

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairperson

Hon'ble Mr. Rajeev Gupta

----- Member

Appeal No. 08 of 2021

1. Sri Prodipto Ghosh, s/o Sri Bon Behari Ghosh, r/o F2/17 DLF City Phase 1, Gurgaon, Haryana-122002.
2. Sri Ashok Jha, s/o Sri A.L. Jha, r/o D-6/24, Vasant Vihar, New Delhi- 110057.

.....Appellants

versus

1. M/s Shikhar Properties & Construction Pvt. Ltd., having its office at United Press Building, Ranikhet Road, Bhowali, District Nainital, Uttarakhand, through its Managing Director, Sri Manoj Joshi.

.....Respondent

2. Smt. Prathna Dayal, d/o Sri Naresh Dayal, r/o C-37, Ground Floor, South Extension Part II, New Delhi.
3. Sri Sanjeev Narayan, s/o Sri Surender Narayan, r/o AF-225, Sainik Farm, New Delhi.
4. Smt. Deepa Narayan, d/o Sri Surender Narayan, r/o AF-225, Sainik Farm, New Delhi.

..... Proforma Respondents

Present: Sri Vaibhav Jain, Advocate, for the Appellants
Sri Ankit Lamba, Advocate, for the Respondent

JUDGEMENT**Dated: 05th April, 2022****Justice U.C. Dhyani (Oral)**

In present appeal, the appellants have challenged the order dated 26.02.2021, passed by Uttarakhand Real Estate Regulatory Authority (for short, 'RERA') in Complaint No. 195/2015, *online*, Sri Prodipto Ghosh and another vs. M/s Shikhar Properties and Construction Pvt. Ltd. and others.

2. *Vide* impugned order dated 26.02.2021, RERA found that the complaint filed by the complainants (Appellants herein) before RERA was not maintainable as the project was not sanctioned by the Development Authority and thus was not registrable under RERA. Appellants were, however, advised to file a suit in the competent Civil Court for enforcement of the promises made in the agreement to sell.

3. After hearing learned Counsel for the parties, this Tribunal is, *prima facie*, of the view that the complaint before RERA is maintainable under the scheme of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act'). If any project is not sanctioned by the Development Authority, it does not absolve RERA of its duties under the Act towards such project. If an agreement took place between the promoter and purchaser and the amenities promised in the brochure of the project have not been fulfilled, the complaint, *prima facie*, is maintainable before RERA.

4. Learned Counsel for the parties, however, submitted, in the very beginning, that the matter be remanded to learned Authority below, after setting aside the impugned order dated 26.02.2021, with a direction to decide the complaint of the complainants (Appellants herein), on merits and the question of maintainability of complaint should be left open to be decided by learned Authority below at the time of final adjudication of the complaint.

5. This Tribunal records the aforesaid submissions of Sri Vaibhav Jain, learned Counsel for the appellants and Sri Ankit Lamba, learned Counsel for the respondent and disposes of the appeal, without

prejudice to rival contentions, by setting aside the impugned order dated 26.02.2021 and directing learned Authority below to decide the complaint of the complainants (Appellants herein), on merits, in accordance with law. The question of maintainability of the complaint is left open to be decided by learned Authority below at the time of final adjudication of the complaint.

6. The appeal is disposed of with the consent of learned Counsel for the parties.

7. RERA shall decide the complaint on its own merits untrammelled by any of the observations made by us in the foregoing paragraphs of this judgement.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATE: 05th April, 2022
DEHRADUN
RS