

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.209 OF 2022
WITH
INTERIM APPLICATION NO.290 OF 2020
IN
SECOND APPEAL NO.209 OF 2022

Mohammed Zain Khan
602, 6th Floor, Gokul Harmony,
Road No.1, Sunder Nagar,
Kalina, Santacruz (E),
Mumbai - 400 098.

....Appellant/Applicant

V/S

1. Emnoy Properties India,
A Limited Liability Partnership,
incorporated under Limited Liability,
Partnership Act, 2008,
Having its Registered address at,
801, 8th floor, Leo Apartments,
Khar (West), Mumbai - 400052.
2. Mirza Yusuf Baig,
Partner of Emnoy Properties India and
Director of Valvan Valley Infrastructure
Pvt. Ltd, Having his address at,
Ann Villa, F/302, 3rd Floor, Plot No. 74/A,
30th Road, TPS 3, Bandra (West),
Mumbai-400 050.
3. Farhan Aashiq Khan,
Partner of Emnoy Properties India,
Having his address at, Shop No.43,

Dheeraj Heritage, Upper Basement,
S.V. Road, Santacruz (West),
Mumbai - 400 054.

4. Valvan Valley Infrastructure Pvt. Ltd.,
A Company incorporated under Companies
Act, 1957, Having its Registered Address at,
801, 8th floor, Leo Apartments,
Khar (West), Mumbai - 400052.
- 5 Khurshid Saifuddin Bohri,
Director of Valvan Valley Infrastructure
Pvt. Ltd. Having his address at,
House no. 5, Bohri Society, G-Ward,
Lonavala-410 401.
6. Moiz Bohri,
Director of Valvan Valley Infrastructure Pvt Ltd.
Having his address at,
House no. 5, Bohri Society, G- Ward,
Lonavala-410401.
7. Bombay Supreme Developers,
Having its address at,
801, 8th floor, Leo Apartments,
Khar (West), Mumbai-400052.
8. Rio Luxury Homes Pvt. Ltd.
A Company incorporated under Companies
Act, 2013, Having its Branch office address at,
Rio Group, 33 Hill Road,
Opposite Marks and Spencer,
Bandra (W), Mumbai-400 050
- 9 Riyaz Ramzan Somani,
Director of Rio Luxury Homes Pvt. Ltd,
Having his office address at,
Rio Group, 33rd Hill Road,

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PARAB

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Opposite Marks and Spencer,
Bandra (W), Mumbai - 400 050.

10. Seema Najarali Zaria,
Director of Rio Luxury Homes Pvt. Ltd,
Having her office address at,
Rio Group, 33rd Hill Road,
Opposite Marks and Spencer,
Bandra (W), Mumbai - 400 050.
11. Maharashtra Real Estate Regulatory Authority,
SRA Building, 'A' Wing,
Prof. Anant Kanekar Road,
Bandra (East), Mumbai - 400051.

....Respondents

Mr. Nilesh Gala with Mr. Manish Gala, Mr. Minil Shah, Mr. Ashraf Kapoor
and Ms. Alpa Gala i/b M/s. Law Square *for the Appellant/Applicant.*

Mr. Bhooshan Mandlik *for Respondent Nos.3 to 6.*

Mr. V.M. Parkar *for Respondent Nos.8 to 10.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 17 APRIL 2024.
PRONOUNCED ON : 23 APRIL 2024

JUDGMENT:

1. By this Appeal, Appellant challenges judgment and order dated 9 October 2019 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (**Appellate Tribunal**) rejecting the Appeal to the extent of the project '*Valvan Valley Project*' and granting liberty to the Appellant to take further appropriate steps in respect of '*Lion's Valley Project*'. Appeal was

preferred by Appellant before Appellate Authority challenging order dated 5 September 2018 passed by the Regulatory Authority dismissing his complaint filed seeking direction against Respondents for initiation of action for non-registration of both the projects.

2. Facts of the case are as follows. Respondent No.1-Emnoy Properties India, a Limited Liability Partnership, with Respondent Nos.2 and 3 as its partners, were implementing project for sale of various bungalow plots under name '*Valvan Valley*' at village Nandgaon, Taluka Mawal, Tungarli, Lonavala. Appellant and his mother were desirous of purchasing a plot in Valvan Valley project and accordingly agreed to purchase Plot No.13-B (Part A) admeasuring 22,000 square feet for consideration of Rs. 55,00,000/-. They paid an amount of Rs.12,50,000/- towards part consideration and Respondent No.1 issued allotment letter and receipt dated 28 August 2012 in the joint names of Appellant and his mother. As per the allotment letter, permission for Non Agricultural (NA) use of the land was to be obtained by April 2013 and possession of the plot was to be handed over against payment of balance consideration by August 2013. It appears that NA permission was not secured within the agreed time up to August 2013. An agreement for sale was executed between Respondent No.1 as Vendor and Appellant and his mother as Purchaser, under which, the project completion period was agreed as two years. It is the case of Appellant that Respondent No.1 failed to complete the project and later informed the Appellant that Valvan Valley project was taken over by Valvan Valley Infrastructure Private Limited, an incorporated

company with Respondent Nos.5 and 6 as its Directors. According to Appellant, Respondent Nos.1 to 6 failed to honour their commitments and therefore Respondent Nos. 2, 5 and 6 offered to convey and sale four small plots in Lion's Valley project i.e. NA Plot Nos.33 (522 square meters), 34 (464 square meters), 35 (464 square meters) and 36 (464 square meters) in lieu of Plot No.13-B in Valvan Valley project on payment of balance amount of consideration of Rs.42,50,000/-. However, since the said four plots were not conveyed to Appellant, he filed Complaint before State Consumer Disputes Redressal Commission against Respondent Nos. 1 to 7 seeking sale and conveyance of the four plots in Lion's Valley project or for monetary compensation in the alternative. On 9 May 2017 State Consumer Disputes Redressal Commission passed interim order restraining Respondent Nos. 1 to 7 from transferring or selling the four plots in Lion's Valley project.

3. After coming into effect of Real Estate (Regulation and Development) Act, 2016 (**the RERA**) on 6 November 2017, according to Appellant, it became duty of Respondents to register both the projects within 90 days. However, none of the two projects were registered. Instead Respondent Nos. 7 and 8 continued promoting and marketing Lion's Valley project by issuance of brochures. In the Lion's Valley project, according to Appellant, there are 19 independent luxury bungalows spread across area of 2 acres. According to Appellant, Maharashtra Real Estate Regulatory Authority (**MahaRERA**) failed to take action against Respondent Nos.1 to 10 for non-registration of either of the projects. Appellant therefore filed Writ Petition (L) No.908 of

2018 before this court seeking directions for formulation of mechanism to deal with complaints against unregistered projects. On 31 July 2018, MahaRERA gave undertaking before this court that it would modify its software for entertaining complaints in relation to unregistered projects and that it would deal with such complaints. According to Appellant, though MahaRERA updated its software and provided online platform for filing complaints against unregistered projects, only few particulars could be uploaded on such online platform, which did not enable Appellant either to raise prayers or to submit documents in support of the complaint. Accordingly, Appellant lodged online complaint before MahaRERA on 20 August 2018 in respect of both Valvan Valley and Lion's Valley projects.

4. According to Appellant, when the complaint came up before MahaRERA on 5 September 2018, the same came to be dismissed without grant of opportunity to Appellant to produce supporting documents. The complaint was rejected by holding that the land, in which plot was agreed to be purchased by Appellant, is agricultural land and that no permission was granted by any Competent Authority for development of the said land. MahaRERA therefore held that the same cannot be treated as a project within the meaning of Section 2(zn) of the RERA.

5. Aggrieved by order dated 5 September 2018, Appellant filed Appeal before the Appellate Tribunal under section 44 of the RERA which was not accepted on online portal on account of non-availability of facility of filing Appeal in respect of unregistered project. Appellant filed Writ Petition (L)

No. 3991 of 2018 challenging the order dated 5 September 2018 passed by MahaRERA. When Petition came up before Division Bench of this Court, it was submitted on behalf of MahaRERA that Appeal could be filed before the Appellate Tribunal in respect of unregistered project. Accordingly, Appellant was permitted to file Appeal before the Appellate Tribunal without prejudice to filing of the Petition. Accordingly, Appellant filed Appeal before the Appellate Tribunal on 18 December 2018. On 20 December 2018, the Appellate Tribunal granted interim order restraining the Respondents from marketing, promoting or selling any plot in the projects Valvan Valley and Lion's Valley. Respondent Nos.1 to 7 filed their Reply in the Appeal raising a contention that the agreement for sale was cancelled by the Appellant and amount of Rs.9,00,000/- was refunded to Mr. Sikander Ali Khan and Mr. Sishan Khan at Appellant's instance. Respondent Nos.8 to 10 filed separate Reply opposing the Appeal. According to Appellant, the plots in Lion's Valley project were marketed and sold by Respondent No.8 in violation of interim order passed by the Appellate Tribunal.

6. By judgment and order dated 9 October 2019, the Appellate Tribunal dismissed Appellant's Appeal thereby refusing to give any direction for registration of project Valvan Valley or granting prayer of the Appellant for compensation or imposition of penalty and upholding the order passed by MahaRERA. So far as Lion's Valley project is concerned, the Appellate Tribunal has given liberty to MahaRERA as well as to Appellant to take further appropriate steps. Aggrieved by the judgment and order dated 9

October 2019 passed by the Appellant Tribunal, Appellant has filed present Second Appeal.

7. When the Appeal came up for admission on 4 December 2020, this court admitted the Appeal on formulating following substantial question of law:

"Whether the Real Estate Authority and RERA Appellate Tribunal were justified in refusing to entertain the complaint of the Appellant lodged against the Respondent-Promoter for contravention of the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016 for punishment under Section 59 of that Act, on the ground that the project was not registered as a Real Estate project under Section 3 of that Act, particularly having regard to Section 31 of that Act?"

8. Mr. Gala, the learned counsel appearing for Appellant would submit that the Appellate Tribunal has erred in dismissing the Appeal filed by the Appellant and in upholding the order passed by MahaRERA. That both MahaRERA as well as Appellate Tribunal have erred in holding that complaints under section 31 of the RERA can be entertained only in respect of projects for which development permissions are issued by the Competent Authority. He would invite my attention to section 31 of the RERA in support of his contention that 'any aggrieved person' is entitled to file a complaint with the Authority for violation or contravention of provisions of the RERA or the Rules and Regulations made thereunder against any promoter, allottees or real estate agent. That MahaRERA was erroneously not permitting filing of complaints on its online platform against unregistered projects on account of

which Appellant was required to knock the doors of this Court by filing Writ Petition No.908 of 2018. That though a solemn assurance was given to this Court on 31 July 2018 that software would be modified for entertaining 'complaints' in relation to unregistered projects, what was permitted by MahaRERA was only 'source info' for taking action against unregistered projects. That complaint for seeking return of amount and compensation, imposition of penalty, interest etc. under sections 12, 18 and 59 of the RERA can be filed in Form-A of Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal, etc.) Rules, 2017 (**the MahaRERA Rules, 2017**). That no facility was made available for lodging of complaint in Form 'A' to the Appellant despite giving of assurance before this court by MahaRERA on 31 July 2018. That an allottee in respect of unregistered project is also entitled to seek compensation under section 12, return of amount and compensation under section 18 and imposition of penalty under section 59 of the RERA. That in order to enable such allottee of unregistered project to seek reliefs under sections 12, 18 and 59 of the RERA, MahaRERA ought to have created a facility for filing of complaint under Form 'A' of the MahaRERA Rules, 2017.

9. Mr. Gala would submit that the broad objective behind enacting the RERA and is to protect the interest of allottees and that if restrictive meaning is imparted to the provision of the RERA by not taking cognizance of complaints filed in respect of unregistered projects, the same would defeat the very objective behind enacting the RERA. In support of this contention, Mr.

Gala would rely upon the judgment of the Apex Court in *Tinsukhia Electric Supply Co. Ltd. vs. State of Assam & Ors.*, (1989) 3 SCC 709. Relying on Division Bench judgment of this Court in *Neelkamal Realtors Suburban Pvt. Ltd. & Anr. vs. Union of India & Ors.* 2017 SCC OnLine Bom 9302, Mr. Gala would submit that since provisions of the RERA are held to be retroactive in operation, non-registration of the project cannot be a reason to close doors on an allottee for redressal of his grievances in respect of project carried out in violation of provisions of the RERA.

10. Mr. Gala would submit that both MahaRERA as well as Appellate Tribunal have only considered the aspect as to whether projects Valvan Valley and Lion's Valley could be registered or not. That both the Regulatory Authority and Appellate Tribunal have failed to appreciate that an allottee in respect of unregistered project can also seek action against the promoter under provisions of sections 12, 18 and 59 of the RERA by filing a complaint under provisions of sections 31 and 71 thereof. That correct reading of provisions of sections 12 and 18 of the RERA would indicate that registration of a project is not mandatory. That proviso to Section 12 of the RERA uses the word 'proposed project' which clearly implies that even unregistered project would carry obligations for promoter thereof under section 12 of the RERA. Mr. Gala would therefore submit that Appellant be granted reliefs under sections 12, 18 and 59 of the RERA. Alternatively, he would submit that MahaRERA be directed to entertain Appellant's complaint under sections 12, 18, 59 read with sections 31 and 71 of the RERA for imposition of

penalty for non-registration, for return of amount with interest together with compensation.

11. *Per contra*, Mr. Mahadik the learned counsel appearing for Respondent Nos.3 to 6 would oppose the Appeal and would submit that the very grievance of the Appellant about non-entertainment or non-decision of his complaint is baseless. He would submit that both the MahaRERA as well as Appellate Tribunal have entertained the complaint filed by Appellant on merits and have recorded concurrent findings that in absence of issuance of any development permissions, the project cannot be registered and have rightly dismissed the complaint filed by Appellant. He would rely upon provisions of section 4 of the RERA in support of his contention that in absence of issuance of sanctioned plan, layout plan, commencement certificate etc., no real estate project can be registered. That the Appellate Tribunal has rightly held that provisions of RERA can apply only in respect of projects, which are liable or capable of registration. That admittedly the land in respect of which Appellant claims rights is in agricultural land, in respect of which no Planning or Competent Authority has sanctioned any plans/layout. That therefore the alleged project is not governed by provisions of the RERA. That therefore promoters of Valvan Valley project cannot be made liable under any of the provisions of the RERA. That therefore complaint filed by Appellant seeking registration of the project Valvan Valley has rightly been rejected by the MahaRERA and the Appellate Tribunal has rightly upheld MahaRERA's order. Mr. Mahadik would pray for dismissal of the Appeal.

12. Mr. Parker, the learned counsel appearing for Respondent Nos.8 to 10 would submit that Appellant has no semblance of relation with Lion's Valley project. That Respondent Nos.8 to 10 had no notice of proceedings filed before MahaRERA and came to know about the same only at the stage of filing of Appeal before the Appellate Tribunal. That Respondent Nos.8 to 10 have absolutely no nexus with Respondent Nos.1 to 7. That Respondent Nos.8 to 10 are concerned with development of only Plot No.24 admeasuring 353 square meters that to under development agreement with owner of the said plot Mr. Rafiq Ramzanali Somani, who purchased the same from Respondent No.4 by registered conveyance deed on 28 July 2017. That plot being less than 500 square meters, is not liable for registration under the RERA. That Respondent Nos.8 to 10 are not concerned with Lion's Valley project nor have authorized agent or web portal to market the same. He would pray for dismissal of the Appeal.

13. Rival contentions raised on behalf of the parties now fall for my consideration.

14. Appellant claims that even though the projects Valvan Valley and Lion's Valley are not registered under provisions of the RERA, he is entitled to seek action against them for imposition of penalty, return of amount with interest as well as compensation under provisions of sections 12, 18 and 59 of the RERA by filing a complaint under section 31 of the RERA before MaharRERA. In the present case initially, Appellant was not even permitted to lodge any complaint before MahaRERA on the ground that the project was

unregistered. It is only when Appellant filed Writ Petition No.908 of 2018 that MahaRERA realised that for enforcing compliance with section 3 of the RERA for registration of projects, it was necessary to create a facility on its online portal for receiving 'source information' so that necessary action can be initiated against persons/entities undertaking real estate project in absence of registration. In Writ Petition (L) No.908 of 2018, MahaRERA filed Affidavit dated 5 July 2018 contending in paragraphs 4 and 5 as under:

"4. In this regard, I hereby bring to the kind notice of this Honourable Court the following points;

(a) In accordance with the provisions of Section 3 r/w Rule 3 of the said Act as well as Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 no promoter shall advertise, market, book, sell or offer for sale invite person to purchase in any manner any plot apartment, etc. in a planning area without registering the real estate project. Thus, prior registration of Real Estate Projects with the Real Estate Regulatory Authority is mandatory.

(b) Section 4 provides the mandatory requirements for the purpose of Registration of the Project. Some of the mandatory provisions are as under-

(i) An authenticated copy of the approvals and commencement certificate from the Competent Authority obtained in accordance with the laws.

(ii) The sanctioned plan, layout plan of the proposed project sanctioned by the Competent Planning Authority.

(iii) A declaration, supported by an Affidavit signed by the promoter or any person authorised by the promoter stating that he has a legal title to the land and that the land is free from all encumbrances.

(iv) Proposed floor space index to be consumed aggregating area in Square metres of the open space.

(c) As per Section 4 (3) of the said Act, the Authority shall

operationalise a web based online system for submitting application for registration of project. I say that such a website has been operationalised from 01.05.2017. I submit that in pursuance of the above said statutory provision, the work of the Authority is web based online basis for Registration of Projects. I submit that on the website of MahaRERA Authority standard operation procedure has been prescribed and the same is available in public domain.

(d) I further submit that so far as information about unregistered project are concerned, standard procedure has been prescribed vide SOP No. 9/2017 dated 24.07.2017, the copy of which is hereto annexed and marked as Exhibit-AR-1. In the said SOP Part (b) deals with the procedure for getting registration of unregistered projects.

(e) I submit that in pursuance thereof the Authority has created a separate dedicated email id known as sourcedetails@maharera.mahaonline.gov.in on which any citizen can submit the information by way of source information regarding Non-Registration of Projects. I submit that based on that Source Information the Technical Officers of the Authority investigate the Information provided by contacting the concerned Promoter. After going through their records if it is found that it is a project liable to be registered under Section 3, orders are being issued for the purpose of registration by imposing penalty for delayed registration as provided under Section 59 of the said Act.

5. The plots purchased by the petitioner bears Plot No.13B and Survey No.138 admeasuring 22000 sq.ft.. at Taluka Lonavala. The information was received by way of Source Information for non-registration by email on 08.01.2018. Thereafter the owner was sent email on the email address provided by the source information, calling upon him to explain the matter. Initially, the owner did not respond. Finally, when he was summoned on 18.06.2018 it transpired that the land in question is Agricultural land. The Sale Deed executed between the Petitioner and original seller shows that the land was Agricultural land. Since the land claimed by the petitioner is not fulfilling the aforesaid criteria for registration as prescribed under Section 4, especially absence of commencement certificate from the Planning Authority, the said project is not eligible for registration,

In view of this, it is prayed that the petition be dismissed with costs."

15. Thus what MahaRERA undertook before this Court in its Affidavit dated 5 July 2018 was creation of dedicated e-mail id to enable citizens to

submit information by way of 'source information' regarding non-registration of projects for it to investigate the same by contacting the concerned promoters. If upon conduct of such investigations, MahaRERA is satisfied that the project is liable to be registered under section 3 of the RERA, it can take action by passing orders directing registration of project by imposing penalties under section 15 of the RERA. Reliance was placed on 'Standard Operating Procedure' issued vide a Circular No. 09 of 2017 on 24 July 2017. When Writ Petition (L) No.908 of 2018 came up before this court on 31 July 2018, the same came to be disposed of recording statement on behalf of MahaRERA that it shall modify/upgrade its software for receiving online complaints in respect of unregistered projects and that complaint tendered by Appellant would be dealt with. The order passed by this Court on 31 July 2018 reads thus:

2. The Petitioner is making a grievance in respect of the failure of the MahaRERA Appellate Authority to take cognizance of the complaints tendered by the complainants in respect of the unregistered project. The counsel appearing for the Respondent No.1 on instructions states that at present the on-line software system is not equipped to entertain the complaints in respect of the projects which are not registered under the RERA Act. It is further stated that necessary modifications / up-gradation of the software will be made within period of 15 days from today. On completion of the process of up-gradation of the software equipped of receiving on-line complaints, in respect of unregistered projects by the MahaRERA within the time stipulated as above, it would be open for the Petitioner to register the complaint in observance of the procedure prescribed in that behalf. The complaint tendered on-line by the Petitioner and other similarly situated complainants, in respect of unregistered projects would be entertained and the same would be dealt with in accordance with the procedure that is being adopted by MahaRERA in respect of disposal

of complaints in relation to registered projects. The statement is made by the learned counsel appearing for Respondent No.1 on instructions from Mr.Wani, Administrative officer of MahaRERA who is present before the Court. In view of the statement made as above, the grievance raised in the Petition stands redressed.

3. The Writ Petition is accordingly disposed of."

16. Appellant complains that despite assuring this court on 31 July 2018 that 'complaint' in respect of unregistered projects would be entertained and dealt with, he was not permitted to lodge such complaint and what is ultimately decided by MahaRERA is only 'source info' registered on MahaRERA's website which was referred paragraph 5 of Affidavit dated 5 July 2018. It is contended by Appellant that a complaint needs to be filed in Form 'A' of the MahaRERA Rules, 2017 whereas no such facility was provided for lodging of complaint in Form 'A'. With the result, what is adjudicated by MahaRERA, according to Appellant, is only 'source information' for the purpose of taking action against unregistered project for registration thereof under section 3 of the RERA. What Appellant expects is adjudication of his rights under sections 12, 18 and 59 of the RERA by imposing penalty, returning the amount with interest and granting compensation to him. He complains that on account of non-availability of facility of lodging complaint under Form 'A', Appellant was neither permitted to raise prayers nor submit supporting documents in support of his grievance. The issue that therefore arises for consideration is whether in respect of unregistered project, an allottee can merely give 'source information' to MahaRERA for taking action under section 3 of the RERA or

whether such allottee can file a full-fledged complaint under section 31 of the RERA for seeking reliefs under sections 12, 18 and 59 thereof. To find an answer, it would be necessary to make a quick reference to various provisions of the RERA.

17. Section 3 of the RERA prohibits advertisement, marketing, booking, selling etc. of any plot, apartment or building in any real estate project without registering the same with the Regulatory Authority. First Proviso to Section 3 of the RERA provides for compulsory registration in respect of ongoing projects on the date of commencement of the RERA. Section 3 reads thus:

"3. Prior registration of real estate project with Real Estate Regulatory Authority

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real project shall be required:-

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that if the appropriate Government considers it necessary, it may reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot of building, as the case may be, under the real estate project.

Explanation. - For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

18. Section 4 of the RERA deals with the manner of registration of real estate projects and mandates every promoter to make an application for registration of real estate project by submitting documents provided in sub-section 2. Section 4 reads thus:

“4. Application for registration of real estate projects

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.

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

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership companies, competent authority) and the particulars of registration, and the names and photographs of the promoter;

(b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details type of land and payments pending;

- (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any,
- (i) the number and areas of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:-
 - (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details:

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

(D) that seventy per cent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation. - For the purpose of this clause, the term "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment."

19. Thus under section 4 of the RERA, it is mandatory for a promoter to submit various documents enumerated in sub-section (2) for seeking registration of real estate project. Under clauses (c) and (d) of sub-section (2), it is mandatory to produce commencement certificate, sanctioned plan, layout plan etc. sanctioned by the Competent Authority for registration of real estate project. The statutory scheme is such that a real estate project cannot be registered unless appropriate permission for execution thereof are obtained from the Competent Authority. The RERA therefore does not contemplate registration of a project, for which no development permission is granted by Planning Authority.

20. The terms 'promoter' and 'real estate project' have been defined in section 2 (zk) and (zn) of the RERA, which read thus:

"(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;

(c) 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 persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for salt for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

(zn) "**real estate project**" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots

or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

21. Thus plain reading of definitions of terms ‘promoter’ and ‘real estate project’ would indicate that development of land into a project by a subdivision thereof into plots is also covered by definition of the terms ‘promoter’ and ‘real estate project’. Section 2(zn) of the RERA does not mandate that the activity of development must be carried out in accordance with development permission granted by Planning Authority for treating such development as ‘real estate project’. However, when it comes to making an application for registration under section 4 of the RERA, it is mandatory that sanctioned development permissions are produced before the Regulatory Authority for seeking such registration.

22. Under section 31 of the RERA, any aggrieved person can file a complaint with the Regulatory Authority or Adjudicating Officer for violation or contravention of provisions of the RERA, Rules and Regulations made there under either against promoter, allottee or real estate agent. Section 31 reads thus:

"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.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed."

23. Thus complaint under section 31 of the RERA can be entertained only if there is violation or contravention of provisions of the Act, Rules and Regulations. Section 3 of the RERA prohibits marketing or selling of plot, apartment or building in absence of registration of the real estate project. Section 3 provides thus:

3. Prior registration of real estate project with Real Estate Regulatory Authority.

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

24. Thus, if any person markets or sales plot or apartment in unregistered project, he contravenes provisions of section 3 of the RERA. Section 59 provides for punishment for non-registration of a project under Section 3 and reads thus:

59. Punishment for non- registration under section 3.

(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

25. Thus, failure to register a project amounts to violation or contravention of provisions of the RERA, which act can be punished under Section 59. Therefore, in strict sense, registration of a project is not a pre-condition for maintaining a complaint under section 31 of the RERA. If section 31 of the RERA is read to mean that complaints only in respect of registered projects can be entertained by Regulatory Authority or Adjudicating Officer, this would mean that no action can be taken by Regulatory Authority against a person who contravenes section 3 of the RERA. In fact, contravention of section 3 necessarily takes place in respect of unregistered project. I am therefore of the view that even in respect of unregistered projects, complaint under section 31 of the RERA would be maintainable.

26. Though complaint under section 31 of the RERA can be filed even in respect of unregistered project, the next issue for consideration is whether the same can be filed and entertained in respect of every unregistered project. Section 3 of the RERA applies to a person who markets or sales plot or apartment in respect of real estate project, which is capable of being registered. The same cannot apply to a project which is incapable of being registered. This is so because when the project itself is incapable of being registered, there is no question of taking action against a person under section 59 of the RERA for non-registration of the project under section 3 of the RERA. Such person obviously would take a defence in proceedings filed for violation of section 3 of the RERA or for imposition of punishment under

section 59 of the RERA that the project is not liable or capable of being registered which is why the same is not registered.

27. There may be several reasons why a particular project is not liable or is incapable of being registered. To give some illustrations, the project may not be situated in a planning area, which is a precondition under section 3 of the RERA. Another instances where the project is in respect of land, which does not exceed 500 square meters or involves construction of building with less than 8 apartments, which constitutes an exception under section 3(2)(a) of the RERA. Another instance could be where the transaction is for sale of agricultural land, where no development is proposed, nor layout sanctioned by any Competent Authority. There could also be a situation where a person is cheated with promise to sell a land, which does not even exist. There may be myriad reason why a particular development/project/transaction is incapable and/or not liable to be registered under sections 3, 4 and 5 of the RERA. If a project is not capable of being registered or is not liable to be registered, a person effectuating such project does not contravene any of the provisions of section 3 of the RERA. Therefore, a complaint in respect of project, which is incapable of being registered or which is not liable to be registered, would not lie under section 31 of the RERA.

28. RERA creates a special mechanism for regulating real estate development and *inter alia* seeks to create fora for allottees to air their grievances against promoters. The remedies provided under RERA are in addition to the civil remedies available to the allottee for enforcement of

his/her rights in respect of real estate projects. Thus, mere denial of remedy under RERA would not necessarily result in extinguishment of purchaser's remedies under civil law. Such purchaser can always maintain a civil suit for seeking appropriate relief against person who has sold or agreed to sell any plot or apartment in a project, which is incapable of or not liable to be registered.

29. The statutory scheme of RERA is such that it governs only those projects which are compulsorily registrable. Any project, which is (i) not liable to be registered at all or (ii) may be liable to be registered in future, but is at the crucial time not registrable, would form outside the purview of the RERA. The legislative intention seems to be that a person seeking to purchase a flat or plot at least ensures that there is some development permission for carrying out the development in question. If any person takes the risk of entering into a sale transaction in respect of development, which is incapable of being registered under the RERA Act, such person will have to exercise civil remedies for seeking appropriate reliefs in respect of the transaction in question. Special remedies under RERA are made available only to such allottees who purchase or agree to purchase plot or apartment in a project that is liable to be registered. To illustrate, if a flat purchaser chooses to purchase a flat in a building which contains less than eight flats and if he has any grievance against the developer thereof, he will have to adopt the remedies outside RERA in respect of his grievances. Similar would be the position that of a person (like Appellant), who chooses to enter into purchase transaction in respect of agricultural land, for which no development permission is issued or

no lay-out is sanctioned by Competent Authority, because of which the project is incapable of being registered or is not liable to be registered. The remedy in such case would be outside RERA framework. If sale of mere plot of land, which is still agricultural, is brought within the purview of the RERA, the same would mean that every transaction relating to sale of agricultural land would then be governed by RERA.

30. Mr. Gala is at pains to point out that the purchase transaction in the in the present case was effected in the year 2012 i.e. before coming into effect of RERA. He would submit that Appellant could not have foreseen regulation of real estate projects by enactment of RERA or exclusion of projects for which no development permissions are issued from ambit of RERA. While I can only sympathize with Appellant for the position, in which he finds himself, provisions of RERA cannot be selectively interpreted to suit individual grievance of Appellant. Though RERA takes within its fold even ongoing projects under first Proviso to section 3 of the RERA, again such ongoing real estate project must be the one which is capable of or liable to be registered. The Appellant has taken the risk of entering into purchase transaction in respect of land, which was yet to be converted to non- agricultural use. Perusal of the allotment letter issued in the name of Appellant and his mother would indicate that NA permission was to be obtained before April 2013. Appellant and his mother have thus chosen to enter into transaction with Respondent No.1 with their eyes open to the fact that they were agreeing to purchase agricultural land, which was to be converted into non-agricultural use. Since RERA would not apply to Valvan Valley project, Appellant would

not be in a position to maintain a complaint under section 31 of the RERA for seeking enforcement of any rights under sections 12, 18 and 59 of the RERA. It appears that Appellant has already filed complaint before the State Consumers Dispute Redressal Commission, and he would be at liberty to pursue the same.

31. Reliance of Mr. Gala on judgment of Division Bench of this Court in *Neelkamal Realtors* (supra) would not cut any ice. The said judgment does not throw any light on the peculiar issue involved in the present Appeal. Mere retroactive operation of the RERA would not mean that the Regulatory Authority can be clothed with jurisdiction to over projects which are incapable of or not liable to be registered. His reliance on Constitution Bench judgments in *Tinsukhia Electric Supply* (supra) would again not be any assistance to the case of Appellant. The legislative intention appears to exclude certain developments from the ambit of RERA. Developments involving land admeasuring less than 500 square meters or building containing less than 8 flats or land in respect of which no development permissions are granted are consciously excluded from application of the RERA. By judicial interpretation, it is not possible to read into the RERA, something which has been specifically excluded. The theory of purposive interpretation therefore cannot be pressed into service for reading into the statute something which is not provided for therein.

32. I am therefore of the view that Appellant's complaint under section 31 of the RERA for enforcement of provisions of sections 12, 18 and 59 thereof is

not maintainable in respect of Valvan Valley project, which is incapable of being, and not liable to be, registered and is not liable to be registered under RERA.

33. So far as Lion's Valley project is concerned, no document is placed on record to demonstrate that Appellant is allotted any Plot in the said project. Appellant's grievance in respect of Lion's Valley project is premised on alleged oral agreement with Respondent Nos.2, 5 and 6 for conveyance of four small plots bearing nos.33, 34, 35 and 36 in Lion's Valley project in lieu of Plot No.13-B in Valvan Valley project. It is Appellant's contention that development permissions have been issued in respect of Lion's Valley project, but the same has still not been registered. If this is the case, the Appellant is free to agitate his grievances in respect of non-registration of Lion's Valley project. In fact, the Appellate Tribunal has granted specific liberty to the Appellant to do so under clause (iii) of operative portion of its order.

34. After considering the overall conspectus of the present case, I do not find any patent error in the concurrent findings recorded by the MahaRERA and Appellate Tribunal in their respective orders.

35. The substantial question is accordingly answered by holding that, having regard to provisions of Section 31 of the RERA, MahaRERA and Appellate Tribunal are justified in refusing to entertain the complaint of Appellant lodged against the Respondent-Promoter for contravention of the

provisions of Section 3 for punishment under Section 59, on the ground that the project was not registered as a Real Estate Project under Section 3.

36. Appellant is not liable to maintain a complaint under section 31 of the RERA in respect of Valvan Valley project. He has already been granted liberty to take appropriate steps in respect of Lion's Valley project. Appellant would also be at liberty to exercise all his remedies in respect of his alleged rights for allotment of plot, return of consideration, payment of interest and compensation in respect of both Valvan Valley project as well as Lion's Valley project by filing proceedings before appropriate forum. Nothing observed in the present judgment shall come in the way of Appellant exercising such remedies.

37. Leaving open all the contentions on merits, the Second Appeal is dismissed. There shall be no orders as to costs.

38. Interim Application also stands disposed of.

(SANDEEP V. MARNE, J.)