

**HIGH COURT OF CHHATTISGARH, BILASPUR****MA No. 48 of 2023**

Tanu Construction through Proprietor Shri Devtanu Chakravarti S/o Shri R.C. Chakravarti aged about 48 Years R/o - Shop No. 3, 2nd Floor, Eshwari Plaza, Telibandha, Tehsil and District Raipur (C.G.)

---- Appellant

Versus

Mr. Nand Kishore Patel S/o Khirsagar Patel R/o - Village Singapur, P.S. Baramkela, District : Raigarh, Chhattisgarh.

---- Respondent

MA No. 49 of 2023

M/s Tanu Construction, through Proprietor Shri Devtanu Chakraborty S/o Shri R.C. Chakraborty aged about 48 Years R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Raipur Tehsil And District – Raipur, Chhattisgarh.

---- Appellant

Versus

Smt. Tulawati Kashyap W/o Shri Sunil Kashyap aged about 46 Years (age is not mentioned in the impugned order) R/o H-4/20 36 Q. Maharani Ward Jagdalpur District - Bastar Chhattisgarh.

---- Respondent

MA No. 50 of 2023

M/s Tanu Construction, through Proprietor Shri Devtanu Chakraborty S/o Shri R.C. Chakraborty aged about 48 Years, R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Raipur Tehsil and District Raipur, Chhattisgarh.

---- Appellant

Versus

Smt. Chandra Kiran Ogar W/o Shri Dharendra Ogar R/o Plot No. 75 Mahaveer Nagar Dharampura-2 Jagdalpur District Bastar, (C.G.)

---- Respondent

MA No. 51 of 2023

Tanu Construction, through Proprietor Shri Devtanu Chakravarty, S/o Shri R.C. Chakravarty, aged about 48 Years R/o Shop No. 3, 2nd Floor, Eshwari Plaza, Marine Drive, Telibandha, Tehsil and District Raipur (C.G.)

---- Appellant





Versus

Mr. R.T. Wankhade S/o Shri T.B. Wankhade aged about 41 Years R/o Royal Residency, Flat No. 204, 2nd Floor, Jathpeth, District Akola, Maharashtra.

---- Respondent

MA No. 52 of 2023

1. Tanu Construction, through Proprietor Shri Devtanu Chakrawarti S/o Shri R. C. Chakrawarti aged about 48 Years. R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Tehsil and District- Raipur, Chhattisgarh.
2. Shri Devtanu Chakrawarti S/o Shri R. C. Chakrawarti aged about 48 Years R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha Tehsil and District- Raipur, Chhattisgarh.

---- Appellants

Versus

Jagmohan Patley S/o Late Shri S. R. Patley aged about 61 Years R/o 345 Ratakhar, Main Ganesh Chowk, Tehsil and District- Korba, Chhattisgarh.

---- Respondent

MA No. 53 of 2023

1. Tanu Construction, through Proprietor Shri Devtanu Chakrawarti, S/o Shri R. C. Chakrawarti aged about 48 Years, R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Tehsil and District Raipur Chhattisgarh.
2. Shri Devtanu Chakrawarti S/o Shri R.C. Chakrawarti aged about 48 Years R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Tehsil and District Raipur, Chhattisgarh.

---- Appellants

Versus

Shri Manoj Kumar Lahare S/o Shri Bhaje Ram Lahare aged about 45 Years, R/o Post Devgaon Tehsil Masturi District Bilaspur, (C.G.)

---- Respondent

MA No. 54 of 2023

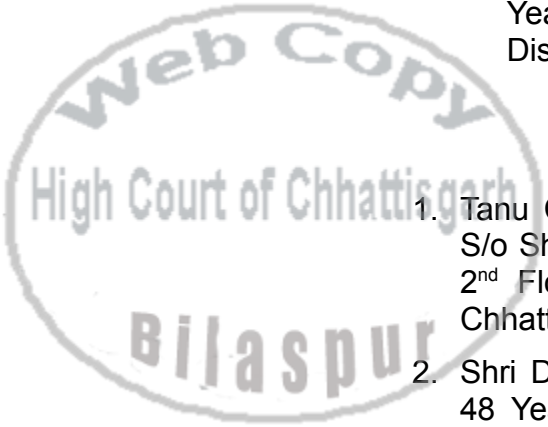
M/s Tanu Construction, through Proprietor Shri Devtanu Chakraborty S/o Shri R.C. Chakraborty aged about 48 Year R/o Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Raipur Tehsil and District : Raipur, Chhattisgarh.

---- Appellant

Versus

Mr. Dhanurjay Chaudhari S/o Shri Rampal Chaudhari aged about 40 Years R/o Village and Post Padigaow, Tehsil Pusour, District Raigarh, Chhattisgarh.

---- Respondent



**MA No. 55 of 2023**

Tanu Construction, through Proprietor Shri Devtanu Chakravarti S/o Shri R.C. Chakravarti aged about 48 Year, R/o Shop No. 3, 2nd Floor, Eshwari Plaza, Telibandha, Tehsil and District Raipur, (C.G.)

---- Appellant

Versus

Mr. Sanjeev Nilam Pratap Ekka S/o Shri Suleman Nan Ekka, aged about 46 Years R/o Village and Post ELS Mission Compound, Baikunthpur, District Koriya, Chhattisgarh.

---- Respondent

MA No. 57 of 2023

M/s Tanu Construction, Through Proprietor Shri Devtanu Chakraborty S/o Shri R.C. Chakraborty aged about 48 Years, R/o Shop No. 3, Second Floor, Ishwari Plaza, Telibandha, Raipur Tehsil and District Raipur (C.G.) (Particular not properly mentioned in the impugned order)

---- Appellant

Versus

Smt. Suvira Das W/o Shri Rajat Kumar Das aged about 46 Years R/o Madan Mohan Malviya Ward Jagdalpur District Bastar (C.G.)

---- Respondent

MA No. 59 of 2023

Dev Residency, through Tanu Construction, Proprietor Shri Devtanu Chakraborty S/o Shri R.C. Chakraborty aged about 48 Years, R/o - Shop No. 3, 2nd Floor, Ishwari Plaza, Telibandha, Tehsil and District Raipur, Chhattisgarh.

---- Appellant

Versus

Smt. Priyanka Singh W/o Shri Shashwat Singh aged about 46 Years R/o - Sanjay Gandhi Ward in front of Ram Mandir Jagdalpur, District : Bastar (Jagdalpur), Chhattisgarh.

---- Respondent

And**MA No. 60 of 2023**

Tanu Construction, through Proprietor Shri Devtanu Chakravarty S/o Shri R.C. Chakravarty aged about 48 Years R/o Shop No. 3, 2nd Floor, Eshwari Plaza, Marine Drive, Telibandha, Tehsil and District Raipur, Chhattisgarh.

---- Appellant



**Versus**

Smt. Manisha Krishna Bobade W/o Shri Krishna Laxman Rao
Bobade aged about 44 Years R/o Plot No. - 48 Gurukripa New
Agrasen Bhawan Javal District Akola Maharashtra.

---- Respondent

For Appellant - Shri Avinash Chand Sahu, Advocate.
For Respondent - Shri Vikas Shrivastava, Advocate appears in
MA No. 51/2023 & MA No. 60/2023.

Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Sanjay S. Agrawal
Judgment on Board

Per Goutam Bhaduri, J.

26/04/2024

Heard.

1. The bunch of appeals are preferred under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act, 2016') proposing the following substantial question of Law :-

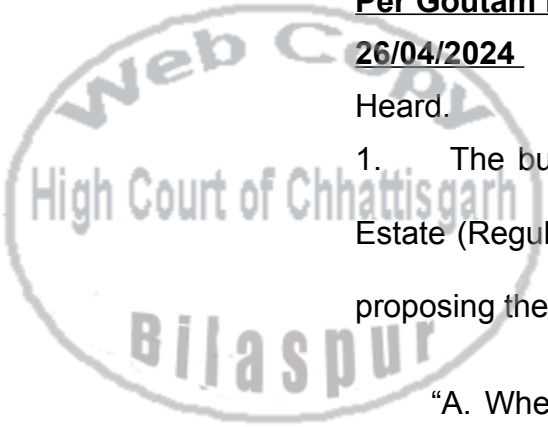
"A. Whether both the courts below have justified in not holding the fact that the applicant / respondent has not fulfilled the requirement of the agreement?

B. Whether both the courts below are justified in allowing the application/ complaint of the applicant?

C. Whether the learned Tribunal is justified in not holding the fact that the case was not maintainable before any authority under RERA act in view of the agreement dated 29.06.2022.

D. Whether the learned Appellate Tribunal was justified the holding the fact that the complain was not maintainable before RERA because the agreement was much prior before commencing of RERA Act."

2. The facts of this case are that against the order passed by the Real





Estate Regulatory Authority (for short 'the RERA') on 18.02.2021 whereby the appellant/promoter was directed to refund the amount obtained from the allottees along with interest within two months. The same was subject of challenge before the Real Estate Appellate Tribunal (for short 'the Tribunal') wherein the Tribunal dismissed the said appeals. Hence, the present appeals are before this court projecting the substantial question of law.

3. The allottees preferred an application before the RERA pleading, *inter alia*, that certain agreement was entered in between the parties for allotment of 1BHK House for different consideration. According to the agreement so entered, the amount was required to be paid in installment almost nearing half of the installment having been paid and few of the allottees have even paid the full installment, they found that no development has taken place over the land/plot on which the house was promised to be constructed. Therefore, since the project was continuing incomplete, they filed the application before the RERA.

4. The promoter came out with a defence that the payment of consideration as per agreement was to be paid in installment and if the three installments are not paid, the agreement would stand terminated and according to the terms of agreement, the allottee cannot initiate any legal proceeding before any forum. It was stated that the legal proceeding questioning allotment, possession, ownership, the electricity connection, registration fees cannot be subject of challenge until the last installment is paid.

5. Learned counsel for the appellant would submit that since the allottees have agreed to get the one bedroom houses as per the





agreement though they paid some of the installment and in few cases the entirety amount was paid until the registration is done, it cannot be subject of question. He would further submit that they having signed the documents i.e. agreement, they cannot question the validity of it after signing. As such, the RERA completely misdirected itself to exercise its jurisdiction as the jurisdiction was barred as per the agreement.

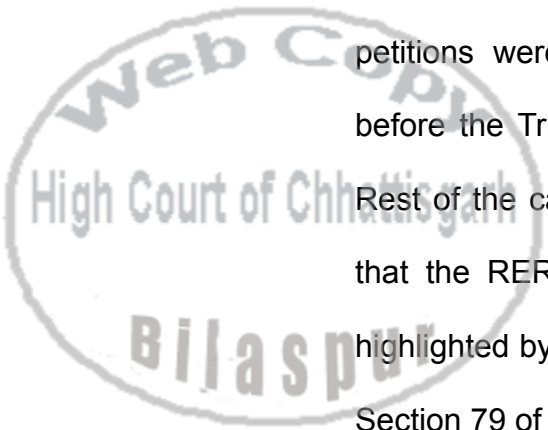
6. The rest of the facts would show that in few of the cases, the allottees have purchased the plot wherein the construction was to be raised as per the agreement, however, when the application was filed before the RERA on an application under Order 7 Rule 11 CPC the said petitions were dismissed. Being aggrieved by such order, the appeal before the Tribunal was filed and the Tribunal has allowed the appeals.

Rest of the cases, it would show that the Tribunal has categorically held that the RERA had the jurisdiction to adjudicate the issue which was highlighted by the allottees, as the jurisdiction otherwise was barred under Section 79 of the Act, 2016.

7. The primary objection of the appellants against the order is that the RERA and the Tribunal did not have the power to adjudicate for lack of jurisdiction. It was further stated that project was closed by the promoter before the Act came into force itself. Therefore, the allottee cannot get the benefit of the Act, 2016.

8. We have heard the learned counsel for the appellant as to find out whether any substantial question of law arises for consideration.

9. Section 3 of the Act, 2016 which purports the prior registration of real estate project with Real Estate Regulatory Authority which was





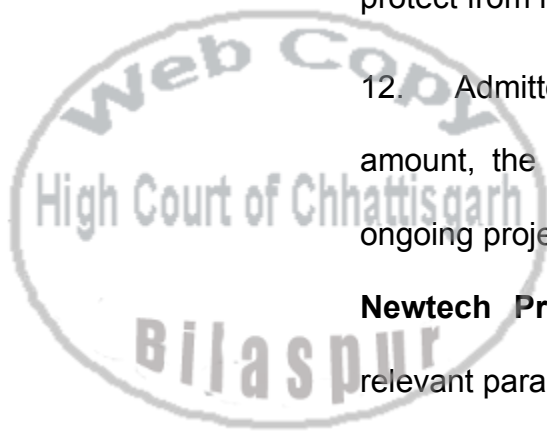
effective from 01.05.2017.

10. The Supreme Court in the matter of **Newtech Promoters And Developers Private Limited Vs. State of Uttar Pradesh and Others** reported in **(2021) 18 SCC 1** has held that ongoing projects which commenced prior to the Act in respect of which completion certificate has not been issued would be covered by the Act.

11. It manifests that the legislative intent is to make the Act applicable not only to the project which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the *inter se* right of the stakeholders.

12. Admittedly, in the instant case, after taking the considerable amount, the project was yet to see its completion, therefore, it was a ongoing project. Consequently, the law laid down by the Supreme Court in **Newtech Promoters And Developers Private Limited (supra)** the relevant para 36 of it are quoted below:-

“36. Looking to the scheme of the 2016 Act and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has 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 and to protect from its inception the *inter se* rights of the stakeholders, including allottees/homebuyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate Authority.”





The aforesaid judgment would completely envelope the issue to answer about the applicability of the Act to the ongoing project, since the project was incomplete on the date when the application was filed i.e. delivery of the built houses to the different allottees.

13. Further Section 31 of the Act, 2016 speaks about filing of complaints with the Authority or the adjudicating officer which reads as under:-

31. Filing of complaints with the Authority or the adjudicating officer.

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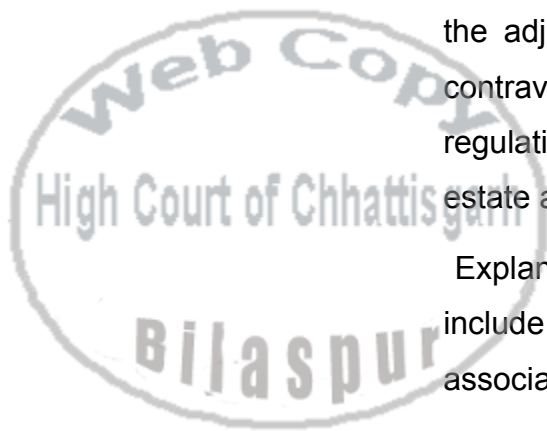
(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.- For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].

14. The reading of the aforesaid section would show that it was only the RERA which was vested with the power under the legislation of 2016 for any violation and contravention of the provision of the Act which would take into sweep the ongoing project in failure in the completion of the project within a stipulated time as promised. If the completion of project has not taken place within the time stipulated either the allottee or promoter either case may be they may approach to the RERA. Further Section 79 of the Act of 2016 creates a bar of jurisdiction of Civil Court.

15. For the sake of brevity Section 79 of the Act, 2016 is reproduced





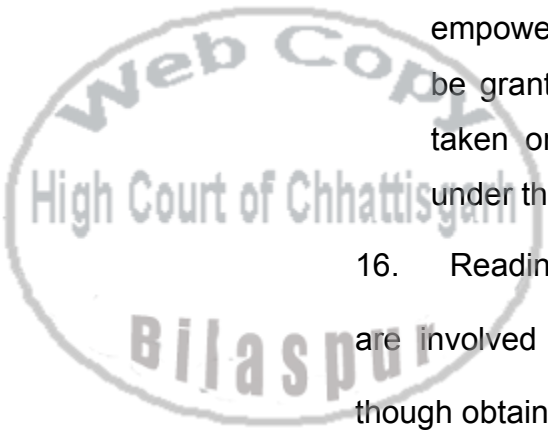
hereunder:-

“79. Bar of jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

This section relates to the bar of jurisdiction.

This section provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.”

16. Reading of Section 31 and Section 79 together and the facts which are involved in these cases would show that the appellant/promottee though obtained the amount from the different allottees to give them 1BHK constructed house but since nothing transpired on the site on the ground level to the subjective satisfaction of the allottees as the construction even did not started, few of them the allottees stopped the payment of installment. It is obvious that if nothing transpired despite payment of lakhs of rupees, the allottee cannot be expected to sit at the fence to see the happening of failure. Thereafter when the allottee knocked the door of RERA to pull back from brinks, the promoter instead of any promise to complete came out with a defence that RERA has no jurisdiction until the entire amount is paid, the complaint cannot be entertained as one eyed askance. It is not expected that the entire consideration of the construction





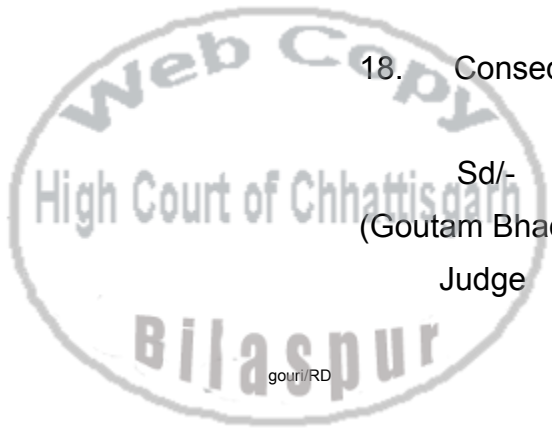
even if paid and construction is not raised, the allottee would be a dormant spectator and would be in hope to stitch up a rain bow-castle. A construction obviously can be seen and can be evaluated, if no construction has been made on the site, then the promoter who was taking the money from the allottees was required to justify his action as it would be deemed to be an ongoing project to apply the provisions of the Act, 2016.

17. In view of the aforesaid discussion, we are of the view, that no substantial question of law arises for consideration in these cases. Accordingly, we are not inclined to admit these appeals.

18. Consequently, all the appeals are dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Sanjay S. Agrawal)
Judge





Head Note

MA No. 48 of 2023 & other connected cases

Tanu Construction Vs. Mr. Nand Kishore Patel

1. The RERA will cover ongoing projects, which commenced prior to Act in respect of which completion certificate has not been issued.

2. It is not expected that entire consideration of construction even if paid and construction is not raised, the allottee would remain dormant spectator sitting on the fence and would be in hope to stich up a rainbow castle.

रेरा ऐसी चल रही परियोजनाओं पर भी लागू होंगी, जो अधिनियम के प्रवर्तन में आने से पूर्व प्रारंभ की गई थी, जिनके संबंध में समापन प्रमाणपत्र जारी नहीं किया गया है।

जब निर्माण के संपूर्ण राशि का भुगतान कर दिया गया हो और निर्माण कार्य नहीं हुआ हो तब ऐसी स्थिति में आबंटित से यह अपेक्षा नहीं की जायेगी कि वह मूक दर्शक बने रहे और इस प्रत्याशा में रहे कि अपेक्षित कार्य पूर्ण हो जायेगा।

