

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeals No. 499 & 501 of 2022
Date of Decision: 21.04.2023**

Appeal No.499 of 2022

Shalimar Estates Private Limited through its Managing Director Shri R.K. Aggarwal son of Shri Bachna Ram, H.No.1084, Sector 8-C, Chandigarh-160009.

Appellant

Versus

Shri Rakesh Kumar Garg son of late Shri M.L. Garg, Resident of House No.518, Sector-6, Panchkula.

Respondent

Appeal No.501 of 2022

Shalimar Estates Private Limited through its Managing Director Shri R.K. Aggarwal son of Shri Bachna Ram, H.No.1084, Sector 8-C, Chandigarh-160009.

Appellant

Versus

Ms. Manjit Kaur wife of S. Manjit Singh, Resident of House No.27 Sector-33-A, Chandigarh.

Respondent

CORAM:

Justice Rajan Gupta	Chairman
Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Shri Nikhil Sabharwal, Advocate,
for the appellant.

Shri Varun Suman, Advocate,
for the respondents.

ORDER:**INDERJEET MEHTA, MEMBER (JUDICIAL):**

By virtue of the present order handed down in appeal No.499/2022, titled “Shalimar Estates Private Limited vs. Rakesh Kumar Garg”, another appeal bearing no.501/2022 titled “Shalimar Estates Private Limited vs. Manjit Kaur & Anr.”, shall also be disposed of as both these appeals have arisen out of the same order dated 31.05.2022, passed by Haryana Real Estate Regulatory Authority, Panchkula, (hereinafter called ‘the Authority’), while deciding Complaint No.726 of 2021 titled “Rakesh Kumar Garg vs. Shalimar Estates Private Limited” and Complaint No.804 of 2021 titled “Manjit Kaur & Anr. vs. Shalimar Estates Private Limited”, together.

2. Feeling aggrieved by the aforesaid impugned order dated 31.05.2022, handed down by learned Authority, Shalimar Estates Private Limited (hereinafter referred to as ‘the Promoter’) has chosen to file the aforesaid appeals.

3. The respondents-allottees had knocked the door of the learned Authority for refund of the amount deposited by them with the appellant/promoter as the appellant had failed to honour the terms and conditions of the agreement executed between the parties regarding the allotted units.

4. After filing of the respective complaints by the respondents/allottees, in response to the notice issued by the learned Authority, Shri R.K. Aggarwal, Managing Director of the appellant had put in appearance. Though, at that time no reply was filed by the appellant/promoter, but said Managing Director of the respondent/company submitted before the learned Authority that the units allotted to the respondents/allottees are situated in an unregistered project of the appellant and in view of the pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. 2022(1) R.C.R. (Civil) 357***, the learned Authority did not have jurisdiction to entertain the respective complaints relating to the unregistered projects, as preferred by the respondents/allottees.

5. However, by way of impugned order, the learned Authority did not find any substance in the aforesaid submission made on behalf of the appellant and arrived at the conclusion that the Authority has jurisdiction to entertain the complaint preferred by the respondents/allottees.

6. The appellant/promoter felt aggrieved, hence, both the appeals.

7. Learned counsel for the appellant, while drawing the attention of this Tribunal towards para no.54 of ***M/s Newtech***

Promoters' case (Supra), has submitted that the Real Estate Project launched by the appellant was a fully completed project in all respects prior to the date when Section 3 of the Act came into effect i.e. 01.05.2017. Further, he has submitted that the Occupation Certificate/Completion Certificate qua the project of the appellant (Annexure A3) was issued by the competent authority on 20.06.2008 and even in the letter dated 22.06.2015 (Annexure A4) written by Estate Officer, HUDA, Panchkula, to the Incharge Criminal Branch, Panchkula, it was categorically clarified that there is no legal shortcoming in the construction of the project and the completion certificate was issued vide aforesaid letter dated 20.06.2008 (Annexure A3). Thus, the learned Authority does not have the jurisdiction to deal with the complaint preferred by the respondents/allottees. Further, it has been submitted that the Act would apply to ongoing projects, and future projects, after they are registered under Section 3 of the Act, and that projects which are currently not registered with the Authority, would not be within the purview of the Act till they are registered. Since, the project launched by the appellant is unregistered project, so, the said project was not within the ambit of the Act.

8. Per contra, learned counsel for the respondents has submitted that the aforesaid submissions of the learned counsel for the appellant are not only without substance but

are also misconceived. Further, it has been submitted that the Hon'ble Supreme Court in **M/s Newtech Promoters'** case (Supra), while dealing with the issue concerning the retroactive application of the provisions of the Act, 2016, has held that the Act is also applicable to the unregistered projects. Further, it has been submitted that in fact there is absolutely nothing on the record to even suggest remotely that any completion certificate qua the project launched by the appellant has been issued by the competent authority.

9. We have duly considered the aforesaid contentions.

10. To appreciate the respective contentions of learned counsel for the parties, first of all, let us have a thorough look at para no.54 of **M/s Newtech Promoters'** case (Supra), which is as follows:-

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

11. From the aforesaid observations of the Hon'ble Supreme Court, it is explicit that the scheme of the Act, 2016 is retroactive in character and it can safely be believed that the

projects which are already completed or to which completion certificate has been granted, are not within the purview of the Act. Admittedly, Section 3 of the Act, came into force on 01.05.2017. To have advantage of these aforesaid observations, the appellant is required to prove and establish on the record that prior to 01.05.2017, the appellant had already completed its project or the completion certificate in this regard had been issued by the competent authority.

12. A thorough look at Occupation Certificate/ Completion Certificate dated 20.06.2008 (Annexure A3), which has been claimed to be a completion certificate by the appellant/promoter, shows that vide this letter dated 20.06.2008, issued by the Estate Officer, HUDA, Panchkula to the appellant, permission for the occupation of the building had been given and it can be construed only as a occupation certificate. Section 2(q) of the Act defines the completion certificate which is as follows:

(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws."

Section 2(zf) of the Act defines the Occupancy Certificate which is as follows:-

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“(zf) “occupancy certificate” means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;”

13. Since, there being difference carved out in the Act itself as to what is the completion certificate and the occupation certificate, unless the appellant had obtained a completion certificate for the project in question, prior to the date when Section 3 of the Act came into effect i.e. 01.05.2017, it was necessarily required by the appellant to get itself registered with the Authority. Further, as the completion certificate still not has been obtained, the appellant cannot claim itself to be outside the purview of the jurisdiction of the authority. The communication dated 22.06.2015 (Annexure A4) regarding handing over complete record of the project, from the Estate Officer, HUDA, Panchkula, to the Incharge, Criminal Branch, Panchkula, mentioning at point 5 that completion certificate of complete building was issued vide office letter dated 20.06.2008 (Annexure A3), is also of no help to the appellant because as referred above, the communication dated 20.06.2008 (Annexure A3) is simply Occupancy Certificate and by mentioning the same to be a completion certificate, in communication dated 20.06.2015 (Annexure A4), it cannot be construed that the project was completed or a

Completion Certificate had been issued prior to 01.05.2017. Thus, in the absence of any evidence on the record that the appellant had completed the project or had obtained the Completion Certificate prior to 01.05.2017, learned Authority has jurisdiction to adjudicate the controversy between the parties.

14. The submission of the learned counsel for the appellant that the Act would apply to on-going projects, and future projects, after they are registered under Section 3 of the Act and that projects which are currently not registered with the Authority, would not be within the purview of the Act till they are registered, is not only without any substance but is also misconceived. The Hon'ble Supreme Court in **M/s Newtech Promoters'** case (Supra), while dealing with the issue concerning the retroactive application of the provisions of the Act, 2016, particularly, with reference to the on-going projects, has dealt with the same elaborately and the said ratio can be condensed as follows:-

“The Act is intended to comply even to the ongoing real estate projects. All “ongoing projects” that commenced prior to the Act and in respect to which completion certificate had not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its

fold the ongoing projects. If the Act is held prospective, then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate had not been issued, must be brought within the fold of the Act, 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India.”

15. From these aforesaid observations of the Hon'ble Supreme Court, by no stretch of imagination it can be construed that the Act is not applicable to the unregistered projects. In fact, without any distinction between the registered and un-registered projects, the Hon'ble Supreme Court has explicitly laid down that all “ongoing projects” that commenced prior to the Act and in respect of which completion certificate has not been issued, fall within the purview of the Act. Thus, the aforesaid submission of learned counsel for the appellant cannot be attached any legal credence. Rather, the acceptance of aforesaid submissions of learned counsel for the appellant would provide immunity not

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only to the promoters of ongoing unregistered projects, from the applicability of the Act, but also to unscrupulous promoters of future projects, who may be enticed by such interpretation not to get their upcoming projects registered as per provisions under Section 3 of the Act.

16. Thus, keeping in view our aforesaid discussion, we are of the considered view that the impugned order dated 31.05.2022 passed by the learned Authority is perfectly legal and valid and the present appeals containing no merits deserve dismissal and accordingly stand dismissed.

17. Copy of this order be placed on the record of Appeal No.501 of 2022 titled "Shalimar Estates Private Limited vs. Manjit Kaur & Anr."

18. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

19. File be consigned to the record.

Announced:
April 21, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)