

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR**

D.B. PIL PETITION NO. _____/2020

Ashish Sharma

... **PETITIONER**

VERSUS

State of Rajasthan

... **RESPONDENT**

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COUNSEL FOR THE PETITIONER

Place: Jaipur

Date: 08/06/2020

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SYNOPSIS

An order dated 13.05.2020 came to be passed by the Learned Rajasthan Real Estate Regulatory Authority whereby an across the board extension of 12 (Twelve) months was granted to registered projects in light of the ongoing COVID-19 pandemic.

However, the said order dated 13.05.2020, by virtue of Clause 6, makes an exemption for delinquent promoters to pay interest or compensation for making a false or incorrect state under Section 12 of the Real Estate (Regulation and Development) Act, 2016. It further waives off the interest and compensation payable by a promoter for failure to give possession under Section 18 of the said Act, 2016 without making any differentiation between projects which have already lapsed before 19.03.2020. Further, Clause 7 of the said order 13.05.2020 directs that no coercive steps will be taken by the Learned Authority for execution of refund orders already passed or that may come to be passed. Therefore, the said order dated 13.05.2020, more particularly Clauses 6 and 7, are violative of the provisions of Real Estate (Regulation and Development) Act, 2016 as well as Articles 14 and 21 of the Constitution of India.

Aggrieved by the order dated 13.05.2020, the Petitioner herein, a public spirited individual, has filed the present public interest litigation.


COUNSEL FOR PETITIONER

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State of Rajasthan through Registrar, Real Estate Regulatory Authority,
Rajasthan, having its office at Udyog Bhawan, Jaipur

... RESPONDENT

WRIT PETITION UNDER ARTICLE 226 OF THE

CONSTITUTION OF INDIA

AND

**IN THE MATTER OF THE ORDER DATED 13.05.2020 PASSED
BY THE LEARNED RAJASTHAN REAL ESTATE
REGULATORY AUTHORITY**

TO

THE HON'BLE CHIEF JUSTICE AND HIS COMPANION JUDGES
OF THE HON'BLE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

MAY IT PLEASE YOUR LORDSHIPS:

The Petitioner most humbly and respectfully begs to file this writ petition as under:

1. **THAT** the Petitioner herein, having [REDACTED], is an advocate enrolled in the Bar Council of Rajasthan and practices before various fora including the Learned Rajasthan Real Estate Regulatory Authority. The Petitioner is a public-spirited person and has approached this court challenging the provisions of order dated 13.05.2020 passed by the Learned Rajasthan Real Estate Regulatory Authority as violative of the said Act, 2016 and Articles 14 and 21 of the Constitution of India. The Learned Rajasthan Real Estate Regulatory Authority (*hereinafter* “**Authority**”), the Respondent herein, is a statutory body constituted under the Real Estate (Regulation and Development) Act, 2016 (*hereinafter* ‘**Act, 2016**’) and therefore constitutes as “the State” under Article 12 of the Constitution of India.
2. **THAT** the said Act, 2016 came to be enacted with effect from 25.03.2016 with an aim *inter alia* to promote the interest of consumers in the real estate sector. The Real Estate Regulatory Authority is a statutory body constituted under the said Act, 2016 with certain specific functions and powers enumerated under the said Act. Section 34(f) of the said Act, 2016 casts a specific function on the Authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents

under the said Act and the rules and regulations made thereunder. Section 34(g) casts another important function on the Authority to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act.

3. **THAT** the ongoing COVID-19 pandemic has had severe effect on the economy, including the real estate sector. To ease the situation, the Central Advisory Council, constituted under the said Act, 2016, in its second meeting dated 29.04.2020 held under the chairmanship of Hon'ble Minister of State, Housing and Urban Affairs, Government of India, recommended automatic extension of 6 (Six) months to all real estate projects where the completion date or revised completion date or extended completion date expires on or after 25.03.2020. Copy of the minutes of meeting dated 29.04.2020 of the Central Advisory Council is filed herewith and marked as **ANNEXURE-1**.
4. **THAT** based on the said recommendations of the Central Advisory Committee, the Ministry of Housing and Urban Affairs, Government of India issued an office memorandum dated 13.05.2020. The said office memorandum dated 13.05.2020 issued an advisory to the States and Real Estate Regulatory Authorities with regards to extension of completion date for projects whose registration expires on or after 25.03.2020. Copy of the office memorandum dated 13.05.2020 issued by the Ministry of Housing

and Urban Affairs is filed herewith and marked as **ANNEXURE-2**.

5. **THAT** the Learned Rajasthan Real Estate Authority (hereinafter “Learned Authority”) issued order dated 13.05.2020 whereby an across the board extension of 12 (Twelve) months came to be granted to all registered projects not already completed, lapsed, or revoked as on 19.03.2020. However, Clause 7 of the said order waives compensation and interest payable even for those registered projects which have lapsed before 19.03.2020. Furthermore, under Clause 6 of the said order, compensation paid under Section 12 and Section 18 of the said Act, 2016 is waived. Copy of the order dated 13.05.2020 issued by the Learned Authority is filed herewith and marked as **ANNEXURE-3**. Aggrieved by the impugned order dated 13.05.2020 passed by the Learned Authority, the Petitioner herein files this present petition on the following amongst other grounds:

GROUND

- A. **BECAUSE** the impugned order passed by the Learned Authority dated 13.05.2020 is arbitrary, unreasonable, and manifestly in error of the principles of natural justice.
- B. **BECAUSE** the Learned Authority, in Clause 6 of the said order dated 13.05.2020, directed that no interest or compensation shall

be payable under Section 12 or Section 18 of the Act for period of extension provided under the said order. Clause 6 of the said order dated 13.05.2020 is reproduced below for ready reference:

“ Moratorium on interest and compensation

6. Owing to force majeure, no interest or compensation will be payable under section 12 or section 18 of the Act for the period covered by the aforesaid extension in estimated finish date of the project.”

Section 12 of the said Act, 2016 casts an obligation on the promoter regarding veracity of advertisement or prospectus and makes the promoter liable in case of a false and incorrect statement contained in notice, advertisement, prospectus or the model apartment or plot. Section 12 of the said Act, 2016 is reproduced hereinbelow for ready reference:

“Section 12: Obligations of promoter regarding veracity of the advertisement or prospectus.- *Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or

the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

Section 12 mandates that if the person intends to withdraw from a project due to a false, incorrect statement made by the promoter in notice, advertisement, prospectus or the model apartment, plot or building, the promoter ought to return the entire investment along with interest and compensation in the manner provided. By issuing directions to the effect that no interest or compensation is payable by the promoter for false statement made as per Section 12 of the said Act, 2016, the Learned Authority has indirectly sanctioned such wrongful acts for the period of the extension. The said order, passed with misapplication of law and fact, seeks to exempt a delinquent promoter for a wrongful act committed, which with or without the ongoing COVID-19 pandemic, still remains a wrongful act. The order dated 13.05.2020 suffers from manifest perversity and legal infirmities and therefore, deserves to be quashed and set-aside.

C. **BECAUSE** Section 18 of the said Act, 2016 provides for return of invested amount along with interest by the promoter to the allottee for failure to give possession of an apartment, plot, or building. Section 18(3) of the said Act, 2016 makes the promoter liable for

compensation upon failure to discharge obligations imposed under the Act, including timely transfer of possession to the allottee. Clause 6 of the said order dated 13.05.2020 passed by the Learned Authority, without making any distinction, imposes a blanket ban on payment of interest and compensation under Section 18 of the said Act, 2016 till 31.03.2021. The said order dated 13.05.2020, passed for easing the industry suffering from the COVID-19 pandemic, fails to differentiate those projects which have lapsed before 19.03.2020 without any *force majeure* event. The violation of said Act, 2016 and the buyer-seller agreement in such cases is not a result of *force majeure* event like the ongoing COVID-19 pandemic. Extending the benefit to such delinquent promoters, for no fault of the allottee, and without any intervention of the ongoing pandemic, is completely arbitrary and violative of the mandate of the said Act, 2016. The said order dated 13.05.2020, more particularly Clause 6, ought to be quashed and set-aside on this count alone.

D. **BECAUSE** Clause 7 of the said order dated 13.05.2020 passed by the Learned Authority states that no coercive steps shall be taken by the Learned Authority for execution of refund orders. Clause 7 of the impugned order dated 13.05.2020 is reproduced below for ready reference:

“Moratorium on interest and compensation

7. Owing to force majeure, no interest or compensation will be payable under section 12 or section 18 of the Act for the period covered by the aforesaid extension in estimated finish date of the project.”

Through the said direction, the Learned Authority has indirectly stayed the operation of any judgment and order already passed or that may come to be passed in favour of the allottee by the Learned Authority till 31.03.2021. The said order dated 13.05.2020 came to be passed by the Learned Authority to provide ease to the hurdles faced by the industry due to ongoing COVID-19 pandemic. The said direction goes beyond the boundaries of the said Act, 2016 and beyond the boundaries of reasonableness. Projects which have already lapsed before 19.03.2020 and against which adverse order has been passed by the Learned Authority are not hindered due to the current COVID-19 pandemic. In such cases, failure to complete a real estate project is due to promoter's fault or negligence and therefore promoter ought to be made liable for breach of the provisions of the said Act, 2016. The said Act, 2016 empowers the Learned Authority to exempt performance of obligations under a buyer-seller agreement in case of a *force majeure* situation. The projects for which adverse orders have been passed by the Learned Authority whereby the promoters have been directed to pay the allottee for breach of obligations are not affected by the ongoing COVID-19 pandemic. There is no

reasonable nexus to extend the benefit of pandemic to such promoters against whom adverse orders have already been passed by the Learned Authority. Further, the second part of the direction applies to those orders that “may come to be issued in the meanwhile”. It is pertinent to note that every project registered with the Learned Authority has to provide an estimated completion date, which is ought to be mentioned in buyer-seller agreements as well. An allottee can claim return of investment along with interest or compensation when the promoter fails to give possession on or before the estimated completion date. Clause 7 of the order dated 13.05.2020 directs no coercive steps for all registered projects without making a differentiation for registered projects whose estimated completion date was either before or extended beyond 19.03.2020 and have failed to provide possession to the allottees. Thus, under the said impugned order dated 13.05.2020, a project whose completion date was before 19.03.2020 and was delayed without any *force majeure* event is also exempted from performance of their obligations. The said direction dated 13.05.2020 is wholly arbitrary and therefore deserves to be quashed and set-aside.

E. **BECAUSE** Clause 6 and Clause 7 of the said order dated 13.05.2020 fail when tested on the anvil of Section 38(2) of the said Act, 2016. Section 38(2) of the said Act, 2016 provides *interalia* that the Learned Authority shall be guided by the

principles of natural justice. It is expected of a public authority to observe the doctrine of reasonableness. Through the said order dated 13.05.2020, the Learned Authority extends the benefit of COVID-19 pandemic to delinquent promoters who have failed to fulfil their obligations under the said Act, 2016 as well as buyer-seller agreements without being affected by the pandemic in any manner. A public authority, such as the Learned Rajasthan Real Estate Regulatory Authority, cannot play fast and loose with the powers vested in them and must act with exactness and precision. In the present factual matrix, the Learned Authority, while extending the benefit of COVID-19 pandemic to those delinquent promoters who have breached their obligations without any *force majeure* reason, has acted arbitrarily and unreasonably. Therefore, Clause 6 and Clause 7 of the order dated 13.05.2020 passed by the Learned Authority ought to be declared ultra vires to the said Act, 2016.

F. **BECAUSE** it is a settled law that arbitrariness in action taken by a statutory body is violative of fundamental right under Article 14 of the Constitution of India. The Hon'ble Supreme Court in the case of *East Coast Railway v. Mahadev Appa Rao* (reported in AIR 2010 SC 2794) has held that arbitrariness in making of an order by an authority can manifest itself in different form, non-application of mind being one of them. When due and proper application of mind is applied to the present factual matrix, the said order dated

13.05.2020, especially Clause 6 and Clause 7 therein, fail to sustain. The relevant clauses of the said order 13.05.2020, as enumerated in the grounds above, clearly show that the Learned Authority has legitimised a wrongful act under Section 12 of the said Act, 2016 and further infringed upon the right of the allottees to claim interest and compensation for a period of one year. It is pertinent to note that allottees invest their life's income in purchasing a piece of real estate such as an apartment. Failure of the promoter to give possession causes various hardships to the allottees and the Learned Authority has been constituted to address such issues prevailing in the real estate industry. If the Learned Authority fails to take steps for execution of refund of amount for a period of one year, even for registered projects which have lapsed before the ongoing pandemic, the same violates the fundamental right of speedy trial enshrined in Article 21 of the Constitution of India. In light of the foregoing, the said order dated 13.05.2020 passed by the Learned Authority, more particularly Clause 6 and Clause 7, ought to be declared unconstitutional and violative of fundamental rights enshrined under Articles 14 and 21 of the Constitution of India.

G. BECAUSE it has been held in the case of *Ajay Hasia V. Khalid Mujib* (AIR 1981 SC 487) that wherever there is arbitrariness in state action, whether legislative or executive or of an authority under Section 12, Article 14 of the Constitution immediately

springs into action and strikes down such a state action. By striking at arbitrariness in State action, Article 14 of the Constitution of India ensures fairness and equality of treatment. The Learned Authority is a creation of law and therefore falls in the ambit of “the State” under Article 12 of the Constitution of India. The preamble of order dated 13.05.2020 states that the objective of the said order is to help the real estate projects to survive the adverse effect of Corona pandemic. As enumerated in the foregoing paragraphs, the scheme of the said order dated 13.05.2020, particularly Clauses 6 and 7, classifying projects already lapsed before 19.03.2020 along with the ongoing projects is in utter violation of the essential conditional of intelligible differentia and lacks rational relation to the object sought to be achieved. The provisions contained in Clauses 6 and 7 of the order 13.05.2020 squarely fall within the ambit of doctrine of arbitrariness. It is an established principle of law that the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme. In light thereof, Clauses 6 and 7 of the said order dated 13.05.2020 passed by the Learned Authority, failing on the touchstone of reasonableness and non-arbitrariness, ought to be declared null and void *ab initio*.

H. **BECAUSE** other legal submissions arising out of the facts and circumstances of the case, may please be permitted to be urged at the time of hearing the writ petition.

6. **THAT** the Petitioner has not filed any other similar/identical writ petition either before Hon'ble Supreme Court of India or before this Hon'ble High Court under Article 226/227 of the Constitution of India assailing the impugned order. Further, to the best of Petitioner's knowledge and research, the issue raised has not been dealt with or decided by any court.

7. **THAT** the Petitioner has been left with no other alternative and efficacious remedy except to approach this Hon'ble Court under Article 226/227 of the Constitution of India.

PRAYER

It is, therefore, respectfully prayed that your Lordships may graciously be pleased to accept and allow the writ petition and by necessary writ, order or direction be pleased to:

1. Declare Clause 6 and Clause 7 of the order dated 13.05.2020 passed by the Learned Rajasthan Real Estate Authority as unconstitutional and ultra vires to the provisions of Real Estate (Regulation and Development) Act, 2016.
2. Alternatively, quash and set-aside the order dated 13.05.2020 passed by the Learned Rajasthan Real Estate Regulatory Authority.

3. Any other order as your Lordships may deem just and proper in the facts and circumstances of the case may kindly be passed, in the interest of justice.

**HUMBLE PETITIONER
THROUGH COUNSEL**

[NIPUN SINGHVI (G/2348/2017)] [PRANJUL CHOPRA (R/1239/2018)]

ADVOCATES

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NOTES:

1. That no such writ petition has been filed previously.
2. That P.F. Notices and extra sets shall be filed as per the directions of the Hon'ble Court.
3. That pie papers are not readily available and hence typed on stout papers.
4. That it has been typed by my private steno and not by any High Court staff.

ADVOCATES