

Exemption of Projects Listed as “Structurally Completed” Cannot be Contemplated as Non-Applicability of Powers or Jurisdiction under RERA Act - TNRERA

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The Government of Tamil Nadu by way of notification on June 22, 2017 promulgated the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (“Rules”) as part of the implementation of Real Estate (Regulation and Development) Act, 2016 (“Act”). Under the said Rules, rule 4 explanation III provides that if a planning authority gives approval for a project which is planned to be developed in different phases, the said phases may be registered by the promoter/developer as an independent project for the purpose of registration with the Real Estate Regulatory Authority (“RERA”). Further it states that a two-third consent of the buyers is not required for the development of a land in different phases but nevertheless requires such an agreement to divide a project to be in written and executed by the parties. It is also notable that registration requirements under RERA shall not become mandatory if the subject land is less than 500 square meters or the total number of apartments developed is less than 8.

In light of the above provisions it is clear that the new legislation under RERA has been standardised so as to give rights to the buyers against any act which was conducted or completed unilaterally by the

developer/promoter. It is also notable to mention that although the new legislation

allows for the bifurcation of a single real estate project into different phases and registering the same as independent projects, the Act itself does not however provide clarity in instances wherein the said phases can be further

divided into sub-phases thereby avoiding registration as per the requirements and provisions of RERA Act.

The ambiguity with respect to the powers and jurisdiction under the Act, was clarified by Tamil Nadu Real Estate Regulatory Authority (“TNRERA”) in a judgement dated September

24, 2018 in the case of Secretary, Serene Kshetra Owners v. M/s. Adinath Srinivasa Foundation LLP^[1],

Complaint number 35/ 2018 discussed below^[2].

FACTUAL BACKGROUND:

The present case was instituted by Serene Kshetra Owners (“Allottees”) of ‘Serene

Kshetra project’^[3] in the

Kancheepuram district wherein the allottees/complainants had stated that the said project which had commenced prior to the introduction of RERA was listed as “structurally completed” as per the list maintained and published in the website of Director of Town and Country Planning (“DTCP”), Chengalpattu. This act of the developer curtailed the Allottees

from reaping the benefits under the RERA Act even though only certain structures were completed or in the process of completion and handed over to the respective allottees.

The facts of the said case were such that the Developer

had taken two different project approvals with respect to the initial project

being

a single integrated project falling under the revenue jurisdiction of DTCP Chengalpattu and Local Planning Authority, Kanchipuram. The said project was divided

into a Residential Layout scheme as Phase I and a Group Development scheme as Phase II under which major plots were structurally completed with the exception

of 7 villas, 6 twin houses and 48 row houses. The Developer registered Phase I

and II of the development schemes as two separate projects without obtaining two thirds majorities of the buyers which he claimed was a matter of right as per section 3(2) of the Act.

It was contended by the Allottees that though the project was initially a single integrated project and later recognised to be developed in two separate phases the same cannot be further subdivided to indicate sub-phases in the said project indicating registered and un-

registered plots with RERA. The Allottees further argued that in such cases there would be

differential treatment towards the present allottees within the same project with that of future allottees who would benefit from certain advantages and rights mentioned under the Act.

In reply to the contentions of the Allottees, the Developer made arguments stating that the said project would not warrant the jurisdiction of RERA as per the exemption provided under 2 (h) (iii) of the Rules as it exempts the purview of RERA for execution of projects outside the Chennai Metropolitan Area for completed structures and plots which were pending

completion certificate. The Developer further rebutted that only upon such verification by the concerned relevant authorities that the said plots were included in the list prepared by DTCP. It was further argued by the Developer that the Act and the Rules lacked jurisdiction to confirm the legality of the present complaint due to the statutory rights guaranteed under explanation of section

3(2) of the Act.[4]

ISSUES:

The issues framed before TNRERA were:

1) Whether a said project can be excluded from the ambit of RERA even to the extent of examining its legality as per rule 2 (h) (iii) of the Rules?

2) Whether the developer has an unfettered right to further bifurcate a project as per his wishes under section 3(2) of the Act

and Explanations II and III of rule 4 of the Rules and whether the same would bar the jurisdiction of RERA to examine the said issues?

OBSERVATIONS AND FINDINGS:

It was observed that if a project is exempted under rule 2 (h) (iii) of the Rules, sections 34 to 37 of the Act relating to powers and jurisdiction can be invoked and be made applicable to test the legality of the said exemption. TNRERA stated that as per sections 34 to 37 of

RERA Act, 2016 there was ample power and jurisdiction to regulate, call forth records, conduct enquiry with respect to registration and regulation of the real estate projects and agents. Therefore, keeping in mind the above provisions TNRERA asserted its authority that no exclusion under the Act itself could bar the applicability of the Act to determine the legality of the matter in hand. Further with respect to issue 2 it was observed that since the project had commenced before TNRERA was initially notified, the bifurcation was made by the Developer keeping in mind the requirements for registration under RERA and thereby taking steps to avoid any possibility of registration. It was therefore observed from the submissions that the Developer had utilised the provisions under rule 4 Explanation III of the Rules, which allows for the registration of phases of a project separately and then thereafter declaring to his advantage from further application of RERA as provided under rule 2 (h) (iii) of the Rules. It was ascertained that since only certain portions in the said project were completed it did not warrant the project as a whole to be accorded the status of "structurally completed" as per section 3 of the Act which would, if accepted prevent the jurisdiction of RERA.

In light of the facts and circumstances the Developer was therefore ordered to register the whole project in its entirety under the provisions of RERA.

COMMENTS:

The order passed by TNRERA in the above case is a welcome judgement to showcase the fact that the real estate regulatory authority does not merely *de facto* pass judgement based on records maintained by the relevant authority and that it imposes itself as the adjudicating authority in matters concerning the wilful omission of the parties to register with RERA. That the present case is clearly a case regarding non-registration with RERA and for the purpose of avoiding registration fee payable by real estate agents to RERA. Further it clarifies the stance that an exemption for non-registration would per se be applicable only if all the plots in a said project are structurally completed and does not include any partly or majorly completed plots in a given real estate project. Thus it can be observed that RERA does not hesitate to resolve any ambiguity which would have occurred prior to its commencement and that moving forward it aims to standardise the real estate sector towards protecting the rights of the buyers.

By - Vaidya Gopikrishnan, Associate

[1] M/s. Adinath Srinivasa Foundation LLP hereinafter referred to as the 'Developer'

[2] Order dated 24 September

2018 - Serene Kshetra Owners v. M/s. Adinath

Srinivasa Foundation http://www.tnrera.in/tnrera_judgements/2018/35-2018.pdf

[3] Joint venture between Serene Senior Living Private Limited and Adinath Srinivasa Foundations LLP – Registered under RERA

[4] Explanation to rule 3 (2) of Act – “For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately”.

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