

**REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,  
SAS NAGAR (MOHALI)**

**APPEAL NO. 23 OF 2018**

ATS Prelude Apartment Owners Association (Regd.) through its Secretary Dr. S.C. Anand, Regd. Office, 1<sup>st</sup> Floor, Club House, ATS Golf Meadows Prelude, Barwala Road, Derabassi, District SAS Nagar, Punjab-140507.

....Appellant

**Versus**

1. Real Estate Regulatory Authority, Punjab Mandi Bhawan, Ground Floor, Sector-65-A, Mohali, SAS Nagar, Punjab-160062.
2. ATS Infrastructure Limited, through its Managing Director Mr. Getamber Anand, ATS Infrastructure Ltd., ATS Golf Meadows, Chandigarh Ambala Highway, Opp. Sada Shiv Complex, Near Dera Bassi Barwala Chowk, Dera Bassi, SAS Nagar, Punjab-140507.

....Respondents

**Present:** Dr. Subhash Chandra Anand, Secretary, ATS Prelude Apartment Owners Association, for the appellant.  
Sh. Harsh Bunger, Advocate for the respondent No.2.

\*\*\*

**CORAM:** JUSTICE RAJIVE BHALLA, (RETD), CHAIRMAN  
S.K. SHARMA, IPS (RETD.), MEMBER

~\*~

**JUDGMENT:** (*Rajive Bhalla (J) (Retd)*): (oral)

## APPEAL NO. 23 OF 2018

\*\*\*

The ATS Prelude Apartment Owners Association (appellant), prays that order dated 23.08.2018, passed by the Real Estate Regulatory Authority, Punjab, may be set aside, the Authority may be directed to order registration of the project and adjudication of the complaint filed by the appellant, on merits.

Before recording our reasons, it would be necessary to refer to the facts. The appellant is an association of the owners of ATS Prelude, who have admittedly been residing in their flats since 2014 i.e. much before the coming into force of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act). After coming into force of the Act, the association addressed a letter dated 23.07.2018, to the Real Estate Regulatory Authority, Punjab, requesting that the "promoter" M/s ATS Gold Meadows Prelude be directed to get the project registered under the Act, as the project is incomplete. The reasons in support were that a notice dated 16.11.2015, issued by the Ministry of Environment, Forests and Climate Change has not been adhered to, EWS tower No. 16 does not have the requisite number of flats, which even otherwise remain un-allotted, basements of towers are incomplete, solar lighting, water heating arrangements, solid waste collection, disposal system are not in place and as NOC has



## APPEAL NO. 23 OF 2018

not been obtained from the National Highways Authority of India or from the Ministry of Environmental and Forests for the approach road. The appellant also alleged that letter No. 342 dated 13.07.2016, addressed by Municipal Council, Derabassi only states that a partial completion certificate has been issued in respect of towers thereby proving that the project is not complete. The appellant also referred to letter No. 3749 dated 21.06.2016, directing the builder to remove any violation and defect in the housing project.

The application was entertained and notice was issued to respondent No.2. After receiving notice respondent No.2 put in appearance and interalia pleading that as a "partial completion certificate" was issued way back in 2014, the project is excluded by Rules 2(g), (h) and 4 of the Punjab State Real Estate (Regulation and Development), Rules, 2017 (hereinafter referred to as the Rules), from registration under the Act.

The Authority accepted the stand taken by respondent No.2 and dismissed the complaint by recording as follows: -

*" Sh. Gudeep Singh, Authorized Representative on behalf of respondent appeared and submitted a detailed reply vide which he informed that the entire project had obtained the partial completion certificate before the notification of the*

## APPEAL NO. 23 OF 2018

*Real Estate (Regulation and Development) Act, 2016. Copies of the partial completion certificate are attached with the reply. As such they are not liable for registration with the Authority. Accordingly, the notice is hereby filed. Copy of the reply submitted by the respondent be sent to the complainant for their information. They may file a formal complaint in Form-M."*

A perusal of the aforesaid order reveals that the notice has been "filed" i.e. dismissed, as the project has been granted a partial completion certificate. Liberty has, however been granted to file a formal complaint in Form-M.

We have heard the appellant in person, counsel for respondent No.2 ,perused the impugned order and relevant statutory provisions. The appellant has reiterated pleadings recorded in the grounds of appeal and prays that as the project is incomplete, the impugned order may be set aside and the Authority may be directed to order registration and award compensation to the appellant. Respondent No.2 on the other hand relies upon the partial completion certificate as its ground to affirm the impugned order.

## APPEAL NO. 23 OF 2018

A due consideration of the facts, the pleas and the statutory provisions reveals that the question that calls for an answer is whether a promoter, who has been issued a partial completion certificate by the competent authority, before coming into force of the RERA Act, is excluded from registration of his project?

An answer to this question lies in Sections 2(q), (s), (t), (zk), (zn), and 3 of the RERA Act and Rules 2(g) and (h) and 4 of the Rules which read as follows: -

**Section 2 :-**

X X X X X X X X X X

- (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;*

X X X X X X X X X X

- (s) *"development" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change*



## APPEAL NO. 23 OF 2018

*in any immovable property or land and includes re-development;*

- (t) *"development works" means the external development works and internal development works on immovable property;*

X X X X X X X X X X

- (zk) *"promoter" means, –*

(i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

(ii) *a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

(iii) *any development authority or any other public body in respect of allottees of –*

(a) *buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

(b) *plots owned by such authority or body or placed at their disposal by the Government,*

*for the purpose of selling all or some of the apartments or plots; or*

APPEAL NO. 23 OF 2018

- (iv) *an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- (v) *any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*
- (vi) *such other person who constructs any building or apartment for sale to the general public.*

X X X X X X X X X X

(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 apartment, 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;*

X X X X X X X X X X

3(1) **Prior registration of real estate project with Real Estate Regulatory Authority:** - (1) No promoter shall

## APPEAL NO. 23 OF 2018

*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 there under, shall apply to such projects from that stage of registration.*

(2) X X XX X X X X X X X

**Rules:-**

**Rule 2 (g)** *“partial completion certificate” means a certificate issued by the Authority competent to issue the same for a part of project area on completion of development works in that part or of a building block in case of built up projects as the case may be.*



## APPEAL NO. 23 OF 2018

**Rule 2 (h)** *“ongoing projects” means the Real Estate Projects which are ongoing in which development and development works as defined in Section 2(s) and Section 2(t) of the Act are still under way, excluding the area of portion of the Real Estate Project for which partial completion or occupation certificate, as the case may be, has been obtained by the promoter of the project.*

X X X X X X X X X X

**Rule 4.** *Disclosure by promoters of ongoing projects.-*

- (1) *Upon the notification for commencement of sub-section (1) of section 3, promoters of all ongoing projects which have not received completion certificate or partial completion certificate, as the case may be, shall, within the time specified in the said sub-section, make an application to the Authority in the form and manner as provided in rule 3.*
- (2) *The promoter shall disclose all project details as required under the Act and the rules and regulations made there under, including the status of the project and the extent of completion.*
- (3) *The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc. which shall not affect the validity of the agreement entered into between the promoter and the allottee to that extent.*

## APPEAL NO. 23 OF 2018

*(4) In case of plotted development the promoter shall disclose the area of the plot being sold to the allottees.*

Section 2 (zk) defines a promoter as a person who offers a real estate project for sale etc. The word "project" is defined under Section 2(zj) to mean a real estate project as defined under Section 2(zn). A promoter is required by Section 3 (1) of the Act to register his "project". Thus a "promoter" who offers his "project" for sale after the coming into force of the Act is required to register the "project". The first proviso to Section 3(1) of the Act, however requires that projects that may have started before the coming into force of the Act but are not complete on the date of coming into force of the RERA Act, i.e have not obtained a completion certificate shall also require registration under the Act. The words "completion certificate" <sup>are R</sup> ~~is~~ defined by section 2(q) of the RERA Act to mean a certificate issued by an authority competent to certify that a real estate project is complete i.e. has been developed according to the sanctioned plan, layout plan and specifications as approved by the competent authority under the local laws. The expression "completion certificate" has to be read along with the expressions "development" and "development works" used in Section 2 (s) and (t) of the Act, which provide that

## APPEAL NO. 23 OF 2018

where development works as defined under Section 2 (s) and (t) are complete in accordance with the sanctioned layout plan and all prescribed specifications have been adhered to by the promoter, he shall be issued a completion certificate.

Admittedly respondent No.2 has not been issued a completion certificate and was therefore required to register the "project" but Rules 2(g) and (h) of the Rules, read with Rule 4, enacted by the State of Punjab, in the exercise of its Rule making power, provides<sup>4</sup> that a promoter who has been issued a "partial completion certificate" for an ongoing project shall require registration for only that part of the project for which a "partial completion certificate" has not been issued. Rule 2(g) defines a "partial completion certificate", to mean a certificate issued to a promoter on completion of a part of a project area including completion of development works in that part/area of a building block, as the case may be. Rule 2 (h) defines an "ongoing projects", and when read with Rule 2(g) of the Rules excludes, that portion of a real estate project for which a partial completion or an occupation certificate, as the case may be, has been obtained by the "promoter" of a "project", from registration under the Act. Rule 4 of the Rules thereafter confines the necessity of registration of a



## APPEAL NO. 23 OF 2018

project to such promoters as have not received completion or partial completion certificates, as the case may be.

A conjoint reading of the Act and the Rules referred to above, leads us to a singular conclusion namely:- that every project whether ongoing or new, must be registered but if a partial completion certificate has been issued, part of the project to which the "partial completion certificate" applies need not be registered.

The "promoter" / respondent No.2, in the present case has been issued a partial completion certificate by the Municipal Council, Derabassi, with respect to part of project, where towers are located. The certificate has not been challenged by anyone and holds the field till date.

At this stage, Dr. Subhash Chandra Anand, Secretary, ATS Prelude Apartment Owners Association, who has addressed arguments, states that Rules 2 (g) (h) and Rule 4 are ultra vires as the Act does not envisage grant of a partial completion certificate or partial completion of a project. The RERA Act envisages absolute completion of a project with no leeway to a promoter for partial completion and as these Rules are in direct conflict with

## APPEAL NO. 23 OF 2018

provisions of the RERA Act, they may be held to be ultravires of the Act.

The argument cannot be accepted as the "vires" of a statutory provision can only be opined by the Hon'ble High Court or the Hon'ble Supreme Court of India. The Tribunal is not empowered to adjudicate a plea of vires even if a Rule may appear to be in excess of the Rule making power of a State Government

Consequently, as respondent No.2 has been granted a partial completion certificate that continues to hold the field. The appeal is dismissed and order passed by the Authority is upheld. The appellant may, however, avail such other remedy as may be available, in accordance with law.



JUSTICE RAJIVE BHALLA (RETD.)

CHAIRMAN

November 26, 2018

AN



S.K SHARMA, IPS (RETD.)

MEMBER