

**114/ IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 7852 of 2022
Date of Decision:20.04.2022

M/s Experion Developers Private LimitedPetitioner

vs.

State of Haryana and othersRespondents

**CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr. Kamal Sehgal, Advocate,
for the petitioner.

Mr. Ankur Mittal, Advocate with
Ms. Vasundhara Asija, Ms. Kushaldeep Kaur,
Mr. Shivam Garg, Advocates, for respondent no.4.

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioner seeks issuance of a writ in the nature of 'certiorari' setting aside the proceedings pending before the Haryana Real Estate Regulatory Authority, Gurugram, in Complaint Case no.CR/6254/3831/2019 (Annexure P-3).

It further seeks quashing of the orders dated 22.10.2021 (Annexure P-17) and 22.02.2022 (Annexure P-20).

It also seeks issuance of a writ of 'mandamus/prohibition' restraining the aforesaid authority from acting in contravention of the

provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred to as the 'Act')

Learned counsel for the petitioner, other than arguing on the merits/demerits of the impugned orders passed by the Haryana Real Estate Regulatory Authority (Annexure P-17 and P-20), has raised a basic issue on the jurisdiction of that Authority to pass the orders, with the contention being that the petitioner having received an occupancy certificate in respect of atleast that part of the project as respondents no.2 and 3 would be concerned with, on 02.03.2017, and the RERA Act having come into effect (as regards Section 3 thereof) only from 01.05.2017, the project has to be treated to be a completed project and therefore there was no requirement for even registration of the project by the petitioner with the RERA authority in terms of Section 3; and consequently if the said respondents had any grievance *qua* any action of the petitioner, the appropriate forum for redressal of any such grievance would not be the respondent authority.

In that context Mr. Sehgal refers to Rules 2(1)(n) and 2(1)(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017, which read as follows:-

“2(1)(n) "layout plan" means a plan of the colony depicting the division or proposed division of land into plots, roads, open spaces, etc. and other details, as may be necessary;

2(1)(o) “on going project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

- (i) any project for which after completion of

development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules; and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.”

The argument therefore is that the petitioner having already applied for and obtained an occupation certificate as referred to above in terms of the Haryana Building Code, 2017, prior to 01.05.2017, there was no requirement at all to get itself registered with the Authority, it thereby being outside the purview of its jurisdiction.

Even prior to notice of motion having been issued, on an advance copy of the petition received, Mr. Ankur Mittal, Advocate, appears for respondent no.4, i.e. the Haryana Real Estate Regulatory Authority, and submits that there is an obvious anomaly between Section 3(2)(b) of the Act of 2016 and the aforesaid Rules of 2017, in as much as Section 3(2)(b) reads to say that it is only after a completion certificate has been obtained by a developer in respect of any particular project, before the said Act came into effect, that it would not be required to get such project registered with the Authority; but with the petitioner having obtained only an occupancy certificate and not a completion certificate, necessarily it was required to get its project registered and therefore the jurisdiction of the Authority is very much existent *qua* the project.

In that respect he also refers to paragraphs 32 to 54 as contained in

the judgment of the Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others, Law Finder Doc Id #1908491, to submit that it was held therein in the context of similar anomalies in the rules framed by the State of UP, that it would be the principal Act which would govern the issue and not any rules framed thereunder. [Of course that would normally be a basic principle of interpretation of any statute, to the effect that if in any part of the rules promulgated under the provisions of an Act, any principal provision of the Act itself is in contradiction (in the Rule), it would be the provision of the Act as would govern the issue and not the anomaly contained in the Rules promulgated under that very Act.]

Specifically, he refers to paragraphs 52 and 54 of the aforesaid judgment, which read as follows:-

“52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.”

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54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.”

Section 3 of the Act reads as follows:-

“3. Prior registration of real estate project with Real Estate**Regulatory Authority:-**

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new

allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

We agree with learned counsel appearing for the respondent-HRERA and also wish to point out that Section 2(q) of the Act, which defines a completion certificate, states as follows:-

“(q) **“completion certificate”** means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;”

On the other hand, an occupancy certificate is also specifically defined under the said Act itself, with clause (zf) of Section 2 of the Act, reading as follows:-

“(zf) **“occupancy certificate”** means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;”

Mr. Mittal has also pointed to clause (zn) of Section 2 of the Act, which defines a real estate project and reads as follows:-

“(zn) **“real estate project”** means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances

belonging thereto;”

Thus, in our opinion, there being a difference carved out in the Act itself as to what is a completion certificate and an occupancy certificate, unless the petitioner had obtained a completion certificate for the project in question, prior to the date that Section 3 of Act came into effect, i.e. 01.05.2017, it was necessarily required to get itself registered with the respondent authority; but with a completion certificate still not having been obtained, simply obtaining of an occupancy certificate or having applied for such certificate in terms of the Haryana Building Code, 2017, we would not consider the petitioner to be outside the purview of the jurisdiction of the respondent Authority and therefore, if the petitioner is aggrieved in any manner of the impugned orders passed on the merits thereof, obviously it has its remedy of appeal before the Tribunal constituted under the said Act.

It is also necessary to mention here that Mr. Sehgal has specifically referred to paragraph 4.10 of the Haryana Building Code, 2017, to submit that the parameters provided under that provision of the said Code and the parameters contained in Section 2(q) of the Act which defines a completion certificate, are identical and therefore the intention of the competent authority as had promulgated the Rules of 2017, would get strength from the Act itself and consequently the provisions of the Rules themselves need to be given effect to.

Mr. Mittal rebuts the aforesaid argument also by pointing out that obviously an occupancy certificate is issued in respect of any part of a project as is ready for such occupation, with a completion certificate to be issued only

upon the entire project being fully completed and therefore the parameters as contained in section 2(q) of the Act cannot be read to be *pari materia* with those provided in the aforesaid provision of the Building Code, especially as Section 89 of the Act stipulates that it shall have an overriding effect over any other law in force.

Though we agree with his contention completely, however, what needs to be observed by this court is that the Explanation to Section 3 of the Act of 2016, reads specifically as follows:-

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

Mr. Sehgal has at this stage vehemently argued that since, even for the purpose of Section 3, each phase of a project is to be considered as a stand alone real estate project, the phase in question as respondents no.2 and 3 would be concerned with, having been completed by the petitioner, at least that part of the project would not be required to be registered.

As regards that factual aspect and specifically with regard to as to whether the petitioner was allowed to complete the project in different phases in terms of the licence granted to it, and therefore whether that occupancy certificate for any particular phase as has been completed (if so), is to be treated to be a completion certificate in terms of Section 2(q) of the Act, is left to the appellate authority under the Act to decide on merits, keeping in view of course the judgement of the Supreme Court in **M/s Newtech Promoters and Developers** (supra), and any other law laid down on the subject.

With the aforesaid observations this petition is dismissed, with the petitioner left to avail of its remedy before the appellate authority under the Act.

(AMOL RATTAN SINGH)
JUDGE

April 20, 2022

dharamvir//

(LALIT BATRA)
JUDGE

Whether reasoned/speaking : Yes
Whether reportable : Yes



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