

Real Estate (Regulation and Development) Act, 2016 (RERA,2016)

Case law study

Gujarat Real Estate Regulatory Authority Vs Satyam Infracon

(Gujarat High Court Order)

This article attempts to discuss the issues in respect of maintainability of appeal filed, by the Gujarat Real Estate Regulatory Authority before Hon'ble Gujarat High Court.

Issues:

Whether Hon'ble RERA Authority can challenge a decision of the Appellate Tribunal before the High Court under Section 58 of the RERA, 2016.

Whether, Hon'ble RERA Authority falls under the definition of "Person" as defined under section 2(zg).

Provisions:

Section 58 "Appeal to High Court "

"58(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time."

2(i) Authority

"Authority" means the Real Estate Regulatory Authority established under sub-section (1) of section 20.

2(o) Company

"company" means a company incorporated and registered under the Companies Act, 2013 and includes,

- (i) a corporation established by or under any Central Act or State Act;
- (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force

2(p) Competent Authority

"competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property.

2(zg) Person

"Person" includes,—

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm under the Indian Partnership Act, 1932 or the Limited Liability Partnership Act, 2008, as the case may be;
- (v) a competent authority;
- (vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf

Fact of the Case:

In the present case the Gujrat Real Estate Regulatory Authority has rejected the RERA registration application by raising the questions regarding authenticity and legality of the plans approved by the competent Authority. In the registration application query was raised regarding the usages of shops in the basement of the project as permitted by the Surat Municipal Corporation and the Hon'ble Chairman Gujarat Real Estate regulatory Authority has suggested to clarify/modify the planning of the project for which development permission was granted by the competent Authority. The Gujarat Real Estate regulatory Authority rejected the application and directed the Surat Municipal Corporation to stay the construction work and re-verify the modified development permission granted to the developer being a promoter.

Aggrieved with the order for rejection of registration application, promoter filed and appeal before the Appellate Tribunal. The Hon'ble Appellate Tribunal sought a final report from the municipal corporation regarding the validity of the development permission and as per the report of municipal corporation the development permission was granted as per the applicable rules and regulations.

On the basis of submission made by the promoter and the report of municipal corporation, Hon'ble Appellate Tribunal observed that RERA Authority has no jurisdiction to direct the municipal corporation to stay the construction and re-verify the development permission and accordingly order was passed by the Hon'ble Appellate Tribunal that RERA Authority shall grant the registration to the promoter and municipal corporation will vacate the stay on construction.

Aggrieved with the Order, RERA Authority filed an appeal before the Hon'ble High Court challenging the order passed by the Hon'ble Appellate Tribunal. In the said appeal, promoter objected that the scheme of the RERA Act does not envisage the Authority being empowered or authorized to prefer an appeal before the High Court against a decision passed by the Appellate Tribunal.

In the objection, promoter contended that as per provision of the Section 58 of the RERA any aggrieved person can file the appeal before the Hon'ble High Court and RERA Authority is not the person as per provision of Section 2(zg).

Further, it is stated that the Authority and the competent Authority are different and it is submitted that in the definition of person includes a competent authority, but does not include "Authority".

While deciding the preliminary objection filed by the promoter, Hon'ble High Court observed that word 'Person' as defined in Section 2(zg) of the Act does not directly refer to the 'Authority' as person, but upon reading of Section 2(o) of the Act, a completely different meaning can be culled out inasmuch as the Section 2(zg)(iii) states that the word 'Person' also includes 'a company'. In definition of the word "company" at Section 2(o) of the Act in addition to a company incorporated and registered under the Companies Act, 2013, the words "a development authority or any public authority established by the Government in this behalf" is also included. Now, undoubtedly the Real Estate Regulatory Authority is a public authority established by the Government under the Real Estate (Regulation and Development) Act, 2016.

Further, it is observed that, once the RERA Authority is the party in the Appeal filed before the Appellate tribunal then, RERA Authority can also file the appeal before the Hon'ble High Court.

Order of Hon'ble High Court of Gujarat:

- a. The Authority would be included in the definition of 'Person' on a conjoint reading of section 2(zg) and 2(o) of the Act; and
- b. The Authority falling within the definition of the word 'Person' is therefore empowered to challenge a decision of the Appellate Tribunal before the High Court under Section 58 of the Act.

Conclusion:

Real Estate Regulatory Authority is a public authority established by the Government under the Real Estate (Regulation and Development) Act, 2016 and therefore its fall under the definition of the Company and company being a person as per Section 2(zg) can file the Appeal before the Hon'ble High Court.