

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

**Case law study**

**NCPL Infracon LLP Vs Jyotsna Shah and Ors.**

**(Gujarat High Court Order)**

This article attempts to discuss the issues in respect of deciding the preliminary objection raised in the complaint and applicability of Civil Procedure Code, 1908 in the proceeding before RERA Authority.

Issues:

Whether Hon'ble RERA Authority/ Hon'ble Adjudicating Officer should first decide the preliminary objection raised in the proceedings?

Whether Hon'ble RERA Authority/ Hon'ble Adjudicating officer should adhere to the Provision of Civil Procedure Code, 1908 while deciding the complaint/application filed under RERA?

Provisions:

Section 35 "Powers of Authority to call for information, conduct investigations"

(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder.....

2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.

Order VII rule 11(d) of Civil Procedure Code, 1908

11. Rejection of Plaintiff. The plaintiff shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaintiff to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provision of Rule 9.

Fact of the Case:

In the present case, allottee filed the complaint before the Hon'ble RERA Authority for possession of units with some amendments/modifications in clauses of draft sale deed and not to install the VRV system of AC in the office premises purchased by the allottee. The Hon'ble GujRERA Authority passed the order in favour of the allottee and directed the promoter to execute the sale

deed within 30 days from the date of order and not to incorporate the clauses related to VRV System of AC in the sale deed. After expiry of 30 days from the order date but before the time period of filing the appeal, allottee filed the execution application for non-execution of sale deed by the promoter. Meanwhile, the promoter filed the appeal to challenge the order, for execution of sale deed without VRV system of AC clause. passed by the Hon'ble GujRERA Authority. However, pending the outcome of Appeal, Hon'ble GujRERA Authority decided the execution application and imposed the penalty of Rs 10,000/- per day on promoter for non-compliance of order passed by Hon'ble GujRERA Authority.

The promoter again filed the appeal before the Hon'ble RERA Appellate Tribunal to challenge the order of penalty of Rs 10,000/- per day imposed by Hon'ble GujRERA Authority. However pending the Appeal, before the Hon'ble RERA Tribunal, the allottee filed the application, under section 18 of RERA, before Hon'ble Adjudicating officer to seek interest and compensation for delay possession of unit.

In response to the application, filed by the allottee, promoter filed the detailed reply raising the preliminary objection with regard to maintainability of the application/complaint since the complaint/application was not affirmed on affidavit.

The promoter, further pleaded that allottee has suppressed various material facts with regard to the present matter and the application/reply filed by the allottee is not affirmed on affidavit so, promoter requested the Hon'ble Adjudicating officer to direct the allottee to file the complaint/application/reply on affidavit.

Further, promoter again filed the application before the Hon'ble Adjudicating officer to decide the preliminary objection first before going into merit of the case but the Hon'ble Adjudicating officer was not inclined to decide the preliminary objections.

Aggrieved with the decision of the Hon'ble Adjudicating officer for not to decide on the preliminary objections, the promoter filed the writ petition before the Hon'ble High court on the ground that;

a. The complaint form which have verification clause clearly denote that the complaint should be duly affirmed on affidavit. However, the entire complaint is not filed on affidavit.

a. The Hon'ble Adjudicating officer being a retired Principle District Judge exercising power of Civil Court as per section 35 of RERA, 2016 needs to follow judicial process while adjudicating complaints made under Section 71 of RERA, 2016 and the preliminary objections which goes to root of the matter has to be heard and decided first.

b. As Hon'ble Adjudicating officer exercises power of Civil Court under Section 35 of RERA Act. The importance of affidavits strictly conforming to the requirements of Order XIX Rule 3 of the Civil Procedure Code, 1908.

c. In catena of judicial pronouncements, it has been held that the preliminary objections/issues have to be decided first by the authority/court.

Order of Hon'ble High Court of Gujarat:

The Hon'ble Adjudicating Officer is directed to decide the preliminary objections raised by the promoter in accordance with law and after considering the provision contained in RERA,2016 as expeditiously as possible.

Conclusion:

While exercising the power of Civil Court, RERA Authority needs to decide first preliminary objections and further as per provision of Civil procedure code and RERA, 2016 the complaint needs to be affirmed on affidavit.