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IS RERA AN “AGGRIEVED PERSON” AND FILE APPEAL ?

Author : G. Natarajan

An interesting issue under Real Estate Regulatory Authority Act has come up before the Hon'ble Supreme Court, as to whether the Real Estate Regulatory Authority can file an appeal before the High Court, against the decisions of the Real Estate Appellate Tribunal. On 09.07.2021, the Supreme Court has issued notice and posted the matter after six weeks.

Introduction of Real Estate (Regulation and Development) Act, 2016 is a watershed movement to regulate and promote the real estate sector and to protect the interest of not only the gullible consumers but also the promoters, by ushering in a transparent regime with Governmental supervision. Section 20 of the Act empowers the appropriate Government to establish an authority, viz., Real Estate Regulatory Authority, to carry out various functions under the Act. Under Section 71 (1) of the Act, an adjudicating officer can be appointed to determine the compensation payable to the complainants in different situations.

Section 43 of the Act establishes a Real Estate Appellate Tribunal. As per subsection (5) of Section 43, any person aggrieved by any order passed by the Real Estate Regulatory Authority or by the adjudicating officer can file an appeal before the Appellate Tribunal.

Section 58 of the Act provides for filing of appeal before the High Court, by any person aggrieved by any decision of the Appellate Tribunal, in accordance with Section 100 of the Civil Procedure Code.

The Gujarat Real Estate Regulatory Authority has preferred an appeal against the order of the Gujarat Real Estate Appellate Tribunal, before the Hon'ble High Court of Gujarat and the Promoter, M/s Satyam Infracon has raised a preliminary objection that the Gujarat Real Estate Regulatory Authority, cannot be considered as a “person” for the purposes of section 58 of the Act.

The High Court has referred to the definition of the term “person” under Section 2 (zg) of the Act, which inter alia includes, an individual, HUF, Partnership firm, Company, a competent authority, etc. The term “competent authority” is also defined under Section 2 (p) of the Act, which covers only the “local authority or any other authority created or established under any law to exercise authority over the land under its jurisdiction and has powers to give permission for development of such land”. Obviously, the Real Estate Regulatory Authority cannot be covered under the definition of “competent authority”.

The High Court noted that the definition of “person” also covers “company” which, as defined under Section 2 (o) of the Act, not only covers a company established under the Companies Act, 2013 but also includes a development authority or public authority established by the Government in this behalf under any law. The Real Estate Regulatory Authority has been established by the Government under the Real Estate (Regulation and Development) Act, for fulfilling the purposes and objects of the Act and hence it is covered in the definition of the word “company” and hence the Authority can file an appeal before the High Court, against the orders of the Appellate Tribunal.

The High Court has also referred to the objects and purpose behind the Real Estate (Regulation and Development) Act, which is to promote the interest of the home buyers and overruled the preliminary objection raised by the Promoter and held that the Real Estate Regulatory Authority can file appeal against the orders of the Appellate Tribunal, if the authority feels that the said decision is not in accordance with the true spirit of the provisions of the Act.

The Promoters have filed a Special Leave Petition against this interim order of the Gujarat High Court overruling the preliminary objection on maintainability of appeal before the High Court, in which the Hon’ble Supreme Court issued notice, returnable in six weeks.

The decision of the Supreme Court in this crucial matter would set the tone for future litigations under Real Estate (Regulation and Development) Act, if the view of the Gujarat High Court is ultimately upheld by the Supreme Court.

Many a times, the home buyers, either individually or through their associations may not be able to litigate the disputes beyond the level of Tribunal, considering their constraints. In such cases, if the decision of the Tribunal happens to be against the interest of the Home buyers, the Real Estate Regulatory Authority itself can file appeal against the order of the Tribunal, before the High Court. Another example could be, under Section 7 of the Act if the registration granted for a project is revoked by the Authority on the basis of various violations committed by the promoter and the Appellate Tribunal, upon an appeal being preferred by the Promoter, sets aside such revocation of registration, the Authority can file an appeal against the decision of the Tribunal, to the High Court.

Giving the status of “aggrieved person” to the Real Estate Regulatory Authority would ensure that the objects of the legislation would be upheld by the Authority by seeking judicial intervention, even though the parties might have given up their remedies beyond the Tribunal.

