

# Praveen Chhabra vs Real Estate Appellate Tribunal on 17 December, 2021

**Author: Rekha Palli**

**Bench: Rekha Palli**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 14552/2021

PRAVEEN CHHABRA

Through

Mr. Sanjeev Sagar with  
Parveen, Advs.

versus

REAL ESTATE APPELLATE TRIBUNAL

Through

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 17.12.2021 CM APPL. 45833/2021 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 14552/2021

3. The petitioner, who claims to be engaged in the business of developing residential and commercial properties in the NCT of Delhi, Uttar Pradesh and Chandigarh, has approached this Court being aggrieved by the order passed by the Real Estate Appellate Tribunal ('Tribunal') on 24.11.2021. Vide the impugned order, the Tribunal, after taking suo motu cognizance of the blatant violations of Section 3 of Real Estate (Regulation and Development) Act, 2016 ('the Act') by the promoters/builders in respect of construction projects, has passed the following directions:

"Accordingly, in view of the above, all construction activity in NCT of Delhi, residential as well as commercial, falling within the scope of sub-section (2) of Section 3 of the Real Estate (Regulation and Development) Act, 2016 being undertaken without registration with the Real Estate Regulatory Authority is stayed till the registration of their project with the Real Estate Regulatory Authority. The concerned Commissioner as well as Executive Engineer of each of the Municipal

Corporations, DDA and NDMC as also the Commissioner of Police through concerned SHO of the local Police Station of each area shall ensure that with immediate effect no further construction act falling within the scope of sub section (2) of Section 3 of the Act is continued in the absence of RERA registration. The concerned field staff shall undertake a survey of each of the properties under construction in their jurisdiction and take necessary steps in terms of this order, take photographs as also the details of the developers.

Furthermore, it is directed that all municipal authorities granting sanction of the building plans in respect of projects falling within the scope of sub section (2) of Section 3 of the Act shall grant the sanction, subject to their obtaining registration with the Real Estate Regulatory Authority appointed under the Act.

Each of the respondents shall file a Status Report with respect to the action taken by them in terms of this order within two weeks.

Mr. Anil Kumar, ACP appearing for the Commissioner of Police shall also file a comprehensive status report furnishing details of the FIRS registered in respect of Societies / individuals offering membership of housing projects and fraudulently collecting huge amounts of money from the innocent buyers within the jurisdiction of Delhi. They shall also coordinate with the RERA with respect to complaints received by them other than those where FIRS are already registered."

4. Learned counsel for the petitioner submits that under the scheme of the Act, the Appellate Tribunal does not have any jurisdiction to initiate suo motu proceedings and pass directions of such magnitude which will affect all the ongoing constructions in the city. He further submits that the tribunal has while directing that no construction activity in respect of residential and commercial projects falling within the scope of Section 3(2) of the Act would be permitted till the said projects are registered with the Real Estate Regulatory Authority (RERA), has proceeded on an entirely wrong premise by failing to appreciate that Section 3(2) of the Act is in fact, in the nature of a proviso to Section 3(1), which mandates compulsory prior registration of the project under the Act.

5. In order to appreciate the petitioner's plea, it would be appropriate to refer to sections 3(1) and 3(2) of the Act, which read as under:

"3(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 standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately."

6. Upon a perusal of Section 3(1) and 3(2) it is evident that Section 3(2) of the Act lays down the conditions when section 3(1) will not be applicable meaning thereby that Section 3(2) specifies the projects in respect whereof, no registration as mandated as stated under Section 3(1) is required.

7. Having perused the impugned order, I find that though the learned Tribunal has noted the fact that in terms of Section 3(2), registration of a real estate project is mandatory only where the area of the land proposed to be developed exceeds 500 sq. mtrs. or the number of the apartments proposed to be developed exceeds eight inclusive of all phases, the subsequent part of the order does not clearly bring out this position. Consequently, the said order is perhaps being misinterpreted by the local authorities which is evident from the letter dated 02.12.2021 issued by the North Delhi Municipal Corporation, wherein by placing reliance on the tribunal's order dated 24.11.2021, a direction has been issued to all its Executive Engineers (Building) to ensure compliance with section

3(2) of the Act, which as noted hereinabove only specifies the categories where no prior registration under the Act is required.

8. In my view, the intent of the impugned order is crystal clear that registration under the Act is required only in respect of projects which are not excluded under Section 3(2). There is nothing in the order which conveys that there is a requirement for registration of projects which are excluded by the provisions of the Act itself i.e Section 3(2).

9. However, as the petitioner has raised an issue regarding the jurisdiction of the tribunal to initiate suo moto proceedings of this nature, this Court before dealing with this aspect deems it appropriate to appoint Mr. Rajeev Mehra, Senior Advocate (Mobile No. 9810014739) as amicus curiae to assist this Court. A copy of the paper book be supplied to Mr. Mehra by the learned counsel for the petitioner within three days.

10. List on 02.02.2022.

REKHA PALLI, J DECEMBER 17, 2021 acm