

Advertisement effect under RERA



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Issues



RERA & HC

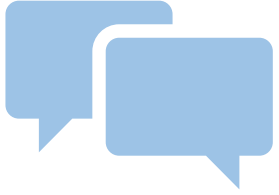


Law



Ratio
Decidendi

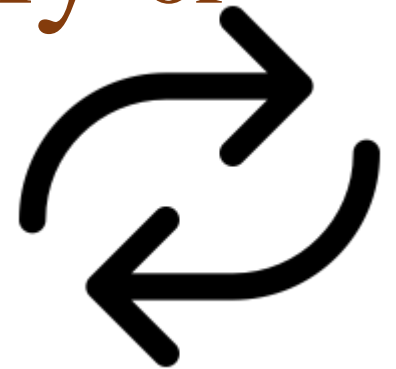
Advertisement Effect



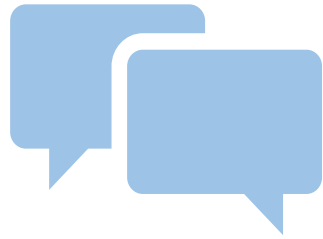
Issue-1

Obligation of the Promoter for veracity of
Advertisement or Prospectus

Prospectively or Retrospectively or
Retroactively



Advertisement Effect



Issue-2

Right of allottee

REFUND

Refund of amount
Interest and Compensation

Section-12

Obligations of the Promoter regarding veracity of the Advertisement or prospectus:

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act

Section-12

- *Explanation: - The Provision clearly says that if any person who buy any apartment/plot in the project, on the basis reliance of information given in advertisement/prospectus or model apartment and later on if it is found that such information was not correct and allottee has suffered the loss due to such incorrect or false information that it is the duty of promoter to compensate such losses.*
- *Apart from the compensation, if allottee wish to cancel the booking of apartment/plot due to such incorrect and false information than promoter has to return the entire amount along with the interest.*

Section-18

Return of amount and compensation:



18(1) If the promoter fails to complete or is unable to give possession of an apartment building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Section-18

Explanations: *This section provide the two situations where promoter is liable to pay the interest to the allottee due to failure to give the possession of an apartment/plot or building*

First situation talks, when promoter failed to give the possession of flat as per the terms and condition of the agreement for sale including the date of possession given in agreement for sale. Therefore, it is the duty of the promoter to give the possession as per the date mentioned in agreement for sale.

Second situation talks, when promoter failed to give the possession due to discontinuance of business after the revocation and suspension of registration granted under RERA.

In both the above situations, promoter has to give the interest for delay in possession of flat/apartment.

Further, if the allottee wish to cancel the booking then it is the duty of promoter to refund the entire amount along with interest.

It is important to note that the return of the amount along with the interest will not debar the allottee to seek the compensation so the allottee can seek the compensation from the promoter for the delay or failure to give the possession.

MahaRERA Order

- ✓ *Obligation of the promoter regarding veracity of the advertisement or brochure **does not apply retrospectively***
- ✓ *Provision of RERA do not apply to the present transaction as which took place in year 2012-13 i.e. much prior to the enactment of RERA on 01.05.2017*
- ✓ *MahaRERA ordered by advising the allottees to execute and register the agreement to sale as per RERA and rules and regulations*
- ✓ *If the allottees intend to withdraw from the project then such withdrawal would be guided by the terms and conditions of the allotment letter*

Observation made by MahaRERA

- ✓ *Promoter can give the possession of the flat as per the time line declared, i.e. August, 2019*
- ✓ *Cancellation of allotment and withdrawal of the money by the allottee will adversely affect the project as the project is in advance stage and 520 allottees are in project*

Appeal to Appellate Tribunal

Ground of Appeal

- ✓ *MahaRERA has considered only one point i.e. obligations of the promoter to compensate the allottee and refund the amount due to incorrect or false information contained in the brochures and advertisement*
- ✓ *The failure on the part of promoter to give the possession as promised was not considered before deciding the case*
- ✓ *Hon'ble MahaRERA has not considered the views taken in the case of **Neelkamal Realtors Suburban Pvt. Ltd. and anr Vs Union of India and ors 2017 S.C.C 9302***
- ✓ *The Hon'ble Bombay High Court held that Section 18 of RERA i.e. provision related to refund of amount, on account of failure of promoter to give the possession on time, to allottee is **retroactively** applicable*

Concept of retroactively or retrospective

Retrospective: *Judicial dictionary (13th Edn.) K.J.Aiyer Butterworth , p.857, states that the word “retrospective” when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure.*

"Retroactive- Acting backward; affecting what is past

'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts

The first, which may be called 'true retroactivity', consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated.

The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new rule of law is applied to an act or transaction in the process of completion.....The foundation of these concepts is the distinction between completed and pending transactions...." (T.C. Hartley, The Foundations of European Community Law 129 (1981).

Order of Appellate Tribunal

1. *Whether Section-12 of RERA applies prospectively or retrospectively or retroactively:-*

Retroactively

2. *Whether Promoter committed breach of Section 12 and Section 18 of RERA*

Yes

3. *Whether allottees are entitled for refund along with interest and compensation from the promoter.*

Allottees are entitled for refund and interest only.

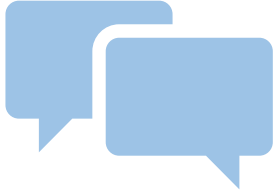
Conclusion

- ✓ *Section-3 of RERA i.e. Registration of Project applicable for Ongoing project*
- ✓ *If Section 3 Is applicable for ongoing project, means all other provision is also applicable to ongoing project*
- ✓ *RERA provision enable the promoter to decide the time line to complete the project but possession of the flat is to be given as per agreement to sale.*
- ✓ *Extension of time line to complete the project is to avoid the penal consequences not to delay the possession as per agreement for sale*
- ✓ *Provision of RERA do not rewrite the clause of the agreement for sale*
- ✓ *Interest payable as per Section-18 of RERA is not penalty as it is compensatory in nature.*
- ✓ *Due Delay in possession, allottee is deprived of the use of fund paid by him so the promoter is liable to paid the interest for utilisation of fund paid by allottee.*
- ✓ *The liability of promoter to compensate and refund of the amount along with interest due to incorrect/false information in the broacher and delay or failure to give the possession as per agreement for sale are not retrospective in nature and the same are compensatory in nature, therefor it is retroactively applicable*

Narayana Realty Infrastructure V Union of India



Advertisement Effect



Issue-1

Website address of RERA Authority to be mentioned on

Advertisement and Prospectus both
or any one



Legal Provision

As per Section 3 of RERA, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any unit, in any real estate project or part of it without registering the real estate project under RERA.

As per Section 11(2), any advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto

Order

Advertisement published in news paper Gujarat Samachar-Vadodara Edition

Project : “Narayan Greenwood” and “Narayan Angan”

Advertisement did not contain webpage of GujRERA Authority:

<https://gujrera.gujarat.gov.in>.

GujRERA Authority taken *Suo Moto action* for violation of section 11(2) of
RERA

Penalty of Rs. 1,25,000/- were imposed for both the project

Promoter filed and appeal before Appellate Tribunal

Appellate Tribunal reduced the penalty from Rs. 1,25,000 to Rs. 75,000/-

High Court Order

Promoter filed the appeal before High Court

High Court remanded back the matter on the basis of interpretation of Section 11(2) of RERA. Gujarat High court has given the view, without going into fact of case, that it would be sufficient compliance with the provision if the website as contemplated therein is mentioned either in the advertisement or prospectus. There is no requirement of its mentioning in both: advertisement and prospectus.

It is mentioned that there is no breach of provision of section 11(2) of RERA as it clearly mentioned that "advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority". In the provision word "Or" is used i.e. advertisement or prospectus not advertisement and prospectus.

High Court Order

The order of High Court was recalled by order dated 26.12.2019 passed in Misc. Civil Application No. 1 of 2019.

Question of law:

Whether the Gujarat Real Estate Regulatory Authority (Respondent no.3) erred in imposing a fine of Rs.1,25,000/- and whether the Gujarat Real Estate Appellate Tribunal (Respondent No.2) further erred in only reducing the fine to Rs. 75,000/- while holding and declaring that the "appellant had no ulterior motive" in failing to mention the name of the website of Gujarat Real Estate Regulatory Authority?

Reduction in penalty was made with the finding that no *mens rea* was involved behind the contravention of Section 11(2) of the Act.

mens rea not being criteria for the penalty under Section 60 of the Act, the penalty was warranted on the mere proof of breach of the provision

Appeal dismissed as there was no involvement of question of law in Appeal



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