

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

Case law study

Pratham Square V/s Gujarat Real Estate Regulatory Authority

This article attempts to discuss the provision related to deemed registration under RERA, 2016.

Issues:

Whether failure on part of GujRERA to accept or reject the registration application within 30 days will be considered as deemed registration.?

Whether rejection of Application for non-submission of Registered development agreement is legal or lawful.?

Whether GujRERA can reject the registration application for non-submission of Registered development agreement.?

Provisions:

Section 5: Grant of Registration

(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

Fact of the Case:

The promoter i.e. Pratham Square a partnership firm, applied for registration of project on 1st August, 2017, the promoter has submitted the hard copy of application along with all documents to Town Planning office, Himmatnagar on 4th September, 2017. The GujRERA issued a notice dated 29th May, 2018 under section 5(1)(b) of the act for compliance for grant of registration. The hearing for the said matter was scheduled on 15th June, 2018 and promoter has furnished all the information's (i.e. Form-3, details of unsold unit in Form-3 and Form-2) as required by GujRERA.

The GujRERA has issued an order dated 5th December, 2018 rejecting the application for registration of project on the ground that registered development agreement pertaining to the land was not submitted and further GujRERA had forfeited the fees paid at the time of application for registration of project.

Aggrieved with the order of GujRERA, promoter filed an appeal before the GujRERA Appellate Tribunal on the ground that

- a. GujRERA was required to provide the registration or refuse the registration within 30 days from the receipt of the application. If GujRERA failed to grant the registration, then project is deemed to have been registered.
- b. There was no query raised in respect of the development agreement and promoter has submitted all the documents on time to time which was asked by the GujRERA.

The GujRERA appellate Tribunal held that it is not necessary to submit the registered development agreement for registration of the project as it is clear from the fact that Partnership firm was created by the partner for their profit sharing and the project will be developed on the land which is in the name of all partners and further, points for development was covered in the documents, therefore the promoter is not required to register the development agreement.

Further it is held by the GujRERA Appellate tribunal that, once promoter has submitted all the necessary documents then it is the duty of GujRERA to grant or refuse the registration in the specified time period i.e. 30 days from the date of application.

Further it was held that order rejecting the registration application and confiscation of registration fees is not legal and not according to law.

Conclusion:

The application for registration of project is required to be granted, therefore GujRERA shall grant the registration of the project according to provision of law and provide a registration number including login id and password to the promoter.

The GujRERA shall not recover the registration fees from the promoter.

The GujRERA has no power to reject the registration application of the promoter on any ground.