



CIVIL

Jurisdiction of RERA Over Unregistered Projects: Punjab and Haryana High Court Upholds Allottees' Rights

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The Division Bench of the Hon'ble High Court of Punjab and Haryana ("High Court") in a recent judgment¹ addressed the issue of jurisdiction in cases involving complaints against promoters related to unregistered projects under Real Estate (Regulation and Development) Act, 2016 ("RERA"). The case specifically focused on whether the non-registration of a real estate project under RERA would nullify the right of an allottee or other aggrieved parties to file complaints, and whether the RERA authorities had jurisdiction to hear and adjudicate such complaints. The High Court's ruling reinforced the broad scope of RERA's jurisdiction.

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Background and Factual Matrix

In this case, the Respondent, an allottee, claimed to have entered into a transaction with the Petitioner, the promoter. The Respondent had booked a unit in the Petitioner's project but later raised grievances regarding non-compliance with the agreed terms. However, the Petitioner had failed to register the project with RERA, which led to a jurisdictional dispute when the Respondent filed a complaint before the authority.

Despite the Petitioner's objections, the RERA Authority proceeded with the complaint and decided the Complaint against the developer. In response, the Petitioner without exhausting alternate remedy directly approached the High Court under Article 226 of the Constitution, challenging both RERA's jurisdiction and the maintainability of the Complaint.

Contentions of the Parties

The Petitioner primarily argued that RERA lacked jurisdiction to adjudicate the dispute as the project in question was not registered under the Act. It was contended that RERA's regulatory oversight extends only to projects that have been duly registered, and since the Petitioner had not sought such registration, the authority had no power to entertain the complaint. Additionally, the Petitioner claimed that the Respondent did not qualify as an "allottee" under the Act, as no formal sale agreement had been executed between the parties. The Petitioner further asserted that disputes arising from private contracts should be adjudicated in civil courts rather than regulatory bodies like RERA.

On the other hand, the Respondent contended that the purpose of RERA was to regulate all real estate transactions, regardless of whether a project was registered. The Respondent, argued that they were entitled to file a complaint under RERA, citing the statutory rights afforded to aggrieved persons under Section 31² of the Act. The Respondent maintained that they had paid a substantial amount towards the purchase of the unit, thereby establishing their status as an allottee with a legal right to seek relief under the Act. Furthermore, the Respondent relied on judicial precedents to argue that consumer protection laws override contractual terms, ensuring that real estate buyers are not left remediless. Lastly, the Respondent urged the High Court to dismiss the writ petition, emphasizing that the Petitioner had deliberately circumvented the statutory process under Section 43(5)³ of RERA and should have approached the Appellate Tribunal instead.

Court's Observations

The Court's observations hinged on the interpretation of key provisions of the RERA Act, especially Sections 31 and 3. The Court held that Section 31 of RERA provides a statutory right to any aggrieved person, including allottees, to file a complaint with the RERA authority or the adjudicating officer for violations of the provisions of the Act or rules made under it.

The Court emphasized that the jurisdiction of the RERA authority is conferred by Section 31, and that the mere non-registration of a project or non-compliance with specific provisions of the Act (such as Section 3) does not preclude the filing of complaints. The Court further highlighted that the definition of "promoter" under Section 2(zk) is broad and includes developers, builders, contractors, and any person involved in the sale or development of real estate.

The Court observed that an allottee's right to file a complaint exists even if the project is still in the development stage or has not yet been registered with RERA. The High Court rejected the Petitioner's argument that RERA lacked jurisdiction over unregistered projects, holding that the Act's primary objective is to protect consumers and regulate real estate transactions. If

developers were allowed to evade scrutiny simply by not registering their projects, the very purpose of the legislation would be defeated.

Another critical issue before the High Court was the maintainability of the writ petition. The High Court reiterated the well-established principle that constitutional courts should not entertain writ petitions when an effective alternative remedy is available and since the RERA Act provides for an appeal mechanism through the Appellate Tribunal, the Petitioner should have first pursued the same before approaching the High Court. The High Court dismissed the Petitioner's writ petition and directed him to seek an appeal before the Appellate Tribunal.

Author's Opinion

In the author's opinion this case emphasizes the strong protective framework established by the RERA Act, which is designed to safeguard the interests of allottees, including prospective buyers. The Court's interpretation of the Act broadens the scope of who qualifies as an allottee and who can file a complaint, ensuring that buyers are not left without a remedy simply because a project is unregistered or incomplete.

The judgment highlights the importance of the statutory rights given to consumers in the real estate sector, allowing them to challenge promoters or developers for any violations of the law, even if the project is still in the planning stages. The case also reinforces that non-registration of a project under RERA does not invalidate the adjudicatory power of the authority.

This judgment emphasizes the need for strict compliance with RERA provisions by developers and promoters. At the same time, it reassures homebuyers and prospective purchasers that they have the legal means to address grievances related to real estate projects.

¹ M/S Ramprastha Developers Pvt Ltd And Ors vs. State of Haryana And Ors (CWP No. 24591 of 2024)

² Section 31. Filing of complaints with the Authority or the 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.

³ Section 43. Establishment of Real Estate Appellate Tribunal.

...(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 at least 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.