

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15444 of 2021

M/s Nesh India Infrastructure Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at Nesh Inn Building 19 and 20, Kidwaipuri, P.S. - Budha Colony, District - Patna - 800001 through its Managing Director, Shri Shashi Bhushan Sinha, Male, aged about 53 years, son of late Chandrika Prasad, resident of 501, Laxmi Hari Niwas, Nageshwar Colony, Kavi Raman Path, P.S. - Buddha colony, District- Patna- 800001.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Vikash Bhawan, Bailey Road, Patna - 800015.
2. Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Vikash Bhawan, Bailey Road, Patna - 800015.
3. The Officer on Special Duty, Bihar Real Estate Appellate Tribunal, Patna- 800001.
4. Savita Sah Daughter of Late Bharat Sah Resident of A/416, Hazari House, South-West Corner of Park, A.G. Colony, District- Patna - 800025.
5. Sita Ram Singh Son of Sri Indira Deo Singh A- 488, East Corner of Park, A.G. Colony, P.S. - Shastri Nagar, District- Patna- 800025.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Abhinav Srivastava, Advocate Mr. Raushan, Advocate
For the Respondents	:	Mr. Abbas Haider (SC-6) Mr. Wasi Mohammad, A.C. to S.C.-6
For Resp. Nos. 4 and 5	:	Mr. D.K. Sinha, Sr. Advocate Mr. Alexander Ashok, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 28-08-2024

By way of this writ petition, the petitioner has
prayed for the following reliefs:-

*“(i) Issuance of a direction, order or writ,
including writ in the nature of certiorari
quashing the order dated 10.08.2021 passed
by the Bihar Real Estate Appellate Tribunal*



(hereinafter referred to as “BREATH”) in Appeal Case No.28 of 2021 and Appeal No.29 of 2021, by which the learned BREATH allowed the prayer of private respondents and modified its earlier order dated 02.07.2021 and directed the petitioner to deposit the total amount of the compensation, interest and litigation cost payable as directed by the Adjudicating Officer of Real Estate Authority, Patna;

- (ii) Issuance of a direction, order or writ, including writ in the nature of mandamus directing the learned BREATH to hear the appeal of the petitioner on merits as per the provisions of Section 43(5) of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “the Act”) which mandates deposit of at least 30% of the awarded amount for hearing the appeal and the petitioner has already deposited 30% of the awarded amount pursuant to the order dated 02.07.2021 passed by the learned BREATH.”*

2. During the pendency of this case, the petitioner has filed Interlocutory Application no.1 of 2023 for staying the execution proceeding which has been initiated at the instance of the respondent nos.4 and 5 before the Real Estate Regulatory Authority, Bihar, in Execution Case Nos.68 of 2021 and 69 of 2021. The said interlocutory application has been



allowed by this Court vide order dated 04.01.2024.

3. The facts of this case are that the petitioner is a company incorporated under the Companies Act, 1956 having registered office at Kidwaipuri, P.S.- Budha Colony, District-Patna. During the course of its business, the petitioner-company entered into a registered development agreement dated 25.08.2011 with respondent nos.4 and 5 for developing their land and further entered into an unregistered supplementary agreement dated 31.01.2011. Clause-7 of the agreement states that the project would be completed in three years including the grace period of six months from the date of sanction of the plan or the handing over the vacant possession to the developer. Since the project could not be completed within time, the respondent nos.4 and 5 filed complaint case nos. 81 and 82 of 2018 under section 31 of the Act before the Real Estate Regulatory Authority (for short "RERA") on the ground of non-observance of the terms of the development agreement dated 25.08.2011. The petitioner-company opposed the maintainability of the said complaint cases on the ground that the respondent nos.4 and 5 did not allege violation of the provisions of the Act or rules and regulations made thereunder as required under section 31 of the Act. However, RERA by an



order dated 09.08.2019 disposed of both the cases with a direction to the petitioner-company to hand over the possession of three specified flats along with parking space to each private respondent and also directed that the private respondents were not required to pay anything as stipulated in the supplementary agreement dated 31.01.2011. Against the aforesaid order, the petitioner-company preferred Appeal Case nos.08 & 09 of 2019 before the Real Estate Appellate Tribunal, Bihar unsuccessfully. Against the order of the Appellate Tribunal, the petitioner-company preferred Miscellaneous Appeal before this Court, which is still pending.

3.1. In the meantime, the respondents nos. 4 and 5 filed a connected case bearing No. RERA/AO/233/2019 and RERA/AO/234/2019 before the Adjudicating Officer claiming the interest and compensation under section 31 read with section 71 of the Act and Rule 37 of the Bihar Real Estate (Regulation and Development) Rules, 2017. In the said case, the petitioner-company filed a detailed reply mentioning therein that the time indicated in the agreement for completion of the project has to be strictly adhered to but, on account of reasons beyond the control of the petitioner-company, the construction work could not be completed within the time frame. However, the



Adjudicating Officer by an order dated 09.03.2021 awarded litigation cost, compensation and interest to the respondent nos. 4 and 5 to be paid by the petitioner - company within 60 days, failing which, liberty was granted to the respondent nos. 4 and 5 to get the order enforced through execution proceeding. Feeling aggrieved by the aforesaid order dated 09.03.2021, the petitioner-company preferred Appeal Case Nos.28 & 29 of 2021 before the Real Estate Appellate Tribunal, Bihar. The Appellate Tribunal vide order dated 02.07.2021 directed the petitioner-company to deposit 30% of the awarded amount as a condition precedent to hear the appeal preferred by the petitioner-company as per Section 43(5) of the Real Estate (Regulation and Development) Act, 2016. In compliance of the order dated 02.07.2021, the petitioner-company deposited 30% of the awarded amount in case of each of the private respondent but subsequently at the instance of the private respondents the Tribunal reviewed its order dated 02.07.2021 and by the impugned order dated 10.08.2021, relying on judgment dated 20.03.2020 of the Madras High Court passed in ***T. Chitty Babu vs. Union of India & Ors. (W.P. No. 29933 of 2019)*** and the judgment dated 16.10.2020 of the Punjab and Haryana High Court passed in the case of ***Janta Land Promoters Pvt. Ltd vs.***



Union of India (CWP No 8548 of 2020) and other analogous cases, directed the petitioner-company to deposit the total amount of the compensation, interest and the litigation cost awarded by the Adjudicating Officer as a condition precedent to hear the appeal.

4. Learned counsel for the petitioner submits that the judgment and order dated 20.03.2020 of the Madras High Court rendered in the case of ***T. Chitty Babu vs. Union of India (W.P. No. 29933/2019)*** and the judgment and order dated 16.10.2020 of the Punjab and Haryana High Court passed in the case of ***Janta Land Promoters Pvt. Ltd v. Union of India (CWP No.3049 of 2020)***, on which the Tribunal placed reliance while passing the impugned order, have already been stayed by the Hon'ble Supreme Court vide orders dated 19.11.2020 and 03.02.2021 passed in Special Leave to Appeal (C) Nos.10396 of 2020 and 183 of 2021 and therefore, both the aforesaid judgments are under consideration before the Hon'ble Supreme Court.

5. Learned counsel for the petitioner-company further submits that the dispute arising out of a development agreement between a landowner and developer is beyond the jurisdiction of the Real Estate Authority or Real Estate Appellate



Tribunal as held by the Authority and Tribunal in Case No.63 of 2018 and Appeal No.16 of 2021 respectively and the Civil Court of competent jurisdiction has the power to look into the disputes of such nature, which falls within the definition of 'promoter' under the Act. In support of this submission, he has drawn the attention of this Court to Section 2(d) of the Act, which reads as follows:

"2(d) 'allottee' in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Thereafter, he submits that on a plain reading of the definition of the 'allottee' one can easily asses that landowner does not fall within the definition of allottee as per section 2(d) of the Act and therefore RERA or the Adjudicating Officer has acted beyond jurisdiction in entertaining the dispute arising out of a development agreement as respondent nos.4 & 5 are



landowners. Further, the petitioner-company is a 'promoter' as per section 2(zk) of the Act but, the respondent nos. 4 & 5 being landowners are not falling under the definition of 'allottee' as per section 2(d) of the Act and as such, the entire proceedings initiated against the petitioner-company is beyond jurisdiction and the RERA or the Adjudicating Officer is not a competent authority to adjudicate the dispute pertaining to the landowner and promoter.

6. Learned counsel for the petitioner further argues that under section 2(zk) the words 'causes to be constructed' in the definition of a promoter brings the landowner within the ambit of definition of a promoter and not an allottee. He draws the attention of this Court to certain circulars issued by different RERAs in different States within the country stipulating the circumstances under which the landowners can be treated as promoter and they were held to be jointly liable for any defect or delay in the project and submits that in none of the circulars, the landowners have been treated as allottees as defined under section 2(d) of the Act and these very facts manifestly demonstrates that the RERA has no jurisdiction to adjudicate any disputes between the land owner and a promoter as the Civil Court is the competent Court to adjudicate the



dispute because it arises from dispute relating to an agreement / development agreement entered into between the parties.

7. Learned counsel for the petitioner refers to Clause-6 of the Bihar Real Estate Regulatory Authority (General) Regulations (Amendment), 2022, Notification No. 01-Bihar/RERA 2022/General Regulation Amendment 2022 and submits that this regulation will not apply in case of the petitioner-company since all the agreements, orders of the RERA or the Appellate Authority is before the date of publication of the aforesaid regulation. He submits that pursuant to order dated 02.07.2021 passed by the Appellate Tribunal, the petitioner-company deposited 30% of the awarded amount but, thereafter another order dated 10.08.2021 was passed directing the petitioner-company to deposit 100% of the award amount without any reason. The Tribunal must form its opinion on the facts and materials before imposing higher quantum of compensation, penalty and interest to be deposited by the promoter as a condition precedent to entertain an appeal and therefore directing the petitioner-company to deposit total awarded amount by way of an unreasoned order is highly arbitrary and unreasonable.

8. It has also been submitted by learned counsel



for the petitioner-company that the order of the Real Estate Regulatory Authority is bad in law for want of jurisdiction since the supplementary agreement dated 25.08.2011 is an unregistered document and as per section 17 of the Registration Act, such documents are compulsorily registerable. Further, the agreement was executed in the year 2011 and the Act came into effect from 2016 and therefore, the proceeding before the Real Estate Regulatory Authority is unsustainable.

9. Lastly, it has been submitted that in Clause-17 of the development agreement dated 25.08.2011, it has clearly been mentioned that any dispute between the parties relating to this development agreement shall be settled / decided in accordance with the Arbitration and Conciliation Act and therefore, this ground also makes the proceeding before the Real Estate Regulatory Authority *void*. The order passed by the RERA is also bad in law on the score that the development agreement dated 25.08.2011 being executed in furtherance of the Bihar Apartment Ownership Act, 2006 and as such, any dispute relating to such agreements can only be adjudicated by the Civil Court of original jurisdiction.

10. The State in its counter affidavit has submitted that in this case the State is a formal party as the



dispute is among the petitioner-company and the respondent nos.4 and 5.

11. The respondent nos. 4 and 5 have filed counter affidavit in the matter.

12. Learned counsel for the respondent nos. 4 and 5 has drawn the attention of this Court to specific clauses of the development agreement dated 25.08.2011, by which it was agreed that the builder shall provide flats of super built up area equal to 2.25 times of the land area i.e. $2.25 \times 2000 = 4500$ sq. feet in lieu of the land given by the respondent nos. 4 and 5. As per clause-5 of the said development agreement, a separate supplementary agreement was signed on the very same date i.e. on 25.08.2011, by which actual share of the land owner was specified.

13. Learned counsel for the respondent nos. 4 and 5 has also drawn the attention of this Court to clause-21 of the agreement, by which it was agreed that if the multi-storeyed building was constructed more than G+5, proportionate share would be distributed between landowner and the Developer. Clause-7 of the agreement states that the project would be completed in three years including the grace period of six months from the date of sanction plan or the handing over the



vacant possession to the developer and as per Clause 7.2 of the agreement, it was agreed that in the event the developer fails to complete the constructions as per the plan within the time frame, the developer shall be liable to pay the compensation @ Rs.8,000/- per flat per month to the land owners.

14. It has been submitted by learned counsel for the respondent nos. 4 and 5 that the whole controversy revolves around the interpretation of proviso to section 43(5) of the Act. There are two categories of condition of pre-deposit under section 43(5) of the Act. The first category refers to penalty, in which 30% or higher percentage as determined by the Appellate Tribunal is required to be deposited before the appeal is entertained. The second category comprises the total amount to be paid to the allottee including interest and compensation imposed on the developer. The interest and compensation awarded by the Adjudicating Officer comes under the second category and therefore, the total amount including the interest and compensation is required to be deposited before the said appeal is heard. It has further been submitted that imposition of penalty is provided in sections 59 to 69 of Chapter VIII of the Act whereas, the imposition of interest and/or compensation is provided under sections 12, 14, 18 & 19 of the Act and these



provisions are not for imposition of penalty. Under section 71 of the Act, Adjudicating Officer is appointed for the purposes of adjudging compensation. In the present case, the Adjudicating Officer had not imposed any sort of penalty but had awarded compensation and interest, consequently the pre-deposit of the total (100%) is required to be deposited by the builder before the case is heard on the merits.

15. Learned counsel for the respondent nos. 4 and 5 has placed reliance on the decision of the Hon'ble Supreme Court in *C.A. 6745-6749 of 2021 (M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and Ors.)* and has submitted that the builder has to deposit total amount of the interest and compensation imposed by the Tribunal before the appeal is entertained by the Tribunal.

16. It has also been submitted by the respondent nos. 4 and 5 that the present dispute relates to the piece of land situated at Danapur, District-Patna within the limit and jurisdiction of Khagaul Nagar Panchyat and over the said parcel of land, residential project named Tiruvananthapuram City, A.G. Enclave Phase-1 has been constructed. The entire land project is on a land ad-measuring 9978.297 sq. meter which is owned by altogether 40 odd landowners, out of which the petitioner-



company entered in an agreement with 37 other landowners to develop residential building in the name and style of Tiruvananthapuram City. Since there was some difficulty in the project because of the land of three persons i.e. respondent nos. 4 and 5 and one Navin Kumar Sinha, the petitioner-company approached them and accordingly the registered development agreement was entered into between the parties.

17. So far as the contention of the petitioner-company that judgment of Punjab and Haryana High Court in ***Janata Land Promoter Pvt. Ltd vs. Union of India and others (CWP No.8548 of 2020)*** as well as judgment of the Madras Court in ***T. Chitty Babu vs. Union of India*** (supra) have been stayed by the Hon'ble Supreme Court is concerned, it is submitted by the respondent nos.4 and 5 that the whole controversy with regard to depositing of 30% and 100% has been set at rest in ***M/s New Tech Promoters and Developers Pvt. Ltd vs. State of U.P. and Ors.*** (supra) and the Hon'ble Supreme Court has resolved the issue. Paragraph no. 81 the aforesaid decision reads as under:-

"81. The opening words of Section 71(1) of the Act make it clear that the scope and function of the adjudicating officer are only for "adjudging compensation" under Sections 12, 14, 18 and 19 of the Act. If the legislative



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

18. It has further been argued that the Hon'ble Supreme Court while discussing the delineation of jurisdiction has held that in case any breach or violation of the provision of Sections 12, 14, 18 and 19 of the Act by the promoter, a complaint straightway has to be filed before the regulatory authority and for adjudging compensation complaint has to be filed before the Adjudicating Officer.

19. It has been submitted by learned counsel for



the respondent nos.4 and 5 that there may be a situation where only interest would be awarded to the allottee by the Adjudicating Officer and similarly, there may be a case where only compensation would be awarded to the allottee by the Adjudicating Officer. In such situation, if only interest is awarded and the promoter files an appeal in Tribunal, he will have to deposit total (100%) amount of interest before the appeal is heard. Similarly, if the Adjudicating Officer directs the promoter to pay compensation to the allottee and he files an appeal against this order of Adjudicating Officer, he (Promoter) will have to deposit total (100%) amount of compensation with the Tribunal before his (promoter's) appeal is heard. Provision of Section-18 of the Act illustrates this point adequately and clearly as to where only interest or only compensation may be awarded.

20. It has also been argued that under Section 43(5) of the Act, an appeal can be filed in the Appellate Tribunal by any person aggrieved by any direction or decision or order made by the authority or by an adjudicating officer under the RERA Act. Secondly, proviso to Section 43(5) in respect of condition of pre-deposit is equally applicable either the appeal is filed being aggrieved by direction / decision / order of Authority or being aggrieved by direction / decision / order of



Adjudicating Officer.

21. So far the objection raised by the petitioner-company that the respondents being landowners are not “allottees” or consumers is concerned, it is submitted that this issue has already been decided by the Hon'ble Supreme Court in the case of ***Bunga Daniel Babu vs. M/s Sri Vasudeva Construction & Ors.*** reported as ***(2016) 8 SCC 429*** that the land owner is a consumer.

22. It has also been argued that according to the preamble of the RERA Act, the purpose of the Act is *inter alia* to protect the interest of the ‘Consumer’. As such, according to definition of the word ‘allottee’ used in Section-2(d) and as per judgment of the Hon'ble Supreme Court in ***Bunga Daniel Babu Versus Vasudeva Construction & Ors. (supra)***, the landowner is an "allottee". Since landowner is an allottee, all the relevant remedies of the RERA Act shall be applicable to the allottee/land owner.

23. It has also been argued that the decision of this Court rendered in ***C.W.JC. No. 18763/2021 (M/s Patliputra Builders Pvt Ltd. Vs. State of Bihar)*** is not applicable to the facts of the present case since the aforesaid case relates to imposition of penalty, however the present case is for payment



of compensation.

24. In reply to the submissions of the petitioner-company regarding jurisdiction of the RERA, it is submitted by learned counsel for the respondent nos. 4 and 5 that since the petitioner-company had never taken any objection to the jurisdiction of the RERA earlier, now the petitioner-company cannot be allowed to take this plea.

25. I have considered the submissions of the parties and perused the materials on record. I have also considered the submissions of learned *Amicus Curiae*, who has assisted this Court. In the present case, the issue with respect to the jurisdiction of the RERA is to be decided first for proper adjudication of the matter. The following facts, as emerged from the records of the case, are required to be noted:-

26. The respondent nos. 4 and 5 invoking section 31 of the Act filed Complaint Case Nos. 81 & 82 of 2018 on the ground of non-observance of the terms of the Development Agreement dated 25.08.2011 before the RERA. In the said proceedings, the petitioner had opposed the maintainability of the said complaint cases on the ground that the respondent nos. 4 and 5 did not allege violation of the provisions of the Act or rules and regulations made thereunder as required under section



31 read with section 71 of the Act. However, the Adjudicating Officer awarded compensation altogether approximately to the tune of Rs.71.56 lakhs to each respondent landowner.

27. The provision of Section 31 of the Real Estate (Regulation and Development) Act, 2016 reads as under :-

“31. Filing of complaints with the Authority or the adjudicating officer:—

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.— For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.”

28. On perusal of the aforesaid provision, it appears that the use of the phrase ‘***any aggrieved person***’ is having a wide import to include the land-owners within its ambit and therefore to invoke the jurisdiction of RERA.

29. The preamble of the Real Estate (Regulation and Development) Act, 2016 reads as under:-

“An Act to establish the Real Estate



*Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of **consumers** in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.” (emphasis supplied).*

30. The Hon’ble Supreme Court has already held in the case of **Bunga Daniel Babu (supra)** that land-owners are consumers under the Consumer Protection Act. The legislature has made its intention clear with the usage of word “consumer” in preamble of the Act that the objective of the Act is to protect the interest of the consumers in the real estate sectors and to establish an adjudicating mechanism for speedy dispute redressal. It will be relevant to quote paragraph no. 21 of the decision rendered in the case of **Bunga Daniel Babu (supra)**, which reads as under:-

*"21. On studied scrutiny of the aforesaid
Clauses, it is clear as day that the*



appellant is neither partner nor a co-adventurer. He has no say or control over the construction. He does not participate in the business. He is only entitled to as per MOU, a certain constructed area. The extent of area as has been held in Faquir Chand Gulati (Supra) does not make a difference. Therefore, the irresistible conclusion is that the appellant is a consumer under the Act".

31. The supplementary agreement which was though unregistered was in continuation of the development agreement and therefore, it is not compulsorily required to be registered under section 17 of the Indian Registration Act, 1908. It is evident from the record that both the development as well as supplementary agreement are entered on the same date i.e. 25.08.2011. Further, the supplementary agreement clearly stipulates that the Developer has **agreed to give** three flats and therefore this transaction of handing over three specified flats to the landowners would be covered under the definition of allottee under the Act. In the definition of allottee, the words “**or otherwise transferred by the promoter**” has been used in the statute which gives a wider meaning and therefore, in this case, covers the act and transaction of the petitioner-company wherein he has agreed to give three flats to the respondent nos. 4 and 5.



Moreover, in the present case, the project was registered under the Act of 2016 and therefore, the disputes are amenable to the jurisdiction of RERA.

32. At this juncture, it would be apposite to decide the issue whether the proceedings before the RERA is maintainability or not for which the relationship between the petitioner and the respondent nos. 4 and 5 has to be examined particularly in light of the development agreement. It appears from clause-8.2 of the Development Agreement that there was agreement between the parties that the agreement shall not constitute a partnership of any sort between the parties, which goes to show that the parties were not co-adventurers. Further, it appears that there is no whisper of any revenue sharing arrangement between the parties.

33. The Bihar Real Estate Regulatory Authority (General) Regulations, 2021 was notified on 5th of August, 2021. Regulation - 6(3) of the aforesaid Regulations, 2021 reads as under:-

*“6 (3) In cases where there is a development agreement or such like arrangement between the promoter and the landowner/s, unless otherwise mentioned in the agreement, the landowner would be treated as an **allottee** under the Act as he is getting*



apartments in lieu of land. In all such cases the promoters of the project would be responsible for fulfilling all obligations under the RERA Act and Rules made there under.”

34. It has been clarified in sub-clause-3 of Regulations -6 that where there is a development agreement or such like arrangement between the promoter and the landowner unless otherwise mentioned in the agreement, the land owner(s) would be treated as an allottee under the Act as he is getting apartments/flats in lieu of his land and in all such cases, the promoters of the project would be responsible for fulfilling all obligations under the Act and the rules made thereunder.

35. Whether this Regulation of 2021 will be application to the facts of the present case or not and whether the Regulation of 2021 can be treated to have retrospective effect or not is to be considered. The Hon'ble Supreme Court in the case of ***State of Bihar and Ors. vs. Ramesh Prasad Verma*** reported as ***2017(5) SCC 665*** has held in paragraph no.21 as under:-

“21. The proposition has been so well laid that we do not wish to burden the present rendition by referring to other rulings in the same vein. Suffice it to state that any legislation or instrument having



the force of law, if clarificatory, declaratory or explanatory in nature and purport, in order to supply an obvious omission or to clear up doubts qua any prior law, retrospective operation thereof is generally intended. ...”

36. In the present case also, the Regulations of 2021 is clarifactory and explanatory in nature and purport in order to supply the obvious omission and to clear up doubts in the Act and therefore, the Regulations are intended to be having retrospective operation. Once the Regulation is treated to have retrospective effect, the respondent nos. 4 and 5 are held to be allottee under the Act and the application filed by them as an allottee is held to be maintainable.

37. After coming into force the Regulations of 2021, the land owner(s) are to be treated as allottee(s) under the Act as he is getting apartments/flats in lieu of his/her land.

38. The registered Development Agreement dated 25.08.2011 executed by and between the parties defined as well as described the character and type of relationship between them and is therefore essential for the purpose of this case. The said development agreement explicitly is neither a joint venture agreement nor does it manifest a partnership of any sort between the parties thereto. There is no whisper of any revenue/profit



sharing between the parties as well. The landowners were not involved in the day-to-day construction activities. Even otherwise, the Bihar Real Estate Regulatory Authority (General) Regulations, 2021 notified on 05.08.2021 which has been held to have retrospective operation for the reasons elaborated in the foregoing paragraphs, leaves no iota of doubt on the locus of landowners to institute and the RERA to adjudicate. The mechanical interpretation as advanced by the petitioner-company to the provisions of the Act will clearly defeat the very object and purpose of the statute which among other things is to regulate and promote the real estate sector and provide for an efficient and transparent mechanism to protect the interest of consumers in the real estate sector.

39. The interplay of all the provisions contained in the Act of 2016 and the regulations made thereunder coupled with the real purport of the registered Development Agreement, can lead to no other inference, but to hold that, the complaint preferred by respondents no 4 and 5 before the Adjudicating Officer is definitely maintainable. Thus, having regard to the totality of facts and circumstances pertinently the terms of the registered Development Agreement and having regard to the entire purport and object of Real Estate (Regulation and



Development) Act, 2016, it is absolutely clear that the present dispute squarely falls within the jurisdiction of Act of 2016 and thus amenable to the RERA.

40. So far as the issue of quantum of amount to be deposited as a pre-condition for hearing the appeal of the petitioner on merit is concerned, it will relevant to quote section 43(5) of the Act, which reads as under:-

“Section- 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 atleast thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.” (emphasis supplied).

41. From a bare perusal of the proviso to Section 43(5) it appears that two categories of condition of pre-deposit



is provided. The first category refers to penalty in which 30% or a higher amount as determined by the Appellate Tribunal is required to be pre-deposited before the appeal is entertained and heard on merits. The second category comprises the total amount to be paid to the allottee which includes interest and compensation. I am of the view that that the amount awarded by the Adjudicating Officer in this case squarely comes under the second category and therefore, the total amount of interest and compensation imposed is required to be deposited before the said appeal is heard on merits. The Adjudicating Officer under Section 71 of the Act is appointed by the authority for the purposes of adjudging compensation under the relevant provisions of the Act. In the present case, the amount awarded by the Adjudicating Officer under is interest and compensation and not penalty.

42. In view of the aforesaid discussions, I do not find any illegality in the impugned order dated 10.08.2021 passed by the Bihar Real Estate Appellate Tribunal, by which the Tribunal has directed the petitioner to deposit the total amount of compensation, interest and litigation cost as directed by the Adjudicating Officer.

43. For the foregoing reasons, this writ



application is dismissed. The matter is remitted back to the Bihar Real Estate Appellate Tribunal for consideration of the matter in accordance with law if the petitioner-company acts as per the order dated 10.08.2021 passed by the Appellate Tribunal.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	07.09.2024
Transmission Date	

