

**Reserved on 24.11.2020**  
**Delivered on 09.03.2021**

**A.F.R.**

**Case :-** SECOND APPEAL No. - 121 of 2020

**Appellant :-** Psa Impex Private Ltd. Thru Authorized Signatory Raj Kumar

**Respondent :-** Real Estate Appellate Tribunal Lko. Thru Registrar And Ors.

**Counsel for Appellant :-** Prashant Kumar

**Counsel for Respondent :-** Shobhit Mohan Shukla

**Hon'ble Mrs. Sangeeta Chandra,J**

1. Heard the learned Senior Counsel Sri Sudeep Seth assisted by Sri Prashant Kumar, Advocate for the Appellant and Shri Shobhit Mohan Shukla, learned Standing Counsel for Real Estate Regulatory Authority (hereinafter referred to as a "the Authority").

2. The brief facts of the case as are relevant for deciding this appeal are being given here in below:-

3. On 18.3.2019, by Letter No.905, the Authority at Gautam Budh Nagar issued a show cause notice to the Appellant under Section 7 of the Act of 2016. The show cause notice has been annexed as Annexure-7 to the Application for Interim Relief. The Promoter had got the Project registered as Sampada Livia under Sections 3 and 4 of the Act, with registration No.UPRERAPRJ5855. The commencement date for the Project was mentioned as 01.12.2014 and date of completion was mentioned as 30.11.2019, and 24 allottees had approached the Authority by filing complaints against the violations of the Builder Buyers Agreement (hereinafter referred to as 'BBA') by the Promoter. During the course of enquiry into

the complaints made by the allottees under Section 38 of the Act, it was found that even the necessary conditions for registration of the Project as mentioned in Rule 14 had not been met and required details were not uploaded on the R.E.R.A. Website. There were no regular progress reports uploaded either. It was, therefore, decided to get an on the spot inspection done of the Project site.

**4.** A team was constituted of the Chief Engineer as the Technical Adviser, along with another Junior Engineer and it was found by the said team that although the Project was registered as "Sampada Livia" and the Promoter's name was given as PSA Impex Private Limited, the board on the site showed the name as "Alturio Residency". The approved plan had not been uploaded on the R.E.R.A. website. The Project completion date was 30.11.2019, however, on 24.2.2019, when the Team inspected the Project and tried to call the Project Coordinator on his mobile number, the same was found to be switched off and the on site inspection showed that the work had been stopped as no construction material was available on the site and only 10% of the structural work on the Project was completed. There were two floors built in Tower A, seven floors built in Tower B, six floors built in Tower C, and only basement was built in Tower D. There were other Towers to be built which had not even been started. It had become evident from the spot inspection report dated 26.2.2019 submitted along with photographs, that there was no likelihood of the Project being completed within time and the flats being handed over to the allottees. The

security guard on the site revealed that work had stopped on the Project for the past two years.

**5.** The Authority surmised that in all likelihood, the hard earned money of the allottees had been diverted unauthorisedly by the Promoter. On the request of the Authority, an audit of the Project was got conducted by the Chief Executive Officer of Greater Noida through M/s. Currie and Brown Auditors, who submitted a report that about Rs.47 Crores of allottees' money had been diverted. Because of the complaints made by the allottees and on the spot inspection report as well as the Auditors report and because of the incomplete details of the Project being uploaded on the website, the Authority had come to a, *prima facie*, satisfaction that the Promoter had violated the conditions of registration and the conditions for revocation of registration under Section 7(1)a, 7b, 7c and 7d existed for the Authority to issue a show cause notice under Section 7(2) of the Act to the Promoter to show cause why its registration may not be revoked. The reply to the notice had to be submitted within 30 days of issuance of such notice.

**6.** A reply to the said show cause notice was submitted on 5.4.2019, and supplementary replies were submitted on 30.4.2019, 6.5.2019, 13.5.2019. Another notice was issued to the Promoter on 17.05.2019 asking for its explanation on seven points as mentioned therein, including a correct up-to-date list of home buyers with their addresses who had given their consent to the Resolution plan of the new builder. The construction plan of the Project and the sanction given by the Competent

## 4

Authority and the arrangement of financial resources and cash flow for completion of the Project was also demanded to be given along with documentary evidence that all the shares of the Company PSA Impex Pvt. Ltd. had been transferred to the new builder M/s Rudra Build Well Constructions Ltd. The Promoter submitted its reply to the letter dated 17.05.2019 on 20.05.2019, saying that the owner of M/s Rudra Build Well Sri Raj Kumar had been taken on board as Director of M/s PSA Impex Pvt. Ltd. and 99.75% shares had been transferred to him.

**7.** The Authority deliberated upon the replies submitted by the Promoter in the light of the provisions of the Act and the Rules, as also the circular of U.P. Real Estate Regulatory Authority published on 15.05.2018. An order dated 11.07.2019 was issued asking the Promoter to contact either personally or through e-mail, the Secretary of UP Real Estate Regulatory Authority with his personal affidavit along with the consent letters of at least two thirds of the allottees to the proposed transfer of the Project to the new builder. The Authority would then arrange publication of the information in various newspapers and fix a date, time and place for public hearing of all home buyers as well as other affected parties. The further proceedings under Section 7 of the Act as proposed in the show-cause notice dated 08.03.2019 would be kept in abeyance to enable the Promoter to comply with the requirements of the Circular dated 15.05.2018.

**8.** The Promoter did not comply with the order dated 11.07.2019. A reminder was sent but still the Promoter did

not make any effort to comply with the directions given in the order dated 11.07.2019.

**9.** Taking into account the conduct of the Promoter, a meeting was held on 26.09.2019 by the Authority and conclusions drawn on the basis of the conduct of the Promoter, the complaints made by the home buyers, the report dated 26.02.2019 of the on-spot inspection including photographs of the Project site, and the Auditor's report, and appropriate orders were passed, observing that the Promoter had not complied with the provisions of Section 4 and 11 and Rule 14 of the Act and the Rules and had not provided the necessary documents nor uploaded quarterly progress report in time. The Promoter had also not respected the BBA where the date of commencement of the Project was shown 01.12.2014 and completion date was given as 30.11.2019. There were only two months left for completion of the Project but the Promoter had completed only 10% of the structural work on the Project. The work had also been stopped some two years ago. The Promoter was in jail and there was no genuine attempt to complete the Project within time. Since different dates were being given in each of the replies for completion of the Project, there was no hope that the Promoter would keep the promise and there was a genuine doubt which had matured into a decision regarding his intentions.

**10.** It was therefore directed that the registration of the Promoter be revoked under Section 7 of the Act and various consequences would follow as a result of this revocation. The Authority decided to proceed as per Section 8 of the Act to ensure the completion of the

Project. The decision of the Authority was conveyed by the Secretary through the Office Order dated 30.9.2019. Aggrieved by the order dated 30.09.2019, the Promoter approached the Appellate Tribunal in Appeal which has been rejected by the order impugned.

**11.** In this Appeal against the order of the learned Appellate Tribunal the Learned Senior Counsel appearing on behalf of the Appellant has raised mainly two questions of law to be decided by this Court. It is the case of the Appellant who is the Promoter of the Real Estate Project named as Sampada Livia (hereinafter referred to as "the Project") that (a) the Authority had not given oral/personal hearing to the Appellant while deciding the case of deregistration/revocation of registration of the Appellant. Even if the language of Section 7 of the Act only provided for issuance of a show cause notice and consideration of reply given to it by the Promoter, the act of revocation of registration had civil consequences and therefore the right of personal/oral hearing should be read into the procedure prescribed by the Act. (b) it has been argued that the Authority acted in a quasi-judicial capacity while ordering revocation of registration under section 7 of the Act and therefore it could not have sub-delegated its power to decide the issue in the case of the Appellant, the Authority had only approved the draft of the order passed by the Secretary, R.E.R.A. The Secretary, R.E.R.A. is only an officer appointed by the State Government to assist the Authority in the exercise of its duties and responsibilities under the Act. The Secretary, R.E.R.A. had passed the order dated 30.09.2019 revoking the registration of the

Appellant which order was passed without jurisdiction as the jurisdiction lies only with the Authority.

**12.** It has also been argued that the Authority has been wrongly held to be exercising its power Suo Moto by the Tribunal as the Authority in its order impugned dated 30.09.2019 itself says that it has taken action the basis of complaints made by the allottees. There were two parties to the lis and therefore the R.E.R.A. had a duty to decide quasi-judicially. Quasi judicial power is conferred by the Act on R.E.R.A. and not on its Secretary. The R.E.R.A. could not have delegated the power under Section 7 to the Secretary.

**13.** It has been argued that as many as six replies were submitted to the Authority and that none of these replies were considered by the the Authority while passing the order revoking the registration of the Appellant.

**14.** It has been argued that in the reply dated 05.04.2019, it was mentioned that the Promoter was in jail for the past six to seven months and was trying to contact an experienced builder to take over the Project. M/ s Rudra Build Well Construction Pvt. Ltd. had proposed to take over the Project and complete the same latest by March, 2020. The detailed Resolution plan would be made available by 30.04.2019.

**15.** In the reply dated 30.04.2019, the Promoter stated that the new builder had taken over the Project and had started work like cleaning up the site and also undertaking strengthening of structural columns which had weakened due to the work having been stalled for a long time. Nearly, 200 home buyers were presented with a Resolution

plan, some of them had taken the option of refund, some had taken the option of shifting to already constructed flats in Rudra Build Well's other the Project, while others had given their consent to continue with the Project and wait for its completion. In the reply dated 30.04.2019, time was again requested to be given and it was assured that actual progress on the site would be evident from 21.07.2019.

**16.** In the reply dated 06.05.2019, it was informed that all the shares/assets and liabilities of the Promoter had been transferred to the new builder that is M/s Rudra Build Well Constructions Pvt. Ltd. and the new Promoter had contacted the architect to update the plan of the Project as per the Green Building Norms and to get it registered under "GRIHA" or "IGBC". A revised construction schedule for each of the towers has been given by the new Promoter.

**17.** In the reply dated 13.05.2019, it was informed to Real Estate Regulatory Authority that at least Rs.10 crores had been disbursed as refund through cheques to various home buyers and arrangements were being made for cash inflow to complete the Project. The builder had proposed to complete two towers by March, 2020 and another two towers by October, 2020. There was no reference to remaining five being completed any time soon.

**18.** It was argued that despite submission of replies categorically stating that the Appellant had sorted out the problem and transferred all shares to a new Promoter and possession of flats to the allottees would be given in a phased manner commencing from October, 2020, the



Appellant has been de-registered. The Secretary, R.E.R.A. by a letter dated 11.7.2019 demanded consent of 2/3rd of the allottees from the Appellant for transferring its share to a third-party and other relevant documents. It has been further argued that the Appellant was not communicated this letter dated 11.7.2019 on account of which, it could not reply in time. Only on receiving the reminder notice dated 8.8.2019, a reply was submitted on 20.8.2019, but the same was not considered by the Authority. It has been argued that in the reply dated 20.8.2019, it was pointed out that 485 buyers out of 533, i.e. more than 2/3rd of the allottees, have submitted the consent to continue with the Project and a request was made to convert the case under Section 15 of the Act and not to de-register the Project. In the two meetings held 26.9.2019 and 27.9.2019, the Authority passed a resolution for de-registering the Project of the Appellant.

**19.** It has been argued that the operative portion of the order dated 30.09.2019 to de-register the Project of the Appellant, and the approved draft of detailed order of the Authority were prepared by some unknown person, the Authority concluded the meetings with a direction to the Secretary, R.E.R.A. to communicate the order under his signature. Neither did the Appellant get any personal nor any oral hearing by the Authority by fixation of date, time and place, nor any detailed order was passed by the Authority regarding revocation of registration of the Project. It was argued that the Agenda of the meeting dated 27.9.2019 clearly shows that no discussion of the reply submitted by the Appellant was undertaken by the

Authority and only a one page (operative portion of the order) was passed by the Chairman of the Authority, while approving the draft of the order prepared by some other person.

**20.** Sri Shobhit Mohan Shukla, on the other hand, has argued that on 17.5.2019, the Authority directed the Promoter to furnish clarification/action plan along with updated list of home buyers, who had opted for ready to move in houses, those who had opted for refund/exit from the Project, and those who had consented to continue in the Project, the cash flow plan to manage the finances for the proposed construction plan and documentary evidence which supported the claim of the Promoter that Rudra Build Well Construction Private Limited had become hundred percent shareholder of the Company. The Appellant submitted its reply on 20.5.2019 saying that Shri Raj Kumar, the Chairman of Rudra Build Well Constructions Private Limited had joined the Board of Directors of the Company and 99.75%, of the shares of the Company had been transferred to him.

**21.** The Authority after considering the reply of the Promoter and with a view to giving it opportunity to comply with the provisions of Section 15 of the Act, passed an order on 11.7.2019. The Promoter was directed to submit within 15 days, the consent for transfer of the Project of the majority of the shareholders supported by their affidavits. Based on consent of not less than 2/3rd of the allottees, a public notice was to be issued thereafter with proper advertisement about date and place of hearing and method for filing objections before the Authority, if

any. The final decision on the show cause notice dated 8.3.2019 was put on hold till the decision on the proposal of the Promoter to be taken by the majority of the home buyers.

**22.** The Promoter did not comply with the order dated 11.7.2019 and keeping in view the conduct of the Promoter, the matter was thoroughly deliberated by the Authority in its meeting dated 26.9.2019 and 27.9.2019, where the Authority came to the conclusion that the Promoter had not given details with documentary evidence as required under the Act and the Rules i.e. under the provisions of Sections 4 and 11 of the Act, and Rule 14 of the Rules on the R.E.R.A. Website. On the website, the Promoter had declared 1.12.2014 as the date of commencement of the Project and 30.11.2019 as the date of completion of the Project. However, only 10% of the work on the Project was done and only two months' time was left to complete the Project as per the date of completion declared on the website. The report of on the spot inspection carried out by the team of Engineers and the facts as were mentioned in the complaints of the allottees clearly made out that the Promoter was detained in jail and for the past two years or more, no construction work was done on the Project. The report submitted by M/s Currie and Brown India Ltd., was also considered where it was stated that the Promoter had diverted Rs.47 Crores collected from the allottees, which amounted to a breach of trust and constituted a criminal offence.

**23.** In view of the deliberation carried out on 26.9.2019 and the conclusions reached from the said deliberations on

27.9.2019, in order to protect the interests of the allottees and to facilitate the remaining work of the Project to be completed as per the provisions of the Act and the Rules, the Authority decided to revoke the registration of the Project with immediate effect and also to proceed under Section 8 of the Act.

**24.** It was argued by Sri Shobhit Mohan Shukla that in the written submissions before the Appellate Tribunal, the Authority also undertook to produce the original records relating to the 22<sup>nd</sup> Meeting held on 27.9.2019 at the time of hearing of the case by the Tribunal. The Authority had noted that although the transfer of shares etc. comes within the domain of Companies Act, still as per Section 15 of the Act, the majority shares of the Project can be transferred only with the *prior written consent of 2/3rd of the allottees and prior approval of the Authority*. The Authority found that the Promoter had transferred majority shares to one Mr. Raj Kumar of Rudra Build Well Construction Private Limited without following the provisions of the Companies Act as well. Such a transfer being against the Companies Act, the name of Mr. Raj Kumar was not even mentioned in the list of Directors of the Company available on the Website of Registrar of Companies.

**25.** The Authority in its meeting dated 26.9.2019 noted several irregularities and directed for framing of a draft order, giving reasons for revocation of registration. In the meeting held on 27.9.2019, the Authority approved the draft order for revocation of registration.

**26.** It was argued by Sri Shobhit Mohan Shukla that the decision with regard to the Appellant had been taken by the Authority as it had been mentioned at Page 353, which is in line with the power of the Authority given to it under Section 7 of the Act and includes revocation of registration of the Appellant; the debarring of the Promoter from accessing the R.E.R.A. website in relation to the project; mentioning his name in the list of defaulters and displaying his photograph on the website and informing all other Real Estate Regulatory Authorities in the country about revocation of such registration; as also freezing the account maintained by the Promoter in relation to the Project in ICICI Bank till further orders.

**27.** The Authority had also taken a decision to constitute a the Project Monitoring Committee under the Chairmanship of the R.E.R.A. Member, Mr. Balvinder Kumar; with the Chief Executive Officer of Greater Noida; and Mr. R.D. Paliwal, a Conciliation Consultant; the Finance Controller of U.P. the Authority; and the Technical Advisor of U.P. the Authority as its Members. This Committee was constituted to suggest ways to the Authority to carry out its obligations under Section 8 of the Act for completion of the Project consequent upon revocation of registration of the Promoter.

**28.** Further, the Authority in discharge of its mandate under Section 8 of the the Authority Act, issued a public notice on 7.12.2019, calling upon the Association of allottees to submit a viable proposal for completion of the remaining development work of the Project. A public notice was issued after expiry of two months' period

stipulated for filing the Appeal before the Tribunal. The Sampada Livia Buyers Welfare Association submitted a proposal to carry out the remaining development work of the Project, which was thoroughly examined by the Project Advisory Monitoring Committee appointed for such purpose. The Committee found the proposal of the Buyers' Association to be feasible and the report of the Committee was considered by the Authority in its meeting held on 02.06.2020 and it permitted the Sampada Livia Buyers' Association to carry out the remaining development work of the Project as per the terms and conditions laid down in its order dated 6.6.2020.

**29.** An authorisation letter was issued on 26.6.2020. Another letter was issued by the Authority to the Promoter directing him to handover the possession of the Project along with the structures and entire assets standing thereon to the Association.

**30.** The Authority had also proposed policy guidelines to be followed by the Authority to facilitate completion of the Project under Section 8 of the Act and the Government has subsequently approved the proposal of the Authority and issued policy guidelines to be followed in all such matters by a Government Order dated 26.6.2020.

**31.** It has been submitted by Sri Shobhit Mohan Shukla that the Appellant had earlier taken the plea that the order passed by the Authority under Section 38 had been passed by a single Member, which was turned down by the High Court in Writ-C No.3259 of 2020: *PSA Impex Private Limited versus State of U.P. and others*, decided on 6.2.2020. In yet another writ petition, namely, Writ-C

No.2248 of 2020: *M/s KDP Build Well Private Limited Versus State of U.P. and four others*, the High Court has again turned down the plea of the builder that the order passed by the Authority had, in fact been passed by the single Member, which was without jurisdiction. It has been held by the Division Bench of this Court that the Authority has the power to take decision authorising not only the Secretary to communicate the decision of the Authority, but also a single Member to decide cases.

**32.** Sri Shobhit Mohan Shukla has further emphasized that in the instant case, the decision had been taken by the Authority, not by a single Member, and it had only been communicated by the Secretary. The Agenda for the 22nd Meeting held on 26.6.2019 has also been filed at Page 342 of the paper book. It contains ten Items of which, Agenda Item No.22.1 relates to the Appellant, M/s. PSA Impex Private Limited.

**33.** In rejoinder to the arguments of the counsel appearing for the Appellant, Sri Sudeep Seth, learned Senior Counsel appearing for the Appellant has read out the last sentence on Page 343 of the paper book, which is as follows:

*"uparyukt ullikhit paristhitiyon mein pradhikaran ke samaksh prakaranvistririt vichar vimarsh evam nirnay hetu evam prastawit aadesh ke aalekh sahit prastut hai."*

**34.** It has been argued by the learned Senior Counsel that the draft of the order to be passed by the Authority

had been prepared by the Secretary and it was placed before the Authority only for its approval.

**35.** Sri Shobhit Mohan Shukla, on the other hand, has read out Pages 352 and 353 of the paper book to emphasize that Agenda Item may have been prepared by the Secretary, the actual deliberation on such Agenda Item was done on 26.9.2019 and 27.9.2019 by the Authority. The decision on each of the Agenda Items was taken thereafter by the Authority itself.

**36.** Learned Senior Counsel to substantiate his arguments has relied upon the following case laws:

(i) *Sahni Silk Mills Pvt. Ltd. vs. Employees' State Insurance Corporation*; 1994 (5) SCC 346.

(ii) *State of West Bengal vs. Subhash Kumar Chatterjee*; (2010) 11 SCC 694.

(iii) *Automotive Tyre Manufacturers Association vs. Designated Authority and others*; (2011) 2 SCC 258.

(iv) *K. Arockiyaraj vs. Chief Judicial Magistrate and another*, 2013 SCC Online Madras.

(v) *Rajendra Pratap and others vs. Sadasiva Rao KTSSK Ltd.*; (2012) 4 SCC 781.

(vi) *Jagannath Temple Managing Committee vs. Siddha Matha*.

**37.** This Court has carefully perused the order dated 30.09.2019 issued by Real Estate Regulatory Authority. It is apparent that in the first two pages, the Authority has referred to 24 complaints being filed by home buyers under Section 31 of the Act regarding various irregularities and violation of the provisions of the Act and the Rules on the part of the Promoter, which have been summarised



and mention has also been made that despite notices having been sent through e-mail, the Promoter did not respond to the notices. Later the complainants informed the Real Estate Regulatory Authority that the Promoter was in jail. Taking into account the complaints under Section 31 of the Act, Real Estate Regulatory Authority examined the information uploaded by the Promoter on the website till 25.02.2019. The information has to be provided under Section 11 and Rule 14 and continuous and regular updation of such information on UP Real Estate Regulatory Authority web page has to be done by the Promoter. No Quarterly Progress Report had been uploaded. Taking into account the lapse on the part of the Promoter, the Authority had asked its technical advisor i.e. the Chief Engineer to constitute a team and to make a spot inspection of the site and submit a report. The spot inspection of the site was done and the report submitted on 26.02.2019 along with photographs.

**38.** In the BBA, the date of commencement of the Project was given as 01.12.2014. In four years i.e. up to February, 2019, only 10% of the structural work was done and it was evident that there was no possibility of the Project being completed and handed over to the buyers in time. There was also the possibility of diversion of the allottees' money. Hence, the Authority asked the Chief Executive Officer of Greater Noida to get an Audit conducted of the Project. The Auditors, M/s Currie and Brown Ltd, informed that about Rs.47 crores had been diverted by the Promoter.

**39.** In paragraph-7 of the order dated 30.09.2019, the reasons for issuing show-cause notice for revocation of registration have been given. The Authority found on the basis of complaints made by the buyers, and on the basis of incomplete information uploaded by the Promoter on UP Real Estate Regulatory Authority web page, and on the basis of the report of spot inspection and photographs of the Project, and on the basis of the Audit report, that the Promoter having registered the Project was not interested in completing the same. The Auditors' report also showed that the Promoter had diverted several crores of allottees' money. Hence conditions mentioned under Section 7(1) existed for taking action under Section 7(2) of the Act. The Promoter had committed a default on all counts as mentioned under sub-section 1 of Section 7 and its various clauses. There was a *prima facie* satisfaction that the Promoter was indulging in several fraudulent practices. The show-cause notice was therefore issued on 08.03.2019 asking the Promoter to submit his reply within 30 days.

**40.** In the order dated 30.09.2019, the Authority has referred to a personal hearing/meeting with the Promoter held on 25.04.2019, in paragraph-13. Therefore, the argument of the learned Senior Counsel regarding personal hearing having not been given and the order having been passed without following the principles of natural justice fails.

**41.** In paragraph-14 of the order dated 30.09.2019 there is reference of majority shares of the earlier Promoter being transferred to the new Promoter, but the same had

been done in contravention of Section 15 of the Act. Section 15 of the Act imposed an obligation on the Promoter in case of transfer of a Real Estate the Project to a third party, to obtain prior written consent from 2/3 of the allottees, and also to obtain prior written approval of the Authority, and on the transfer or assignment being permitted by the allottees and the Authority under sub-section 1, the intending Promoter was required to independently comply with all the pending obligations under the Act and the Rules and Regulations and as per the Agreement for Sale entered into by the erstwhile Promoter with the allottees. The transfer or assignment of assets and liabilities would not result in extension of time to the intending Promoter to complete the real estate the Project and he was required to complete the same as per the Builder Buyer Agreement.

**42.** In *U.P. Avas Evam Vikas Parishad and another Versus Friends Cooperative Housing Society Limited and Another* reported in **(1995) Supplement 3 SCC 456**, the Supreme Court observed that there is a distinction between permission or "prior approval" and "approval." The difference between approval and prior approval or permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted still validates the previous act. It is not necessary to obtain previous consent before taking any action and its approval would mean that such action is validated.

**43.** Where a statute uses the term prior approval,

anything done without prior approval is a nullity; where a statute employs the expression approval, however, in such cases subsequent ratification can make the act valid. In some cases, the word 'prior' and 'previous' may be implied if the contextual situation or circumstances justify such reading otherwise if an act requires only approval the action holds good until it is disapproved. Since Section 15 of the Real Estate (Regulation and Development) Act required prior approval and not simply approval and there was no prior approval either of the allottees or of the Authority when shares of Appellant was transferred to M/s Rudra Builders Pvt. Ltd, the said transfer became vitiated and could not be countenanced.

**44. Section 34 of the Act** provides for the functions of the Authority and enumerates the same in several Sub-clauses from a to h quoted hereinbelow:-

**"34.** *The functions of the Authority shall include—*

*(a) to register and regulate real estate projects and real estate agents registered under this Act;*

*(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;*

*(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters*

*including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;*

*(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;*

*(e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;*

*(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;*

*(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;*

*(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act."*

**45.** This Court has also carefully perused the order of the Tribunal impugned in this Appeal dated 20.10.2020. The Tribunal has referred to the brief facts of the case as mentioned by the Appellant in its Appeal in Paragraphs-1

and 2 of its order. It has also referred to the reply/written submissions in Paragraph 3. Keeping in view the several replies of the Promoter and his representatives, the matter was thoroughly deliberated by the Regulatory Authority in its meeting dated 26.9.2019 and 27.9.2019 and the draft of the impugned order dated 30.9.2019 was approved by the Authority. The Secretary, R.E.R.A. had only communicated the decision of the Authority for which, he was duly authorised. In Paragraph 4 of its judgment, the Tribunal has considered the issues raised by the learned counsel for the Appellant in the memo of the Appeal. It has referred to the fact that although several grounds were written in the Appeal, the counsel for the Appellant during the course of hearing had confined his whole argument for assailing the order passed by the the Authority principally on the grounds; (a) that the Authority's order was passed without jurisdiction by the Secretary of the Authority; (b) It was in violation of the provisions of Sections 20 and 21 of the Act; (c) the order was passed without considering the replies preferred by the Appellant; (d) no reasons were assigned by the Regulatory Authority for taking *suo moto* action under Section 7 of the Act; (e) no authorisation was done by the Regulatory Authority in favour of the Secretary to pass the impugned order; (f) in none of the complaints, the relief of revocation of the registration of the Promoter was sought; (g) the Appellant-Company had changed its Promoter with the approval of 2/3rd of the allottees and failure to take prior approval of the Regulatory Authority under Section

15 of the Act does not warrant the de-registration of the Project.

**46.** The Tribunal thereafter summarised the facts as culled out from the information supplied by the Appellant in the grounds of the Appeal and the Regulatory Authority in its written submissions, and also examined the record of the case sent from Gautam Buddha Nagar.

**47.** The Tribunal has mentioned these facts in Paragraph Nos.5, 5.01, 5.02, 5.03 of its order that the Project was registered as an ongoing the Project in the month of August, 2017 by the Promoter M/s. P.S.A. Impex Private Limited in the name of Sampada Livia. The commencement date was given as 01.12.2014 and the proposed completion date was 30.9.2019. The original commencement date of construction was not uploaded. The Promoter had provided very few details about the Project on its web-page on U.P.R.E.R.A. Website and only the cost of the Project was given. The geographical location, details like longitude and latitude were not provided. The development work and the structural construction carried out was also not given in the description. The column regarding details of the land was left blank. The details of encumbrances etc. were also not provided. The approved map was not uploaded. The affidavit of the Promoter under Section 4(2)(1) was also not uploaded. There was no certificate of the Chartered Accountant, no certificate of the Engineer and no certificate of the Architect. The ownership documents of the land were not uploaded by the Promoter. The annual audited balance sheets were also not uploaded. No

quarterly progress report was uploaded. REG 5 Form as provided in the Regulations was also not uploaded. The floor plans of all types of flats were not provided in the format required and only unit plans were uploaded, which were also not approved by any Competent Authority. The uploaded unit plans only mentioned about the super area of the unit and the information was not as per Section 4 of the Act read with Rules 3 and 14 of the Rules, i.e. in violation of the transparency provisions. Further as per the Regulatory Authority records, the Promoter was given opportunity to provide/upload details through various letters issued in pursuance of order dated 7.5.2018. The copy of the Circular dated 7.5.2018 of the Authority was sent to the Promoter on its Email address registered with the Regulatory Authority and through another letter dated 14.12.2018, opportunity was provided to complete all information on the website. A penalty of rupees two lacs was imposed upon the Promoter by the Regulatory Authority by its order dated 31.8.2019 for failure to update quarterly progress report. The Promoter neither updated the quarterly progress report nor deposited the penalty.

**48.** In the complaints filed by 24 allottees of the Project under Section 31 of the Act, it was alleged that the Promoter had promised to hand over possession of the units by the end of 2017 and to pay the Bank's EMIs in case of failure to do so. The Promoter having diverted and misappropriated the money deposited by them was now not traceable and no work was going on at the site. The Tribunal considered the inspection report dated 26.2.2019



of the Technical Advisor, examined all the records as also the report submitted by M/s. Currie and Brown. As per the Auditor's report, the total sold units were 355 and unsold units were 371. The amount received from the sold units was Rs.94 Crores out of which Rs.5 Crores was refunded to the allottees for cancellations. As per the assessment of the Auditors, the percentage cost incurred should be 15%, whereas the developers had claimed percentage cost incurred as 29%, and there were several other discrepancies with regard to structural construction and the estimated cost of such construction. As per the assessment of the Auditors, only 15% of the construction was completed and the Promoter had diverted about Rs.47 Crores of funds received from the customers.

**49.** The Tribunal in its judgment has also referred to the initiation of action under Section 7 for revocation of registration of the Project in great detail in Paragraph-6 along with its several sub paragraphs. It has considered in detail the provisions of Section 4 read with Rules 34 and 14 of the Rules, and the requirement under the Act and the Rules for the Promoter to upload exhaustive details on the website of the Regulatory Authority on its web page. Detailed mention of Section 4 and the relevant Rules has been made by the Tribunal in its order. Even basic information like allotment letters, Lease Deeds, Sanctioned Plan, details of encumbrances, details of land and its ownership was not provided by the Promoter.

**50.** The Tribunal has considered the provisions of Section 7 thereafter and the requirement under the Act is that at least 70% of the amount received from the allottees

should be utilised towards cost of construction and land cost, and the amount so collected should be deposited in a separate Escrow Account to be withdrawn only after it is certified by an Engineer, and Architect and a Chartered Accountant, in proportion to the percentage of completion of the Project and the balance 30% of the amount can be utilised for marketing cost and administrative expenses etc. The Act further casts duty upon the Promoter to submit audited accounts within six months of the end of every financial year to ensure the compliance of the various provisions of the Act.

**51.** As per the Audit Report, the Promoter had collected about Rs.94 Crores from buyers and paid approximately Rs.10 Crores to Greater Noida Authority towards land charges and spent Rs.33 Crores on construction and refunded Rs.5 crores towards refund for cancelled units. No certificate of the Chartered Accountant or the Engineer or the Architect was submitted with respect to cost incurred on the Project and the amount collected from the customers. The Auditors had also mentioned in the report that the builder had not paid the dues of Greater Noida Authority to the tune of Rs.30.8 Crores and had diverted about Rs.47 Crores from the Project. The Promoter had also created encumbrances by way of loan to the tune of Rs.5 Crores.

**52.** The Tribunal has observed that Section 7 of the Act empowers the Authority to revoke the registration granted under Section 5 in three circumstances, firstly on a complaint, secondly, on the recommendation made by the Competent Authority and thirdly, even Suo Moto. It has

only to record its satisfaction that the Promoter has made a default in doing anything required by or under the Act or the Rules or Regulations made thereunder, or the Promoter has violated the terms and conditions of approval given by the Competent Authority; or the Promoter is involved in any kind of unfair practice or irregularities which includes making any statement or falsely representing that the services are of a particular standard or that the Promoter has approval or affiliation, or makes a false or misleading representation concerning the services offered or the Promoter permits publication of any advertisement in a Newspaper or otherwise, of services that are not intended to be offered or indulges in any fraudulent practices.

**53.** The only requirement under Section 7(2) of the Act is that the registration shall not be revoked unless the Authority has given the Promoter not less than 30 days' notice in writing stating the grounds, on which it is proposed to revoke the registration and has considered any cause shown by the Promoter within the period of that notice, against the proposed revocation.

Under sub-section (3) of Section 7, the Authority is empowered either to revoke the registration or it may permit the same to remain in force, subject to such terms and conditions as it thinks fit to impose in the interest of the allottees. Upon revocation of the registration, the Authority shall debar the Promoter from accessing its website in relation to that the Project, and specify his name in the list of defaulters and also inform other Real Estate Regulatory Authorities in the country about such a

revocation of registration; The Authority shall also facilitate the remaining development works to be carried out in accordance with the provisions of Section 8; The Authority shall direct the bank holding the Projects bank account, to freeze the account and thereafter take such further necessary actions towards facilitating the remaining development works; and Authority may do such acts as to protect the interest of the allottees or in public interest, issue such directions as it may deem necessary. The Tribunal held that the Authority had rightly passed the order dated 30.09.2019.

**54.** Under Section 34 Sub-clause (f), it has to ensure the compliance of the obligations cast upon the Promoters, the allottees and the real estate agents under the Act and the Rules and Regulations made thereunder. Under Section 38 the Powers of the Authority have been enumerated where the Authority shall have the power to impose penalty or interest in regard to any contravention of obligations cast upon the Promoters, the allottees and the real estate agents under the Act or the Rules and the Regulations made thereunder.

**55.** Section 38 only provides that the Authority shall be guided by the Principles of Natural Justice and subject to other provisions of the Act and the Rules made thereunder, Authority shall have power to regulate its own procedure. Thus even under section 38 where the Authority deals with complaints and imposes penalty alongwith interest etc., the Authority has been given the power to regulate its own procedure and is not bound by

the procedure prescribed under the Civil Procedure Code or any other Civil Law.

**56.** The learned counsel for the Appellant has placed reliance on the observation of the Supreme Court in ***Sahni Silk Mills Private Limited and Another Vs Employees' State Insurance Corporation*** reported in **1994 (5) SCC 346**, and has read out several paragraphs to argue that there cannot be any Sub delegation or even delegation of quasi judicial function. This Court has perused the judgement rendered in ***Sahni Silk Mills (Supra)***, it is apparent therefrom that the Appellants therein had challenged the recovery notices issued by Regional Director of ESI Corporation for delayed payment of Contribution in Employees State Insurance on behalf of the employer. It was argued that such recovery orders could have been issued either by the Corporation or by the Director General of the Corporation and not by Regional Directors. Under Section 85-B, the Corporation can recover from the employer such damages as it may think fit, whenever an employer fails to pay the amount due towards contribution or any other amount payable under the Act subject to reasonable opportunity of being heard being given to the employer. Under section 94A the Corporation may delegate any of its powers to any officer or Authority subordinate to the Corporation in relation to such matters and subject to such conditions if any, as may be specified also by the Corporation.

**57.** In exercise of power under Section 94-A the Corporation delegated its power to impose and recover damages from the Employees and by a Resolution dated

28.02.1976 provided that for the purpose of levy of damages the Director General or any other Officer authorized by him may levy and recover damages from the employers. It was argued that the power of the Corporation was delegated to the Director General but the Director General could also specify any other officer or Authority subordinate to it to exercise that power. Such other officer had neither been named nor had been described by designation in the Resolution of the Corporation dated 28.02.1976. It was argued that it is essential that the delegated power should be exercised by the Authority upon whom it is conferred and by no one else.

**58.** The Court observed that Section-94A only conceived direct delegation by the Corporation to different officers or Authorities, there was no scope for such delegate to sub-delegate that power. It observed that the power under Section 85-B to impose damages is quasi judicial in nature and it requires a reasonable opportunity of being heard to be given to the Employers. Once objections are filed they have to be considered and thereafter alone an order of recovery of damages has to be passed.

**59.** The Supreme Court observed that if Section-94A had a provision enabling the Corporation not only to delegate its power to any other officer or Authority subordinate to the Corporation, but also to empower such officer or Authority in its own turn to authorize any other officer to exercise that power, the Resolution could have been sustained on the principle indicated in the cases of ***Harishankar Bagla Versus State of Madhya Pradesh***

**AIR 1954 SC 465** and **Barium Chemicals Ltd. and another Versus Company Law Board and others** reported in **AIR 1967 Supreme Court 295**. However, the clear indication of the language of the Section 85-B was such that the delegation by the Corporation was only to the Director General. There was no further liberty to the Director General to authorize any other officer to exercise the power under Section 85B. It held that part of the Resolution of the Corporation which permitted the Director General to further delegate his powers to Subordinate Officers as ultra-virus of its power under Section 94A.

**60.** However, the Court observed in Paragraph-5 that in the present administrative set up extreme Judicial aversion to delegation cannot be carried to an extreme. A public Authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorized either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by the statutory authorities the maxim "*delegatus non-protest delegare*" is not being applied specially when there is a question of exercise of administrative and discretionary Power. It observed in Paragraph-6 that by now it is almost settled that the Legislature can permit any statutory Authority to delegate its power to any other Authority.

**61.** Learned counsel for the Appellant has also relied upon **Automotive Tyre Manufacturers Association vs. Designated Authority and others, 2011 (2) SCC 258**, wherein the Supreme Court was considering a bunch of Civil Appeals under Section 130 E of the Customs Act

arising out of a common judgement and order passed by The Customs Excise and Service Tax Appellate Tribunal, where the Appeals filed by the Appellants were dismissed and levy of anti-dumping duty imposed under Section 9 of the Customs Tariff Act was affirmed. The learned senior counsel for the Appellant has placed reliance upon paragraphs 76 and 80 to 84 of the judgement to say that even if the Statute does not provide for personal hearing to be given to a party whose interest is being affected, such personal hearing has to be read into the language of the Act as the Rule of Law requires fair play in action and fair play in action means that the Rules of natural justice be followed which are summarised as (1) No one shall be a judge in his own cause and (2) No one shall be Condemned unheard.

**62.** The Supreme Court observed that it is not always easy to draw a line demarcating and administrative decision from a quasi judicial decision. Nevertheless, the aim of both a quasi-judicial function as well as an administrative function is to arrive at a just decision. The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power, regard must be had to (1) the nature of the power conferred; (2) the person or the persons on whom it is conferred; (3) the framework of the law conferring that power; (4) the consequences ensuing from the exercise of that power; and (5) the manner in which that power is expected to be exercised. The Supreme Court held that whether the



power is to be exercised administratively or quasi judicially is immaterial as the Authorities are expected to act fairly in each case.

**63.** The principles that have to be kept in mind are the express language and basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which power is conferred on the final effect of the exercise of the power. It is not always easy to draw a line demarcating an administrative decision from a quasi judicial decision. Nevertheless, the aim of both quasi judicial function as well as other administrative function is to arrive at a just decision.

**64.** The learned counsel for the Appellant has also placed reliance upon ***State of West Bengal Vs. Subash Kumar Chatterjee and others, 2010 (11) SCC 694***, and has referred to paragraph 8 to 24, 26 and 27, to say that the power conferred upon the Administrative Tribunal under the Act flows from Article 323 of the Constitution and therefore, the Administrative Tribunal cannot delegate the power to decide, and the dispute regarding pay scales was required to be decided exclusively by it and it could not have shifted its responsibilities by remitting the original application made to it to the Chief Engineer. Such delegation is void ab initio and such practice by the Administrative Tribunals was strongly disapproved by the Supreme Court. The Supreme Court observed that the practice adopted by the Tribunals directing applications filed before them to be treated as representations before the executive authorities for their decision on merits should be deprecated. The Tribunals cannot delegate their

essential function and duty to decide service related disputes. In the aforesaid case, the Administrative Tribunal was considering a dispute regarding pay-scale and parity sort by one group of employees with that of another.

**65.** The learned counsel for the appellant has also relied upon a Full Bench decision of the Madras High Court in the case of ***K. Arockiyaraj V Chief Judicial Magistrate and Another*** reported in **2013 SCC online Madras 2576**, and has read out Paragraph-16 thereof. The writ petitioners had challenged the power of the Chief Judicial Magistrate to pass orders under Section- 14 of the SARFAESI Act as the provision empowered only the Chief Metropolitan Magistrate and District Magistrate to exercise the powers under the provision. The Full Bench held that under section 14 of the SARFAESI Act, the language is very clear and unambiguous, it states that the Chief Metropolitan Magistrate or the District Magistrate can help the secured creditors in taking possession of the secured assets. In cities where there is no Chief Metropolitan Magistrate the secured creditors can seek the assistance of the District Magistrate and not the Chief Judicial Magistrate. However, the said judgement is no longer good law in view of the Supreme Court judgement rendered in Civil Appeal No.6295 of 2015 dated 23.09.2019.

**66.** Learned counsel for the Appellant has placed reliance upon ***Rajendra Prataprao and Others Versus Sadashivrao Mandalik K.T.S.S.K. Ltd. and Others*** reported in **2012 (4) SCC page 781**, and has read out Paragraph Nos. 1, 5 to 9, 11 to 15 and 19. It was held that

if Statutory Appeal is made to the State Government under the provisions of Maharashtra Cooperative Societies Act, there is a provision for the Minister Incharge of the Department to hear such a case and decide and there can be no delegation of the function to the Secretary of the Department. When any Minister is likewise unable to discharge his functions, the Chief Minister may direct any other Minister to discharge all or any of his functions. When the Minister for Cooperatives had expressed his inability to hear the appeal the Chief Minister could have directed any other Minister to decide the same and not the Secretary of the Department.

**67.** The learned counsel for the Appellant has also placed reliance upon ***Jagannath Temple Managing Committee Versus Siddha Math and Others*** reported in **2015 (16) SCC 542**, and referred to Paragraphs 58.2, 62, 63 and 64 to substantiate his argument. In the said case the Supreme Court was considering the Orissa Estates Abolition Act, 1951 enacted to protect the interest of cultivators and to do away with the evils of Zamindari system by abolishing intermediaries and the effect thereof on the properties of Shri Jagannath temple which were governed by a special enactment, Shri Jagannath Temple Act, 1955, where all the endowments of Jagannath Temple Puri stood statutorily vested with its Temple Committee. Under an order of the Tehsildar one of such endowments was settled in favour of the respondent Math which in fact contravened Sections 5 and 30 of Shri Jagannath Temple Act, on the ground that by way of an Amendment in 1974, the Orissa Estate Abolition Act, became applicable to

endowments made to temples also. The Supreme Court held that the intention of the 1974 amendment could not have been to render the entire 1955 Act meaningless. The Supreme Court held that the order passed in 1982 under the Orissa Estate Abolition Act in favour of the respondent Math had been passed by the Tehsildar Puri, whereas Section 8-A of the Act clearly provides that the claims have to be filed before the Collector. Although the learned Senior Counsel appearing for the respondents had contended that the definition of "Collector" in the of Orissa Estate Abolition Act, 1951, is an inclusive one, and therefore the Tehsildar has Authority to determine the rights of the respondent. Such an argument was rejected by the Supreme Court by observing that the proceedings under section 8A of the 1951 Act were quasi-judicial in nature; the Supreme Court observed in Paragraph 63 that it is a well settled law that quasi-judicial function cannot be delegated and therefore the inclusive definition of 'Collector' under Section 2D of the Orissa Estate Abolition Act, 1951, to also include the 'Tehsildar', can be applied only in so far as it pertains to the discharge of administrative powers of the Collector like service of notices under the Orissa Estate Abolition Act, or like inspecting and submitting a report of the disputed property. The Tehsildar, however cannot perform the quasi judicial function of settling claims under Sections 6 or 7 or 8 of the Act.

**68.** It is clear from the perusal of the Sections 7(1), 7(2) and 7(3) as stated hereinabove, that the Authority is empowered to revoke the registration of a builder on

finding the builder guilty of any of the offences as mentioned in sub-section (1), and sub-clauses thereof. The only requirement under sub-section (2) is for the Authority to give a 30 days' notice of the proposed action to the builder and if the builder submits his explanation within 30 days period, to consider the same and then pass appropriate orders. There is no requirement of giving repeated notice or giving unlimited time at the request of the Promoter. There is also no requirement of giving personal/oral hearing. The Rules of natural justice are not a straight jacket formula that have to be adopted in all cases, even de hors the intent of the Legislature and in violation to the specific and clear language of the Act. Moreover, as has been observed hereinabove, the appellant was given a personal hearing on 25.04.2019.

**69.** It has been argued that as per the provisions of Sections 35, 36, 37, 38, 39, 56 and 79 of the Act and Rules 22 and 24 of the Rules, the Authority is a Court or at least a quasi judicial Authority and therefore, cannot delegate its power to decide to the Secretary or even a single Member of the Authority

**70.** Under Section 35, the Authority has power to call for information, and conduct investigation and also appoint one or more persons to make enquiry in relation to the affairs of any Promoter or allottee or Real Estate Agent. The Authority has also been given the same powers as are vested in the Civil Court in respect of discovery and production of books and of accounts and other documents, and other matters prescribed under the Rules and Regulations.

**71.** The Authority under Section 36 has the power during the course of an enquiry, to pass interim orders restraining any Promoter or allottee or a Real Estate Agent from carrying on any act until the conclusion of such enquiry or until further orders, which may be considered prejudicial to such enquiry.. Power of the Authority to issue directions is further emphasised under Section 37 of the Act. The Authority can under Section 38 impose penalty or interest in regard to contravention of obligations cast upon the Promoters, the allottees or the Real Estate Agents. The Authority in imposing such penalty or interest shall be guided by the principles of natural justice, but it shall have power to regulate its own procedure. The Authority can in certain cases make *suo moto* reference to the Competition Commission of India.

**72.** Under Section 39, the Authority may at any time within a period of two years from the date of an order, rectify any mistake apparent from the record and rectify or amend its order, if the mistake is brought to its notice by the parties, however, such amendment shall not be carried out in respect of an order against which an Appeal has been preferred under the Act. Also, while rectifying any mistake apparent from the record, the Authority cannot substitute or amend the substantive part of the order, which means simply that it cannot by way of an amendment render it a nullity.

**73.** Under Section 56, the applicant or the Promoter may either appear in person or authorize one or more Chartered Accountants, Company Secretaries, or Cost Accountants or Legal Practitioners or any Officer or Agents

to represent its case before The Tribunal or the Regulatory Authority or the Adjudicating Officer, as the case may be.

**74.** Under Section 79, 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 the Act to determine, nor any injunction shall be granted by any Court or Authority in respect of any action taken or proposed to be taken in pursuance of a power conferred by or under the Act.

**75.** Under Rule 22, the Authority in addition to the powers specified under sub-section (2) of Section 35, shall also have the additional power requiring a Promoter, allottee or Real Estate Agent to furnish in writing such information or explanation or produce such documents within such reasonable time as it may consider necessary to decide a case; it may also requisition any public record or document or its certified copy from any office. The Authority may call upon such experts or consultants from the fields of Economics, Commerce, Accountancy, Real Estate, Competition, Construction, Architecture or Engineering or from any other discipline as it deems necessary, to assist the Authority in the conduct of any enquiry or proceeding before it. The Authority may also prior to the grant of registration, enquire into the nature of rights and interests of the Promoter, the extent and location of the area of land, the layout plan of the Project, financial and technical and managerial capacity of the Promoter to develop the Project; plan regarding the development works to be executed in the Project; and the

conformity of development of the Project with the neighbouring areas. The Authority may, in the interest of allottees, also enquire into the payment of amounts imposed as penalty, interest or compensation paid or payable by the Promoter in order to ensure that the Promoter has not withdrawn the said amount from the account maintained by it under Section 4; or use any amount that was paid to such Promoter by the allottees for that Real Estate Project for which the penalty, interest or compensation is payable or any other Real Estate Project; or recover the amount paid as penalty, fine or compensation from the allottees of the relevant Real Estate Project or any other Real Estate Project.

**76.** Under Rule 24, every order passed by the Adjudicating Officer, Regulatory Authority or the Appellate Tribunal, as the case may be, shall be enforced by the Adjudicating Officer, Regulatory Authority or the Tribunal in the same manner as if it was a Decree or order made by the principal Civil Court in a Suit pending therein. The Regulatory Authority or the Appellate Authority in the event of its inability to execute the order, may send this order to the principal Civil Court to execute it within the local limits of whose jurisdiction the Real Estate Project is located or person against whom the order has been issued, actually resides or carries on business or personally works for gain.

**77.** In view of the Sections and Rules cited hereinabove, can it be said that R.E.R.A. is a Court or a Quasi-Judicial body and has to act Quasi-Judicially when taking a decision under Section 7 of the Act?



**78.** In *Messers Supertek Ltd versus Subrata Sen*, Second Appeal (Def) 341 of 2018, decided on 01.10.2018 by a Co-ordinate Bench of this Court was deciding a Reference under Section 5 of the Court Fee Act.

**79.** The Court has observed that the proceedings before the Real Estate Regulatory Authority are summary in nature to which the Code of Civil Procedure is not applicable. The order of the Appellate Tribunal is not a "decree" under Section 2(2) of the C.P.C. This court considered the objects of Real Estate (Development and Regulation) Act and observed that it is a special Legislation which provides for the regulation and promotion of Real Estate by promoting sale of Real Estate in an efficient and transparent manner. It proposes to protect the interest of the purchaser of the real estate and to provide a speedy adjudicating mechanism of the disputes in matters connected therewith. In substance while promoting real estate, it endeavours to protect and safeguard the interest of the investors in real estate. It is, therefore, a kind of beneficial Legislation for the protection of the investor/purchaser of the real estate. The Appellate Tribunal is not a Court subordinate to the High Court and the order of the Appellate Tribunals is not a "decree" as defined under Section 2(2) of the C.P.C. which means "a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit".

**80.** The Court observed that in the definition of decree as given under the C.P.C., three words are important namely; *adjudication*, *court* and *suit*. The suit commences with the

plaint and ends when the judgement or order is pronounced which culminates into a decree, the order of the Tribunal does not conform to any of the above requirements of a decree as it is rendered on a complaint and is not the result of adjudication in a suit. The proceeding before Real Estate Regulatory Authority is not in the nature of a suit instituted by filing a plaint. Real Estate Regulatory Authority derives jurisdiction on the complaint. Proceedings before it are not governed by strict Rules of Evidence as in a civil Suit. The order passed by Real Estate Regulatory Authority or by the Appellate Tribunal on Appeal arising out of such proceedings maybe executable as a decree of a civil court but the Appellate Tribunal will have all the powers of the civil court only in respect of execution of its orders. Sometimes, it may also send its orders to a civil court having local jurisdiction for execution in case the person or the property of the Promoter or builder or real estate agent is situated within the local jurisdiction of that Civil Court.

**81.** The Supreme Court has observed in *Paramjit Singh Patheja v I.C.D.S Ltd.* **JT 2006 volume 10 Supreme Court 41**, in paragraph 36 that a legal fiction must be limited to the purpose for which it was created. In applying a legal fiction, one should not travel beyond the limits for which it has been created. Therefore the order of the Tribunal can only be considered to be a decree to facilitate its execution. It is otherwise similar to Income Tax Appeals filed under Section 260 of the Income Tax Act, which are not to be characterised as Second Appeal even if they are arising out of an Appellate order.

**82.** This Court in *Messers Supertek Ltd* (supra), was considering whether orders passed by the Tribunal could be said to be a “decree” and found that unlike regular Civil Court’s adjudicating civil suits, the decision on a complaint by an allottee against a Promoter or a real estate agent cannot be said to be arising out of a plaint in a Suit, wherefore the order of the Tribunal cannot be termed to be a “decree”.

**83.** This Court shall now consider whether an order passed by the Authority under Section 7 of the Act of 2016 can be considered to be a judicial or quasi judicial adjudication. In *Sri Sitaram Sugar Company Ltd. and another vs. Union of India and others*, **1990 (3) SCC 223**, a Constitution Bench of the Supreme Court was considering the question of determination of price of levy sugar by the Central Government in the exercise of its powers under sub-section (3i) of Section 3 of the Essential Commodities Act, 1955. The petitioners’ counsel argued that the expression “determine” used in sub-section (3c) indicates that the order to which the expression refers is quasi judicial. The Supreme Court observed in paragraph-32 of its judgement as follows:- *“judicial decisions are made according to law while administrative decisions emanate from administrative policy. Quasi judicial decisions are also administrative decisions, but they are subject to some measure of judicial procedure, such as rules of natural justice....”*.

**84.** A judicial enquiry investigates, declares and enforces liabilities as they stand on the present or past facts and under law supposed already to exist. A quasi-judicial order

emanates from adjudication which is part of the administrative process resembling a judicial decision by a court of law. Adjudication operates concretely upon individuals in their individual capacity, as per Bernard Schwartz in "Administrative Law".

**85.** The Constitution Bench referred to *Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation* 1948 (1) Kings Bench 223, to observe that a repository of power acts '*ultra vires*', when it acts in excess of his power in the narrow sense, or when he abuses his power by acting in bad faith, or for an inadmissible purpose, or on irrelevant grounds, or without regard to relevant considerations, or with gross unreasonableness.

**86.** In *State of Himachal Pradesh vs Raja Mahendra Pal*, **1999 (4) SCC 43**, the Supreme Court was considering the question whether the pricing committee constituted by the Himachal Pradesh Government for determining the price of forest produce with respect of transactions between the Government and Himachal Pradesh Forest Corporation can be said to be a quasi-judicial body, whose decisions are binding not only on the Government and the Himachal Pradesh Forest Corporation but also between the Government and the respondent who was a Zamindar holding the Jagir of Kulehar forest.

**87.** The Court observed that quasi judicial acts are such Acts which mandate an officer the duty of looking into certain facts not in a way in which it is specially directed but after exercising a discretion, in its nature judicial. The exercise of power by such Tribunal or authority contemplates the adjudication of rival claims of persons by

an act of the mind, or judgement upon the proposed course of official action for the consequences of which the official will not be liable, although his act was not well judged. A quasi-judicial function has been termed to be one which stands midway between a judicial and an administrative function. The primary test as to whether the authority is alleged to be a quasi judicial one is whether it has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in the affirmative, the authority would be deemed to be quasi-judicial, and if the reply is in the negative, it would not be. The dictionary meaning of the word "quasi" is "not exactly."

**88.** It follows, therefore, that an authority is described as quasi-judicial when it has some of the attributes or "trappings" of a judicial function but not all. The Court relied upon judgement rendered in *Province of Bombay vs. Kusaldas S. Advani and others*, AIR 1950 Supreme Court 222, where the Court had laid down a test for ascertaining whether the action taken by a statutory body was a quasi-judicial act or an administrative act. The Court referred to English decisions to say that whenever any body of persons having the legal authority to determine questions affecting rights of subjects and having the duty to act judicially undertakes any action it shall be said to be acting in a quasi judicial manner. The decision rendered in *Kusaldas S. Advani* (supra) was followed in *Radeshyam Khare and another vs. State of Madhya Pradesh and others*, AIR 1959 Supreme Court 107, where the Supreme Court observed that the definition given in *Kusaldas S.*

*Advani* insists on three requisites, each of which must be fulfilled in order that the act of the body may be quasi judicial act, that Court or person (1) must have a legal authority (2) To determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Real and determining test to ascertain whether an act authorised by a Statute is quasi judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially. Relying upon paragraphs 149 and 150 of the *Halsbury's Laws of England*, and citing the case of *R Vs. Manchester Legal Aid Committee*, 1952 (1) All England Reporter 480, it had been submitted by the counsel for the Appellants that where a statute requires a decision to be arrived at purely from the point of view a policy or expediency the authority is under no duty act judicially or quasi judicially. On the other hand, where the order has to be passed on evidence either under an express provision of the Statute, or by implication and determination of particular facts on which its jurisdiction to exercise its power depends, or if there is a proposal and an opposition the authority is under a duty to act judicially. In paragraph 150 of the *Halsbury's Laws of England*, it was mentioned that the duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case, and the construction of the particular statute, with the assistance of the general principles laid down in the judicial decisions.

**89.** The principles deducible from various judicial decisions were considered by the Supreme Court in *Kusaldas S. Advani (supra)*, and were thus formulated: "(i) *If a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the Statute, which claim was opposed by another party, and (ii) determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the Statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a positive judicial act; and (iii) if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are no two parties apart from the authority and the contest is between the authority Proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi judicial act provided the authority is required by the Statute to act Judicially*".

**90.** In view of the aforesaid statement of law where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority was held to be quasi judicial and the decision rendered by it a quasi judicial order. Where there is a lis or two contesting parties are making rival claims and the statutory authority under the statutory provision is required to decide such a dispute, in the absence of any other attributes of a quasi judicial authority, such statutory authorities acquire the quasi judicial authority. There are other cases where there



is no lis or two contending parties before statutory authority, yet such a statutory authority has been held to be quasi judicial and the decision rendered by it as quasi-judicial decisions when such a statutory authority is required to act judicially.

**91.** The Supreme Court went on to observe thus "*the legal principles laying down when an act of a statutory authority would be a quasi judicial act, which emerge from the aforesaid decisions are these:(a) where a statutory authority empowered under the statute to do any act,(b) which would prejudicially affect the subject, although there is no lis or two contending parties and the contest is between the authority and the subject, and, (c) the statutory authority is required to act judicially under the Statute, the decision of said Authority is quasi judicial.*" It was further observed that "in some cases administrative authority may determine question of fact before arriving at a decision which may affect the rights of but such a decision would not be a quasi judicial act. It is a different thing that in some cases, policy may demand affording of an opportunity to the claimant whose right is going to be affected by the act of the administrative authority, still such an administrative authority would not be a quasi judicial authority. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where the law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi judicial authority."



**92.** After referring to three decisions that lay down whether an administrative Tribunal has a duty to act judicially, the Supreme Court observed in Paragraph-21 that "in each case the conclusion should be gathered from the provisions of the particular statute and the Rules made thereunder" and their Lordships clearly expressed the view that if an Authority is called upon to decide respective rights of the contesting parties or if there is a lis, ordinarily there would be a duty on the part of the said Authority to act judicially.

**93.** In ***Gullapalli Nageswara Rao versus Andhra Pradesh State Road Transport Corporation***, 1959 (Supplement 1) SCR 319, the Supreme Court considered a judgement of *the House of Lords in Franklin Versus Minister of Town and Country Planning (1947) 2 All ER 289 (HL)*. The Supreme Court considered the provisions of the New Towns Act, 1946, which required that for developing a new town, the Minister proposed a Scheme designating a particular area as the site of the proposed new town and the draft would be published in the Official Gazette inviting objections. On objections being made, a public local enquiry was to be held and the Minister would consider the report of the person by whom the enquiry was held and then pass appropriate orders. The Minister was entrusted with the discretion to decide whether to go on with the Scheme or not, it was his left to his subjective satisfaction. The action of holding the enquiry and then taking of the decision by the Minister concerned, which was being considered by the House of Lords did not contemplate a judicial act as the Rules of natural justice

were not applied to the Minister's decision making for the simple reason "that the initiative was wholly his, and on him was placed the responsibility of seeing that the intention of the Parliament is carried out."

(emphasis supplied)

**94.** The Supreme Court referred to several commentaries on Administrative Law where the judgement rendered in *Franklin* case was referred to and analyzed and it was held that the Court looked at the Act as a whole, applying a theory of interpretation similar to the Rule in *Haydens* case. It was held that the *Franklin's* case is based upon the interpretation of the provisions of that Act and particularly on the ground that the object of the enquiry is "to further inform the mind of the Minister and not to consider any issue between the Minister and the objectors." (emphasis supplied)

**95.** The language of Section 7 of the Act and the procedure applicable to the Authority while taking decision under Section 7 does not require the Authority to act judicially. The Act only requires that where the Authority is satisfied that condition for the exercise of its power of revocation of registration of the Promoter or real estate agent exist viz. it is established that the Promoter/ Real Estate Agent is adopting corrupt practices then the Authority may pass an order revoking the registration and the consequences mentioned under the Section would follow. The Authority may issue show-cause notice and consider any reply submitted to it within thirty days of issuance of notice. The Authority therefore is only required to issue notice to "further inform its mind" with regard to

**51**

action proposed to be taken by it, in this case Suo Moto. The power under Section 7 is an Administrative Power. Therefore, the power given under Section 81 of the Act to sub delegate the actual drafting of the order giving detailed reasons for invoking its power under Section 7 of the Act against the promoter, the appellant herein, was rightly exercised by the Authority.

**96.** This Court finds no illegality, or infirmity either in the order dated 30.09.2019 or in the order dated 20.10.2020 passed by the Tribunal in this Appeal.

**97.** The Appeal is ***dismissed***. The Appellant shall comply with the order of the Authority and of the Tribunal within thirty days from today.

**Order Date: 9/03/2021**  
Rahul/Sachin/PAL

**[Justice Sangeeta Chandra]**