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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **SURESH V SWAMY V. LARSEN & TURBO LTD.**

**AUTHORED BY: VAISHNAVI NIMJE**

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**Cases Analysis: Suresh V Swamy V. Larsen & Turbo Ltd**

**Symbiosis Law School, Nagpur**

**A Constituent of Symbiosis International (Deemed University), Pune**

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**Faculty Name: Ms. Vaidehi Pareek**

**COMPLAINT NO: CC006000000057656**

**DATE OF JUDGEMENT – 22<sup>nd</sup> April, 2019**

**HON'BLE JUDGES/CORAM - SHRI B.D. KAPADNIS**

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**COMPLAINANT: ADV. ANIL D'SOUZA**

**RESPONDENTS: ADV. MANISH GALA**

## **INTRODUCTION**

The Real Estate (Regulation and Development) Act, also known as RERA, is a key piece of legislation that was passed in India with the goal of regulating and promoting accountability, efficiency, and transparency in the real estate industry. The Indian Parliament approved it in 2016, and it went into force in May 2017. Even though it is still in its early stages of development, the Real Estate (Regulation and Development) Act, 2016, is already having a significant impact on how the real estate sector operates and several other sectors of the industry. RERA is significant because it safeguards homebuyers' rights, encourages accountability and transparency in the real estate sector, and seeks to implement long overdue changes in a sector long marred by problems including project delays, unfair business practices, and a lack of transparency. The market for real estate in India has benefited from it by giving buyers and investors more confidence.

Given the demand for infrastructure support to meet the population's housing and development needs, as well as the reality of crooks in the industry, legislation to control the real estate market is long overdue. This will ensure transparency and increase end users' confidence. As was already indicated, as the act is still in its early stages, further clarification is desired and required. A recent ruling by the MahaRERA in the case of Suresh V. Swamy v. Larsen and Turbo Limited addressed various legal issues that had been the topic of discussion for a while. The analysis that follows aims to make the primary issues that the Maharashtra Real Estate Regulatory Authority addressed in its judgement crystal obvious.

## **FACTS OF THE CASE**

The client has filed a complaint with the appropriate government alleging that the promoter has failed to deliver his reserved unit No. 301, Tower T8, which is situated in the Taluka Kurla village of the promoter's registered project Emerald Isle, as agreed upon in September 2017. In December 2018 the project received its occupancy certificate, and a new completion date of December 31, 2018 was suggested.

The complainant, Suresh Swamy, lodged a grievance against L & T Ltd., a real estate promoter, with the Real Estate Regulatory Authority (RERA). The basis for the complaint was that L & T Ltd. was



unable to transfer ownership of a property to Suresh Swamy by the deadline stated in the affidavit submitted in conjunction with the real estate project's registration under Section 4 of the Real Estate (Regulation and Development) Act (RERA). The agreed upon date for the handover of possession was established in the month of September 2017 in accordance with the parties' agreement. However, while being far behind schedule compared to the original commitment, the project eventually got a certificate of occupancy in December 2018. The project's revised completion date, which was likewise planned for December 2018, was also announced. By earning interest on the deposits made by him and the other allottees during the waiting time, Suresh Swamy claimed that L & T Ltd., the promoter, had unlawfully plundered him of both his money and the property he was promised. The main question in this case concerned whether the Real Estate Regulatory Authority's jurisdiction ended after the promoter acquired the occupancy certificate or if it persisted for the entire period that the project was registered. The authority took into account both the project's declared completion date and the provisions of Section 5(3) of RERA, which states that a real estate project's registration is valid for the time period specified by the promoter in the affidavit submitted at the time of registration.

The defendants (L & T Ltd.) claimed that once a project acquired the occupancy certificate and the registration expired, the RERA authorities lost control over it. In essence, the dispute centered on how RERA laws should be interpreted and whether the authority had control beyond the granting of occupancy certificates or only during the project's registration term.

### **ISSUES OF THE CASE**

1. Whether the Jurisdiction of the Real Estate Regulatory Authority is co-extensive with the registration of the Project?
2. Whether Section 18 of RERA is retroactive in operation?
3. Whether RERA applies to the agreement for sale executed under Maharashtra Ownership flats Act?
4. Whether the Authority has jurisdiction to entertain the complaint despite arbitration Clause in agreement?
5. Whether the respondents have failed to hand over the possession of the flat on agreed date?
6. Whether the complainant is entitled to get interest on his investment for delayed possession u/s 18 of RERA?

## **CONTENTION ON BEHALF OF THE COMPLAINANT**

### **(SURESH SWAMY)**

1. According to the complainant, the Real Estate Regulatory Authority (RERA) has jurisdiction over the property even after the occupancy certificate has been issued. They assert that RERA's Section 5(3) makes it clear that a project's registration stays valid for the amount of time specified by the promoter at registration, regardless of when the occupancy certificate is obtained.
2. The complainant admits that the sale agreement was signed on June 5, 2015, which was before RERA was put into effect on May 1, 2017. However, they insist that RERA is applicable because Section 18 of RERA is prospective in nature and applies to all projects registered under RERA after its implementation, rather than being retrospective in nature.
3. According to sections 56 and 57 of the agreement, the complainant claims they were not given the opportunity to resolve the problem. They contend that notwithstanding the fact that this step has not been taken, these articles compel the dispute to be referred to an arbitrator in accordance with Section 7 of the Arbitration and Conciliation Act 1996.
4. The lawsuit contests the respondent's assertion that the task was completed on schedule. They contend that the occupancy certificate was received on December 21, 2018, which is within the indicated completion term, and that the project's completion date was set as December 31, 2018, in accordance with Section 4 of RERA.
5. The complainant argues that the reasons for the respondent's delays, such as problems with environmental clearance and a stop-work order from the Municipal Corporation, do not account for the total delay of thirteen months and twenty-three days. They contend that these problems could have been settled more quickly.
6. The responder disputes the complainant's allegation that they are entitled to interest on the tax amount.
7. The complainant accepts the project's phased development and provision of common amenities, but argues that as long as they committed not to object to this requirement, they should not be precluded from raising concerns about unfinished common amenities.

## **CONTENTION ON BEHALF OF THE RESPONDENTS (L & T LTD.)**

1. The defendants contend that the Real Estate Regulatory Authority's (RERA) authority ended when Tower T8's occupancy certificate, showing project completion, was received on December 21, 2018. They contend that the complaint, which was submitted on January 13th, 2019, after the possession demand letter was sent on December 26th, 2018, is not within the purview of RERA.
2. The respondents contend that the provisions of RERA are not relevant in this matter because the agreement for sale was signed on June 5, 2015, before RERA was enacted on May 1, 2017.
3. The respondents contend that the complainant has not started the process required under clauses 56 and 57 of the agreement, which calls for disagreements to be referred to an arbitrator in accordance with Section 7 of the Arbitration and Conciliation Act 1996.
4. The occupancy certificate issued prior to the project's stated completion date of December 31, 2018, according to the respondents, demonstrates that the project was completed within the timeframe they stated under Section 4 of RERA.
5. The respondents identify justified causes of delay outside of their control for the cumulative delay of twelve months and twenty-three days, including environmental clearance concerns and the Municipal Corporation's stop-work notice.
6. The defendants contend that given the project's phased development and provision of common amenities, the complainant agreed not to raise concerns about missing common amenities.
7. The respondents identify justified causes of delay outside of their control for the cumulative delay of twelve months and twenty-three days, including environmental clearance concerns and the Municipal Corporation's stop-work notice.

## **PROVISIONS OF DIFFERENT STATUTES**

In the case of Suresh Swamy vs. L & T Ltd. before the Real Estate Regulatory Authority, various provisions of different statutes are invoked. Here are the provisions from different statutes relevant to the case:

1. Real Estate (Regulation and Development) Act, 2016 (RERA):
  - Section 4: Requires promoters to register real estate projects and provide specific project details, including the declared time of completion.
  - Section 5(3): Specifies the duration of validity for the registration of a project based on the completion timeline declared by the promoter.
  - Section 18: Addresses the application of RERA to ongoing projects and clarifies its prospective nature.
2. Maharashtra Ownership of Flats Act: Mentioned as the basis for the execution of the agreement for sale on 5th June 2015, indicating the complainant's contention that RERA applies to the case.
3. Arbitration and Conciliation Act, 1996: Referred to in the context of clauses 56 and 57 of the agreement, which the complainant contends require disputes to be referred to an arbitrator under this act.
4. Environmental Clearance: The respondents cited the grant of environmental clearance and the subsequent expansion request as factors contributing to project delays.

These statutory provisions have a significant impact on the legal arguments and claims made by both parties in the case, particularly those relating to the authority of the Real Estate Regulatory Authority, the applicability of RERA, dispute resolution processes, project completion schedules, and causes of project delays.

## **DOCTRINE AND PRINCIPLES USED IN THE JUDGEMENT**

- Doctrine of Privity of Contract: This doctrine examines the relationship between parties to a contract and determines who can enforce the terms of the contract. In this case, it might have been considered in relation to the contract between Suresh Swamy and L & T Ltd. regarding possession of the flat.
- Doctrine of Promissory Estoppel: This doctrine deals with promises made by one party that another party relies upon to their detriment. If L & T Ltd. made specific promises regarding possession dates, the doctrine of promissory estoppel might have been invoked if Suresh Swamy relied on those promises to his detriment.

- Doctrine of Substantial Performance: This principle examines whether a party has substantially performed its contractual obligations even if minor deviations or deficiencies exist. It could have been relevant in assessing whether L & T Ltd. substantially fulfilled its commitment regarding possession of the flat.
- Doctrine of Frustration: This doctrine addresses situations where unforeseen events occur that make the performance of a contract impossible or radically different from what was originally contemplated. It might have been relevant in assessing the impact of project delays on the contract.

### **PRECEDENT CITED**

According to the evidence presented, the Division Bench of the court made the following major observations and statements in Para-119 of the judgment in the Neelkamal Realtors case:

1. According to Section 18 of the Real Estate (Regulation and Development Act) (RERA), the allottee's and promoter's agreement for sale, which was signed before the project was registered under RERA, should be used to calculate the delay in receiving possession of a property.
2. The possibility of changing the project's completion date and announcing the new date under Section 4 of the Act was described as being provided by RERA to project promoters. However, the court stated that RERA does not intend to rewrite the contract between the promoter and the unit buyer (the allottee).
3. The promoter in this case arbitrarily changed the project completion date during the registration process without the allottees' (flat buyers') permission, the court determined.
4. The court concluded as a result that the respondents (the promoter) were legally obligated to transfer ownership of the apartment on the date specified in the original agreement for sale and not the date the promoter unilaterally claimed during the registration process.
5. The court took into account a copy of the sales contract that the respondents (promoter) had signed in the complainant's (allottee) favor, which stated that possession of the apartments would be given on or before March 31, 2017, with a grace period of six months. Consequently, the agreed upon date for possession was on or before September 30, 2017.

## **JUDGEMENT**

According to a decision made in the complainant's favor by the Maharashtra Real Estate Regulatory Authority, the respondents must pay the complainant simple interest on a sum of Rs. 1, 29, 42, 112 starting on the day of default, or on October 1, 2017, until it gives the complainant ownership of the apartment. The complainant is allowed to use the flat as long as he pays the agreed-upon payment, the court further ordered the respondent to pay the complainant a sum of Rs. 35,000/- toward the cost of the lawsuit.

## **OBSERVATIONS**

The following lists issue-by-issue discussions of the observations made by the authority and the subsequent analysis of the judgment and opinions:

**1. Does the Real Estate Regulatory Authority's jurisdiction extend to the registration of the Project?**

- The answer to this question, according to the authority, is no. It said that the Authority's authority cannot be circumvented only because the project is finished, the occupancy certificate has been received, or the possession has been offered.

**2. Does Section 18 of the RERA apply retroactively?**

- As a result, the authority came to the conclusion that Section 18[2] of RERA is both required and retroactive. The Neelkamal Realtors decision, which dealt with Sections 3, 6, 8 and 18 of RERA, was taken into consideration by the authority when deciding whether or not the Section was retroactive in effect. The Neelkamal Realtors decision noted that these provisions are somewhat retroactive or quasi retroactive and that the parliament has the authority to legislate even such provisions.

**3. Does the Maharashtra Ownership Flats Act agreement for sale fall under the RERA?**

- The authority found the answer to this issue to be affirmative. The authority took cognizance of the Hon'ble Division Bench of the High Court in the Neelkamal Realtors case wherein it observes-“Under provisions of Section 18, the delay in handing over the possession would be

counted from the date mentioned in the agreement for sale entered into by the Promoter and the allottee prior to its registration under RERA--the RERA does not contemplate the re-writing of the contract.”

The authority held that the aforementioned observation was sufficient to hold that the provisions of RERA are applicable to the agreements for sale even though they were made before the registration of a project under RERA. The authority explained that this simply extended the scope of the Act to apply to agreements that were made even before it went into effect, or during the MOFA regime.

**4. Does the Authority have the authority to consider the complaint despite the arbitration clause in the contract?**

- The attorney representing the respondents had argued that since the purchase agreement had an arbitration clause, the disagreement should be referred to an arbitrator in accordance with Section 7 of the 1996 Act on Arbitration and Conciliation. However, the authorities concluded that the answer to this question was really yes. The following is the justification:

To resolve disputes between the aggrieved party and the promoter, allottee, or real estate agent for violation or contravention of the provisions of RERA, Rules and Regulations made thereunder, the Real Estate Regulatory Authority has special powers under Section 20 of RERA.

Consequently, despite the requirements of the Arbitration and Conciliation Act and the arbitration clause of the agreement, jurisdiction rests with the Authority and cannot be transferred to the Arbitrator.

**5. Have the respondents failed to turn over the keys to the apartment by the scheduled date?**

- The authorities concluded that the answer to this question was yes. The authority claimed that Section 18's provisions were clarified in Paragraph 119 of the Division Bench's decision in the Neelkamal Realtors case, and that the delay in transferring possession would begin to accrue as of the date specified in the agreement for sale that the promoter and the allottee entered into before the project was registered under RERA. The authority found the respondents bound by the contractual obligation to turn over possession of the flat on the

agreed date and not by the declared date and noted that the promoter had changed the date of project completion while registering the project incommunicado, without the consent of the allottees.

Additionally, the respondents agreed to give possession of the apartments on or before March 31, 2017, with a six-month grace period. The respondents were deemed to have failed to hand over the possession by the predetermined date because they had pledged to provide it on or before September 30, 2017.

**6. Is the complaint eligible to get interest on his investment for a delayed possession under RERA Section 18?**

- The authority determined that the answer to this question was in the affirmative and expressed the opinion that the complainant is entitled to interest on his investment at the prescribed rate if the respondents violate Section 18 of the RERA by failing to transfer possession of the flats on the scheduled date. The authority also noted the prescribed interest rate under the rules established by the Act. The rate was shown to be 2% higher than State Bank of India's highest marginal cost of lending rate, which is now 8.75%. The allottee is therefore entitled to simple interest at a rate of 10.75% annually from the date of default until the transfer of the flat's possession.

### **LEARNING OUTCOME**

The learning outcomes from the case of Suresh Swamy v. L&T Ltd., as decided by the MAHARERA, include the following:

1. **Enforcement of Contractual Obligations:** The case reinforces the importance of enforcing contractual obligations in real estate transactions. It underscores that when a promoter fails to meet the agreed-upon possession date as specified in the contract, they may be held liable for compensating the allottee for any losses incurred due to the delay.
2. **Payment of Interest for Delay:** The judgment establishes that in cases of possession delay, the promoter may be required to pay interest to the allottee. This interest is typically calculated from either the date of default or from a specified reference date until the actual possession of



the property is transferred. These interest payments are meant to make up for any financial losses or inconveniences the allottee may have had as a result of the delay.

3. **Legal Expense Reimbursement:** The case serves as an example of how a party found in breach of a contract could be forced to cover the innocent party's reasonable legal expenses incurred in pursuing redress. This guarantees that the innocent party is not overly burdened by the expense of litigation and encourages parties to settle disagreements through the court system.
4. **Right to Use the Property:** The judgment recognizes that despite the possession delay, the allottee retains the right to use the property as long as they continue to fulfill their financial obligations, such as making payments as per the agreement. This emphasizes that the allottee's rights to the property should not be unjustly curtailed due to the delay caused by the promoter.

Overall, the case provides valuable insights into the legal and contractual dynamics of real estate transactions, particularly in cases of possession delays, and underscores the importance of upholding contractual commitments and protecting the rights of property purchasers.



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