

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-8781-2020

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Vinod Kumar v. Union of India and others

Present: Mr. Nitin Gupta, Advocate for the petitioner.

Case has been heard through Video Conferencing in view of COVID-19 Pandemic.

Notice of motion.

Mr. Satya Pal Jain, Additional Solicitor General of India with Mr. Dheeraj Jain, Advocate accepts notice on behalf of respondeent No.1- Union of India whereas Ms. Sudeepti Sharma, Additional Advocate General, Punjab accepts notice on behalf of respondent No.2-State of Punjab.

Petitioner is aggrieved by circular dated 13.5.2020 (Annexure P-1) issued by Real Estate Regulatory Authority, Punjab (RERA) whereby it extended the period of validity of registration of projects by six months in addition to the period that would be normally granted for processing the application provided application is made on payment of necessary late fee. Relevant paras of the circular are reproduced below for ready reference:-

“3. The Real Estate Regulatory Authority, Punjab has considered the existing situation from all aspects and hereby determines that the current COVID-19 pandemic is a 'Force Majeure' situation for the purposes of the Real Estate (Regulation and Development) Act, 2016 in the State. In view of this, it has been decided as follows:-

a. For all registered projects where completion

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date or revised completion date or extended completion date is on or after 15th March, 2020, the period of validity for registration of such projects shall be automatically extended by six months from the original date.

b. For all projects whose registration had lapsed prior to 15th March, 2020 and in which applications for extension are under consideration, the period of validity for registration of such projects shall be extended by six months in addition to the extension period that would normally be granted on processing the application.

c. For all registered projects the registration of which has lapsed prior to 15th March, 2020 and in which application for extension has not yet been made, the period of validity for registration of such projects shall be extended by six months in addition to the period that would normally be granted on processing the application, provided they apply for extension after paying the necessary late fee. In calculation of late fee, the period from 15th March, 2020 to 30th June, 2020 shall be excluded.

d. The time limit for all statutory compliances in relation to real estate projects and real estate agents, in accordance with the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations made thereunder, which had become due till date is extended upto 30th June, 2020.”

It has been contended by learned counsel for the petitioner that ostensibly the circular was issued to give relief to those projects whose

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registration was expiring on or before 15.3.2020. However, by virtue of impugned circular which is in the nature of a notification even term of those projects whose registration has expired long back has been extended by six months. According to him, power to issue circulars/notifications of this nature vests in the State Government and not in the adjudicatory bodies. At best, RERA could have entertained an application under Section 84 or 85 of the Real Estate (Regulation and Development) Act, 2016. However, no such application was moved in the instant case. Learned counsel further submits that there are many similarly placed small time home buyers comprising two/three bed room flats who are suffering as builders have stopped work under the umbrella of the impugned circular.

A query was put to Mr. Jain as to the letter, Annexure P-2, issued by Government of India, Ministry of Housing and Urban Affairs and effect thereof. He candidly submits that same is only advisory in nature and it is left to every State Government to consider the advisory in the light of the situation prevailing in the State and in the facts and circumstances of each case. The said letter does not contain the mandate to adjudicatory bodies to act in a particular manner. He further submits that for issuance of circular/notification of general nature, State Government would be the competent authority.

We, however, find that the present circular has been issued by the RERA whose primary function is to adjudicate upon the disputes which come before it. Though, Ms. Sudeepti Sharma, Additional Advocate General, Punjab has vehemently taken a stand in favour of the promoters/builders and submitted that no fault can be found with the order passed by the RERA, we are not impressed by the argument. We fail to

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understand the need for passing an omnibus order giving protection to all the projects in State of Punjab, particularly when the Act has a specific provision for entertaining an application on behalf of the promoter/builder for extension of time. There is no doubt that '*Force Majeure*' clause can be invoked for this purpose. However, the applicant who would approach the RERA would have to convince it that he has been forced by circumstances beyond his control to continue with the project.

Surprisingly, the circular may even give protection to those promoters/builders whose registration may have expired long back. The intent of the advisory issued by the Government of India was certainly not to accommodate such defaulters. We, thus, find something palpably wrong with the circular. Thus, operation of impugned circular dated 13.5.2020 (Annexure P-1) is hereby stayed.

To come up on 28.9.2020.

(RAJAN GUPTA)
JUDGE

June 30, 2020
gbs

(KARAMJIT SINGH)
JUDGE