

**UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL,
DEHRADUN**

ORDER SHEET

Appeal. No. 27 of 2019

M/S GTM Builders & Promoters Pvt. Ltd.....Appellant (s)

Versus

Smt. Shobha Malhotra & another.....Respondent(s)

ORDER BY THE BENCH

Dated: 19.04.2021

Present: Sri Suresh Chandra Sharma & Sri Vikrant Gambhir, Advocates
for the appellant.
Sri Anand Chamoli, Advocate, for the Respondents.

Present appeal has been filed on 01.10.2019 against the order dated 29.07.2019 passed by Uttarakhand Real Estate Regulatory Authority (for short, RERA) in a complaint made by respondents. Against this order, the appellants approached the Hon'ble High Court by WPMS No. 3001/2019. Hon'ble High Court in its judgment and order dated 26.09.2019, dismissed the writ petition on the ground of alternative remedy, inasmuch as the order of RERA is evidently an appealable order under Section 43 of the Real Estate (Regulation and Development) Act, 2016, (No. 16/2016) (hereinafter referred to, the Act).

2. On the objection of the Ld. Senior Counsel for the petitioners to the point of jurisdiction of Uttarakhand RERA in the matter, the Hon'ble High Court ordered that the Appellate Tribunal, before proceeding in the matter shall consider the point of jurisdiction in the first instance.

3. In compliance of the above order of Hon'ble High Court, this Tribunal has heard the arguments of Ld. Counsel for both the sides on the point of jurisdiction and perused the record.

4. In the order impugned dated 29.07.2019, Ld. Authority below has dealt with this issue in point no.1, as to whether the complaint is time barred under the Limitation Act and whether this Regulatory Authority does not have jurisdiction to hear it. In its decision on this issue, Ld. Authority below has observed that the respondents (appellants herein) have stated in their written reply that the sale deed of the flat had been executed and registered in favour of the complainants (respondents herein) on 13.05.2013 and the possession certificate was issued on 10.01.2014, which was accepted by the complainants. The complaint before RERA has been filed after five years and is, therefore, time barred. It is also argued that at the time of registration of

sale deed, the complainants did not make any objection and now they cannot raise any question about delayed possession and interest. The complainants, in their counter reply, have stated that they had made almost the entire payment by July, 2008 for the flat. Subsequently, time to time they requested the respondents to pay the interest amount on the bank loan, as per the tripartite agreement, which was declined by the respondents. The complainants wrote to the respondents on 23.06.2011 about the delay and for completing the construction work of the flat, but, in reply, the respondents sent letters dated 25.11.2011 and 29.12.2011 carrying threat for cancellation of the allotment of the flat. The respondents, without obtaining occupancy certificate and completion certificate from the competent authority, gave letter/proposal to the complainants for taking possession. The respondents in the *mala fide* way and for threatening the complainants sent a final demand note dated 30.06.2012 for Rs.17,72,681/- plus service tax, while the complainants had paid an amount exceeding the full cost of the flat including bank interest. The complainants were afraid that their entire amount will be seized by the respondents and, therefore, under duress and pressure of the respondents, they had to get the sale deed of the flat executed. Ld. Authority below, on observation of the documents filed before it, has found force in the contention of the complainants that they had the fear of their money being seized by the respondents. Ld. Authority below has also observed that till the time of the registration of the sale deed of the flat, respondents had not obtained the occupancy certificate or completion certificate from MDDA and without obtaining occupancy certificate, they have illegally handed over the possession of the flat to the complainants. After registration of the sale deed, the complainants, on 30.01.2014, informed the respondents about the shortcomings in the flat through email and on 19.05.2014 filed a complaint in the District Consumer Redressal Forum, Delhi, which remained pending there till 07.05.2018. Certified copy of the order dated 07.05.2018 of the District Consumer Redressal Forum was obtained by the complainants on 10.09.2018. *Vide* this order, the complaint was returned to the complainant as the amount involved in the complaint was more than 20 lacs. Thereafter, the present complaint under the Act was filed on 30.10.2018.

5. Ld. Authority below has held that the complainants have given satisfactory explanation of the period between the execution of the sale deed and filing of the present complaint and the correspondence between both the parties before and after the sale deed, shows that the complainants in order to secure the amount given to the respondents, agreed for the registration of the sale deed under duress. Ld. Authority below has further observed that till the time of the registration of the sale deed and even till the present, respondents have not got the completion certificate of the project from the competent authority and in this way the project of the respondents is covered under Section 3 of the Act. Ld. Authority below has observed that, in these

circumstances, the complaint filed under the Act, is not held to be time barred and this Regulatory Authority has jurisdiction to hear the same.

6. The appellants, in the appeal, have referred to Section 3 of the Act and submitted that project where no activity, as mentioned in Section 3(1) of the Act, is being undertaken and the construction is complete, is excluded from the registration and accordingly the project of the appellants named: GTM Forest and Hills was not registered with RERA. The respondents jointly booked a three bed room flat bearing No. 302, 3rd Floor, Tower No. FH 09 vide agreement dated 26.11.2006. The construction in the first phase of the project was completed in the year 2012 with some delay occasioned due to various *force majeure* circumstances. After completion of the construction work in the said project, the appellant no. 1 applied to the MDDA for issuance of part completion of the project. MDDA categorically recorded that the construction work in the said project is complete, however, it also noted that there is no provision for issuance of part completion certificate and accordingly, the same cannot be issued/ granted. They have filed copy of the letter dated 30.11.2012, issued by MDDA in this regard, with the appeal as Annexure: 6. After completion of the construction on the said project, the appellants got the sale deed executed and registered in favour of the majority of the buyers and also handed over possession of the flats to them. The accounts between the respondents and appellant no.1 stood settled on 31.03.2013, as per settlement letter of this date. The possession letter of the flat was also issued on 10.01.2014. According to the appellants, their project was completed much before coming into force of the Act and Rules made thereunder, therefore, the said project is not required to be registered with RERA under Section 3 of the Act. The appellants had specifically submitted that the RERA has no power and jurisdiction to entertain the complaint. The provisions of the Act cannot apply retrospectively to a contract which was executed before coming into force of the Act and the transaction was completed between the parties in all respect. RERA has only given consideration to the facts that since the completion certificate of the project was not obtained, hence, the provisions of the Act shall be applicable. RERA erroneously assumed the jurisdiction against the provisions of Section 3 of the Act, where under this Section, the project of the appellants was not required to be registered with RERA and consequently the provisions of the Act and the Uttarakhand Rules made thereunder are not applicable to this project of the appellants. It is also submitted without prejudice that even under Section 71 of the Act, read with Rule 15 of the Rules, RERA does not have the power to pass the order in the complaint filed by the complainants and the impugned order is completely erroneous.

7. The appellants placed two documents before the Bench on 12.03.2020. The first one being an application dated 19.07.2017, for registration of project with RERA,

showing that they have successfully completed Phase-I in the name of Forest and Hills and Phase-II in the name of Forest Lavana, is ongoing. The second document is a Govt. order dated 13.09.2019 of the Housing Department of Uttarakhand, enabling issuance of part completion certificates.

8. During the arguments, Ld. Counsel for the appellants has placed certain rulings of National Consumer Disputes Redressal Commission, which basically state that, once the possession of the house with an open eye has been taken, without any pre condition/ objection, after getting the possession it does not lie in the mouth of anybody to say that the house is not in a habitable condition or to make allegation about its location and deficiencies etc.

9. Ld. Counsel for the respondents has also produced an order dated 03.06.2019 of the State Consumer Disputes Redressal Commission, Uttarakhand, passed in Consumer Complaint No. 16/2015, Col. V.K.Pant vs. M/S. GTM Builders & Promoters Pvt. Ltd and others, in respect of another Flat No. FH-2(302) of the same project. In this case, as per Para 3 of this order, upon being served with the notice of the consumer complaint, the opposite parties put in appearance before the Commission, but in spite of being granted sufficient opportunity, did not file any written statement and later, also failed to appear before the Commission and neglected the proceedings of the consumer complaint. Consequently, the consumer complaint was directed to proceed *ex-parte* against the opposite parties and an order was passed that in case the opposite parties fail to turn up, the consumer complaint shall be heard in their absence and decided as per law.

10. As per Para 2 (e) of this order, according to the consumer complaint, the flat is still incomplete and is not in habitable condition and the following works are still to be completed:

- (i) Sanitary fitting in bathroom.
- (ii) Modular kitchen and wood work in bedrooms.
- (iii) Door and windows.
- (iv) Installation of lift.
- (v) Electricity fitting.
- (vi) Fire-fighting system is incomplete.
- (vii) Work of club house not started.

The above works also include installation of lift, firefighting system and work of club house, which do not pertain to the flat alone but pertain to the respective Tower and the project as such. The respondents had the opportunity to rebut these allegations before the Commission, but they have not done the same. It is unexplainable as to why the appellants chose not to participate in the proceedings of the Commission and rebut the allegations. This goes to show that the project was not complete as far as the flats of this Tower were concerned. The flat involved in the impugned order and the present appeal is of Tower No. FH 09, which is a similar Tower

and, therefore, there are sufficient reasons to believe that the so called Phase-I of the appellants' project was not complete till the Act came into force.

11. It has also been argued on behalf of the appellants that their request for issuance of part completion certificate for the project was turned down by MDDA *vide* letter dated 30.11.2012, as in the Development Authority byelaws, there was no provision of giving part completion certificate. Letter issued by Secretary, MDDA, addressed to Director G.T.M., Builders and Promoters Pvt. Ltd, has been annexed as Annexure: 6 to this appeal, which translated to English, reads as under:

“Please refer to your letter dated 28.11.2012 by which you have demanded part completion certificate. You have done construction of 31 thousand sq.mts on the site, but on the site, construction of two bed room flats and finishing work of three bedroom flats remains.

Therefore, it is not possible to give completion certificate and Authority byelaws have no provision for giving part completion certificate.”

12. It is clear that this reply of MDDA is in cursory manner, without verification of actual completion of construction work and cannot be deemed to be any sort of verification of the completion as stated by the builder. We gave time verbally to the appellants to show any document of MDDA officials having visited the project to verify the construction before issuance of the letter dated 30.11.2012. No such document has been placed before us.

13. It is clear from the above that even part project was not complete at that point of time, as such this should be treated to be an ongoing project on the date of the commencement of the Act. The completion certificate of the part project has been issued on 02.03.2020 by the MDDA. As per the first *proviso* to Section 3, projects that are ongoing on the date of commencement of this Act, and for which the completion certificate has not been issued, are covered under Section 3 of the Act. In view of this, we hold the project in question to be covered under Section 3 of the Act and Ld. Authority below has correctly held that it has jurisdiction to hear the complaint regarding the same.

14. It is also of academic interest to analyze whether RERA has jurisdiction to hear complaint about projects, which have been completed before the commencement of the Act. Section 71(1) of the Act reads as follows:

“71. (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, on or before the commencement of this Act, he may, 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.

15. The above proviso to sub-section (1) of Section 71 provides that any person whose complaint in respect of matters covered under Sections 12,14, 18 and 19 of the Act is pending before the Consumer Disputes Redressal Forum/ Commission, on or before commencement of the Act, he may with the permission of such Forum/ Commission, withdraw the complaint pending before it and file an application before the adjudicating officer under the Act. Complaints pending before the Consumer Forum/ Commission, before the commencement of the Act can also be regarding the projects which have been duly completed before the commencement of the Act. This Section clearly authorizes the adjudicating officer of RERA to hear such complaints. This goes to show that the jurisdiction of RERA also extends in respect of matters covered under Sections 12,14,18 & 19 of the Act to the projects completed before the commencement of the Act. Section 3 of the Act deals only with the requirement of prior registration of real estate projects with RERA. It specifies which projects are required to be registered with RERA but does not make any mention of exclusion of already completed projects from the overall jurisdiction of RERA. **The implication is that registration of already completed projects is not required with RERA, but as far as the obligations of promoters or rights and duties of the allottees are concerned, the jurisdiction of RERA extends to such projects as well. It is also to note that definition of allottee, promoter, project etc. are not confined to the time subsequent to the coming into force of the Act.**

16. A question arises here that, according to this interpretation, even complaints regarding projects, which have been completed decades back, would start pouring in before RERA. We feel while such complaints can not be rejected on the ground of RERA not having jurisdiction, there will be other causes for rejection of many of them, like delay and laches or non-maintainability etc.

17. In the instant appeal, we have already held that RERA had jurisdiction to hear the complaint, as stated in Para 13 above.

18. The appeal be listed for further hearing on 11.05.2021.

(RAJEEV GUPTA)
MEMBER (A)

(JUSTICE U.C.DHYANI)
CHAIRPERSON

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(RAJEEV GUPTA)
MEMBER(A)

(JUSTICE U.C.DHYANI)
CHAIRPERSON

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