

**Court No. - 40**

**Case :-** WRIT - C No. - 27147 of 2020

**Petitioner :-** M/S Proview Realtech Pvt. Ltd.

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Petitioner :-** Siddharth Singhal, Ankita Singhal

**Counsel for Respondent :-** C.S.C., Wasim Masood

**with**

**Case :-** WRIT - C No. - 27104 of 2020

**Petitioner :-** M/S Proview Realtech Pvt. Ltd.

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ankita Singhal, Siddharth Singhal

**Counsel for Respondent :-** C.S.C., Wasim Masood

**with**

**Case :-** WRIT - C No. - 27175 of 2020

**Petitioner :-** M/S M.R.J.V. Constructions Company

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Petitioner :-** Siddharth Singhal, Ankita Singhal

**Counsel for Respondent :-** C.S.C., Wasim Masood

**Hon'ble Munishwar Nath Bhandari, J.**

**Hon'ble Rohit Ranjan Agarwal, J.**

Heard learned counsel for the petitioner, Sri Anit Tiwari, Senior Advocate assisted by Sri Wasim Masood, learned counsel for the respondent No.2 and learned Standing Counsel for respondent Nos.1, 3 and 4.

Since the question of law involved in all the three writ petitions is similar, and as agreed by the counsel for the parties, they are heard together and decided by this common judgment.

The writ petition No.27147 of 2020, which is taken to be leading case, has been filed with the following prayers:

*“(i) Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the recovery certificate dated 27.10.2020 and citation dated 07.11.2020 (Annexure No.1 to the present writ petition)*

*(ii) Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the impugned order dated*

*20.03.2020 passed by respondent no.2 (Annexure-2 to the present writ petition).*

*(iii) issue a writ, order or direction in the nature of Certiorari calling the record and quashing the minutes/resolutions dated 14.08.2018 alleged to have been passed by the respondent no.2 (Annexure No.3 to the writ petition).*

*(iv) Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing the minutes/resolution dated 05.12.2018 alleged to have been passed by respondent no.2 (Annexure -4 to the writ petition).*

*(v) Issue an appropriate writ, order or direction for striking down Regulation 24(a) of the U.P. Real Estate Regulatory Authority (General) Regulation, 2019.”*

The petitioner has challenged the order passed by Real Estate Regulatory Authority (*in short* “RERA”) dated 20.03.2020 though an appeal against the said order lies under Section 43(5) of Real Estate (Regulation and Development) Act, 2016 (*in short* “Act of 2016”).

It is a case where a complaint was filed by the non-petitioner alleging that despite payment towards unit No.08 in the scheme introduced by the petitioner, the possession of a unit has not been given. The unit (flat) was booked on 28.01.2012 and was to be delivered in the year 2017. The prayer was made for refund of the amount of Rs.25,36,985/- with interest. The Authority found that as per the agreement entered between the parties, possession of the flat in question should have been delivered by 29.02.2017. The petitioner-Company failed to show delivery of possession of the flat in question. Thus, taking into consideration the default of the Promoter (petitioner herein) and referring to the judgment of Apex Court, an order was passed by RERA on 20.0.2020 for refund of the principal amount alongwith interest. In pursuance thereof, order dated 27.10.2020 was issued for its execution. The amount of Rs.25,36,985/- was shown towards the principal amount while component of interest was Rs.15,68.814/-. The petitioner has filed

this writ petition to challenge not only the order dated 20.03.2020 passed by RERA but the order dated 27.10.2020 on the execution application.

Learned counsel for the petitioner submits that an appeal against the order passed by RERA is maintainable but this case has exceptional circumstances thus even a writ petition would be maintainable. One member of RERA has passed the order going against the Act of 2016. Section 21 provides for formation of Authority consist of Chairperson alongwith two whole time Members. The impugned order is by one Member alone going against the mandate of Section 21 of the Act of 2016. In view of the above, there is no need to prefer an appeal as the order dated 20.03.2020 is without jurisdiction.

It is also stated that the order to award interest by the Authority is again going contrary to the provisions. Rules for award of interest was introduced in the year 2018. The amount deposited with the Promotor has been ordered to be returned with interest. The interest has been allowed even for the period prior to introduction of U.P. Real Estate (Regulation and Development)(Agreement for Sale/Lease) Rules, 2018 (*in short "Rules of 2018"*). It is even ignoring the rate of interest agreed by the parties. Challenge to the order has been made on that ground also.

We are first taking challenge to the order dated 20.03.2020, passed by the Authority to find out as to whether one member was competent to pass the order.

The issue has been raised in reference to Section 21 but it is not open for debate having been decided by this Court in **Writ -C No.2248 of 2020 (M/s K.D.P. Build Well Pvt. Ltd. vs. State of U.P. and 4 Others)** vide judgment dated 04.02.2020 and in **Writ- C No.3289 of 2020 (Rudra Buildwell Constructions Pvt. Ltd. vs. Poonam Sood and Another)** vide judgment dated 06.02.2020 holding order by one member to be legal. The issue regarding composition of RERA was considered in reference to Sections 21 and 81 of the Act of 2016. Section 81 provides for delegation

of power/function and taking the aforesaid provision into consideration, the argument was not accepted.

At this stage, learned counsel for the petitioner has made a reference to the judgment of Punjab and Haryana High Court on the same issue in **Civil Writ Petition No.8548 of 2020 (Janta Land Promoters Private Limited vs. Union of India and others)** vide judgment dated 16.10.2020. It is stated that judgment of this Court has been referred by Punjab and Haryana High Court and has taken a different view.

What we find is binding effect of the judgment rendered by this Court than to follow the judgment of other High Court. Accordingly, we are unable to accept the first argument in reference to Section 21 of the Act of 2016. It is more so when the petitioner did not raise objection before the single Member about his competence to adjudicate the complaint. In absence of objection, the Authority proceeded with the matter. If the objection would have been taken and was sustainable, the complaint could have been decided by the Authority consisting of three Members. The petitioner has challenged the order in reference to the composition only when he lost in the complaint.

It is further necessary to refer Sections 21, 29 and 30 of the Act of 2016 to discuss the issue independent to the earlier judgments. The provisions aforesaid are quoted hereunder :

***“21. Composition of Authority.- The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.”***

***29. Meeting of Authority.- (1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.***

*(2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.*

*(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*

*(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application.*

*Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.*

**30. Vacancies, etc., not to invalidate proceeding of Authority.-** *No act or proceeding of the Authority shall be invalid merely by reason of—*

*(a) any vacancy in, or any defect in the constitution of, the Authority; or*

*(b) any defect in the appointment of a person acting as a Member of the Authority; or*

*(c) any irregularity in the procedure of the Authority not affecting the merits of the case.”*

Section 21 of Act of 2016 speaks about composition of the Authority, which shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government. Section 29, however, talks about the meeting of Authority and perusal of sub-section (2) thereof shows that in absence of Chairperson for any reason, the other Member chosen by the Members present amongst themselves at the meeting, shall preside thereby. Sub-section (2) to Section 29 permits adjudication of complaint even in absence of Chairperson so appointed by the appropriate Government. Thus, it is not

necessary that the adjudication of the complaint has to be made by the composition of Authority, as given under Section 21 of the Act of 2016 though as per Section 29 also, it should be by two Members in absence of the Chairperson.

Section 30 of Act of 2016 is, however, relevant and address the issue raised in this petition. The vacancies, etc. not to invalidate proceeding of the Authority. It shows that in case of vacancy, or any defect in the constitution of the Authority or any defect in the appointment of a person acting as a Member of the Authority, the proceeding of the Authority would not be invalidated. Section 30 of the Act of 2016 give complete answer to the objection raised by the petitioner regarding composition of the Authority. It is not that whatever composition given under Section 21 of the Act alone can decide the complaint rather reference of Section 29 has been given to indicate that complaint can be heard even in absence of the Chairperson and, in any case, due to the vacancy or any defect in the constitution of Authority, the proceeding would not be invalidated. This aspect was not brought to the notice of Punjab and Haryana High Court in the case of **Janta Land Promoters Private Limited (supra)**.

It is otherwise a fact that the petitioner kept silence on the hearing of the complaint by one Member and thereby he cannot now be allowed and to seek invalidation of the proceeding going contrary to Section 30 of the Act of 2016 and his conduct. The first argument cannot be addressed simply by referring to Section 21 of the Act of 2016 but has to be reference of other provisions, more specifically, Section 30 of the Act of 2016, which was inserted by the legislature to save the proceeding if the vacancy exist in the Authority or other reason. It is otherwise a fact that an order was issued to delegate the power to a Member for hearing of the complaint, which was considered by this Court in earlier judgment. Thus the first ground raised by the petitioner cannot be accepted.

So far the second issue regarding rate of interest is concerned, it is nothing but a challenge on the merit of the order. We hold writ petition for it to be not maintainable as petitioner has remedy of appeal. Thus we are not causing interference in the order on merit but allowing the petitioner to take remedy of appeal, if so desires. It is after taking note of the fact that the order of RERA is not otherwise onerous so as to maintain a writ petition.

The other challenge in the writ petition is to execution of the order made in reference to Section 40(1) of the Act of 2016. The recovery of the amount is to be made as arrears of land revenue. It is stated that recovery of interest, penalty or compensation alone can be made as arrears of land revenue. In the instance case, RERA has issued citation for return of the amount so deposited with the Promoter with interest. The refund of the principal amount cannot be through the process of execution given under Section 40(1) of the Act of 2016 but can be as per Section 40(2) of the Act of 2016.

To deal with the argument aforesaid, we are quoting Section 40 of the Act of 2016, hereunder :

***“40 Recovery of interest or penalty or compensation and enforcement of order, etc.- (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.***

***(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with***



*such order or direction, the same shall be enforced, in such manner as may be prescribed.*

Before addressing the issue further it would be necessary to go through the object of the enactment i.e. as to why the Parliament brought the Act of 2016. The object of Act of 2016 is to protect the interest of consumer in real estate sector apart from others. The Bill was introduced with the following object :

*“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.*

A perusal of the object reveals that the Act of 2016 has been enacted to save interest of consumers apart from others and thereby to regulate real estate in a proper manner. It is even to give speedy dispute redressal mechanism. Section 40(1) of Act of 2016 no doubt provides for mechanism for recovery of interest, penalty or compensation. It cannot however be ignored that recovery of the amount is provided under Section 40(1) alone. Section 40(2) is for execution of any other order or direction to any person to do any act, or refrain from doing any act, which is not empowered to do under the Act of 2016 and in case of failure to comply, execution can be enforced in the manner prescribed. Sub-section (2) of Section 40 was to enforce any direction of the nature of restrain or injunction which cannot be enforced as an arrears of land revenue. After coming into the force of the rules framed by the State of Uttar Pradesh, the matter of execution can be taken by the Adjudicating Authority. Sub-Section (2) of Section 40 is not meant for recovery of the amount but for any other direction either to act in a particular manner or to refrain a party



in doing any act. Such order can be enforced firstly by the Adjudicating Authority and in case of failure, through the civil court. Rules 23 and 24 of Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 (*in short "Rules of 2016"*) were brought for that purpose and provides the mechanism for execution of the order.

In the light of the aforesaid, we are required to give proper interpretation to Section 40 so that the object sought to be achieved by enactment of Act of 2016 is carried out.

In the instant case, the consumer had deposited a sum of Rs.25 lacs and odd, in instalments but despite an agreement for giving possession of the flat in the year 2017, it was not handed over to the consumer. The direction for return of the amount with interest has been given in those circumstances. If a consumer is to seek execution of the part of the order through the civil court then the very purpose of the enactment of Act of 2016 to provide speedy dispute redressal mechanism would frustrate. If the argument of the petitioner is accepted then for recovery of a sum of Rs.25 lacs and odd, the non petitioner consumer is to be send to civil court while recovery of amount of interest of Rs.15 lacs can be made as arrears of land revenue, as admitted by the counsel for the petitioner himself. If recovery of amount is to be sought by dividing it in two parts and by different method, it would be against the object of the Act of 2016. The object of speedy redressal would frustrate if recovery of the amount is also sought through the civil court. We thus hold that the purpose and object of Section 40(1) is to allow recovery of the amount as arrears of land revenue so as to expeditiously give the relief to the consumer having suffered in the hands of the Promoter. Section 40(1) has to be given interpretation by reading down the provision to make it purposeful and akin to the object of the Act of 2016. Section 40(2) is for any other direction either to act in a particular manner or to restrain a party to do certain act and execution of it can be made by the Adjudicating Authority

and in case of failure, by the civil court. Section 40(2) covers basically the case of an order of injunction or mandatory injunction.

Accordingly, we are unable to accept even the last argument raised by the counsel for the petitioner. It would otherwise frustrate the very object of the Act of 2016 and would give rise to the anarchy, existing earlier, in the hands of Promoters.

Thus, for all the reasons, we are unable to accept any of the arguments raised by the counsel for the petitioner. All the writ petitions are accordingly **dismissed**, however, with the liberty to avail the remedy of appeal if other than the issue decided by us remains, which may include the issue towards interest.

**Order Date :- 12.1.2021**

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Justice  
Munishwar  
Nath Bhandari

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Justice Munishwar  
Nath Bhandari  
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