IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FMAT 97 of 2024
With
CAN 1 of 2024
&
FMA 1406 of 2024
With
CAN 1 of 2024
&
FMAT 310 of 2024
With
CAN 1 of 2024
Deepak Mawandia
vs.
Shree RSH Projects Pvt. Ltd.

Appearance:

For The Appellant : **Mr. Rishad Medora, Adv.**
Ms. Ramya Hariharan, Adv.
Mr. Soumyajit Saha, Adv.
Mr. S. Rao, Adv.

For The Respondent : **Mr. Reetobroto Mitra, Adv.**
Mr. Meghajit Mukherjee, Adv.
Ms. Labanyasree Sinha, Adv.
Ms. Brinda Sen Gupta, Adv.
Ms. Mobina Ali, Adv.
Ms. Srijeeta Gupta, Adv.

Mr. Ramendu Agarwal, Adv.

Ms. Sonia Das, Adv.

Ms. Namrotaa Roy Chowdhury, Adv.

Judgment on : **07. 02.2025**

Harish Tandon , J.

The instant appeal raises an important issue striking at the jurisdiction and competence of the Civil Court in entertaining the dispute, the redressal whereof is provided in a Special Act, though not taken before it but discernible from the averments made in the plaint as well as the application for temporary injunction filed before the Civil Court. The point urged before us was neither put forth before the Trial Court nor argued at the behest of the plaintiff-respondent but is taken before us by the defendant/appellant, if found to be correct, would exclude the jurisdiction of the Civil Court in entertaining the suit having barred either expressly or by necessary implication.

The instant appeal is against an *ex parte ad interim* order of injunction passed by the Trial Court at the behest of the defendant/respondent who neither appeared in the said suit at the time of passing impugned order nor filed the pleading raising such issue. We permitted the defendant to take such plea as we find the reference of the initiation of the proceedings before the RERA having pleaded by the plaintiff/respondent in the plaint as well as the temporary injunction application for the simple reason that if it is ultimately found that the jurisdiction or competence of the Civil Court is expressly or by necessary implication is barred under the RERA Act, any order be it *ad interim*, *interim* or temporary injunction would be regarded as a nullity.

Shorn of unnecessary details, the plaintiff/respondent filed a suit before the Civil Court with the principal relief that the defendant/appellant may be directed to pay the remaining balance of the consideration amount agreed under the agreement for sale and to execute the deed of conveyance in respect of a flat covered under the said agreement for sale. In other words, it is a suit for specific performance of an agreement for sale upon payment of the remaining balance consideration money.

Often a question arises whether the Court should enter into such aspect at the stage of temporary injunction which is primarily decided on three golden parameters namely, existence of *prima facie* cases, balance of convenience and inconvenience, irreparable loss and injury. It is no longer *res integra* that the order of injunction be it *ex parte*, interim or temporary, the Court must consider whether it has a jurisdiction in relation to a subject matter and the same has not been excluded under the Special Act either expressly or by necessary implication. Even though the Court can grant injunction yet it must have the competence in jurisdiction to do so and, therefore, the jurisdiction of the Civil Court assumes an importance role in exercising such jurisdiction and the power so conferred upon it. The Court shall not pass injunction despite having satisfied itself the fulfilment of the aforesaid three parameters if it lacks competence and jurisdiction in relation to a subject matter or such jurisdiction is either expressly or impliedly barred under the particular statute.

The exclusion of jurisdiction of the Civil Court should not be readily inferred but can be excluded only by express provision in the statute or by necessary implication. Section 9 of the Code of Civil Procedure postulates that every Civil Court has jurisdiction to decide the issue unless such jurisdiction is expressly or by necessary implication is barred. It is in such sense the Courts in the country have accepted the normal Rule of Law that the Civil Court has jurisdiction to try all suits of civil nature except the cognizance is either expressly or impliedly excluded which is not to be readily inferred. The presumption is always drawn in favour of the existence of the jurisdiction vested upon the Civil Court to try all suits of civil nature than the exclusion of the jurisdiction of the Civil Court to try such suit. Section 9 of the Code of Civil Procedure encapsulated the adaptation of two basic principles namely whether the legislative intent to exclude arises explicitly or by necessary implication and whether the statute in question provides for adequate and satisfactory alternative remedy to a party agreed by an order or an action contemplated therein.

The reliance can be safely placed upon a judgment of the Apex Court in ***Dhulavai vs. State of Madhya Pradesh reported in AIR 1969 SC 78***, in support of the aforesaid contention that where the statute gives finality to an order of the special tribunals, the jurisdiction of the Civil Court must be held to be excluded provided such special statutes contained an adequate remedy to do what Civil Court would normally do. It is further held that in the event such provision does not exclude those cases where the provisions of the particular Act has not been complied with or statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the exclusion of the civil jurisdiction should not be normally inferred.

Any point which strikes at the toot of jurisdiction or exercise of powers vested upon the Civil Court can be raised for the first time before the Appellate Court even the scope of the appeal is limited as the order impugned before the Appellate Court can be tested on the existence of a jurisdiction and the competence of the Court in passing the order of such nature and, therefore it is an ardent duty of the Court to satisfy its conscience on the conferment of the jurisdiction and the exercise of the powers having not excluded expressly or by necessary implication. Ordinarily, the Civil Court has three kind of jurisdiction namely territorial, pecuniary and jurisdiction in relation to subject matter. The plea of territorial and pecuniary jurisdiction if not raised at the first instance before the Court of original jurisdiction cannot be permitted to be raised for the first time before the Appellate Court under Section 21 of the Code of Civil Procedure. However, the jurisdiction in relation to a subject matter is indispensable which can neither be waived nor acquiesced by the act of the parties and, therefore, can be taken as a plea of demur for the first time before the Appellate Court. There is thus no fetter on the part of the Appellate Court to decide such issue or point taken for the first time before the Appellate Court.

As indicated above, the plaintiff/respondent filed Title Suit no. 133 of 2024 in the 5th Court of Civil Judge, Senior Division at Alipore for specific performance of a contract and mandatory injunction. It is averred in the plaint that the plaintiff/respondent undertook to develop the Premises no. 17D, Prince Golam Mohammad Shah Road, Kolkata 700045, on the basis of a development agreement dated August 7, 2014 entered into by and between the plaintiff/respondent and the owner of the said property to construct the G+32 multi storied building in the name and style of **'RSH Signature'**. The defendant/appellant showed his interests to purchase the residential flat no. 1801 on the 18th floor of the said multi storied building with the built up area of 4084 sq. ft. together with a triple height sky balcony containing a total built up area of 445 sq. ft. attached to said flat along with the 3 covered car parking spaces and entered into an agreement for sale on December 5, 2016 at a total consideration of Rs. 6 Crore 21 lakhs 37 thousand along with service tax and the other miscellaneous expenses specified in the schedules appended thereto. Pursuant to the said agreement the payments were made leaving a sum of Rs. 1 crore 55 lakh 34 thousand 250 together with the GST at the rate of 12 per cent and the additional expenses and the expenses for executing the deed of conveyance in respect of the said flat. It is averred that several correspondences were exchanged between the parties but the defendant/appellant failed to fulfil his obligations under the said agreement; rather filed a complaint before the West Bengal Real Estate Regulatory Authority which gave rise to the registration of WBRERA/COM000471 flagging an issue that the flat was not made ready for delivery of possession which was supposed to be done within a stipulated time nor possession is handed over as the completion certificate or the occupation certificate required to be obtained was not obtained in the said complaint. The defendant/respondent claimed an interest for such lapses on the part of the plaintiff/respondent and failure to comply with the obligations imposed under the RERA Act and the Rules framed thereunder. It is further alleged in the plaint that the defendant/appellant is avoiding to comply of a part of obligation agreed upon by and between the parties under the said agreement for sale and, therefore, a mandatory injunction be issued upon the defendant/appellant to pay the balance consideration price and also to execute the deed of conveyance in respect of the said flat. On the basis of the aforesaid facts pleaded in the plaint, an application for temporary injunction was filed for restraining the defendant/appellant to take possession of the suit flat without making the balance consideration price along with the other allied statutory and non-statutory charges in terms of the said agreement for sale.

The Trial Court passed an *ex parte ad interim* order of injunction restraining the defendant/appellant from taking possession of the suit premises until the payment of the outstanding amount together with the other statutory or non-statutory charges aggrieved upon by the said agreement for sale which is assailed in the instant appeal. At the cost of repetition we must record that there is no reflection of the various provision of the Real Estate (Regulation and Development) Act, 2016 touching upon the jurisdiction of the Civil Court to entertain the disputes and the reliefs claimed in the said suit filed before the Civil Court nor the findings exposits such pleading relating to the filing of the complaint before the Real Estate Regulatory Authority. The disclosure of the filing of the complaint before the RERA in the plaint as well as the injunction application have embolden the defendant/appellant to take a plea of ouster jurisdiction of the Civil Court by placing the various provision of the aforesaid Act.

The said Act was published in the Gazette of India (Extraordinary) Part III on 26.03.2016 with the avowed object to establish the Real Estate Regulatory Authority for regulation and promotion of the Real Estate sector and to ensure the sale of plot, apartment or building or a sale of real estate project in an efficient and transparent manner. It is further aimed to protect the interest of consumers in the Real Estate sector and to provide adjudicating mechanism for speedy dispute redressal, by establishing the Real Estate Regulatory Authority with further object to establish the Appellate Tribunal to hear appeal from the decisions, orders, directions of the Real Estate Regulatory Authority and the adjudicating officer and for the matters connected therewith or incidental thereto. The need for framing the legislature in this regard was envisioned as it was felt that buying the house and having a permanent shelter is engrained in the Indian society and in the larger perspective is a single investment of an individual during his lifetime. There has been a radical change in the perspective of the Indian culture because of the liberal policy having adopted by the Government in extending the loan or finance to an individual in order to give impetus in the infrastructure development having a direct or indirect impact on the economic development of the country as well as the society at large. At one hand such liberalisation in extending the loan by the financial institution plays an important role in the economic development and uplifting of the peoples of the society but also put them into a vulnerable position because of such high financial exposure augmenting the insolvency in the event of failure to adhere the conditions imposed in this regard. The moment the home buyers avail the credit facilities from the financial institutions and becomes a creditor to them it was felt that the Real Estate sector which is completely unregulated in absence of any transparency in the business profile and to create a safeguard, the Act of 2016 was a significant milestone achieved in this regard in bringing a balance between the rights of the developer and the buyer. The Act mandates the registration of the project not only with regard to the completion of the project but also of the statutory obligation of the developer and the home buyer to abide by the terms and conditions of the agreement as well as the statutory compliance. The experience gained by the passage of time indicates that the moment the project is approved under the said Act, it not only helps the developer to raise funds from the bank but also encourages the genuine buyers to buy the flats with the sense of satisfaction that it is an approved projects and the ease of extending the financial assistance.

On the conspectus of the aforesaid aims and object and the purpose underlying the promulgation of the said Act, it would be apposite to consider the various provisions contained therein in pursuit of determining the pivotal issue relating the ouster of the jurisdiction of the Civil Court as raised by the defendant/appellant in the instant appeal. The allottees defined in Section 2(d) of the said Act in relation to a real estate project to mean the person to whom a flat, apartment or building, as the case may be, has been allotted, sold (whether as free-hold or lease hold) or otherwise transferred by the promoter and further expanded such definition by including the person who subsequently acquired the said allotment through sale, transfer or others. It however excludes any person who has taken such flat, apartment or building on rent.

Section 3 of the said Act mandates the registration of real estate project with the Real Estate Regulatory Authority established under Section 20 of the said Act. Chapter III of the said Act comprising Section 11 to Section 18 contained the functions, the duties and the obligation of the promoter/developer in the real estate project including the execution and registration of conveyance deed of the apartment, plot or the building in favour of the allottee along with an undivided proportionate title in common areas to the association of allottees or competent authority. Section 14 mandates the adherence of the sanction plan and the project specification by the promoters/developer and Section 17 further obligates the promoter/developer to execute a registered conveyance in favour of the allottee and also to obtain the occupancy certificate and handing over the physical possession of the flat to the alottee.

Chapter IV contained only one Section i.e. Section 19 imbibing the rights and duties of the allottees including an obligation to make payments in the manner and time specified in the agreement for sale and the other statutory charges, if any, and in the event there is a failure in this regard the liability to pay interest at such rate as may be prescribed for delayed period. Section 31 of the said Act confers right on any aggrieved person to file a complaint before the regulatory authority for any violation or contravention of the provision of the Act or the Rules and Regulations made thereunder against the promoter; allottee or real estate agent as the case may be. Section 34 of the Act relates to the functions of the authority which includes the insurance of the compliance of an obligation cast upon the promoters, allottees and the real estate agents under the Act and the Rules and the Regulation made therein, as well as the order or direction made in exercise of such power. By Section 38, the powers have been vested upon the authority to impose penalty or interest, in regard to any contravention or obligation cast upon the promoters, allottees and real estate agent under the Act and to be guided by the principle of natural justice. The aforesaid Section is quoted as under:

"38. Powers of Authority.- (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that-

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

Then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India."

The powers of the authority to issue directions or orders be it *interim* or otherwise can be seen from Section 36 and 37 without any specification of the registrations having imposed in this regard. The Act also contained several provisions relating to establishment of Real Estate Appellate Tribunal under Chapter VII of the said Act including the power and function and also to pass an order to be executable as a decree under Section 57 thereof. The right to appeal against an order or direction is provided under Section 58 of the said Act before the High Court having territorial jurisdiction over the site of the real estate project.

Chapter VIII of the said Act is relatable to the offence penalties and the adjudication by the authorities established under the said Act for the various failures on the part of the promoter, the real estate agent and the allottee. Section 67 contemplates the liability to pay penalty in the event the allottee fails to comply with or contravene any of the orders, directions or decisions of the authority for the period during which such default continues whereas Section 68 is relatable to punishment with imprisonment for a term which may extend one year or with fine in the event such default continues. Section 71 and 72 of the Act provides that the regulatory authority may appoint an adjudicating officer in consultation with the appropriate Government to hold an enquiry in the prescribed manner for adjudging the compensation under Section 12, 14, 18 and 19 of the said Act with due regard to the factors enumerated under Section 72 as under:

"71. Power of adjudicate. – (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is

or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

72. Factors to be taken into account by adjudicating officer.- While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused as a result of the default;

(c) the repetitive nature of the default;

(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice."

The pivotal issue clinches on Section 79 of the said Act containing a specific provision relating to the exclusion of the jurisdiction of a Civil Court in the following:

"79. Bar of jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

The cumulative effect of the aforementioned provisions lead to an inescapable conclusion that the said Act is a self-contained code containing an exhaustive provision relating to a real estate project and the obligations and liabilities of the promoter, allottee and the real estate agent as well as their respective obligations. A complete mechanism is provided for redressal of the grievances of the dispute not only to the allottee but also of the promoter and the real estate agent and therefore, equilibrium is created amongst the respective rights of the parties. By virtue of Section 11(4)(f) it is obligatory on the part of the promoter to execute a registered conveyance deed of the apartment, plot and building in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority which is further reiterated under Section 17 in the following:

"17. Transfer of title.- (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per the sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, [to the association] of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate."

On the other hand, the rights and duties as well as the obligation of the allottee to make payment in terms of the agreement for sale is evidently present under Section 19(6) in the following:

"19. Rights and duties of allottees.- (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building, as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

Under Section 34 of the Act having a broad heading **"Function of Authority"** cast obligation upon it to ensure compliance of the obligations cast upon the promoter, allottee and real estate agent under the Act, Rules and Regulation framed therein including any orders or the directions made in exercise of powers conferred under the said Act under Clause **'f'** and **'g'** of the said Section. The authority is further empowered to pass orders or direction under Section 36 and 37 of the said Act without any restrictions and/or specification provided therein and, therefore, it can be safely inferred that in the event it is found that any Act, thing or deed done in contravention to the said Act, Rules or the Regulations made therein the authority has the power in this regard. The cumulative effect of Section 36, 37 and Section 34(f) and (g) of the said Act leads to an inescapable conclusion that not only power to pass such order is vested upon the authority but also a power to ensure the strict compliance thereof is also conferred upon it.

At the first blush, it raises a doubt in our mind as to whether the authority has a power to pass an order or a direction of a specific performance of an agreement in juxtaposition with the provisions contained in Chapter VIII of the said Act in the event of non-compliance of the directions or the orders passed therein as it is only relatable to the penalties to be imposed and also the punishment to be inflicted. We do not find any provision concerning regulatory authority that any orders or directions are executable as a decree of a Civil Court but such provision is conspicuously present in relation to an order or a direction passed by the Real Estate Appellate Tribunal under Section 57 of the said Act which runs thus:

"57. Orders passed by Appellate Tribunal to be executable as a decree.- (1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court."

The question often arises when the regulatory authority is not empowered to execute its order or direction as a decree of a Civil Court whether it can exercise such power vested upon the Appellate Tribunal under the said Act. It is no longer *res integra* that the authority exercises the powers and assumes jurisdiction on the basis of a statute enacted in this regard and cannot travel beyond the peripheral thereof. The moment the legislatures consciously did not incorporate specific provision conferring the power and the jurisdiction in such manner, the regulatory authority cannot assume such jurisdiction. As discussed hereinabove, the exclusion of the jurisdiction of a Civil Court should not be inferred readily except when it is so excluded explicitly or by necessary implication and/or the statute in question provides adequate and satisfactory alternative remedy to a party; in other words, the ouster of Civil Court can only be assumed if the authority under the statute can exercise all powers vested upon the Civil Court. In the event the statute provides that the authority is vested with the power not only to adjudicate the dispute which is capable to be adjudicated by the Civil Court but also to execute the same in the manner as is done by the Civil Court, the exclusion can be inferred by necessary implication in absence of any express provision.

Inspiration in this regard can be drawn from a Division Bench judgment of this Court in case of ***Mandira Mookerjee vs. District Consumer Disputes Redressal Forum & Ors., reported in (2005) 4 CHN 694*** where an identical issue arose whether the Consumer Forum is competent to pass an order for specific performance of an agreement for sale of an immovable property. It is held that under the Specific Relief Act which recognises the right of the specific performance of a contract available to a party agreed but it does not contain any express provision that it can only be done by the Civil Court and not otherwise. The reference was made to a hypothetical situation where the parties under an agreement agreed to resolve the dispute through private fora i.e. arbitration and the arbitrator was empowered to pass an order for specific performance. In the aforesaid backdrop it is held:

"7.3 True that this decision was related to arbitration but that would not preclude the Consumer Forum to be placed in the shoes of the arbitrator principally on the ratio decided in those decisions. The question is whether any Forum other than Civil Courts can exercise discretion with regard to specific performance of contract for sale of an immovable property in terms of the Specific Relief Act or whether the jurisdiction of the Consumer Forum is excluded by reason of any provisions contained in the Specific Relief Act. If it can be true in relation to arbitration then there cannot be any bar of its being equally true in relation to a proceeding before the Consumer Forum."

The reliance appears to be placed upon the recent judgment of the Apex Court rendered in ***New Tech Promoters and Developers Pvt. Ltd. vs. State of Uttar Pradesh & Ors., reported in (2021) 18 SCC 1*** by both the parties in support of their respective contention. The appellant sought to rely upon the portion of the observations made therein concerning the power of the adjudicating officer not only to determine the compensation, interest, penalty but also to examine and determine the allegation made in the complaint in providing a complete relief to an aggrieved person; on the other hand, the respondent relies upon the observations made therein that the adjudication is only restricted to the determination of the interest penalty and compensation and not beyond it. The fact of the said case is required to be recapitulated before the observations made therein are regarded as a binding precedent in the instant case. In the said case, the allottee had approached the regulatory authority for refund of the payment along with an interest as the developer/promoter failed to hand over the possession of the unit on the basis of the agreement entered into by and between the parties. A plea was sought to be raised that the adjudicating officer cannot decide a question whether any interest should be imposed upon the refunded amount and in that perspective it says that it comes within the purview of ambit of its power and jurisdiction vested under Section 71 of the said Act. A decision is what is decided in the context and ratio is to be culled out therefrom. The Apex Court was not considering whether the regulatory authority has a power to pass an order or direction which, in the way tantamount to a specific performance of an agreement and, therefore, in our view the aforesaid judgment in ***New Tech Promoters & Developers Pvt. Ltd. (supra)*** does not come in aid of deciding the aforesaid point. Though the power to execute the order or direction passed by the authority is not provided in the statute except in the form of a penalty to such power but can be traced from Rule 26 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 which runs thus:

"26. Manner of implementation of order, direction or decisions of the adjudicating officer, the authority or the Appellate Tribunal. – (1) Every order made by the Authority, Adjudicating Officer or Appellate Tribunal shall be enforced by it in the same manner as if it were a decree of a civil court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable.

(2) Any such order shall be executed by the Principal Civil Court of the district having jurisdiction to execute the same."

The aforesaid provision postulates that the every order made by the authority shall be enforced in the same manner as of a decree of the Civil Court and by virtue of the reference, the provision contained under Order XXI of the Code of Civil Procedure is imbibed within the said Act. Order XXI of the Code of Civil Procedure is a self-contained Code comprising of an exhaustive provision relating to the execution of a decree or the order including the specific performance of an agreement for sale. By virtue of Sub-Rule (2) of Rule 26 the order can also be executed by a principal Civil Court of a district having jurisdiction to execute the same. The conjoint reading of the various provision in the Act as well as the Rules as mentioned hereinabove leaves no ambiguity in our mind that the power of the regulatory authority is not restricted to a penalty or compensation but the orders or the direction can be executed as a decree under Order XXI of the Code of Civil Procedure either by itself or by the principal Civil Court and, therefore, it cannot be said that the said Act does not contain a provision relating to a complete redressal of the dispute involved therein. The Regulatory Authority is vested with the power to ensure the compliance not only of the Act, Rules or the Regulation but also the obligations contained therein and also to have such orders or direction to be executed so as to bring quietus to the lis.

Section 79 of the Act has to be interpreted in such a manner and the moment the jurisdiction of the Civil Court is ousted, it cannot pass any order be it in a form of *ex parte*, *interim* or temporary injunction. The Apex Court in ***Hasham Abbas Sayyad vs. Usman Abbas Sayyad & Ors., reported in (2007) 2 SCC 355*** held that any order passed by an authority lacking the inherent jurisdiction would be regarded as nullity in the following:

"22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppels, waiver and

acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice, being a nullity, the same ordinarily should not be given effect to."

In view of the discussions made hereinabove, the said Act being a complete Code providing the exhaustive mechanism not only for the adjudication of the disputes, adherence of an obligation of the respective parties but also to execute the same as if it is a decree passed by the Civil Court. We, thus, find that it excludes the jurisdiction of the Civil Court. The order impugned, therefore, cannot be sustained. The same is hereby set aside.

The appeal is allowed.

There shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)