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Broadening the Applicability of RERA: A Case Study of Lavasa Corporation Ltd. v. Manju Narendra Joshi & Ors.

Siddharth Jain*
Student
Institute of Law, Nirma University, Sarkhej-Gandhinagar Highway, Gota, Ahmedabad, Gujarat, India

Abstract

The Real Estate (Regulation and Development) Act, 2016 was enacted with an intent to protect the interests of the investors whilst striving to bring in professionalism, standardization, and accountability in the real estate sector. With the view of upholding the intent of the Act and achieving the said objectives, the High Court of Bombay in the case of Lavasa Corporation Ltd v. Manju Narendra Joshi & Ors. has substantially answered the question as to whether the provisions of RERA are applicable to an Agreement to Lease. The paramount objective of the Act is to ensure utmost accountability towards the consumers and to provide speedy, comprehensive and effective remedies to them. This need was felt by the Parliament, as it was noticed that the consumers were not given possession for years at a stretch, and also that their money was locked in such projects. To ensure that the same is not repeated, the Bombay High Court, in the present case, ruled in favor of the respondents and held that the intention of the appellants was to put this project for sale and, therefore, it will be bound by the provisions of RERA.

Keywords: *RERA, Agreement, accountability, consumers, sale*

****Author for Correspondence*** E-mail: 15bbl017@nirmauni.ac.in

INTRODUCTION

The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') was enacted with an intent to protect the interests of the investors whilst striving to bring in professionalism, standardization and accountability in the real estate sector.

The Preamble of the Act states that the legislation is enacted with the intention "*to establish the 'Real Estate Regulatory Authority' for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy redressal and also to establish the Real Estate Appellate Tribunal to hear Appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and Adjudicating Officer and for the matters connected therewith or incidental thereto*" [1].

It is evident from the Statement of Objects and Reasons of the Act that the real estate sector plays an important role in fulfilling the housing and infrastructure needs and demands of the country. Thus, there existed a necessity to enact this Act to regulate the unregulated real estate sector and provide adequate protection to investors of the said sector. Lack of professionalism and standardization in the said sector encumbers healthy and stagnant growth of the real estate sector, but now with RERA at play, all such encumbrances will be eliminated.

With the view of upholding the intent of the Act and achieving the said objectives, the High Court of Bombay in the case of *Lavasa Corporation Ltd v. Manju Narendra Joshi & Ors*. [2] has substantially answered the question as to whether the provisions of RERA are applicable to an Agreement to Lease.

FACTS

The respondents booked apartments in the township scheme – 'Lake Views' – of the appellant (Lavasa Corporation), by entering into an Agreement to Lease. As per the agreements, the booking is for the period of 999 years with a fixed annual lease rent of Re. 1. The respondents, in accordance with the agreements, have paid consideration to the extent of 80% of the sale price and have also made a substantial payment towards the stamp duty and registration charges of their respective apartments. The said agreements impose an obligation upon the appellant to complete the project and hand over the possession of the apartments to the respondents within 24 months. The respondents after patiently waiting for six to seven years filed a suit against the appellant in the MahaRERA in accordance with Section 18 of RERA, claiming compensation inclusive of interest for the delay in possession of the apartments. The appellant preferred three appeals under Section 58 of RERA, before the Hon'ble High Court of Bombay.

The appellant challenged the maintainability of the complaint by the respondents on the grounds that the provisions of RERA are not applicable to Agreement of Lease. The main contention raised was that by virtue of the agreements entered between both the parties – which was an Agreement to Lease – the respondents are 'Lessees' and the appellant 'Lessor', which are exempted from the purview of RERA. Thus, the adjudicating authority has no jurisdiction to entertain the complaint by the respondents, as the appellant clearly does not fall within the ambit of the provisions of the Act.

The Maharashtra Real Estate Appellate Tribunal passed three separate orders in furtherance to three separate appeals filed by the respondents, under Section 43(5) of RERA. The appeals were against the orders passed by the adjudicating authority under Section 18 of the Act. The appellant is aggrieved by the three orders passed by the Maharashtra Real Estate Appellate Tribunal, as the Tribunal held that the provisions of RERA are applicable in the present case, even in Agreement of Lease, and therefore the adjudicating member of the Maharashtra Real Estate Regulatory Authority has the jurisdiction to entertain the complaints. This was held so, even though the appellant claimed that the relationship between both the parties is of 'Lessor' and 'Lessee' and thus, there is no absolute transfer of right, title and interest in favor of the respondents concerning their respective apartments.

ISSUES PRESENTED

The below-mentioned three substantial questions of law were raised:

i. Whether the Appellate Tribunal has committed an error in holding that the provisions of RERA are applicable to the 'Agreement of Lease' executed between the appellant and the respondents?
ii. Whether the Appellate Tribunal has committed an error in holding that the 'adjudicating authority' under RERA has jurisdiction to entertain the complaints filed by the respondents, under Section 18 of RERA?
iii. Whether the adjudicating authority, under RERA, can go behind the 'Registration Certificate' of the appellant, to hold that it has no jurisdiction, though the project is registered under the said Act?

HOLDING AND RATIONALE

The appellant in the present case, as a reply to the above raised issue, contended that it is evident from the tittle of the agreements that they were 'Agreements to Lease' and not 'Agreements to Sale', thereby barring the applicability of RERA. In accordance to Section 2(zk) of RERA, a 'promotor' is a person who constructs an apartment with an intent to sell, not to lease [3]. Similarly, Section 2(zn) of the Act states that a real estate project shall be undertaken with the purpose of selling all or some constructed apartments [4], thus making the appellant a 'lessor' not a promoter and the appellant's project, outside the purview of the provisions of RERA. The remedies enshrined under Section 18 of the Act are to be claimed against the 'promoter' and not the 'lessor' [5], thereby debarring the jurisdiction of the adjudicating authority in the present case.

Moreover, the appellant further contended that the respondents were fully aware and that they acknowledged that the agreements so entered into are Agreements to Lease and they thereby agreed to book an apartment on lease for 999 years with a fixed annual lease rent of Rs. 1. The appellant also contended that the project was registered with RERA in respect of some of its components and thus this registration

cannot be a sole test for invoking the provisions of RERA.
However, the respondents contended that the mere title or nomenclature of an agreement cannot be the sole test to adjudicate the real nature and intent of the agreement. In the present case, the agreement laid down conditions which were consistent to the agreements executed under the Maharashtra Ownership Flats (Regulation and Promotion of Construction, Sale, Management and Transfer) Act, 1963, which indeed is a format for an Agreement to Sale. As held in the case of *R.K. Palshikar (HUF) v. CIT, M.P., Nagpur and Bhandara* [6], "having regard to the fact that the period of the lease was of 99 years, it was as good as a lease in perpetuity or a permanent lease in as much as an alienation as a sale….the mere use of the word 'lease' would not by itself make the document in lease" [7]. Therefore, the conditions such as the time period of 999 years, fixed annual lease rent of Re. 1, and the payment of consideration to the extent of 80% of the sales price along with additional payments, must be considered before determining the real nature and intent of the agreement.

Further, the 'registration certificate' highlights the dichotomy of the contention raised by the appellant that only certain components of the project are registered under RERA as, even though separate parts of the projects can be registered individually, the appellant has registered the entire project under RERA in order to avail benefits provided to the promoter and to the project. In accordance with the 'Principle of Estoppel' [8], as enshrined under Section 115 of the Indian Evidence Act, 1872, the appellant in the present case while acting in the capacity of a 'promotor' has availed benefits given under RERA and thus is estopped from contending that the adjudicating authority has no jurisdiction to entertain the complaint filed by the respondent to the authority under Section 18 of the Act.

As held in *R.S. Raghunath v. State of Karnataka* [9] that "when the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but also proper to read that provision in its context. The 'context' means, the statue, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief, that it intended to remedy" [10]. The respondents further contented that the Hon'ble Court shall not only ponder upon the terms used by the legislature but shall also consider the 'Preamble' and the 'Objects and Reasons' of the said Act in order to comprehend the real intent of the legislature.

The Court in the present matter iterated that there must be a harmonious construction between the definition of 'Allottee', 'Promoter' and 'Real Estate Project' and the Object and Reasons of RERA.

It is a well-established rule of law that the intent of the legislature is to be adjudged by reading the provision of a statue in reference with the statue. If a provision is read in isolation without the context of the whole Act, then it will not align with the intention of the legislature and may not do justice to the Objects and Reasons of the Act.

The Heydon's Rule of Suppression of Mischief iterates a test to interpret the true intent of the legislature behind the Act. As per the said test, the first step is to take into consideration as to what was the common law before the enactment of the Act; the second step is to detect the mischief present for which the common law didn't provide any remedy; the third step to focus on what remedies the legislator has adopted to resolve the said mischief; and the final step is to check whether the mischief is suppressed and there is proper implementation of this remedy.

Thus, in order to interpret the real and true intent of legislator, the prevailing mischief and its suppression by enactment of the Act has to be taken into consideration. RERA was enacted to suppress the mischief of defrauding and wronging the investors/customers who had invested their hard-earned money in the real estate sector. The said Act was enacted to ameliorate the sufferings of the investors/customers with the prime objective of protecting the allottees from the wrongdoings of the promoters. One of such provisions, Section 18 of the said Act, imposes penalty on the developer, if he fails to complete the project and deliver possession within stipulated promised time [11].

In case of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. v. Union of India and Ors.* [12], the Court held that, "*When the 'Promoter' is, in effect, constructing the apartments for the 'Allottees' and the 'Allottees' make the payment of premium, the Act requires the 'Promoter' to pay interest to the 'Allottees', whose money it is, when the project is delayed beyond the contractual/agreed period. When the 'Allottee' has parted with entire consideration for purchase of the apartment and still he is not given possession and the 'Promoter' is enjoying the benefit of the said amount of consideration, it is expected under the Act that he is bound to pay compensation to the 'Allottee'. In other words, it becomes a case of unjust enrichment on the part of the 'Promoter', if he is not liable to compensate the 'Allottees' by paying interest on the amount retained by him, the 'Authority' under the RERA also can impose penalty or interest on the 'Allottees' for contravention of the obligations cast upon both of them, in view of Section 38 of the Act. Thus, the legislation has done balancing of rights and liabilities of 'Promoters' and 'Allottees'.*" [13].

In the present case, the respondents have paid more than 80% of the total consideration amount, along with the registration charges and stamp duty to the appellant, thereby making them entitled to the benefits provided by RERA to such allottees. In the present case the appellant promised a timely delivery of possession of the apartments to the respondents as per the agreement but failed, now depriving the respondents from enjoying the benefits and remedies available. According to Section 18 of the Act, this will lead to unjust enrichment of the appellant and thus will defeat the purpose of the Act and its objectives.

Thus, the interpretation of the statute in accordance with Heydon's rule, must be not only to suppress the mischief but also to provide for remedy and to suppress the clumsy attempts of evasions and inventions for the continuance of mischief. A provision should be interpreted in such a manner that it facilitates the cure and remedy, in accordance with the true intent of the Act.

The provisions of any Act must be considered in their practical requirement, focusing primarily on how the said provisions will strive to achieve the objective of the Act. As held in the case of *Tata Engineering & Locomotive Co. Ltd. v. State of Bihar and Anr.* [14], "Statutes, it is often said, should be construed not as theorems of Euclid, but with some imagination of the purposes, which lie behind them, and to be too literal in the meaning of words is to see the skin and miss the soul. The method suggested for adoption, in cases of doubt as to the meaning of the words used, is to explore the intention of the legislature through the words, the context, which gives the color, the context, the subject-matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their literal sense, are interpreted from the context and scheme underlying in the text of the Act" [15].

Similarly, in *Utkal Contractors & Joinery (P) Ltd. v. State of Orissa* [16], the court emphasized that "the need to construe the words in a provision in the context of the scheme underlying the other provisions of the Act as well, which ultimately was considered to be in tune with the object set out in the 'Statement of the Objects and Reasons' and in the 'Preamble'" [17].

Further, the court in the present matter, while adopting an object-oriented approach, referred to the case of *K.N. Farms Industries Private Limited v. State of Bihar and Others* [18], where the Supreme Court commented on the necessity of adopting an object-oriented stating that "the courts, while interpreting the provisions of any Act, should, no doubt, adopt an object-oriented approach, keeping in mind the principle that legislative futility is to be avoided so long as interpretative possibility permits. But, at the same time, the courts will have to keep in mind that the object-oriented approach cannot be carried to the extent of doing violence to the plain language used in the statute, by re-writing the words of a statute in place of the actual words used, or, by ignoring definite words used in the statute" [19].

It is clearly stated under Section 3 of RERA that a real estate project if it is developed in phases, then every such phase has to be considered as a stand-alone project and has to be registered separately under RERA [20]. But the appellant, under Section 4 of the Act, registered the entire project under RERA [21] and not only some parts of the components of the project as contended above, which is evident from the registration certificate of the appellant's project. The appellant itself never considered the said agreements, as entered with the respondents, to be an agreement to lease but an agreement to sale, as the appellant instead of opting for the available alternative of not registering the project, registered it in its entirety.

Hence, it can be said that the appellant by registering itself under RERA, has submitted itself to the jurisdiction of RERA and its adjudicating authorities, thus making the contention of the appellant that it is outside the ambit of Section 18 of the Act, as the agreement so entered is of Agreement to Lease and not Agreement to Sale, groundless. Thus, the complaints filed by the respondents under Section 18 of the Act are very much maintainable before the adjudicating authority as, the appellant has itself registered the entire project under RERA, thereby accepting the liabilities and benefits associated with such registrations.

The court in the present matter, after considering the facts and circumstances in totality and the terms and conditions of the said agreements, with regards to the Objects and Reasons of the Act, held that the matter falls within the jurisdiction of RERA and that the complaints filed under Section 18 of the Act, by the respondents before the adjudicating officer are maintainable and that focusing on the title or nomenclature of the agreements for adjudicating such matters will defeat the very objective of the Act.

CONCLUSION

The paramount objective of The Real Estate (Regulation and Development) Act, 2016, is to ensure utmost accountability towards the consumers and to provide speedy, comprehensive and effective remedies to them. This need was felt by the Parliament as it was noticed that the consumers were not given possession for years at a stretch, and also that their money was locked up in such projects. To ensure that the same is not repeated, the Bombay High Court in the present case ruled in favor of the respondents and held that the intention of the appellants was to put this project for sale, and therefore it will be bound by the provisions of RERA.

It is quintessential that while interpreting the intention of the legislature, the Objects and Reasons and the Preamble to the said legislation must be taken into consideration and not only the terms used in the provisions. The Objects and Reasons of the Act clearly state that the Consumer Protection Act, 1986, though provides remedies to the buyers in the real estate sector, but such remedies were not adequate, as this forum was only able to provide curative recourses and was not equipped to address all the concerns of the buyers and promoters of the said sector. Therefore, RERA was enacted to fulfil for the lack of protection provided by the Consumer Protection Act.

The Preamble of the Act strives to bring in professionalism, transparency and standardization in the real estate sector but if agreements such as in the present case are considered outside the purview of the Act, by virtue of its title or nomenclature of it being an Agreement to Lease, the very objective of the Act will be frustrated. Thus, the High Court of Bombay in the case of *Lavasa Corporation Ltd v. Manju Narendra Joshi & Ors*. has answered this question beautifully, whilst upholding the intent of the Act, and not deciding simply on the basis of the nomenclature of the agreements.

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