IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RERA Appeal No.19 of 2020
Date of Decision:- 27.11.2020

M/s Parador Developers (Amritsar) Private Limited ....Appellant

vs.

Real Estate Regulatory Authority, Punjab and another ....Respondents

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CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present:- Mr. Shekhar Verma, Advocate,
for the appellant.

Mr. P.S. Bajwa, Addl. A.G., Punjab.

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SUDHIR MITTAL, J.

Vide request dated 13.10.2017, the appellant sought permission for change of land use of an area measuring 93.265 acres for development of a residential colony. The Department of Town and Country Planning, Punjab, granted permission for change of land use vide its memo dated 17.10.2017. Consequently, an application for grant of licence was made to the Amritsar Development Authority, who, granted the licence vide its memo dated 13.06.2019. Licence period was 5 years ending on 12.06.2024. Thus, application dated 10.09.2019 was filed before the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the 'Authority) for registration of Phase-I of the residential colony under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'). A declaration in Form-B was also filed stating that the development work would be completed on or before 12.06.2024. There is no dispute that Phase-I of the residential colony covers an area of 70.264 acres wherein residential plots are to be developed. Phase-II covers the rest of the land and pertains to development of a group housing colony. Vide memo dated 4.10.2019, Phase-I was registered but the validity thereof was reduced by one year i.e. upto 12.06.2023. The appellant sought a clarification and vide memo dated 13.11.2019. The Authority clarified that registration was uptill 12.06.2023 only as the group housing component was not being executed in Phase-I. Thus, the appellant filed a statutory appeal before respondent No.2 but the same has been dismissed vide order dated 03.07.2020. Hence, the present appeal has been filed under Section 58 of the Act.

A perusal of Section 58 of the Act shows that an order of the Appellate Tribunal can be challenged on any one or more grounds specified in Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). Section 100 of the CPC provides that the High Court can hear an appeal from a decree passed in appeal by a Court subordinate to the High Court if it is specified that the case involves substantial question of law. The meaning of the expression 'substantial question of law' is no longer *res integra*. Yet, reference is being made to ***Nazir Mohamed*** Vs. ***J. Kamala and others***, **2020 (3) RCR (Civil) 684** wherein after examination of precedents, it has been held:-

> "32. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way."

In the grounds of appeal certain legal issues have been raised.

However, the substantial questions of law which arise in this case are :

(a) Whether the Authority was justified in reducing the period of registration despite the statutory prescription mentioned under Section 5(3) of the Act.

(b) Whether the appellant was entitled to grant of an opportunity of hearing before the period of registration was reduced.

Section 4(2)(l) of the Act stipulates that an application for registration of the project shall enclose various documents, one of which would be a declaration supported by an affidavit signed by the promoter or authorized person wherein statement would be made of a number of facts including the time period within which he undertakes to complete the project or phase thereof. Section 5(3) of the Act states that the registration granted thereunder shall be valid for a period declared by the promoter under sub-clause (C) of clause (l) of sub-section 2 of Section 4. Section 4(2)(l)(C) is reproduced below:-

"4. Application for registration of real estate projects:-

(1) xxxx xxxx xxxx xxxx

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:-

(a) to (k) xxxx xxxx xxxx xxxx

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:-

1. (A) & (B) xxxx xxxx xxxx

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D to F) xxxx xxxx xxxx”

Section 5 of the Act is also reproduced below:-

“**5. Grant of registration:-**(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section(1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section(1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his

web page and to fill therein the details of the proposed project.

(3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (l) of sub-section (2) of Section 4 for completion of the project or phase thereof, as the case may be."

The Appellate Tribunal has relied upon a Division Bench judgment of the Bombay High Court reported as 2017 SCC online Bombay 9302 ***Neel Kamal Realtors Suburban Pvt. Ltd. and another*** vs. ***Union of India and others***, to hold that the Authority has the power to reduce the period of registration. It is not bound to register the project for the period declared by the promoter under Section 4(2)(l)(C) because if that were so, the promoter could declare an arbitrary period for completion of the project and the same would be contrary to the object and purpose of the Act. It has also been held that reasons must be given for reducing the time period else, the decision would be rendered arbitrary. Reasons have been provided vide memo dated 13.11.2019. They are that registration has been sought for Phase-I of the project only and the group housing component is not being executed therein. Thus, although reasons have been given in brief, the same are germane to the issue. Reduction of the time period cannot be held to be arbitrary.

Learned counsel for the appellant has argued that it is in the interest of a developer to mention a reasonable period in the declaration made under Section 4(2)(l)(C) of the Act because if an unreasonably long period is mentioned, it would affect the marketability of the project. Thus, in view of the profit motive, no developer would ever mention an unreasonably long period in the declaration. Further, the language of Section 5(3) of the Act is clear and unambiguous and it gives no discretion to the Authority to register a project for a period otherwise than that mentioned in the declaration. Section 4(2)(l)(C) and Section 5(3) of the Act have been wrongly interpreted by the Appellate Tribunal. Judgment of the Bombay High Court in ***Neel Kamal (supra)*** is not applicable to this case as interpretation of Sections 4(2)(l)(C) and Section 5(3) of the Act was not the subject-matter thereof. Challenge in the said case was to the constitutional validity of various provisions of the Act including Section 4(2)(l)(C) and Section 5(3) and any observation made regarding the power of the Authority to reduce the period of registration while considering the constitutionality of the said provisions was *obiter dicta*. Thus, the appeal should be allowed and the order of the Tribunal as well as that of the Authority should be set aside.

In response, learned counsel for the respondents submits that the learned Appellate Tribunal has rightly relied upon the judgment in ***Neel Kamal (supra)*** and that the Authority has the power and jurisdiction to reduce the period of registration of a project as otherwise a promoter could mention any arbitrary period and the same would not be in the interests of the buyers.

It is settled law that while interpreting a Statute, its plain meaning must be given effect to in case there is no ambiguity. A perusal of sub-section 3 of Section 5 of the Act leaves no manner of doubt that registration granted under Section 5 of the Act shall be valid for a period declared by the promoter under Section 4(2)(l)(C). This is the plain and clear meaning of the words used therein. Thus, no other interpretation is possible.

Under Section 5 of the Act, the Authority has the power either to register a project or to refuse registration but before refusal, an opportunity of hearing must be granted. There could be many reasons for refusing to register a project and one of them could be an arbitrary time period mentioned in the declaration. Thus, if a promoter mentions an inordinately long period in its declaration or for some other reason the Authority finds the same to be illogical and arbitrary, it could reject the application, however, not without grant of opportunity of hearing. During the course of hearing, the promoter would be in a position either to justify the period or to accept the objections of the Authority and modify the period. This would take care of the concerns of both sides and would not cause any violence to the language of the Statute. The interpretation placed by the Authority under Section 5(3) of the Act would entail adding the words 'unless the period is arbitrary' at the end of the sub-section, which is not permissible.

The judgment in ***Neel Kamal (supra)*** was passed on a challenge to the constitutional validity of various provisions of the Act. The challenge was laid by promoters of ongoing projects. Thus, the Division Bench was concerned with the constitutionality of the various provisions of the Act and any stray observation which gives the impression of interpretation of Section 5(3) of the Act would be *obiter dicta*. In any case, para 96 relied upon by learned counsel for the respondents can in no way be read to mean that the Authority has power to reduce the time period mentioned in the declaration. All it says is that in case an unreasonable time period is mentioned therein, the Authority would not register such an application and would issue necessary directions keeping in view the facts and circumstances of each case. This is precisely the interpretation made hereinabove.

The substantial questions of law are, thus, answered in favour of the appellant. It is held that the Authority has no power or jurisdiction to reduce the time period mentioned in the declaration. If it feels that the period mentioned is arbitrary or unacceptable due to any reasons, a notice to show cause for rejection of the application must be given.

The appeal is allowed and the orders impugned therein are set aside. The case is remitted to the Authority for a fresh decision in accordance with law. The Authority is directed to pass an order within seven days from receipt of a certified copy of this judgment.

November 27, 2020 **(SUDHIR MITTAL)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**