquiry by the Authority that respondent has violated or contravened provisions of the Act or the rules or regulations made thereunder warranting penalty proceedings under the provisions of the Act. The Authority may initiate penal proceedings exercising its powers under sub-section (1) of section 38 to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder and Authority shall be guided by the principle of natural justice and shall have power to regulate its procedure. (i) the Authority shall issue a notice to the respondent mentioning the section under which it intends to initiate penal proceedings alongwith a show cause as why penalty as contemplated by the Authority shall not be imposed upon the violator respondent; (ii) on the date so fixed, the Authority upon consideration of the reply to the show cause notice, may order the respondent liable to pay penalty as deem fit subject to provisions of the Act: Provided that penalty may be expressed in lump sum amount or interest imposed by the Authority upon the respondent

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	violator and it shall be credited to the account of the State Government of Haryana in accordance with the provisions of subsection (2) of section 76; (iii) if allottee is violator for any delay in payment towards any amount or charges to be paid by him as per provisions of the Act or rules or regulations or agreement for sale, the Authority may order that the allottee shall be liable to pay interest at such rate as prescribed in rule 15 to the promoter. (m) If the complaint in form 'CAO' filed before the adjudicating officer for adjudging quantum of compensation, the complaint shall be admissible from the stage of concluding inquiry by the Authority that respondent being promoter has violated or contravened provisions of the Act or the rules or regulations made thereunder warranting liability of the promoter to pay compensation to the allottee under the provisions of the Act or the rules or regulations made thereunder. The Authority may refer the matter to the adjudicating officer for adjudging the quantum of compensation payable to the complainant allottee, and direct both the parties to appear before the adjudicating officer on the appointed day. The quantum of compensation payable to the complainant may be expressed by the adjudicating officer in the form of lump sum amount or in the form of percentage of interest

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	on the amount paid by the complainant to the respondent promoter (compensation expressed in terms of interest i.e. compensatory interest) (n) if any person fails, neglects or refuses to appear, or present himself as required before the Authority, the Authority shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.
(3) The procedure for day to day functioning of the Authority, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.	(3) The procedure for day to day functioning of the Authority, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.
(4) Where a party to the complaint is represented by an authorised person, as provided under section 56, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.	(4) Where a party to the complaint is represented by an authorised person, as provided under section 56, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.”

Rule 29 (Pre-Amendment)	Rule 29 (Post-Amendment)
Filing of complaint and inquiry by Adjudicating officer. Sections 12, 14, 18 and 19.	Filing of complaint/ *application for inquiry to adjudge quantum of compensation by adjudicating officer, in respect of compensation under* sections 12, 14, 18 and 19
29. (1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form ‘CAO’, in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form	29. (1) (a) Any aggrieved person may file an application/ complaint with the adjudicating officer *for adjudging quantum of compensation as provided under sections 12, 14, 18 and 19, where violation by the promoter has been established by the Authority in an*

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of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.	*inquiry under section 35, in Form 'CAO'* or in such form as specified in the regulations, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank or online payment in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.
(2) The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely:--	(2) The adjudicating officer shall for the purposes of *adjudging compensation* follow summary procedure for inquiry in the following manner, namely: —
(a) upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;	(a) upon receipt of the complaint, the adjudicating officer shall issue a notice to the respondent promoter *along with particulars of the contravention and the copy of the complaint seeking compensation* and supporting relevant documents regarding compensation demanded by the allottee (aggrieved person) to be paid by the respondent promoter;
(b) the respondent against whom such notice is issued under clause (a) of sub rule (2) may file his reply in respect of the complaint within the period as specified in the notice;	(b) the respondent against whom such notice is issued under clause (a) *may file his reply in respect of admissibility of the compensation and quantum of compensation* within the period as specified in the notice;
(c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;	(c) the notice shall specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;
(d) on the date so fixed, the adjudicating officer shall	(d) the adjudicating officer shall have the power to summon and

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explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent, (i) pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he deems fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made thereunder; (ii) does not plead guilty and contests the complaint, the adjudicating officer shall demand and explanation from the respondent;	enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry i.e. adjudging quantum of compensation. [section 71(3)]
(e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, he may dismiss the complaint;	(e) while holding inquiry for adjudging the quantum of compensation or interest (compensation expressed in term of interest i.e. compensatory interest) as the case may be, the adjudicating officer shall have due regard to the following factors, - (i) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (ii) the amount of loss caused as a result of the default; (iii) the repetitive nature

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	of the default; (iv) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.
(f) in case the adjudicating officer is satisfied on the basis of the submissions made that the there is a need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;	(f) before announcing his award, a show cause notice shall be issued to the promoter respondent opposite party; specifying therein the quantum of compensation proposed to be paid along with reasons thereof. After considering the reply of the promoter (respondent), evidences and documents all facts and circumstances and taking into account of the factors mentioned in section 72. The adjudicating officer shall announce his final award regarding quantum of compensation.
(g) the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;	(g) the quantum of compensation to be paid to the allottee (complainant) by the promoter (violator respondent) may be expressed in the form of lump sum amount to be paid to the allottee (complainant) or in percentage of interest on the amount paid by the allottee (complainant) to the promoter (respondent).
(h) the adjudicating officer shall have the 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 documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence.	(h) any compensation payable by the promoter to the allottee in terms of the Act or the rules and regulation made there under shall be payable by the promoter to the allottee within a period of ninety days from the date on which compensation has been adjudged by the adjudicating officer.

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(i) on the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the respondent is,- (i) liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 14 and such compensation as he deems fit. (ii) not liable to any interest or compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing; (j) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.	
(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.	(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.
(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in	(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in

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original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.	original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.

47. Corresponding amendments were made to Forms CRA and CAO. A perusal of the unamended and amended Rules 28 and 29 of the Haryana Rules, as juxtaposed, would reveal that the two distinct set of adjudicatory processes, one before the Authority and the other before the AO, stand explicitly recognized. Under the amended Rule 28, any aggrieved person can file a complaint with the Authority against any promoter, allottee or real estate agent inform CRA. If in that complaint only an allegation has been made regarding contravention or violation of the provisions of the Act, then the Authority itself is to conduct an inquiry for establishing the veracity of the allegations. If the allegation is established, the Authority can pass such orders in accordance with the Act. Under the amended Rule 28 (e) when the allottee is the aggrieved person and the promoter has violated the provisions of the Act, and in the complaint compensation has been sought, then the complaint will be referred by the Authority to the AO for adjudging 'quantum of compensation' as per Section 71(3) of the Act taking into consideration the factors mentioned in Section 72 and in a manner prescribed under amended Rule 29.

48. Rule 28 (2) of the Haryana Rules as amended delineates the procedure that the Authority will follow in making the inquiry into the allegation of violation of the provisions of the Act, Rules or regulations. It is further provided under Rule 28 (3) as amended that the procedure for the day-to-day functioning of the authority, which has not been provided by Act of the rules, shall be specified by the regulations made by the authority.

49. Rule 29 of the Haryana Rules as amended talks of filing of complaint/ application for inquiry for adjudging by the AO of the quantum of compensation under Sections 12,14, 18 & 19. The amended Rule 29 (2) sets out the summary procedure for inquiry by the AO. Correspondingly, Form CRA now stands amended with the heading 'complaint to the authority' and with the caption 'claim for relief, directions/ orders and penalty proceedings under

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Section 31 read with Sections 35, 36, 37 & 38'. The corresponding from CAO which pertains to complaints before the AO has also been amended where the word 'claim' has been substituted by "claim for compensation or interest, as the case may be".

50. The principal arguments of counsel for the Petitioners, assailing the above amendments, are as follows:

(i) The scheme of the Act and the provisions pertaining to exercise of adjudicatory functions reveals that the legislative intent was not to have a bifurcation of the adjudicatory powers between the Authority on the one hand and the AO on the other. In other words, the legislative intent was to create only one adjudicating authority for deciding the issues between the parties.

(ii) If two separate orders are passed by the Authority and the AO on the issues of determination of violation and quantum of compensation or interest, two appeals would lie before the Appellate Tribunal with there being no finality of the determination of the violation. Thus, it would lead to only multiplicity of litigation.

(iii) In case a complaint is filed before the authority claiming compensation which was not granted by the Authority since it is not authorized to deal with that issue, it would amount to denial of compensation. In such a case, can the complaint for compensation be refiled before the AO?

(iv) That even for the sake of arguments, if it can be said that the Authority has power to grant refund of money and interest, then also the Authority will have jurisdiction to grant interest only under the agreement between parties. In case the complainant demands interest as per the Act, Rules and regulations, it will be treated as compensation, and thus will be within the purview of the AO. Similarly, if the rate of interest demanded is more than the rate of interest mentioned in the

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agreement, the same will be counted for compensation. Therefore, wherever anything other than refund and interest as provided in agreement is claimed by a party, the Authority will not have jurisdiction to adjudge the same. Where the complainant claims relief of compensation/ damages, the Authority will act only as a post office and send the complaint to AO.

(vi) The jurisdiction of a plaint/ complaint depends on the claims made by the plaintiff/ complainant and not on the relief granted by the Authority or AO. The question of jurisdiction and maintainability arises on the presentation of the complaint and not upon its decision. Therefore, the Authority would not have jurisdiction to determine compensation or interest. The cause of action being a bundle of rights, cannot be bifurcated to be agitated in part before one authority and the remaining before another.

(vii) Interest granted to an allottee in the shape of compensation would be within the exclusive jurisdiction of the AO. The expression 'compensation or interest' in Section 71 (3) cannot be interpreted as interest on the compensation. It is inconceivable that the interest alone, without determination of compensation, can be granted.

51. Almost all counsel appearing for the Petitioners have emphasised on the requisite qualifications for being appointed as an AO and compared it with the qualifications for being the member of the Authority to argue that it is only the AO who is intended to undertake the adjudicatory functions of determining violations of the Act, Rules and regulations and to grant reliefs as a consequence. Relying on a number of decisions of the Supreme Court and the High Courts, including ***Union of India v. R. Gandhi, President, Madras Bar Association (2010) 11 SCC 1*** and ***State of Gujarat v. Utility Users Welfare Association (2018) 6 SCC 21*** it is argued that only a person, with the requisite educational qualifications and possessing adequate experience as a judicial officer can undertake such exercise, failing which the provisions of the Act that are interpreted to expand the adjudicatory powers of the Authority, would be

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unconstitutional. It is pointed out that disputes under the Act would involve determining if the clauses of an agreement of sale have been complied with and that such a 'lis' can be adjudged only by the AO. The refrain of the Petitioners is that the Authority comes in only to determine penalties and consequent interest on the penalty and nothing more. In other words, according to the Petitioners, Section 38 of the Act exhausts all of the adjudicatory powers of the Authority. It is urged that since it is not mandatory for the Authority to have as its member a judicially trained person, it is not equipped to undertake any adjudicatory exercise.

52.The stand of the State of Haryana as well as the Authority on the other hand is that any existing ambiguity in interpretation of provisions of the Act, vis-à-vis the powers of the Authority and the AO now stands clarified with the amendment to Rules 28 and 29 of the Haryana Rules and the corresponding forms CRA and CAO. It is submitted that the limited scope of the powers of the AO is to adjudge the quantum of compensation or interest by way of compensation and for all other reliefs, it is the Authority which has the jurisdiction. It is further submitted that the word 'interest' used in Section 71 (3) of the Act is different from the interest payable under Section 18 (1) of the Act, which is at such rate as may be prescribed. The latter is pre-decided interest for which no adjudication as such required. The rate is fixed by the State Government in terms of the Rules. However, for adjudging the quantum of compensation or quantum of interest by way of compensation, the AO is required to have due regard to the factors in Section 72 of the Act. Thus the interest to be determined by the AO is not a pre-fixed rate of interest. This is separate from the interest payable under Section 18 (1) of the Act. It is submitted that there is no warrant to restrict the powers of the Authority. Merely because the qualifications for being appointed as an AO and as a member of the Authority may be different, cannot lead to the conclusion that it is only the AO, who has the powers of adjudication and not the Authority. Reliance has been placed on the decision of the Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd v. Union of India, 2018 (1) RCR (Civil) 298***.

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53. The Court now proceeds to consider the above submissions. As already noted, the Act envisages a three-tier structure of adjudication. The adjudication in the first instance is to be undertaken by two fora, viz., the Authority and the AO. In the second tier there is the Appellate Tribunal, which entertains appeals against the orders of the Authority and the AO. The third tier is the High Court. Under Section 58 of the Act, an appeal from any order of the Appellate Tribunal is maintainable before the High Court.

54. Under Section 22 of the Act, while the qualification for being appointed as Chairperson of the Authority is a person having adequate knowledge and professional experience of at least 20 years in diverse disciplines/fields mentioned therein, it is 15 years in the case of Members. The disciplines/fields mentioned are urban development, housing, real estate development, infrastructure, economics, and technical experts from relevant fields, planning law, commerce, accountancy, industry, management, social service, public affairs or administration. It is, therefore, not mandatory for either the Chairperson or the member to have professional experience in law. It is significant, however, that the Chairperson/Members of the Authority are to be appointed by the appropriate government on the recommendation 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. As far as the AO is concerned, under Section 71 (1) of the Act, it is the Authority which appoints the AO in consultation with the appropriate government. The AO has to necessarily be a serving or retired district judge.

55. From the overall scheme of the Act, and in particular the provisions referred to, it is evident that no powers of a High Court are sought to be entrusted to the Authority. The orders of the Authority are appealable before the Appellate Tribunal, which in terms of Section 46 (1) of the Act is presided over by a Chairperson who 'is or has been a Judge of a High Court'. This has to further be seen in the context of the orders of the Appellate Tribunal itself being appealable in the High Court. Therefore, even the Appellate Tribunal is subordinate to the High Court in the hierarchy of judicial authorities under the Act. This is, therefore, very different from the scheme of the Companies Act

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and the amendments thereto which were under challenge in the ***Madras Bar Association*** case (*supra*). There the powers of the High Court were entrusted to the National Company Law Tribunal. It is in that context the decision was rendered mandating that since the NCLT takes over the functions of the High Court "the members should as nearly as possible have the same position and status as High Court Judges".

56. For the same reason, the reliance by the Petitioners on the decision of ***Utility Users Welfare Association*** (*supra*) is also misplaced. There the Supreme Court was dealing with the adjudicatory mechanisms under the Electricity Act, 2003 in which a two-tier structure is contemplated. There are the Central and State Regulatory Commissions, and adjudication officers at one level and at the appellate level, there is the Electricity Appellate Tribunal (APTEL). The APTEL comprises a Chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court, one Judicial Member who has been or qualified to be a judge of a High Court, two Technical Members who are electricity sector experts and one Technical Member who is an expert from petroleum and natural gas sector. Each bench of the APTEL has at least one Judicial Member and one Technical Member. A second appeal lies to the Supreme Court, from the orders of the APTEL, only on substantial questions of law. Under the Act in question however, there is an appeal provided to the High Court from the orders of the Appellate Tribunal. Therefore, it would not be appropriate to compare the Electricity Commissions under the Electricity Act with the Authority/AO under the Act or the APTEL with the Appellate Tribunal. The Court is, therefore, not able to accept the plea of the Petitioners that in the absence of Chairperson and Members of the Authority not mandatorily being required to have legal/judicial background but from variety of other fields, no adjudicatory function can be entrusted to the Authority whatsoever. Given the two levels of appeals provided under the Act itself, first to the Appellate Tribunal which has a serving or retired High Court judge as Chairperson, and then to the High Court, such submission appears to be misconceived.

57. The judgment of the Bombay High Court in ***Neelkamal Realtors Suburban***

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Pvt. Ltd. (*supra*) to the extent it holds that there is no mandatory requirement for the Authority to have a judicial member who has the qualifications of judicial officer, is consistent with the conclusion of this Court. Indeed, as explained by the Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd.*** (*supra*), the context in which the observations were made by the Supreme Court in ***Madras Bar Association*** (*supra*) was different from the context of the multi-tiered adjudication process under the present Act.

58. Reliance was placed by counsel for the Petitioners on the following observations in the report of the Parliamentary Standing Committee on the Real Estate Bill 2013 to urge that the intention was to entrust the AO alone with adjudicatory powers:

> "8.19. The Committee observe that under sub clause (2) of Clause 61, 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 ninety days from the date of receipt of such application. The Committee are in agreement with the opinion of RBI that the Adjudicating Officer needs to have more powers to pass interim orders in the nature of directing the promoter to deposit at least a portion of the amount of compensation even before the final disposal if the Adjudicating Officer is satisfied that there is a prima facie case in favour of the allottee or to direct the promoter to provide alternative accommodation to the allottee where there is delay. The Committee desire the Ministry to incorporate suitable provision in the Bill."

59. The above passage no doubt concerns entrusting adjudicatory powers to the AO but by no means is intended to expand the scope of the powers and functions of the AO under Section 71 of the Act. The opening words of Section 71 (1) of the Act make it clear that the scope and functions of the AO 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 AO, 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 AO is only for 'adjudging compensation'. Even in Section 71 (3) of the Act, it is reiterated that the AO may direct 'to pay such compensation or interest as the case may be as he thinks fit' in accordance with provisions of

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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 read "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,……."

60. On a collective reading of Sections 71 and 72 of the Act, the legislative intent becomes explicit. This is to limit the scope of the adjudicatory powers of the AO to determining compensation or interest in the event of violation of Sections 12, 14, 18 and 19 of the Act. To recapitulate, the question of compensation arises only in relation to the failure of the promoter to discharge his obligations. Therefore, in a complaint for compensation or interest in terms of Section 71 of the Act, the complainant would be the allottee and the Respondent would be the promoter. However, the powers of the Authority to inquire into complaints are wider in scope. As is plain from Section 31 of the Act, a complaint before the Authority can be against "any promoter/allottee, real estate agent, as the case may be." It is, therefore, not correct to equate the adjudicatory powers of the Authority with that of the AO as they operate in different spheres. Even vis-à-vis the promoter, complaints seeking reliefs other than compensation or interest in terms of Section 71 read with Section 72 of the Act, the powers of adjudication are vested only with the Authority and not with the AO. The submission that since disputes under the Act would involve determining if the clauses of an agreement of sale have been complied with by either party and that such a 'lis' can be adjudged only by the AO, is also not acceptable. There is no reason why the Authority cannot examine such a question if it were to arise for determination in a complaint before it. In any event, the Authority's decisions are amenable to judicial review in two further appeals, once by the Appellate Tribunal and, thereafter, by the High Court.

61. Consequently, the plea of the Petitioners that the power and scope of the functions of the Authority are limited to determining penalty or interest under Section 38 of the Act is rejected as it overlooks the wide range of powers of the Authority on a collective reading of Sections 31, 34 (f), Sections 35, 36 and 37. In fact, the power to issue interim orders under Section 36 of the Act and the

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power to issue directions under Section 37 of the Act are not made available to the AO under Section 71 of the Act.

62. The powers of the Authority under Section 35 of the Act are also of a wide nature. While discharging those functions, it will be open to the Authority to even require the AO to conduct the inquiry. Section 35 (2) of the Act also makes its plain that the Authority will have the same powers as a civil Court. The legislative intent is, therefore, not to diminish the adjudicatory functions of the Authority but rather to provide it with all the trappings of a quasi-judicial/judicial authority while inquiring into the complaints and issuing directions.

63. Although, the Act does use distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a collective reading of the 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. This Court finds merit in the contention on behalf of the Respondents that the expression 'interest' as used in Section 18 of the Act is a pre-determined rate, as may be fixed by the government, and is distinct from the interest by way of compensation that has to be computed by the AO in terms of Section 71 (3) keeping in view the factors outlined in Section 72 of the Act. 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 determine it on a collective reading of Sections 71 and 72 of the Act.

64. The submission on behalf of the Petitioners that the word 'quantum' is not used in Section 71 of the Act and, therefore, the AO has the powers beyond adjudging compensation, is again based on an improper understanding of the scope of those powers. If Sections 71 and 72 of the Act are read together, it is plain that the AO has to adjudge the 'quantum of compensation'.

65. As far as the proviso to Section 71 (1) of the Act is concerned, it is an

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enabling provision. It enables a person whose complaint is pending in the consumer fora under the CPA to opt to withdraw such complaints to go before the AO. However, this has to be read along with Section 88 of the Act, which clearly states that "the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force." It is, therefore, not mandatory for a person, who has a complaint before the consumer fora to have his complaint transferred to the AO. He can pursue both the remedies simultaneously on the strength of Section 88 of the Act. If, however, such person opts to withdraw his complaint before the consumer fora to come to the AO, the scope of the relief he seeks would be limited to the compensation or interest. He will, therefore, have to take a conscious decision. If the relief he is seeking in the complaint before the consumer fora is in addition to seeking compensation or interest in the form of compensation, for instance refund of the amount and interest thereon, then he will have to take a conscious decision on restricting his relief before the AO to one of compensation or interest by way of compensation. For the remaining reliefs, he will have to go before the Authority.

66. It was repeatedly urged by the counsel for the Petitioners that the Authority and the AO can come to different conclusions on the same question, viz., whether there has been a violation of provisions of Sections 12, 14, 18 and 19 of the Act by the promoter. This again appears to the Court to be based on an erroneous understanding of the scheme of the Act. If a complainant is seeking only compensation or interest by way of compensation simpliciter with no other relief, then obviously the complainant would straightway file a complaint before the AO. The complaint will be filed in form CAO and will be referrable to Rule 29 of the Haryana Rules. The AO in such instance would proceed to determine whether there is a violation of Sections 12, 14, 18 and 19 of the Act. Therefore, the question of any inconsistent order being passed by the Authority in such instance would not arise.

67. The second scenario is that a single complaint is filed seeking a combination of reliefs with one of the reliefs being relief of compensation and payment of interest. In such instance, the complaint will first be examined by

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the Authority which will determine if there is a violation of the provisions of the Act. If such complaint is by the allottee and against the promoter and if the Authority comes to an affirmative conclusion regarding the violations it will then, for the limited purpose of adjudging the quantum of compensation or interest by way of compensation, refer the complaint for that limited purpose to the AO. With the Authority already having found in favour of the complainant as regards violation by the promoter of Sections 12, 14, 18 and 19 of the Act, clearly the AO will not further examine that question. The AO will only proceed to determine the quantum of compensation or interest keeping in view the factors outlined in Section 72 of the Act. In other words, the AO will act on the finding of the Authority on the question of violation of those provisions and not undertake a fresh exercise in that regard. This way the powers of the Authority under Section 31 read with Sections 35 to 37 of the Act will not overlap the functions of the AO under Section 71 of the Act. Both sets of provisions are, therefore, capable of being harmonized.

68.1 The settled legal position on the doctrine of 'harmonious construction' may be noticed at this stage. It was explained by the Supreme Court in ***Venkataramana Devaru v. State of Mysore AIR 1958 895*** that:

> "The rule of construction is well settled that when an enactment there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction."

68.2 In ***State of Rajasthan v. Gopi Kishan Sen AIR 1992 SC 1754***, it was held:

> "the rule of harmonious construction of apparently conflicting statutory provisions is well established for upholding and giving effect to all the provisions as far as it may be possible, and for avoiding the interpretation which may render any of them ineffective."

68.3 In ***CIT v. Hindustan Bulk Carriers (2003) 3 SCC 57***, the Supreme Court reminded that:

> "The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber' or 'dead letter' is not a harmonised construction. To harmonise is not to destroy."

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68.4 In the same decision it was held:

> "The Courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some in exactitude in the language used. [See *Salmon v. Duncombe (1886) 11 AC 627 p.634 (PC)*, *Curtis v. Stovin (1889) 22 CBD 513)* referred to in *Commissioner of Income Tax v. S. Teja Singh AIR 1959 SC 352*].
>
> If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. [See *Nokes vs. Doncaster Amalgamated Collieries (1940) 3 All E.R. 549 (CL)* referred to in *Pye vs. Minister for Lands for NSW (1954) 3 All ER 514 (PC)*]. The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India AIR 1992 SC 1*. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute."

69. In light of the settled legal position, this Court rejects the submission advanced by the counsel for the Petitioners that the provisions of the Act concerning the respective adjudicatory powers of the Authority and the AO, as they presently stand, are irreconcilable and that it is the AO alone that can exercise those powers to the exclusion of the Authority. Rules 28 and 29 of the Haryana Rules as amended seek to give effect to the harmonized construction of the provisions of the Act concerning the powers of the Authority and of the AO. The amended Rule 28 (1) of the Rules, in so far as it requires the Authority to first determine violations of the Act and then if it finds the existence of such violations to refer the matter to the AO only where there is prayer for compensation and interest by way of compensation, is consistent with above interpretation. It is in other words based on the correct understanding of the clear delineation of the powers of the Authority on one hand and the AO on the other. Rule 29 of the Rules is also consistent with this clear delineation of the adjudicatory powers of the Authority and the AO respectively. Therefore, the Court does not find the amended Rules 28 and 29 of the Rules, or the amendments to Forms CRA and CAO to be *ultra vires* the Act.

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70. The decision of the Appellate Tribunal rendered on 2nd May, 2019 in ***Sameer Mahawar*** (*supra*) to the effect that the Authority lacks the power to examine a complaint seeking refund or the interest can no longer hold good, particularly since it was rendered prior to the notification of the amended Rules 28 and 29 of the Haryana Rules.

71. The further issue that arises is regarding the prospective application of the amended Rules 28 and 29 of the Haryana Rules. Here, the settled legal proposition is that a change of forum would be 'procedural'. It was explained by the Supreme Court in ***Securities and Exchange Board of India v. Classic Credit Limited (2018) 13 SCC 1***, as under:

> "34……In our considered view, the legal position expounded by this Court in a large number of judgments including *New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840; Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765;* and *Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 4 SCC 696*, is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise.
>
> And also, that generally change of 'forum' of trial is procedural, and normally following the above proposition, it is presumed to be retrospective in nature, unless the amending statute provides otherwise.
>
> ….
>
> 35. We have also no doubt, that alteration of 'forum' has been considered to be procedural, and that, we have no hesitation in accepting the contention advanced on behalf of the SEBI, that change of 'forum' being procedural, the amendment of the 'forum' would operate retrospectively, irrespective of whether the offence allegedly committed by the accused, was committed prior to the amendment."

72. In view of the settled legal position, the position that emerges is this. As long as the complaint is yet to be decided as on the date of the notification publishing the Haryana Amendment Rules 2019, that will now be decided consistent with the procedure outlined under the amended Rules 28 and 29 of the Haryana Rules. In other words, if the pending or future complaint seeks only compensation or interest by way of compensation, and no other relief, it will be examined only by the AO. If the pending or future complaint seeks

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other reliefs i.e. other than compensation or interest by way of compensation, the complaint will have to be examined by the Authority and not the AO. If the pending or future complaint seeks a combination of reliefs, the complaint will have to be examined first by the Authority. If the Authority finds there to be a violation of Sections 12, 14, 18 and 19 of the Act by the promoter, and the complaint is by the allottee, then for determining the quantum of compensation such complaint will be referred by the Authority to the AO in terms of the amended Rule 28 of the Haryana Rules. A complaint that has already been adjudicated prior to the coming into force of the amended Rules 28 and 29 of the Haryana, and the decision has attained finality, will not stand reopened.

Retroactive application of the Act to 'ongoing projects'

73. The last issue concerns the retroactivity of the provisions of the Act particularly with reference to 'ongoing' projects. The expression "Real Estate Project" is defined in Section 2 (zn) of the Act to mean:

> "the development of a building or a building consisting or 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."

74. The Act is intended to apply even to 'ongoing' Real Estate Projects. The expression 'ongoing project' has not been defined under the Act but under Rule 2 (o) of the Haryana Rules which reads as under:

> "ongoing project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:
>
> (i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

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> (ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules."

75. The expression 'Completion Certificate' has been defined under Section 2 (q) of the Act as under:

> "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."

76. This has to be read along with the expression 'occupancy certificate' which is defined under Section 2 (zf) of the Act as under:

> "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."

77. Rule 3 of the Haryana Rules talks of application for registration and Rule 4 of 'additional disclosure by Promoters of ongoing projects.' Therefore, all 'ongoing projects' i.e. those that commenced prior to the Act, and in respect of which no completion certificate is yet issued, are covered under the Act. It is plain that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. The issue that arises is whether this is permissible in law?

78. The decision of the Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd.*** (*supra*) has dealt with this issue quite extensively. The conclusion of the Bombay High Court that this retroactive application of the Act, as distinguished from retrospective effect, in relation to ongoing project is consistent with the legal position in this regard. A very conscious decision was taken that the Act should apply not only to new projects but to existing projects as well.

79. The following observations of the Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd.*** (*supra*) are relevant in this context:

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"86. On behalf of the Petitioners it was submitted that registration of ongoing project under RERA would be contrary to the contractual rights established between the promoter and allottee under the agreement for sale executed prior to registration under RERA. In that sense, the provisions have retrospective or retroactive application. After assessing, we find that the projects already completed are not in any way affected and, therefore, no vested or accrued rights are getting affected by RERA. The RERA will apply after getting the project registered. In that sense, the application of RERA is prospective in nature. What the provisions envisage is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under RERA, but, while getting project registered, promoter is entitled to prescribe a fresh time limit for getting the remaining development work completed. From the scheme of RERA and the subject case laws cited above, we do not find that first proviso to Section 3(1) is violative of Article 14 or Article 19(1)(g) of the Constitution of India. The Parliament is competent to enact a law affecting the antecedent events. In the case of *State of Bombay v. Vishnu Ramchandra AIR 1961 SC 307*, the Apex Court observed that the fact that part of the requisites for operation of the statute were drawn from a time antecedent to its passing did not make the statute retrospective so long as the action was taken after the Act came into force. The consequences for breach of such obligations under RERA are prospective in operation. In case ongoing projects, of which completion certificates were not obtained, were not to be covered under RERA, then there was likelihood of classifications in respect of undeveloped ongoing project and the new project to be commenced. In view of the material collected by the Standing Committee and the Select Committee and as discussed on the floor of the Parliament, it was thought fit that ongoing project shall also be made to be registered under RERA. The Parliament felt the need because it was noticed that all over the country in large number of projects the allottees did not get possession for years together. Huge sums of money of the allottees is locked in. Sizable section of allottees had invested their hard earned money, life savings, borrowed money, money obtained through loan from various financial institutions with a hope that sooner or later they would get possession of their apartment/flat/unit. There was no law regulating the real estate sector, development work/obligations of promoter and the allottee. Therefore, the Parliament considered it to pass a central law on the subject. During the course of hearing, it was brought to notice that in the State of Maharashtra a law i.e. MOFA on the subject has been in operation. But MOFA provisions are not akin to regulatory provisions of RERA.

87. The important provisions like Sections 3 to 19, 40, 59 to 70 and 79 to 80 were notified for operation from 1/5/2017. RERA law was enacted in the year 2016. The Central Government did not make

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

88. On behalf of the Petitioners it was submitted that Parliament lacks power to make retrospective laws. Series of judgments cited above would indicate a settled principle that a legislature could enact law having retrospective/retroactive operation. It cannot be countenance that merely because an enactment is made retrospective in its operation, it would be contrary to Article 14 and Article 19(1)(g). We find substance in the submissions advanced by the learned counsel appearing for the respondents that Parliament not only has power to legislate retrospectively but even modify pre-existing contract between private parties in the larger public interest. No enactment can be struck down merely by saying that it is arbitrary and unreasonable unless constitutional infirmity has been established. It is settled position that with the development of law, it is desirable that courts should apply the latest tools of interpretation to arrive at a more meaningful and definite conclusion. A balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6). The application of the principles will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

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

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> and wait for the outcome of the same for indefinite period. The public interest at large is one of the relevant consideration in determining the constitutional validity of retrospective legislation."

80. This Court concurs with the above conclusions. No order of the Supreme Court either entertaining a Special Leave Petition against the above decision in ***Neelkamal Realtors Suburban Pvt. Ltd.*** (*supra*) or staying its operation has been shown to this Court. In any event, the Court is of the view that there is nothing unreasonable and arbitrary in making the provisions of the Act applicable to all ongoing projects. There is a clear indication in the Act read with the Haryana Rules of what can be considered to be an ongoing project. If it is the case of the promoter that the completion certificate has been deliberately delayed, that would be examined by the AO, the Authority or the Appellate Tribunal, as the case may be, and the decision on that issue shall be taken into account while deciding the case. The mere fact that there may be an instance where there has been deliberate delay in issuing the completion certificate will not render the retroactivity of the provisions unreasonable or arbitrary. Consequently, this Court rejects the challenge to Sections 13, 18 (1) and 19 (4) of the Act and Rules 3 to 16 of the Haryana Rules as regards their retroactive applicability to 'ongoing projects'.

81. One issue that has been raised in CWP-15647-2019 (*M/s TDI Infrastructure Ltd v. Union of India and others*), concerning the retroactive application of Section 13, 18 (1) and 19 (4) of the Act and Rules 8 and 15 of the Haryana Rules, is in respect of Space Buyers Agreements that were executed prior to the coming into force the Act and the Haryana Rules. The submission is that in terms of the Explanation to Section 3, the project undertaken by the Petitioner M/s. TDI Infrastructure Limited (hereafter 'TDI') cannot be considered to be an 'ongoing' project. The contention is that TDI had completed "major portion of development of their project' and had obtained a part completion certificate (CC) and had applied for an occupancy certificate (OC) prior to the coming into force of the Act, despite which their projects were treated as 'ongoing'. According to TDI, on a collective reading of Sections 2 (o) with 2 (zn) of the Act as interpreted by the Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd v. Union of India*** (*supra*), the provisions of the specific agreements

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entered into between TDI and their customers prior to coming into force of the Act and Haryana Rules are sacrosanct and cannot be sought to be overridden by retrospectively applying the Act and the Rules. It is sought to the contended that as long as the part CC was obtained and the OC had been applied for and was pending on the date of the coming into force of the Act, it would not fall within the definition of 'ongoing' project and such projects do not require registration. The grievance is that despite the above position, a notice dated 17th January, 2019 was issued by the Authority to TDI under Section 35 of the Act, taking a contrary view and seeking to apply the Act and Rules to TDI.

82. It is sought to be contended that directions issued by the Authority to TDI requiring it to get its project registered would contradict the decision of Supreme Court in ***K. Kapen Chako v. The Provident Investment Company (P) Ltd. (1977) 1 SCC 593*** which holds that an Act cannot be applied retrospectively to override the effect of an existing instrument/contract. Reliance has also been placed in this context on the decisions in ***Suhas H. Pophale v. Oriental Insurance Co. Ltd. (2014) 4 SCC 657*** and ***Purbanchal Cables and Conductors Pvt. Ltd. v. Assam State Electricity Board (2012) 7 SCC 462.*** In the last mentioned judgment, the Court was considering the award of interest in terms of new statute and had held that such award of interest could only be for transactions/contracts executed after the date of enactment and cannot be retrospective. It is contended that in all the agreements executed by TDI prior to the enactment of the Act, the buyers were agreed for compensation for delayed possession in the form of 'liquidated damages' payable in terms of the agreement. There was a contractual cap on the amount of damages that may be relieved in terms of space buyer agreements. It is contended that all of this cannot be overridden by applying the provisions of the Act. Reliance is placed on the statement made by the Minister of Urban Development while dealing with the Bill in which, inter-alia, it was stated as under:

> "Regarding the consequences of including the ongoing projects under the Bill, I discussed the issue with my officials. This shall have a bearing on the projects and consumers. In fact, the Select Committee of Rajya Sabha too in its wisdom supported and retained the need for regulating existing projects. But at the same time, project which is almost at the far end of completion and all, what they require is they need to give only information. We are not

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> going to harass them. Because there is so much concern among the industries circle as to what will happen to the ongoing projects, on ongoing projects whatever agreement you have entered earlier stands. You have to fulfill the obligation which you yourself have agreed upon through an agreement. And whatever conditions that were stipulated in our agreement, they have to be implemented in toto. All of what I am proposing will apply for the future projects along with the projects which have got stuck now. It is necessary for me to clarify that upon passage of the Bill, ongoing projects would not come to a standstill. Let me make it very clear in the premises of the Parliament. They will not come to a standstill they will continue.
>
> The Bill does not provide that the existing project should stop all operations until complied with the provisions of the Bill. The Bill does not say that. The Bill only provides upon the formation of the authorities, all promoters of existing projects coming within the ambit of the Bill would need to register and provide and upload all project details on the website of the Authority. This is mandatory. A window of three months from the date of the commencement of the said clauses, sections have been given to the promoters for registration also.
>
> Reasonable time has been given. All that developers need to do is to specify the project details of such apartments so that, prospective buyers will make informed choice, project status is known to all, and ensure that the projects are completed on time. That is the need of the hour."

83. It is, accordingly, contended that Sections 13, 18 (1) and 19 (4) of the Act and Rules 8 and 15 of the Haryana Rules to the extent they are applied retrospectively, are violative of Articles 14, 20 and 19 (1) (g) of the Constitution of India.

84. The above submissions have been considered. The Statement of Objects and Reasons preceding the enactment have already been referred to. The relevant passages of the judgment of Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd.*** *(supra)* have also been referred to. The very concept of 'ongoing project' is unique to the Act. The legislature was conscious of the impact that the Act would have on such 'ongoing projects'. A collective reading of Section 3 with Section 2 (o) and 2 (zn) indicates that care was taken to specify which of the projects would stand exempted. Section 3 (2) (b) of the Act is categorical that no registration of the project would be required where

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"the promoter has received completion certificate for real estate project prior to the commencement of this Act." It cannot thus be argued that without satisfying the above requirement or the other two contingencies in Sections 2 (a) and 2 (c) of the Act, a promoter can avoid registering an 'ongoing' project under the Act.

85. Whether on the facts of a particular case, a promoter satisfies the above requirement and therefore, is not required to obtain registration, is for the Authority to determine in the first instance. If TDI is aggrieved by the decision of the Authority, then TDI would have other remedies already set out in the Act. The mere possibility that the Authority may commit an error in concluding whether TDI satisfies the conditions spelt out in the Act for exempting them from registration, would not be reason to strike down the provisions themselves. The Court is of the considered view that Section 13, 18 (1) and 19 (4) of the Act and Rules 8 and 15 of the Haryana Rules do not fall foul of Articles 14 and 19 (1) (g) of the Constitution on account of the their retroactive applicability to 'ongoing' projects.

86. The Act was consciously made applicable to 'ongoing projects' i.e. those for which a CC has yet not been received by the promoter. There is also no question of any violation of settled law regarding overriding of the agreements of sale entered into prior to the date of Act coming into force and Haryana Rules. Those agreements of sale would obviously be subject to the new legal dispensation put in place by the Act and the Rules. In light of the object and purpose of the Act, no comparison can be drawn with the other enactments which were subject matter of the decisions of Supreme Court relied upon by TDI.

87. TDI also appears to be making a mistake in treating the penalty imposed under the Act as a 'punishment for an offence' and erroneously contending that there is a violation of Article 20 of the Constitution of India. The penalty envisaged under the Act is not in the nature of a punishment for an offence but the consequence of failure to comply with various obligations specified in the Act.

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88. For the above mentioned reasons, the Court finds no ground to accept the prayer of the Petitioner for a declaration that Sections 13, 18 (1) and 19 (4) of the Act and Rules 8 and 15 of Haryana Rules, to the extent of their retroactive operation i.e. to 'ongoing projects' should be struck down. The Court leaves it open to TDI to raise all the other contentions regarding the grant or non-grant of the CC or OC and the applicability to its projects of the Act in its case before the Authority.

Summary of conclusions

89. To summarise the conclusions:

(i) The challenge to the constitutional validity of the proviso to Section 43 (5) of the Act is rejected.

(ii) The orders of the Appellate Tribunal declining to grant the Petitioners further time to make the pre-deposit 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, are hereby affirmed. Nevertheless, this Court has in paragraphs 94 and 95 hereafter issued directions giving one last opportunity to the Petitioners to make the pre-deposit in a time-bound manner.

(iii) In the facts and circumstances of the individual 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 of waiver of pre-deposit. In none of the cases is the Court satisfied that a case of 'genuine hardship' has been made out.

(iv) On the interpretation of the provisions of the Act, the conclusions 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, in none of the cases the Authority can be held to have exercised a jurisdiction that it lacked and its orders cannot be said to be without jurisdiction. No interference under Article 226 is warranted on that score.

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(v) As regards the merits of the order of the Authority the remedy of an appeal before the Appellate Tribunal is in any event available. 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 instance too the pre-deposit would be mandatory.

(vi) 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.

(vii) Rules 28 and 29 of the Haryana Rules as amended seek to give effect to the harmonized construction of the provisions of the Act concerning the powers of the Authority and of the AO. They are not *ultra vires* the Act. The Court rejects the challenge to the validity of the amended Rules 28 and 29 of the Rules and the amendments to Forms CRA and CAO.

(viii) A complaint yet to be decided as on the date of the notification of the Haryana Amendment Rules 2019, will now be decided consistent with the procedure outlined under the amended Rules 28 and 29 of the Haryana Rules.

(ix) The challenge to Sections 13, 18 (1) and 19 (4) of the Act and Rules 8 and 15 of the Haryana Rules as regards their retroactive applicability to 'ongoing projects' is hereby rejected.

90. 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. All the interim

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orders in the petitions stand vacated. The proceedings in the pending appeals before the Appellate Tribunal will now continue in accordance with law.

Orders in the individual writ petitions

91. As far as CWP No. 34244 of 2019 is concerned, the only prayer therein is for quashing the amended Rules 28 and 29 of the Haryana Rules. In view of the present judgment of this Court, that prayer is rejected. Further, it may be noted that by interim order dated 11th September 2020, this Court had vacated the interim order passed by it on 25th November, 2019 and directed that the AO before whom the complaint of Petitioner was pending, will proceed with the hearing but not pass any final order. In view of the present judgment of this Court, it is now directed that the said complaint, since it seeks refund together with interest, be placed before the Authority on 23rd November, 2020 for directions and for the Authority to then proceed to dispose of the said complaint in accordance with law. The AO will arrange to transmit the record of the said complaint to the Authority well before the aforementioned date. The writ petition is dismissed in the above terms.

92. As regards the remaining petitions, many of the prayers are common and some others are relevant to some of the writ petitions. However, the complete list of prayers as is evident from examining the prayer clauses in the individual writ petitions include the following:

(i) That the proviso to Section 43 (5) of the Act be declared unconstitutional;

(ii) That the amended Rules 28 and 29 forms CRA and CAO of the Haryana Rules be declared ultra vires of the Act.

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

(iv) That the order of the Appellate Tribunal dismissing the application for waiver of pre-deposit be quashed.

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(v) That the order of the Appellate Tribunal dismissing the appeal for failure to make the pre-deposit be quashed.

(vi) A direction be issued by this Court in exercise of its powers under Article 226 of the Constitution, to the Appellate Tribunal to entertain the Petitioner's appeal without insisting on any pre-deposit.

(vii) That the retrospective application of Sections 14, 18 and 19 of the Act and Rules 8 and 15 of the Haryana Rules be declared invalid.

93. For the reasons set out in this judgment each of the above prayers wherever occurring in the writ petitions is rejected. It is clarified that this Court is desisting from discussing the merits of the orders of the Authority in the individual petitions as that would have to be examined by the Appellate Tribunal wherever appeals have been or are to be filed.

Directions

94. Since these writ petitions have been pending for some time and interim orders have also been passed in many of them, as a one-time measure permission is granted to the Petitioners to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal, wherever appeals have already been filed and are pending, not later than 16th November, 2020. This will also be available to those Petitioners in whose cases the registry of the Appellate Tribunal did not process the appeals for failure to make the pre-deposit. Upon the making of such pre-deposit within the time granted by this Court, the Appellate Tribunal, where the appeal is still pending, will then proceed to hear the appeal on merits, which would include a challenge to the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit even within the extended time as granted by this Court, the Appellate Tribunal will proceed to pass appropriate consequential orders in the appeal.

95. Where the Petitioner's appeal already stands dismissed by the Appellate Tribunal for a failure to make the pre-deposit as directed, and that order is

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challenged in the writ petition, this Court as a one-time measure, permits the Petitioner 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. Upon making of the pre-deposit within the time granted by this Court, the Appellate Tribunal will recall its order dismissing the appeal, restore the appeal to file and proceed to dispose of the appeal on merits, which will include examining the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit with the time as granted by this Court, the order of the Appellate Tribunal dismissing the appeal will stand affirmed without any further recourse to this Court.

96. Where no appeal has yet been filed before the Appellate Tribunal, it is open to the Petitioner to challenge the order of the Authority before the Appellate Tribunal in accordance with law. The fact of pendency of present petitions will be taken into account by the Appellate Tribunal while examining the question of condoning the delay in filing the appeal.

97. With all of the above directions, the writ petitions are dismissed but no order as to costs. All the interim orders in the individual petitions stand vacated.

98. A copy of this judgment be placed in the connected petitions.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

16th October, 2020
jk/satyawan

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

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