THE U.P. REAL ESTATE APPELLATE TRIBUNAL

AT

LUCKNOW

<u>Bench 1</u>
<u>Reserved Judgment</u>

1. **APPEAL NO. 30/2019**

Rajiv Saini

Vs.

M/s Aadhar Infraholding Ltd.

WITH

2. **APPEAL NO. 31/2019**

Sanjeev Jain

Vs.

M/s Aadhar Infraholding Ltd.

WITH

3. **APPEAL NO. 32/2019**

Shashikant

Vs.

M/s Aadhar Infraholding Ltd.

WITH

4. **APPEAL NO. 33/2019**

Kusum Sharma

Vs.

M/s Aadhar Infraholding Ltd.

WITH

5. **APPEAL NO. 34/2019**

Vinay Shankar Mathur

Vs.

M/s Aadhar Infraholding Ltd.

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. The instant 5 appeals have been preferred under Section 44(1) of the Real Estate (Regulation and Development) Act 2016 ("the Act 2016") by the appellants, aggrieved by the order dated 27.12.2018 passed by the Regulatory Authority ("the Regulatory Authority"), through which 23 complaints were disposed of by a composite order. In all the appeals, M/s Aadhar Infraholding Ltd. ("respondent") is the same and the complaints have been disposed of through a common order by the Regulatory Authority as well as the issues involved are also same, therefore all the 5 appeals were clubbed and are being disposed of through a common Judgment.

   1.1 For the sake of convenience, Appeal No. 33/2019 (Kusum Sharma Vs. M/s Aadhar Infraholding Ltd.) is taken up as the lead case.

2. A perusal of the order passed by the Regulatory Authority on 27.12.2018 indicates that the Regulatory Authority has rejected the complaints made by the complainants and has observed that there is no ongoing project at the site for which registration is mandatory under section 3 of the Act, therefore RERA has no jurisdiction to hear these complaints.

3. The brief facts of the lead case are as follows:-

   i. In April 2016, the appellant had booked Retail Shop/Unit no. La-03, Plot no. 3, Knowledge Park-V, Greater Noida (West), Uttar Pradesh on the basis of a layout of the project provided by the respondent by making advance payments in the realty project named "The Business Capital", promoted by the respondent. The appellant deposited booking amount of Rs. 1,76,000/- on 25.04.2016 through cheque no. 012311 of State Bank of India. As per averments in the memo of appeal, the respondent was advertising the said project as one of the best international projects of the world, and advertisements were made at the location site on hoardings and its boundary wall.

   ii. After depositing the booking amount against the said unit, the appellant paid Rs.7,52,728/- through cheque no. 372863 dated

06.06.2016 i.e. total Rs.9,28,728/-. Thereafter, on 13.06.2016 the respondent signed an agreement with the appellant.

iii. The total cost of the unit was Rs. 16,64,000/- and the appellant had paid Rs. 9,28,728/- i.e. 50% of the total cost of the unit.

iv. On 17.06.2016, the respondent issued an allotment letter confirming that shop No.La-03 was processed successfully.

v. The project was advertised continuously from 2014 to 2018 on the website www.adhargroup.com. After hearing in RERA on 6th December, 2018 it was found that the Respondent has closed the website.

vi. Thereafter respondent has not started any construction on the project site from 2014 till filing of the complaint and as the company was not Registered under RERA till 15.08.2017 which was the last date of registration or till filing of the complaint. The General Manager Mr. Dinesh Sharma of the respondent advised the appellant to apply for cancellation of agreement and refund. On 29.09.2017 the appellant applied for cancellation of the unit by depositing all the original documents.

vii. Thereafter the respondent issued three cheques (No.002598 dated 08.02.2018 for Rs.3,00,000/-, No. 002599 dated 06.03.2018 for Rs.3,00,000/- and No.002600 dated 30.03.2018 for Rs.2,22,417/-) to the appellant totaling Rs.8,22,417/-.

viii. The appellant deposited the aforesaid three cheques in the Bank on their respective dates, but all the three cheques bounced back with the remark "Funds Insufficient". When the first cheque dated 08.02.2018 for Rs.3,00,000/- bounced back, the appellant visited the respondent's office requesting for payment, then the respondent issued two Bank Drafts (one Bank Draft dated 17.02.2018 for Rs.1,50,000/- and the other Bank Draft dated 24.04.2018 for Rs.1,00,000/-).

ix. Thereafter the appellant continuously tried to recover rest money from the respondent, but all her efforts failed.

x. Feeling aggrieved by the act of the respondent, the appellant filed a complaint no. 7201814340 before the RERA on 24.07.2018 seeking relief that if the respondent fails to handover the retail shop, the respondent may be directed to return the deposited amount along with 24% Interest w.e.f. 25.04.2016 and a sum of Rs. 10 lac as compensation. It was further stated that the respondent has cancelled the project without intimating the appellant, while the respondent intentionally did not register the project with RERA.

xi. On 06.12.2018, one of the 23 complainants, mentioned in the UP RERA order dated 27.12.2018, has given the mobile number of the Director of the respondent i.e. Shri Harish Kumar Sharma to the Regulatory Authority who called him from his chamber's landline number, Shri Harish Kumar Sharma, Director of the company /Respondent has sent his representative Sri Dinesh Chandra Sharma, General Manager. The Regulatory Authority, after discussion with the General Manager of the company /Respondent stated that the respondent will refund the money within 30 days and in case of non-refund the complainants may contact RERA office i.e. after 6th January 2019.

xii. On 27.12.2018, surprisingly, the appellant received the impugned order, before completion of 30 days, vide email wherein it is mentioned that the complaint has been rejected.

xiii. The respondent has taken the money and made the booking even after notification of RERA Act, 2016 which is a clear violation of the Act, and the Regulatory Authority failed to observe this fact. The order dated 27.12.2018 was issued in haste without giving proper attention towards the documents submitted by the appellant and the order is erroneous having error in both fact and law.

xiv. The company/respondent had advertised the project from 2014 to 2018, accepted the payments, and issued allotment letters without registration even after implementation of RERA Act. This is a gross violation of provisions of Section 3 of RERA Act. Hence, the Respondent is liable for punishment under Section 59 and for penalty under Section 60 of the Act.

xv. At the time of hearing General Manager Dinesh Chandra Sharma was in the court and gave his statement that the company/respondent was going to pay the amount within 30 days.

xvi. The Regulatory Authority has misrepresented the fact and wrongly rejected the complaints vide its order. It is stated that all complaints pertained to the non-existence of the project and the case belonged to the period before RERA came into force.

xvii. The Regulatory Authority has made serious errors of fact and law and has done grave damage and injury to all the complainants. There are sound proofs that payments were made in the bank accounts of the respondent, despite this the complaints have been rejected. Instead of giving the order for refund of money to all applicants, the order given by the Regulatory Authority is against the Principles of Natural Justice which is a basic requirement of RERA as specified in Section 53 (1) of the Act.

xviii. The Regulatory Authority failed to observe in its order that the buyers have booked by paying either 50% or 60% advance and balance 50% or 40% was to be given on completion of the project. Thus, buyers had paid a huge advance payment.

xix. While passing the impugned order, the Regulatory Authority did not take into consideration the reliefs claimed by the appellant and did not discuss the merits of the case and despite there being no cogent evidence led by the respondent about the statement made, the Regulatory Authority declined to award interest upon the deposited amount of the appellant. Moreover, no interest was awarded with respect to the arrears of the holding over charges.

4. The appellants have challenged the order of the Regulatory Authority dated 27.12.2018 on the following grounds:-

A. Because admittedly the respondent failed to complete the construction of the project within the stipulated time in accordance with the terms and conditions of the Allotment Letter.

B. Because the Regulatory Authority failed to indicate any reason for not passing the order relating to payment of compensation to the respondent. Moreover, no reason was indicated as to award interest at the rate of 24% per annum to the appellant against the amount deposited by appellant with the respondent. It is further stated that in the absence of any cogent reasons being present in the impugned order, the said finding and consequent direction is completely unsustainable and bad in the eye of law.

C. Because the impugned order dated 27/012/2018 has been passed without considering the provisions contained in section 71 of the Act 2016.

D. Because the impugned order passed by the Regulatory Authority favors the respondent. The respondent is free from the bindings and effect of Section 43(5) of RERA Act, 2016 as neither any money is being refunded to the buyers nor the respondent is required to deposit amount before appellate tribunal as per provisions of Section 43 (5) and can easily file written statement on the date of hearing without paying any money. It is clear that this UP-RERA order of 27th December 2018 has helped the respondent to deny the justified dues to the complainant. Now the respondent can go in appeal to any court without paying any deposit in any court against the order of the Tribunal, if it will be in favour of the Appellant. The order of the adjudicating officer shocked all the complainants as all payments were made through cheque, internet banking, RTGS/NEFT or demand draft etc. Hence, despite all payments and proofs submitted before the Regulatory Authority, no glance has been given on the supporting documents.

The act of the adjudicating officer is serious concern for all the buyers of the realty project "The Business Capital" of respondent.

E. *Because some of the complainants informed the Regulatory Authority that Shri Harish Kumar Sharma, Director did not meet them whenever they visited the office of the Aadhar Infraholding Limited. The complainants never said that "Uttardata Uplabdh Nahin hain". The complainants also gave mobile number of the Director to the Regulatory Authority who called the Director from landline number installed in his chamber at UP-RERA office at Greater NOIDA.*

F. *Because the complaint of the appellant is properly fit for justice under Sections 2,3, 4, 12, 13,18, 59, 60,69,71 and 72 of the RERA Act, 2016.*

G. *Because in order to refuse compensation under section 18 of the Act, 2016, the Regulatory Authority was required to record and the demand evidence in view of the provision contained in section 71 (3) of the Act 2016, however, neither any direction in this regard was passed nor such power was exercised and the impugned order was passed in a hurried and cryptic manner.*

5. The appellants have sought the following reliefs:-

i. *Return of principal amount along with interest @ 18% per annum from 25/04/2016.*

ii. *Direct the respondent to make payment of Rs. 10,00,000/- (Rs ten lakhs Only) towards amount of compensation.*

iii. *Direct the Respondent to make payment of Rs.35,000/- (Rs. Thirty Five Thousand only) towards cost of litigation/expenses.*

iv. *Pass any other or further order as this Hon'ble Authority may deem fit under the fact and circumstances of the case.*

6. Though Shri Vikas Verma, learned counsel for the respondent filed vakalatnama on 14.12.2021 and sought time for filing objections, but he

did not choose to file objections to the grounds of appeal even after getting various opportunities. After giving ample opportunities to learned counsel for the respondent for filing objections, the matter was proceeded for ex-parte hearing vide order dated 25.08.2022.

7. Vide notice dated 14.11.2022, it was informed to the parties that old cases of 2019, listed for hearing on 19.11.2022 will not be adjourned on any count. It was also made clear that in case the parties/their legal representatives do not appear on the date fixed, the Tribunal will decide the case on the basis of pleadings and documents available on record. Despite the aforesaid notice, no one was present on behalf of either of the parties on 19.11.2022, when after examining the record the Judgment was reserved.

8. On 28.11.2022 learned counsel for the appellants, Sri Prabhat Kumar Tripathi, filed an application in all the 5 appeals for re-listing of the matter for hearing, whereupon the matter was listed on 14.12.2022, but no one was present to press the application on 14.12.2022 and the matter was directed to be listed on 16.12.2022. On 16.12.2022 also no one was present to press the application for re-hearing and the same was directed to be listed on 21.12.2022. Learned counsel for the appellant appeared on 21.12.2022 and he was allowed to argue the matter. No one was present on behalf of the respondsesnt.

9. On examination of the pleadings and record available on the memo of appeal, the admitted facts are as under:--

9.1 In pursuance to the advertisement of the respondent the appellant booked a Retail Shop/Unit no. La-03, Plot no. 3, Knowledge Park-V, Greater Noida (West) Uttar Pradesh by depositing an amount of Rs.1,76,000/- on 25.04.2016 and subsequently paid Rs.7,52,728/- through cheque no. 372863 dated 06.06.2016.

9.2 An agreement was signed between the appellant and the respondent on 13.06.2016 showing the respondent as ‘developer’ and the appellant as ‘investor’ meaning thereby that the investor has booked a retail shop for provisional allotment of category

'Retail Shop' measuring 208 sq. ft. against which he has paid a sum of Rs.9,28,728/- which includes service tax of Rs.39,751/- with the payment plan (50:30:20) i.e. 50% of BSP+ Service Tax at the time of booking, 30% of BSP+ Service Tax at the time of completion of structure, and 20% of BSP+ Other Charges+ Service Tax at the time of possession.

9.3 The respondent, vide letter dated 17.06.2017, issued provisional allotment letter of Unit No. La-03.

9.4 The examination of the agreement/MOU dated 13.06.2016 as well as provisional allotment letter dated 17.06.2016 does not indicate any period for offer of possession of the allotted unit.

9.5 It is admitted case of the appellant (as per averments in para 5.11 of the memo of appeal) that the respondent has not started any construction on the project, location site from 2014 till date (i.e. till filing of the appeal on 21.02.2019) and the company has not registered the project under RERA till 15.08.2017. Thus, it is evident that the appellant booked a unit with the respondent in April 2016 without there being any construction activity on the project site.

9.6 As per the averments of the appellant, on account of no construction activity and on the advice of General Manager of the respondent, the appellant applied for cancellation of the agreement and refund of deposited amount on 29.09.2017 stating in the affidavit-cum-undertaking that "now I wish to surrender the booking of said Unit in the aforesaid project to the Company willfully, voluntarily and without any undue pressure/coercion and request the Company to complete the formalities as per the terms of the application form/allotment letter executed by me". The appellant has also agreed that the company shall refund to her the amount in accordance with the terms of the application form/allotment letter executed by her, after forfeiting the earnest money/other agreed amount against cancellation of her booking and upon cancellation of her allotment right in the said unit at her request by the company, neither the appellant nor anybody else claiming through her, shall have any right, title, interest etc. in the said unit and the company is free to deal with the said unit at its sole discretion.

9.7 The appellant has further stated that the respondent issued three cheques (No.002598 dated 08.02.2018 for Rs.3,00,000/-, No. 002599 dated 06.03.2018 for Rs.3,00,000/- and No.002600 dated 30.03.2018 for Rs.2,22,417/-) to the appellant totaling Rs.8,22,417/- and all the three cheques issued by the respondent bounced back with the remark "Funds Insufficient". The respondent, thereafter issued two Bank Drafts (one Bank Draft dated 17.02.2018 for Rs.1,50,000/- and the other Bank Draft dated 24.04.2018 for Rs.1,00,000/-).

9.8 As the rest amount has not been returned by the respondent, therefore, the appellant, feeling aggrieved against the action of the respondent, approached U.P. RERA vide Complaint No. 7201814340 dated 24.07.2018 seeking relief for refund of the deposited amount along with interest from 25.04.2016.

9.9 The complaint of the appellant was rejected by means of impugned order dated 27.12.2018 taking into consideration the statement of the complainant/appellant that no construction is being done at the spot and apparently the project is not being developed, therefore, the project cannot be characterized as on-going project and there is no requirement of registration of the project under Section 3 of the Act 2016. The complaint of the appellant is with respect to non-existent project and the issue is not covered under the Act 2016. Further vide notice dated 27.11.2018 the complainants were required to provide relevant evidence in order to determine the requirement of registration of the project under Section 3 of the Act 2016 and the issue falls under the jurisdiction of the RERA. Since the complainants failed to provide any evidence even with respect to availability of land and other requisite approvals, the complaint of the appellant along with other similar complaints against the respondent were rejected on the ground that on the spot there is no on-going project which warrants registration of the project under Section 3 of the Act 2016 and the complaint does not fall within the jurisdiction of RERA.

10. In order to appreciate the controversy on the basis of grounds, pleadings on record and submissions of learned counsel for the appellants, we deem it proper to frame the following issue:--

> *Whether the project of the respondent falls in the category of ongoing project, as per the record available in the memo of appeal, and warranted registration under the Act 2016?*

11. It would be apt to understand the import of certain sections, definitions contained under the Act and the Rules framed thereunder. Section 3 of the Real Estate (Regulation and Development) Act, 2016 which came into effect on 25th March, 2016, is being reproduced below:-

> ***Section 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 standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.*

11.1 Thus under Chapter II of the Act 2016, registration of real estate projects become mandatory and to make the statute applicable and to take its place under Sub-section (1) of Section 3, it was made statutory that without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project, but with the aid of provisions to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act, except as the projects covered by sub section-(2) of Section 3 of the Act, as a consequence, all such home buyers agreements which have been executed by the parties inter se have to abide the legislative mandate in completion of their ongoing projects.

The term "ongoing project" has not been so defined under the Act while the expression "Real Estate Project" is defined under Section 2(zn) of the Act, which reads as under:-

> *" 2(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*"

As per the legislative mandate, the Act is intended to apply even to the ongoing real estate projects. The expression "On Going Project" has been defined under Rule 2(h) of the U.P. Real Estate (Regulation and Development) Rules, 2016, which reads as under:-

> *"2(h) "ongoing project" means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfill any of the following criteria on the date of notification of these rules:*

(i) where services have been handed over to the Local Authority for maintenance.

(ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.

(iii) where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.

(iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate."

The expression "Completion Certificate" has been defined under Section 2(q) and "Occupancy Certificate" under Section 2(zf) of the Act, which reads as under:-

"2(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;

"2(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;"

11.2 Looking at the scheme of the Rules, the Completion Certificate can only be issued after all norms etc. have been complied with and only thereafter a project would escape from the mandate of registration.

11.3 Further, as per the scheme of Act 2016 and Section 3 in particular all "ongoing projects" that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake-holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

11.4 The Apex Court recently in **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & others (Civil Appeal No.(s) 6745-6749 of 2021 arising out of SLP (Civil) No.(s) 3711-3715 of 2021** had the occasion to consider as to whether the Real Estate (Regulation and Development) Act, 2016 is retrospective or retroactive in its operation and what will be its legal consequence, if tested on the ambit of the Constitution of India. The Apex Court after extensive analysis of the aims and objects, provisions of the Act observed as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/ allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.*

42. What the provision further emphasizes is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. The Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law."

The Apex Court further drawing a distinction between retrospective and retroactive statutes observed as under:-

"48. The distinction between retrospective and retroactive has been explained by this Court in Jay Mahakali Rolling Mills Vs. Union of India and Others, which reads as under:-

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

49. Further, this Court in Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others, held as under:-

"67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated. 68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place

prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31.8.2016 [Shanti Conductors (P) Ltd. v. Assam SEB, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."

50. In the recent judgment of this Court rendered in the case of Vineeta Sharma Vs. Rakesh Sharma and Others wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:-

"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."

"51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

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.*

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."

11.5 We have also examined the provisions of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, wherein in Chapter II under the heading of **DUTIES AND LIABILITIES OF PROMOTERS** vide Section 4(5) it has been provided that an apartment may be transferred to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws and under the heading of **Explanation**, it has been further provided that for the purposes of this sub-section "completion" means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be.

11.6 The purpose of this beneficial legislation', it says "is to safeguard the pecuniary interest of the consumers/allottees". It was observed that the Act, obligates a promoter to get a project registered, which is either not complete or is sans completion certificate on the date of commencement of the Act.

11.7 The key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, ex-facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a completion certificate on the date of commencement of the Act.

11.8 The project is ongoing or not it has to be distinguished on the basis of ongoing project under Section 3(2)(h) of the Act 2016 which states that where the promoter has received completion certificate for a real estate project prior to commencement of the Act 2016 notwithstanding anything contained in sub-section (1), no registration of real estate project is required and the project shall not be 'ongoing project', but in other cases with respect to the project existed at the time of commencement of the Act, the same need to the registered failing which the Regulatory Authority is required to take action under Section 59 of the Act 2016 and ensure that ongoing project is registered in order to make the provisions of the Act and Rules 2016 applicable.

11.9 Section 31 of the Act deals with filing of complaint and reads that "Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of the Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be".

11.10 An aggrieved person has not been defined in the Act, which means that this term should be given a wider and not a restrictive interpretation, in this scenario, any person can come to agitate his/her grievance before the Authority. If a complaint is made under section 31 for violation or contravention of the provisions of the Act (as the language of the statute suggests), it may also include a complaint by the allottee against the promoter for not registering the project, apart from other complaints of non-delivery, delayed possession or any other conceivable, or otherwise, an exploitative condition, where a person's life's earnings are at stake in a real estate project.

11.11 The authority would have to admit a complaint even if it is to reach a conclusion about the completion of a project or to draw further conclusions about the applicability of the Act. Merely because a project hasn't been registered can never be an acceptable reason to deprive the allottee of his/her statutory right to file a complaint.

11.12 In our view, the Authority has to act as a watchdog and play an active role in thwarting such malpractices which may result in closing its doors to any aggrieved person.

11.13 Further, the Authority cannot also turn a blind eye to its own powers under Section 35, under which it can act suo motu to call for information or clarifications relating to the affairs of any promoter; especially when an allottee complaint of incomplete work as well as infrastructural development, suggesting that the project may still be an ongoing project.

11.14 Sections 32, 34 and 35 of the Act read together leave no doubt that the Authority is a watchdog designed to ensure transparency in the real estate sector, to protect all players, be it the allottee, the promoter Or be a real estate agent. The underlying emphasis is to protect the interest of an allottee, who is a dwarf compared to the might of the promoters/developers.

11.15 No doubt the language of the statute would state that registration would not be required on completion of a project, but in the event of a complaint regarding deficiency in development works, it is the duty of the Authority to consider the matter, watch closely, otherwise such pleas may be resorted to by unscrupulous developers/promoters to defeat the valuable rights of the allottees.

11.16 We are of the opinion that the language of the statute also provides that a developer shall be protected from the registration and consequences of the Act, only in case where the project was completed with completion certificate. But, to establish a fact that whether the project is ongoing or completed just to free the promoter from the consequences of the act are matters of fact to be determined in the course of proceedings initiated by an aggrieved person. Non-applicability of the Act cannot be a presumption to be derived from a mere fact simplification of a project not being registered.

11.17 Proceeding under section 59 of the Act is a course available to the Authority except for determination of a complaint. Once a complaint is filed on issues pointing out the deficiencies and defaults of a promoter, the Authority has to decide on its own whether to take recourse to the procedure prescribed under section 59 after filing a complaint.

11.18 In para 5.11 of the memo of lead appeal, the appellant has averred that the respondent has not started any construction on the project location site from 2014 till date and the respondent did not register the project under the RERA till the date of filing of the appeal i.e. 21.02.2019.

11.19 It is the admitted fact that the present project of the respondent is not registered, therefore, the provisions of the Act of 2016 are not applicable on the same in view of the judgment of **Hon'ble Supreme Court in Civil Appeal No(s) 6745-6749 of 2021 (M/S Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others) decided on 11.11.2021. The issue is decided accordingly.**

12. As the project of the respondent is not registered with UPRERA, therefore, in view of the observations of the Hon'ble Supreme Court in ***M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others (supra),*** neither the complaint before the Regulatory Authority nor the appeal before the Tribunal is maintainable.

13. Accordingly, all the five **appeals are dismissed.**

14. However, it is open for the appellants to raise the issue of registration of the project of the respondent on the administrative side of the Regulatory Authority, as the Regulatory Authority performs administrative as well as quasi judicial functions separately.

15. No order as to costs.

Dated: 29th May, 2023.

GauravSri/-Shakir **(K.K. Jain)** **(D. K. Arora)**