

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

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

----- Chairperson

Hon'ble Mr. Rajeev Gupta

----- Member

Misc. Application No. 36 of 2021

GTM Builders & Promoters Pvt. Ltd., having corporate and registered office at D-21, Office No. 217, DMRC Building, Corporate Park, Sector-21, Dwarka, New Delhi -75, through its authorized signatory, Mr. Ravindra Nath Dubey, Address: GTM Builders & Promoters Pvt. Ltd., D-21, Office No. 217, DMRC Building, Corporate Park, Sector-21, Dwarka, New Delhi -75

.....Appellant

versus

Sri Krishan Dutt, s/o Late Sri Sukhbeer Singh, r/o 83, Lal Bagh, Gandhi Colony, Muzaffarnagar, Uttar Pradesh

.....Respondent

Present: Sri Vikrant Gambhir, Advocate, for the Appellant
Sri Shivam Nagaliya, Advocate, for the Respondent

JUDGEMENT

Dated: 24th March, 2022

Per: Justice U.C. Dhyani

In this appeal, the appellant-promoter has challenged the order dated 06.09.2021 passed by the Real Estate Regulatory Authority (for short, 'RERA') in Complaint No. 205/2019, *Online*, whereby the appellant-promoter was directed to disclose the position of plots on the next date.

2. It is the submission of appellant-promoter that order dated 06.09.2021 was passed subsequent to the order dated 17.03.2021, which is also under challenge in Miscellaneous Application No. 27 of 2021 and therefore, the appellant-promoter has filed separate appeal against impugned order dated 06.09.2021.

3. The main grounds on the basis of which the Tribunal finds that the complaint filed by the homebuyer was maintainable before RERA, are:

- (i) Homebuyer has withdrawn his case from the Consumer Forum/ Commission.
- (ii) Permission of such forum to withdraw the complaint was required on or before the commencement of RERA Act.
- (iii) Such permission is required for filing an application before the adjudicating officer.
- (iv) Adjudicating officer and RERA are different entities. Their jurisdiction is well defined. Adjudicating officer is not RERA.
- (v) In the instant case, the homebuyer's complaint is pending before RERA, and not before the adjudicating officer.

4. This Tribunal has decided Miscellaneous Application No. 27 of 2021 today itself. A part of order in Miscellaneous Application No. 27 of 2021 reads as below:

"13. The answer to the abovementioned question, is that there is no bar on initiation of proceedings either under the CP Act or RERA Act but simultaneous proceedings before Consumer Forum/ Commission and RERA, are not permissible.

14. It is the submission of learned Counsel for the respondent-homebuyer that the respondent-homebuyer was not aware that he can file his complaint before RERA and therefore, he filed his complaint before Consumer Forum and when the matter travelled to State Consumer Commission, he withdrew his complaint.

15. In reply, learned Counsel for the appellant-promoter submitted that even if the complaint has been withdrawn by the respondent-homebuyer, no permission of the State Consumer Commission has been sought to continue proceedings before RERA.

16. It may be noted here that the homebuyer had already filed complaint before RERA and when a question was raised before the learned Authority as to how two simultaneous proceedings can go on, the homebuyer withdrew his complaint before State Consumer Commission. At present there is only one complaint, which is before RERA.

17. So far as the permission to withdraw the complaint before Consumer Forum to file the same before RERA is concerned, that is mandated only for proceedings pending on the date of commencement of Real Estate (Regulation and Development) Act, 2016.

18. Permission, it appears, was necessary when the proceedings were already pending before the Consumer Forum when Act No. 16 of 16 came and homebuyer wanted to file the same before RERA. In such eventuality, it was mandatory for the homebuyer to withdraw his complaint with the permission of the Consumer Forum/ Commission before filing the same before RERA according to Section 71 of RERA Act, which is being reproduced herein below, for convenience:

Power to 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, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2)

(3)

(Emphasis Supplied)

19. In the instant case, no substantial order on merit had been passed by the State Consumer Commission towards adjudication of the rights of parties and the homebuyer was not barred from election of RERA as forum for redressal of his grievance by withdrawing from the Consumer Commission and pursuing his already filed complaint with RERA. In any case, the right of the homebuyer to seek redressal of his grievance from RERA survives in the peculiar facts of the case. Therefore, we do not find any infirmity in the impugned order of RERA.

22. With the aforesaid observations, the appeal against RERA's order dated 17.03.2021 stands disposed of at the admission stage."

This Tribunal has not found any illegality in the order dated 17.03.2021.

5. There appears to be no infirmity in the order dated 06.09.2021 either, inasmuch as the same is only a direction to appellant-promoter to disclose the position of flats.

6. Section 32 of Real Estate (Regulation and Development) Act, 2016, (for short, 'the Act') provides for functions of Authority for promotion of real estate sector. Section 34 of the Act deals with functions of the Authority.

7. Section 35 of the Act provides for powers of Authority to call for information and conduct investigation. Such Section reads as below:

35. (1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court

under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.

[Emphasis Supplied]

8. It is within the competence of RERA to order in writing and record reasons calling upon any promoter, at any time, to furnish in writing such information or explanation relating to its affairs, as the Authority may require.

9. In the instant case, learned Authority below has only directed the appellant-promoter to apprise (the Authority) with the position of the flats. It is an innocuous order and is in accordance with the scheme of the Act.

10. No interference is, therefore, called for in the impugned order dated 06.09.2021.

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11. Order dated 10.08.2021 has also been assailed whereby the application of appellant-promoter to recall the order imposing penalty on it was allowed and order imposing penalty on it was recalled. Such part of the order dated 10.08.2021 was passed in favour of the appellant-promoter.

12. Learned Counsel for the appellant-promoter submitted that the appellant-promoter is aggrieved by that part of the impugned order whereby it was given last opportunity to file pleadings/ documents.

13. The proceedings before RERA should be conducted on the basis of principles of natural justice. In other words, opportunity to file pleadings/ documents and oral opportunity of hearing should be given to the parties.

14. In the instant case, RERA has given last opportunity to the appellant-promoter to file pleadings/ documents, which is under challenge in the present RERA appeal.

15. It appears that the appeal has been filed by the appellant-promoter to avail further opportunity to file pleadings/ documents. To grant or not to grant adjournment or, to grant or not to grant further opportunity to file documents depends on the judicial discretion of RERA. Appellate Tribunal should not usurp such jurisdiction of learned Authority below. Otherwise also, there appears to be no illegality in such order.

16. No interference is called for in the impugned order dated 10.08.2021. RERA appeal directed against such order, therefore, fails and is dismissed. No order as to costs.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C. DHYANI)
CHAIRPERSON

DATE: 24th March, 2022
DEHRADUN
RS