



ADMINISTRATIVE TRIBUNAL, GOA  
PANAJI - GOA

REGISTRAR  
ADMINISTRATIVE TRIBUNAL  
PANAJI, GOA

329

246/c  
64/c

GOA REHA, PANAJI  
Invoice No. 695  
Date of receipt: 14/7/20

REAL ESTATE APPEAL NO.01/2020

Ms. Despamont

A partnership firm duly constituted  
under Indian Partnership Act, 1932  
having its Principal place of business at 6,  
Junta House, 18<sup>th</sup> June Road, Panaji-Goa  
Through its duly authorised Partner  
Mr. Viraj Paraz, House no.740,  
B. B. Borkar Road, Alto Porvorim-Goa.

..... Appellant

Vs

1. Edcon Real Estate Developers  
Office on 5<sup>th</sup> Floor,  
Siddharth Bhandodkar Bhavan,  
Above Axis Bank,  
Dr. P. Shirgaonkar Road, Panaji-Goa.
2. Edwin de Menezes  
R/o House no.E-464,  
Corte de Oiteiro,  
Panaji - Goa.
3. Cedric Vaz  
R/o Flat no.T-4, Indira Apartments,  
Cactano Albuquerque Road,  
Panaji - Goa.
4. Mr. Olivio Agenlo Da Cruz Pinto  
R/o House no.1056/1, 1<sup>st</sup> ward,  
Santa Cruz, Tiswadi Taluka, Ilhas-Goa.
5. Mrs. Maria Silvina A. Pinto  
House no.150, Velsao,  
Cansaulim - Goa.
6. Mr. Xavier Gracias  
House no.150, Velsao,  
Cansaulim - Goa.
7. Mrs. Jasmine B. Furtado  
House no.146, Ward 15,  
Pinto Mansion, Campal,  
Panaji - Goa.

*Pf. expansion  
E part up. +  
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GOA RERA, PANAJI  
Invoice No... 695  
Date of receipt... 14/7/20

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Vs

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House no.146, Ward 15,  
Pinto Mansion, Campal,  
Panaji - Goa.

*Pl. up above  
& put up. +  
High Court  
interim or  
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Tiswadi  
14/7/2020*

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8. Mr. Jaime F. L. Pinto  
R/o Opp. Rendezvous,  
Vainguinim Valley,  
Dona Paula – Goa.
9. Mr. Francisco C. Da Cruz Pinto  
R/o Flat no.101, Block-B, Kerant,  
Caranzalem – Goa.
10. Mrs. Bertha Fernandes  
R/o Flat no.101, Block-B,  
Kerant, Caranzalem – Goa.
11. Mrs. Lucia J. Pinto  
House no.B/249, Villa Souza,  
Betim, Bardez – Goa.
12. Mr. Henrique Antonio D'Souza  
House no.B/249, Villa Souza,  
Betim, Bardez – Goa.
13. Mr. Barnabe F. X. Pinto  
House no.146, Ward 15, Pinto Mansion,  
Campal, Panaji – Goa.
14. Mrs. Prudencia C. Pinto  
R/o House no.1056/1, 1<sup>st</sup> ward,  
Santa Cruz, Tiswadi Taluka, Ilhas-Goa.
15. Mr. Felinto C. X. O. Pinto  
House no.146, Ward 15, Old Blood bank,  
Campal, Panaji – Goa.
16. Mrs. Maria Hellen Braganza  
House no.146, Ward 15, Old Blood bank,  
Campal, Panaji – Goa.
17. Mr. Bernado Savio Pinto  
R/o Opp. Rendezvous,  
Vainguinim Valley, Dona Paula-Goa.
18. Mrs. Margarita Pinto  
R/o Opp. Rendezvous,  
Vainguinim Valley, Dona Paula-Goa.
19. Miss Elma Sacramento Beliza Pinto  
R/o House no.1056/1, 1<sup>st</sup> ward,  
Santa Cruz, Tiswadi Taluka, Ilhas-Goa.

..... Respondents

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JUDGMENT

2020 March 20

This appeal under Section 44 (1) of the RERA Act, 2016 is directed against the Order dated 18/12/2019 passed in RERA complaint 49/2019 by the Goa Real Estate Regulatory Authority.

1. **Brief facts as narrated by the Appellant are as under :**

On 18/06/2019, the Appellant filed a complaint before the Goa Real Estate Regulatory Authority alleging that the Respondents having failed to register their project, have failed to disclose information in respect of the litigation with the Appellant which is sub judice before the Civil Court, thereby prejudicing the rights and interest of the Appellant in the land as well as the suit.

The Appellant states that during the hearing it was revealed by the authority to the Appellant that the Respondent no.4 has been issued an exemption certificate dated 24/07/2018 granting exemption from registration of the project 'Edcon Rio Grande' under Goa RERA as on-going project and therefore, the complaint filed by the Appellant is dismissed.

2. Heard Ld. Advocate Shri Abhay Nachinolkar for the Appellant and Ld. Advocate Shri R. Menezes for the Respondents no.1 to 3. The Ld. Advocate Shri S. Rivonkar representing the Respondents no.4 to 19 adopts the argument of the Respondents no.1 to 3.

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3. Ld. Advocate for the Appellant contends that the impugned order is contrary to the law as coming to a finding that the Respondent's project is an ongoing project, it relies on the exemption granted to the project from registration to the Promoters/Respondents. The Ld. Advocate submit that there is no provision under the RERA Act or the Rules thereunder exempting any ongoing project from registration under Section 3 of the RERA Act.

Ld. Advocate submits that the exemption granted to the Respondents/ Promoters from registration by letter dated 24/07/2018 is dehors the provisions of the RERA Act or the Rules made there under. In these circumstances the Authority could not have relied upon the exemption granted to the Respondents either to terminate the proceedings or to dismiss the complaint filed by the Appellant.

Ld. Advocate submits that the Authority erred by misinterpreting the Notification issued by the Government while passing the impugned order. The Ld. Advocate submits that the Notification relied upon by the Authority i.e. Order no.11/35/2017-DMA dated 23/02/2018 states and only extends the last date of filing the online application for registration of ongoing real estate project under RERA Act till 23/03/2018. According to Ld. Advocate, the said order only extends the period of registration for ongoing projects and does not exempt ongoing project from registration.

Ld. Advocate has relied on the decision of Hon'ble High Court of Bombay in case of *Mr. Kashinath Jairam Shetye & 4 ors. vs The State of*

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**Goa & anr. (Public Interest Litigation Writ Petition no.18/2017)** wherein it is held that :

"8. The learned Advocate General states that since the State will adopt methodology provided under Section 59(1) of the Act, 2016 there is no question of formal extension, as Section 59(1) of the Act, 2016 lays down sufficient parameters to deal with such a situation.

9. Therefore, there shall be no registration dehors Section 59(1) of the act, 2016.

11. The Act of 2016 makes a distinction between new project to be registered and an ongoing project. Therefore, the State Authority will scrutinize each case to ascertain whether it is ongoing project or new project and deal with the case accordingly."

In the case of **Lavasa Corporation Limited vs Jitendra Jagdish Tulsiani & anr. (Second Appeal (Stamp) no.9717 of 2018 with Civil Application no.683 of 2018)** the Hon'ble High Court held that :

" 74. This Section thus makes registration of the project mandatory for its sale. As per Clause (2) of Section 3, the RERA is made applicable even to the projects that are on-going on the date of commencement of the RERA and for which, Completion Certificate has not been issued. In respect of such projects also, promoters are required to register the projects with the Real Estate Regulatory Authority within three months from the commencement of the RERA, with an option that they can register entire real estate project or part of it. The specific 'Explanation' to the Section 3 of the RERA

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*provides that, where the real estate project is to be developed in phases, every such phase shall be considered as a stand alone real estate project and the Promoter shall obtain registration under this Act for each phase separately. This 'Explanation' is important for the purpose of the present litigation, as here in the case, the Appellant has already got itself registered under RERA, by making an application under Section 4 of the said Act. The 'Registration Certificate' is produced on record proving that, the entire project as such is registered and not only certain components thereof. It is not the case of the Appellant also that only some parts of the components of the said project are registered. Though it is contended that, the RERA is applicable only to some part of the project, despite that, the entire project is registered under the RERA, as is evident from the 'Registration Certificate'."*

4. Ld. Advocate for the Respondents no. 1 to 3 submits that the Appellant cannot be construed as 'aggrieved person'. The Ld. Advocate submits that the definition of 'aggrieved person' has to be read in consonance with the preamble of the Act. He submits that the intention of the RERA is to protect interest of the consumers. The Ld. Advocate submits that completion certificate for the project was obtained on 22/01/2018. Ld. Advocate submits that the order passed in case of temporary injunction in Civil Suit protect the right, if any, of the Appellant and separate proceeding under RERA is not required.

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The Ld. Advocate has relied on the following decisions :

**State of Maharashtra vs Marwanjee F. Desai & Ors. [(2002) 2  
Supreme Court Cases 318]** wherein the Hon'ble Supreme Court held that :

*" The language used as noticed above in Section 7 containing the provision of appeal has to be interpreted in its proper perspective and not in a manner restrictive. If the reasoning provided by the High Court is to be accepted then in that event the statute shall have to be given a go-by and to be rendered a complete otiose. The word "every", appearing in Section 7 immediately before the word "order", stands out to be extremely significant so as to offer an opportunity of appeal in the event of there being an order against the Government.*

*True intent of the legislature shall have to be gathered and deciphered in its proper spirit having due regard to the language used therein. Statement of objects and reasons is undoubtedly an aid to construction and a useful guide but the interpretations and the intent shall have to be gathered from the entirety of the statute and when the language of the sections providing an appeal to a forum is clear and categorical no external aid is permissible in interpretation of the same. The legislature has deliberately used "every order" and if the restrictive meaning is attributed, as has been so done by the High Court, then the word "every" in any event becomes totally redundant but since the legislature avoids redundancy every word used in the particular provision shall have to be attributed a meaning and attribution of*

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any meaning to the word "every" by itself would negate the interpretation as found favour with the High Court. The word "every" has been totally ignored, which is neither permissible nor warranted."

**Jasbhai Motibhai Desai vs Roshan Kumar, Haji Bashir Ahmed & Ors. [(1976) 1 Supreme Court Cases 671]** wherein the Hon'ble Supreme Court held that :

" 48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a 'person aggrieved' and has no locus standi to challenge the grant of the no-objection certificate."

**Infosys Technologies Limited vs Jupiter Infosys Limited & anr. [(2011) 1 Supreme Court Cases 125]** wherein the Hon'ble Supreme Court held that :

"27. The moot question which has been debated before us is whether or not, the first respondent is an aggrieved person. That the first respondent filed composite applications under Sections 46 and 56 of the 1958 Act for rectification/removal of the trade mark

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"Infosys" registered in Classes 7, 9 and 16 is not in dispute. Sections 46 and 56 read as follows :

"46. Removal from register and imposition of limitations on ground of non-use.-(1) Subject to the provisions of section 47, a registered trade mark may be taken off the register in respect of any of the goods in respect of which it is registered on application made in the prescribed manner to a High Court or to the Registrar by any person aggrieved on the ground either--

(a) that the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him or, in a case to which the provisions of section 45 apply, by the company concerned, and that there has, in fact, been no bonafide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to a date one month before the date of the application; or

(b) that up to a date one month before the date of the application, a continuous period of five years or longer had elapsed during which the trade mark was registered and during which there was no bona fide use thereof in relation to those

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*goods by any proprietor thereof for the time being:*

*Provided that, except where the applicant has been permitted under sub-section (3) of section 12 to register an identical or nearly resembling trade mark in respect of the goods in question or where the tribunal is of opinion that he might properly be permitted so to register such a trade mark, the tribunal may refuse an application under clause (a) or clause (b) in relation to any goods, if it is shown that there has been, before the relevant date or during the relevant period, as the case may be, bona fide use of the trade mark by any proprietor thereof for the time being in relation to goods of the same description, being goods in respect of which the trade mark is registered.*

*(2) Where in relation to any goods in respect of which a trade mark is registered--*

*(a) the circumstances referred to in clause (b) of sub section (1) are shown to exist so far as regards non- use of the trade mark in relation to goods to be sold, or otherwise traded in, in a particular place in India (otherwise than for export from India), or in relation to goods to be exported to a particular market outside India; and*

*(b) a person has been permitted under sub section (3) of section 12 to register an identical or nearly resembling trade mark in respect of those goods under a registration extending to use in relation to goods to be so sold, or*

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*otherwise traded in, or in relation to goods to be so exported, or the tribunal is of opinion that he might properly be permitted so to register such a trade mark, on application by that person in the prescribed manner to a High Court or to the Registrar, the tribunal may impose on the registration of the first-mentioned trade mark such limitations as it thinks proper for securing that registration shall cease to extend to such use.*

(3) *An applicant shall not be entitled to rely for the purpose of clause (b) of sub-section (1) or for the purposes of sub-section (2) on any non-use of a trade mark which is shown to have been due to special circumstances in the trade and not to any intention to abandon or not to use the trade mark in relation to the goods to which the application relates."*

56. *Power to cancel or vary registration and to rectify the register.--(1) On application made in the prescribed manner to a High Court or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.*

(2) *Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any*

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entry in the register, may apply in the prescribed manner to a High Court or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.

(3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

(5) Any order of the High Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

(6) The power to rectify the register conferred by this section shall include the power to remove a trade mark registered in Part A of the register to Part B of the register."

28. The position that emerges from the above provisions is this. Whether the application is under Section 46 or under Section 56 or a composite application under both Sections, it is a pre-requisite that the applicant must be a person aggrieved. Section 46(1) of the 1958 Act

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*enables any person aggrieved to apply for removal of registered trade mark from the register on the ground of non-use as stated in clause (a) and/or clause (b). To be an aggrieved person under Section 46, he must be one whose interest is affected in some possible way, it must not be a fanciful suggestion of grievance. A likelihood of some injury or damage to the applicant by such trade mark remaining on the register may meet the test of locus standi."*

5. I have carefully considered the arguments and perused the records.
6. The point for determination is whether the impugned order is in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016.
7. The first objection raised by the Respondents is that the Appellant is not 'aggrieved person' under the Act.

Section 31 of the Act reads as under :

**" Filing of complaints with the Authority or the adjudicating officer:-**

- (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.

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*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.”*

8. Whether the Appellant is aggrieved person or not it would be appropriate to examine what the Appellant has pleaded in the memorandum of appeal and Special Civil Suit no.18/2013/A.

The Appellant states that there exists a property bearing Chalta no.3A of P. T. Sheet no.81 admeasuring 5622 sq. mtrs. bearing old Cadastral Survey no.1062 presently surveyed under Chalta no.3A of P. T. Sheet no.81. The property is divided into two distinct plots namely, lote A and lote B. Lote A is recorded in register of properties for payment of land revenue i.e. Matriz Da Contribucao Predial under no.1062 in the name of Alexandrino Felix Xavier Pinto of St. Cruz village and is bounded on the north by Lote B, on the south by the property of heirs of Cristovam Pinto, on the east by the marshy land of the heirs of Gustavo Pinto and on the west by the property of the said Cristovam Pinto.

Lote B is recorded in Register of properties for payment of land revenue i.e. Matriz Da Contribucao Predial under no.1064 in the name of Olivio Jaime Vincent Barjona da Conceisao Pinto of St. Cruz village and is bounded on the north by property of Verodiano Violante de Souza Pinto, on the south by lote A of Alexandrino, on the east by the marshy land of the heirs of Gustavo Pinto

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and on the west by the property of the heirs of the said Cristovam de S. Francisco Xavier Pinto. The Appellant states that the cadastral survey was conducted on the basis of the decree no.3602 dated 24/11/1934. Upon the death of Olivio Jaime Vincent Barjona da Conceisao Pinto, Inventory proceedings were initiated in the Court of Civil Judge, Senior Division, Panaji bearing no.20/71-81. In terms of the allotment made in the said Inventory proceedings, only lote B is shown in the list of movable properties as per chart belonging to Olivio Pinto. The said lote B was allotted in common equal shares to Berta Sara D'Costa Pinto and Gustavo Renato Da Cruz Pinto. In terms of an agreement dated 7/02/1980, it was agreed that upon the death of any of the parties to the agreement, surviving party will be the sole owner of the undivided properties. Berta Pinto expired on 4/03/1981 leaving Gustavo Renato Da Cruz Pinto and his wife as sole heirs. Upon the death of Berta Inventory proceedings no.20/71-81 were initiated wherein a specific reference came to be made to the aforesaid agreement dated 7/02/1980 and accordingly appropriate order dated 30/09/1981 came to be passed by the Inventory Court declaring that the entire inheritance in terms of agreement dated 7/02/1980 has passed to Gustavo Renato Da cruz Pinto and his wife. It is, therefore, contended that at no point of time, the predecessor in title of the Appellant had any interest or right in lote A. Gustavo Renato Da Cruz Pinto filed an application dated 16/03/1992 in the office of the City Survey contending that he is entitled for both the halves i.e. lote A and lote B, because he is enjoying

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the same. Inquiry Officer recorded his statement on oath and based on that passed an order recording his name in respect of lote A and lote B. The Appellant states that bare perusal of the documents suggest that the said Gustavo Renato Da Cruz Pinto misguided the survey authorities. Upon the death of Gustavo Renato Da Cruz Pinto a deed of succession was drawn and name of the Respondent no.1 came to be entered into the City Survey Records. Upon the death of Gustavo Renato Da Cruz Pinto the Inventory proceedings came to be initiated. In the said inventory only lote B was included and listed as Item no.3. Vide various sale deeds, the Appellant purchased lote A from son of Alexandriano and upon the execution of the sale deed, the Appellant acquired full title to the suit property.

The Appellant filed application under Section 96 of the Land Revenue Code and it is at that time, he noted that the name of Gustavo Renato Da Cruz Pinto is erroneously entered in the holder's column. On 16/08/2010, the Appellant was directed to furnish all the documents which the Appellant has furnished to the competent authority. However, the competent authority did not heed to his request and dismissed his contention and confirmed the name of Gustavo Renato Da Cruz Pinto as the holder of the property. Somewhere in February 2011, the Appellant was desirous in selling the property and published a public notice. He received objections from Adv. S. Dessai representing the defendants. In the said objections reference was made of construction license dated 5/10/2011. The Appellant, therefore, filed a writ

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petition challenging the action of the competent authority in which the defendants herein intervened. After hearing the parties, the Hon'ble High Court dismissed the writ petition relegating the parties to file a suit as well as remanding the matter to the competent authority to pass a speaking order.

In this context, the suit has been filed for a declaration that the Appellant is sole, the universal owners of Lote A of the property surveyed under Chalta no.3A of P. T. Sheet 81 of Panaji City having acquired their title by virtue of three deeds of sale all dated 19/01/2010 executed by the heirs of Alexandrine Felix Xavier Pinto and that the defendants therein have no right, title and interest in the property referred to in prayer (a) above and for recovery of possession of the same wherein the defendants therein are claiming de facto possession and restore the property to the original status and that the defendants be restrained by way of permanent injunction from acting in pursuance of the development permission bearing no.NGPDA/1192/2074/2009 dated 4/12/2009 issued by the North Goa Planning & Development Authority as also the construction license bearing no.FI/CCP/ENG/CONST-LIC/25/2011-2012/42 dated 5/10/2011 and that the defendants be restrained by way of permanent injunction from carrying out any activity including construction activity in the said property and that the Respondents be restrained by way of permanent injunction to act in any manner detrimental to the interests of the Appellant pending adjudication and inquiry before the Inspector, Survey & Land Records, City Survey, Panaji as directed by the

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Hon'ble High Court by its order dated 14/08/2012. The Appellant has also sought interim relief in terms of the injunction prayed.

The Respondents (Defendants in the said suit) filed written statement to the said suit. They raised preliminary objections. Their first objection is that it is not indicated in the plaint that the partnership firm of the Appellant is registered. Their second objection is that the claim of declaration is barred by limitation. It is their third contention that the Appellant has no locus standi as they have not indicated any semblance of title in favour of their predecessors. The sale deeds of which the Appellant claims title to the suit property suffers from factual defects. Firstly, that the Appellant on the strength of the power of attorney obtained from the vendor sold the property to himself. Secondly, one of the donors of the Power of Attorney (Vendor) Sydney Pinto and Phyllis Elliot expired prior to the execution of the deed of sale and thirdly that the sale is bad in terms of Article 1191 of the Portuguese Civil Code. The next preliminary objection is that the Appellant is not entitled for a relief of recovery of possession because as on date the Appellant is out of possession. It was contended that the application for injunction suffers from delay and laches and the stage of construction has not been indicated in the application for injunction.

9. The Ld. Civil Judge in the order dated 10/03/2017 passed in application

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for temporary injunction in the Special Civil Suit no.18/2013/A has held as under :

*" The application for injunction dismissed, however on the condition that defendants shall furnish the particulars of the prospective buyers of the residential units that they are entitled to being owners, in advance to the court and it must be made clear to the prospective buyers that their purchases are subject to the result of the suit by making a 'specific recital' in the agreement of sale or sale deed, as the case may be."*

10. The expression 'aggrieved person' imply some or other reason which might have aggravated the person to undertake the legal remedy. Needless to mention that only a person/party who has suffered or suffers from legal injury can challenge the act/action/order in the court of law. A 'person aggrieved' must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. A 'legal right' means an entitlement arising out of legal rules.

The expression 'aggrieved person' denotes elastic and an elusive concept. In any case, in the present case, the Appellant claims right over the portion of the property which is being developed and has approached the competent Civil Court for required reliefs and the Ld. Civil Judge has passed above mentioned order.

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11. The following definition and Section of the Act are required to be construed.

**Definition of promoter**

"promoter" means (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of –

(a) Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its

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Members or in respect of the allottees of such apartments of buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

*Explanation – For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder."*

**Section 11. FUNCTIONS AND DUTIES OF PROMOTER**

"(4) The promoter shall –

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

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Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project.

(g) pay all outgoing until he transfers the physical possession of the real estate project to the allottee or the association of allottees, as the case may be which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project).

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such

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allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person.

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or the building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be.

(5) The promoter may cancel the allotment only in terms of the agreement for sale.

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause".

**Chapter 2 – Section 3(2)**

**3. Prior registration of real estate project with Real Estate Regulatory Authority :**

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required –

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(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation :- For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

12. The Ld. Advocate for the Respondents no. 1 to 3 submits that order of the Civil Court is sufficient and there is no need for the proceeding under RERA for protection of right/interest of the Appellant. This contention is unacceptable considering the Section 88 of the RERA Act which reads as

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under:

**"Section 88 – Application of other laws not barred.-**

*The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force".*

13. The preamble of the RERA reads as under :

*" An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."*

What is more important is to give complete and effective meaning to the statutory provisions. The purpose, which is sought to be achieved by the Act has to be kept in mind by the Appropriate Authorities. Any interpretation which will render the provisions redundant, ineffective or defeat the object of the Act should be avoided.

In my considered opinion, the approach of this Tribunal should be to secure the object which statute seeks to achieve unless crucial omission or

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clear direction in the statute makes it unattainable. It is settled principle of interpretation that the statute must be construed to make it effective and workable. The Tribunal strongly lean against a construction which reduces the statute to a futility or which creates hardship while implementing its provisions. A statute or any provisions therein must be so construed as to make it effective and operative in order to give meaningful life to the legislative enactments.

**14. Chapter VII – Section 44(6) reads as under :**

*“44. (6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit”.*

Considering the preamble and Sections 11(4) (a), (e), (g) & (h) of the Act, the interest of the prospective purchasers of the premises in the project is required to be protected. Therefore, the Respondents are required to be registered under RERA.

**ORDER**

- Appeal is partly allowed. ✓
- The impugned order is set aside. ✓
- The Respondents are directed to register the project ✓  
under the RERA Act. ✓

**PRONOUNCED**

SSA.



*(Signature)*  
**(RAJESH NARVEKAR)  
PRESIDENT**

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Photo of Judgment/Order dtd. 20/02/2020

in Case no. Real Estate Appeal no. 1020

copy applied for on 10.07.2020

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13th day of July, 2020

Applied by Yugankaraj V. Redkar  
Dy. T.P., Reka, for the  
purpose of office record.



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