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The Insight

Unlocking the developments in Real Estate and Corporate Law

INSIDE RERA

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Foreword

Dear Readers,

Greetings from RGC Lawyers,

As we embark on this new edition of our newsletter, we're reminded of the ever-evolving landscape of real estate, corporate and commercial law. These sectors are not merely industries; they are the lifeblood of economic progress, driving innovation, and shaping our communities.

In these pages, we endeavor to unravel the intricacies, offering you a window into the latest trends, critical legal updates, and strategic insights. Whether you're a seasoned professional navigating complex transactions or an entrepreneur charting new territory, we believe the knowledge shared here will be your guiding light.

Our team at RGC Lawyers has poured their expertise and dedication into curating content that's not only informative but also practical in its application. We hope this newsletter serves as a valuable companion in your professional journey.

Thank you for entrusting us with your legal pursuits. Here's to staying ahead, together.

Warm Regards,

Rajesh Goel
Managing Partner



Concession Lease Cannot be Altered by way of a Writ.

The Hon'ble Supreme Court of India in the case of [Gwalior Development Authority and Anr. v. Bhanu Pratap Singh](#), answered the question in negative as to whether the high courts' writ jurisdiction can be invoked to modify the terms of an existing lease deed that has been duly registered in accordance with the provisions of the Indian Registration Act, 1908.

Gwalior Development Authority ("**GDA**") invited bids for leases, including a plot of 27,887.50 sq. meters. Mr. Bhanu Pratap Singh won the bid but paid late. Instead of forfeiting, GDA reduced the plot to 18,262.89 sq. meters in a registered Lease Deed. In 2009, Bhanu Pratap sought the remaining area. High Court granted this, asking for interest on late payments.

GDA appealed, stating the Lease Deed finalized the transaction. It was argued by GDA that amending a duly registered instrument wasn't permissible under Article 226. Bhanu Pratap countered that once his bid was accepted, GDA couldn't split the plot. He invoked Article 226, emphasizing GDA's responsibility as a public authority.

The Supreme Court found fault with GDA's leniency in accepting Bhanu Pratap's delayed payment, deeming it a violation of Article 14 of the Constitution and an abuse of discretion. However, the Court emphasized that in

Possessory Right of a Prospective Purchaser

"The Supreme Court has established that while an Agreement to Sell doesn't constitute a transfer of proprietary rights in an immovable property, if the potential buyer fulfills their contractual obligations and takes possession of the property, they attain possessory title. This title is safeguarded by Section 53A of the Transfer of Property Act, 1882 (TPA)."

Recently, the Hon'ble Supreme Court has in its judgement [Ghanshyam v Yogendra Rathi](#), has held as follows:

"Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of [Section 53A of the Transfer of Property Act, 1882](#). The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him."

The Court noted that an Agreement to Sell is not a document of title or a deed of transfer of property by sale and as such, may not confer absolute title upon the plaintiff-respondent over the suit property in view of [Section 54 of the Transfer of Property Act, 1882](#).

commercial transactions, the matter should be viewed through commercial principles as outlined in the contract.

The Supreme Court accepted GDA's arguments, stating that the Lease Deed for 18,262.89 sq. meters, executed and registered on March 29, 2006, concluded the transaction. Since the Lease Deed was mandatorily registered under the Registration Act, it couldn't be altered, even under Article 226 of the Constitution.

In essence, the Supreme Court's stance is that once a lease transaction is finalized through a registered lease deed, neither party can change the commercial terms by involving constitutional courts under Article 226 or Article 32 of the Constitution of India.

Nonetheless, the Court stated that the agreement to sell, the payment of entire sale consideration as mentioned in the agreement itself and corroborated by the receipt of its payment and the fact that the plaintiff-respondent was put in possession of the suit property in accordance with law proves that the Purchaser has a de-facto having the possessory rights over the suit property in part performance of the Agreement to Sell. This possessory right of the plaintiff-respondent is not liable to be disturbed by the transferer



A New Policy for Obtaining CLU Permission

The Government of Punjab, through its Department of Housing and Urban Development ("PUDA") has [notified a new policy under Notification No. 18/02/2023-5Hg2/524](#) for obtaining a Change of Land Use ("CLU") permission. Under this notification, the CLU permission for all activates has been merged with the process of obtaining the Layout Plan Approval/Building Plan Approval/ License to Colonies. Notably, the notification, also imposes certain conditions which include:

1. The Applicant must submit all the documents as stated in the notification itself and the Competent Authority will scrutinize all the mandatory requirements as may be involved for completion of the process of obtaining a CLU Permission.
2. The Authority will collect the Conversion Charges in lump sum before the Layout Plan Approval/Building Plan Approval/ License to Colonies along with other requisite charges.

The notification further states that the Competent Authority shall dispose of the said application under the provision of PAPRA Act after scrutinizing all documents and NOCs/ comments of all departments within 45-60 days.



RAJ-RERA reaffirms that Agreement for Sale cannot be Modified.

In the case of **Pramod Kumar Vs. Jaipur Dream Buildcon Pvt. Ltd.**, the RERA Authority of Rajasthan has reaffirmed and insisted that any modification/alteration of Agreement for Sale by a Promoter constitutes a flagrant violation of the provision of RERA.

Pramod Kumar booked a flat in the 'Unique New Town Phase II' project and signed an agreement for sale (AFS) with Jaipur Dream Buildcon Pvt. Ltd ("Promoter"). Due to financial constraints, Pramod couldn't proceed with the purchase and requested a refund from Jaipur Dream according to their resale policy.

Unsatisfied with Promoter's response, Pramod filed a complaint with Rajasthan RERA seeking a refund with interest. After hearing both parties, Rajasthan RERA found discrepancies between the cancellation clauses in the AFS signed and the notified AFS under RERA Rules. The Authority concluded that the Promoter cannot unilaterally modify the AFS, as it holds statutory value and can only be amended by the state government. In light of the same, the RERA Authority penalized the Promoter and declared the signed AFS null and void *ab-initio*.

Supreme Court Issues Notices to States who don't yet have RERA.

The Supreme Court has recently taken notice of the absence of a functioning Real Estate Regulatory Authority (RERA) in Nagaland, Meghalaya, Sikkim, and the Union Territory of Ladakh. In response, the court has formally requested the chief secretaries of these regions to provide explanations for this lapse.

Furthermore, the Chief Secretaries of Arunachal Pradesh, Meghalaya, Mizoram, Sikkim, and West Bengal, along with the Union Territory of Jammu and Kashmir, have also been called upon to furnish details about the current status of RERA implementation in their respective areas. This proactive move by the Supreme Court underscores the importance of effective regulatory bodies in the real estate sector across the country.

Supreme Court Rules Against Differential Treatment for Homebuyers with RERA Decrees under IBC

The Supreme Court, in the case of [Vishal Chelani and others v. Debashis Nanda](#)

has ruled that homebuyers, regardless of whether they approached the Real Estate Regulatory Authority (RERA), cannot be treated differently under the Insolvency and Bankruptcy Code (IBC). The court overturned a National Company Law Appellate Tribunal order, emphasizing that all

homebuyers, irrespective of RERA involvement, should be treated equally in insolvency proceedings. The decision highlighted that [Section 5\(8\)\(f\) of the IBC](#) does not distinguish between classes of financial creditors, and [Section 238 of the IBC](#) takes precedence over the RERA Act. The court directed equal treatment for the homebuyers involved in the case.



Mr. Gunjesh Ranjan, representing the resolution professional, argued against the appeal, contending that the appellants, having approached UPRERA, belong to a sub-class of homebuyers entitled to specified amounts and are thus considered unsecured creditors. He asserted that these homebuyers have relinquished their rights under [Section 18 of the RERA Act](#) and cannot secure dual benefits. Rejecting these arguments, the Supreme Court held that *"It is only home buyers that can approach and seek remedies under RERA - no others. In such circumstances, to treat a particular segment of that class differently for the purposes of another enactment, on the ground that one or some of them had elected to take back the deposits together with such interest as ordered by the competent authority, would be highly inequitable."*

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