

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB,
AT CHANDIGARH**

Subject:-

Appeal No.60 of 2022

1. Aman Sethi, Flat No.2, Type-3, Tower-1,
CIAB-NABI Campus, Sector-81, Knowledge City,
Mohali-140306, Punjab And
2. Rakesh Kumari, Flat No.5, Akali Market, Desumajra,
Sector-125, Kharar-140301.

....Appellants

Versus

1. M/s Dara Buildtech & Developers Limited, SCO-3&4,
Surya Enclave, Adj. Yes Bank, Sector-115, Kharar-
Landran Road, Mohali-140301
2. The Real Estate Regulatory Authority, Punjab, First
Floor, Block-B, Plot No.3, Sector-18A, Madhya Marg,
Chandigarh-160018.
3. The Adjudicating Officer, Real Estate Regulatory
Authority, Punjab, First Floor, Block-B, Plot No.3, Sector-
18A, Madhya Marg, Chandigarh-160018.

....Respondents

Appeal No. 61 of 2022

Ravinder Kumar aged about 59 years S/o Late Sh. Kewal
Ram R/o 2, New Harbans Nagar, Near Shiv Mandir,
Jalandhar, Punjab-144002.

....Appellant

Versus

Amritsar Improvement Trust, C Block, Ranjit Avenue,
Amritsar, Punjab-143001.

....Respondent

Appeal No. 64 of 2022



1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6 LE.
2. Amandeep Bakhshi wife of Sapandeep Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire-United Kingdom SL6 6LE through their power of attorney holder namely Sumesh Kumar son of Sh. Kartara Ram resident of House No.210, HIG, Sector-71, Mohali, SAS Nagar, Punjab.

....Appellants

Versus

1. Real Estate Regulatory Authority, Punjab, through its Chairperson, First Floor, Block-B, Plot No.3, Sector-18A, Madhya Marg, Chandigarh-160018.
2. M/s Ansal Properties and Infrastructure Ltd., having its registered office at 115, Ansal Bhawan 16 KG Marg, Central Delhi, Delhi through its Managing Director/Director/Authorized Signatory. Email sami@ansalapi.com.
3. M/s Concord Hospitality Private Ltd. having its registered office at 1, through its Managing Director/Director/Authorized Signatory Email: rjngill@yahoo.com
4. Harpinder Singh Gill, Managing Director, Concord Hospitality Private Ltd. having its registered office at 1, VPO Bal Sanchander, Airport Road, Ajnala Road, Amritsar, Punjab Email: rjngill@yahoo.com.

....Respondents

Appeal No. 65 of 2022

1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6 LE.
2. Amandeep Bakhshi wife of Sapandeep Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire-United Kingdom SL6 6LE through their power of attorney holder namely Sumesh Kumar son of Sh. Kartara Ram resident of House No.210, HIG, Sector-71, Mohali, SAS Nagar, Punjab.

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Versus

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....Respondents

Memo No. R.E.A.T./2022/213

To,

**REAL ESTATE REGULATORY AUTHORITY, PUNJAB
1ST FLOOR, BLOCK B, PLOT NO. 3, MADHYA MARG,
SECTOR-18, CHANDIGARH-160018.**

Whereas appeals titled and numbered as above was filed before the Real Estate Appellate Tribunal, Punjab. As required by Section 44(4) of the Real Estate (Regulation and Development) Act, 2016, a certified copy of the order passed in aforesaid appeals is being forwarded to you and the same may be uploaded on website.

Given under my hand and the seal of the Hon'ble Tribunal this 10th day of May, 2022.



(Handwritten Signature)
REGISTRAR

REAL ESTATE APPELLATE TRIBUNAL, PUNJAB

①

IN THE REAL ESTATE APPELLATE TRIBUNAL, PUNJAB AT CHANDIGARH

Appeal No. 60 of 2022

In AdcNo00622021UR of 2021

MEMO OF PARTIES

(1) Aman Sethi, Flat No.2, Type-3, Tower-1,
CIAB-NABI Campus, Sector-81, Knowledge City,
Mohali – 140306, Punjab AND

(2) Rakesh Kumari,
Flat No. 5, Akali Market, Desumajra,
Sector-125, Kharar – 140301

Appellants

Versus

(1) M/s Dara Buildtech & Developers Limited,
SCO – 3&4, Surya Enclave, Adj. Yes Bank,
Sector-115, Kharar-Landran Road, Mohali – 140301
E-mail: daraestates@hotmail.com


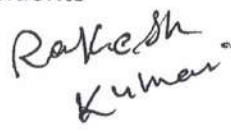
(2) The Real Estate Regulatory Authority, Punjab,
First Floor, Block-B, Plot No.-3, Sector-18A,
Madhya Marg, Chandigarh – 160018

(3) The Adjudicating Officer,
Real Estate Regulatory Authority, Punjab
First Floor, Block-B, Plot No.-3, Sector-18A,
Madhya Marg, Chandigarh – 160018



Mohali

...Respondents



(Aman Sethi and Rakesh Kumari)

Appellants

Dated: 07/04/2022

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BEFORE THE HON'BLE COURT OF REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB

APPEAL No. 61 of 2022

MEMO OF PARTIES

Ravinder Kumar, aged about 59 years, S/o Late Sh. Kewal Ram R/o 2, New Harbans
Nagar, Near Shiv Mandir, Jalandhar, Punjab - 144002

.... APPELLANT/PLAINTIFF

Versus

Amritsar Improvement Trust, C Block, Ranjit Avenue, Amritsar, Punjab-143001

.... DEFENDANT/RESPONDENT

Place : Chandigarh

Date : 11 April, 2022


(Advocate Indu Verma)

Counsel for Appellant/Plaintiff



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**BEFORE THE PUNJAB REAL ESTATE APPELLATE TRIBUNAL
AT CHANDIGARH**

Appeal No. 64 of 2022

In ADC No. 0249 of 2021

MEMO OF PARTIES

1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE
2. Amandeep Bakshi wife of Sapandeep Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE
Through their power of attorney holder namely Sumesh Kumar son of Sh. Kartara Ram resident of House No. 210, HIG, Sector-71, Mohali, SAS Nagar, Punjab.Appellants/Complainants


Versus

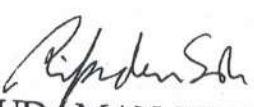
1. Real Estate Regulatory Authority, Punjab, through its Chairperson, First Floor, Block-B, Plot No.-3, Sector-18A, Madhya Marg, Chandigarh – 160018.
2. M/s Ansal Properties & Infrastructure Ltd, having its registered office at 115, Ansal Bhawan 16 K G Marg, Central Delhi, Delhi through its Managing Director/Director/Authorised Signatory. Email: sami@ansalapi.com.
3. M/s Concord Hospitality Private Ltd having its registered office at 1, VPO Bal Sanchander, Airport Road, Ajnala Road, Amritsar, Punjab through its Managing Director/Director/Authorised Signatory Email: rjngill@yahoo.com.
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Chandigarh

Dated: 21.04.2022




SANJEEV GUPTA & RIPUDAMAN SINGH
ADVOCATE
COUNSEL FOR THE APPELLANTS



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**BEFORE THE PUNJAB REAL ESTATE APPELLATE TRIBUNAL
AT CHANDIGARH**

Appeal No. 65 of 2022

In ADC No. 0246 of 2021

MEMO OF PARTIES

1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE
 2. Amandeep Bakshi wife of Sapandeep Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE
Through their power of attorney holder namely Sumesh Kumar son of Sh. Kartara Ram resident of House No. 210, HIG, Sector-71, Mohali, SAS Nagar, Punjab.
-Appellants/Complainants


Versus

1. Real Estate Regulatory Authority, Punjab, through its Chairperson, First Floor, Block-B, Plot No.-3, Sector-18A, Madhya Marg, Chandigarh – 160018.
2. M/s Ansal Properties & Infrastructure Ltd, having its registered office at 115, Ansal Bhawan 16 K G Marg, Central Delhi, Delhi through its Managing Director/Director/Authorised Signatory. Email: sami@ansalapi.com.
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Chandigarh

Dated: 21.04.2022


SANJEEV GUPTA & RIPUDAMAN SINGH
ADVOCATE
COUNSEL FOR THE APPELLANTS

**BEFORE THE REAL ESTATE APPELLATE TRIBUNAL,
PUNJAB, AT CHANDIGARH**

Date of Decision: 25.04.2022

Appeal No.60 of 2022

1. Aman Sethi, Flat No.2, Type-3, Tower-1,
CIAB-NABI Campus, Sector-81, Knowledge City,
Mohali-140306, Punjab And
 2. Rakesh Kumari, Flat No.5, Akali Market,
Desumajra, Sector-125, Kharar-140301.
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Versus

1. M/s Dara Buildtech & Developers Limited, SCO-
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Sector-18A, Madhya Marg, Chandigarh-160018.
-Respondents

Appeal No. 61 of 2022

Ravinder Kumar aged about 59 years S/o Late Sh.
Kewal Ram R/o 2, New Harbans Nagar, Near Shiv
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....Appellant

Versus

Amritsar Improvement Trust, C Block, Ranjit
Avenue, Amritsar, Punjab-143001.

....Respondent



APPEAL NO. 60 OF 2022, APPEAL NO. 61 OF 2022,
APPEAL NO.64 OF 2022 AND APPEAL NO.65 OF 2022

Appeal No. 64 of 2022

1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6 LE.
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APPEAL NO.64 OF 2022 AND APPEAL NO.65 OF 2022

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Versus

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....Respondents



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**CORAM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K GARG DISTRICT AND SESSIONS JUDGE (RETD.)
ER. ASHOK KUMAR GARG, C.E. (RETD.), MEMBER
(ADMINISTRATIVE/TECHNICAL)**

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Argued by: - Mr. Aman Sethi (appellant in person)
in Appeal No.60 of 2022.
Ms. Indu Verma, Advocate
(in Appeal No.61 of 2022).
Mr. Sanjiv Gupta, Advocate
(in Appeal No.64 of 2022 and
Appeal No.65 of 2022).

JUDGMENT: (*Justice Mahesh Grover (Retd.)*)

1. By this order we will dispose of four appeals, since the principle question arising therein is common to all, even though the facts emerging from the grievances, set out in the complaint may be varied, as also the projects to which they pertain to.
2. The issue that has engaged our attention is stemming from the decision of the Real Estate Regulatory Authority, Punjab (hereinafter referred to as the Authority) reflected in its Circular dated 06.12.2021, the operative part of which is as below: -



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“The judgment dated 11.11.2021 of Hon’ble Supreme Court in the case of ‘M/s Newtech Promoters and Developers Pvt. Ltd. vs State of UP and Others etc.’ in Civil Appeal No(s) 6745-6749 of 2021 and other connected matters was considered in detail by the Authority in a meeting held on 22.11.2021; and after due deliberations, it has been decided as follows:-

1. *Complaints against unregistered projects:*
 - a. *No complaint under Section 31 of the Act filed against any unregistered project shall be entertained. However, proceedings under Section 59 of the Act may be initiated by the Authority against any defaulting promoters on the basis of the evidence available on record.*
 - b. *In case of complaints against unregistered projects filed prior to passing of the judgment date 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgment dated 11.11.2021.*

3. *Learned counsel representing the appellant in the aforesaid appeals and Mr. Aman Sethi (appellant in person in Appeal No.60 of 2022) have argued that such a course is in conflict with the provisions of law and*



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tantamounts to defeating the rights of the allottees, as it debars a statutory remedy available to them.

4. We have heard the learned counsel for the appellant/appellants.
5. The impugned orders in Appeal No.60 of 2022 (Aman Sethi and anr. Versus Dara Buidtech & Developes Ltd. and anr.), reveals that a composite complaint seeking relief of refund, interest and compensation was filed, which was dealt with by the Authority and Adjudicating Officer by segregating the two reliefs as per the requirement of law. The respondent in the said complaint i.e. Dara Buildtech & Developers Ltd. responded to the complaint by posing a question, whether complaints under Section 31 of the Act in relation to projects, which are not registered with the Real Estate Regulatory Authority, Punjab are maintainable or not. In this regard, reliance had been placed on the judgment of the Hon'ble Supreme Court in M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.
6. It was argued before the Adjudicating Officer that since the project had not been registered no complaint shall



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lie, even if it is an ongoing project but unregistered. The Adjudicating Officer observed that complaint under Section 31 would not be maintainable, since the project in question was not registered and concluded with reference to para No.54 of the judgment in Newtech's case (supra) that the applicability of the Act is retroactive in character and thus the provisions of the Act would not apply to projects already completed or regarding which completion certificate has been granted. But at the same time, it shall apply after getting the ongoing projects and future project registered under Section 3 of the Act, to prospectively follow the mandate of the Act.

7. In Appeal No. 61 of 2022 (Ravinder Kumar Versus Amritsar Improvement Trust), the Authority placed reliance upon its own judgment in Dr. Anjali Sharma Vs. Gupta Builders & Promoters Pvt. Ltd. and anr. (Complaint No.RERA/GC0419/2021) in addition to the Newtech' case and followed a similar reasoning to hold that since the complaint is against an unregistered project, the same was not maintainable at that stage. However, liberty was granted to the complainant to agitate the matter through a separate complaint under



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Section 59 of the Act. For the purpose of reference, portion of the order of the Authority is extracted hereinbelow:-

“ The present complaint is against an unregistered project. Hence, the same is dismissed as being not maintainable at this stage. However, the complainant is at liberty to file a separate complaint U/s 59 of the Act, along with the required evidence, if any, for non-registration of the project. In case, there is prima facie evidence that the project was ongoing in nature on the date of commencement of the act, the Secretary of this Authority should initiate the process of issuance of notice U/s 59 of the Act, to the promoter for getting project registered with the Authority.”

8. In Appeal No.64 of 2021 and 65 of 2021 (Sapandeep Singh Bakshi & another versus M/s Ansal Properties & Infrastructure Ltd. & others), the Secretary of the Authority communicated the decision regarding maintainability of the complaint, in view of the circular dated 06.12.2021 and no separate order was passed by



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the Authority. The communication dated 05.01.2022 is reproduced hereinbelow:-

"In view of the circular No.RERA/LEGAL/2021/8950 dated 06.12.2021 passed in consonance with the order 11.11.2021 passed by the Hon'ble Supreme Court in the case titled M/s Newtech Promoters and Developers Pvt. Ltd. versus State of UP and others etc. in Civil Appeal No(s) 6745-6749 of 2021, in complaints against the Projects that are not registered with this Authority are not maintainable. This complaint is accordingly returned as non-maintainable. Any hard copy of the complaint along with its Annexures submitted to the Authority may be collected from the Legal Branch within 15 days.

9. We have heard the appellants and have perused the records of the case as also the judgment of the Hon'ble Supreme Court in **M/s. NEWTECH PROMOTERS AND DEVELOPERS PVT. LTD. VERSUS STATE OF UP & ORS.ETC.,** from which the impugned decisions of the Authority draw sustenance and are unable to persuade



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ourselves to agree with the view of the Authority reflected in the circular dated 06.12.2021, as also the impugned orders in aforesaid appeals.

10. The Hon'ble Supreme Court while dealing with question of applicability of the Act i.e. (i) “ **Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?**”, extensively dealt with the objects and reasons and the purpose of the Act before concluding, whether the Act is retrospective or retroactive.
11. We cannot help referring to the preceding paragraphs to the conclusion of the aforesaid question, in the judgment of the Hon'ble Supreme Court, as they note the intent and purpose of the legislation. The purpose of 'this beneficial legislation', it says "is to safeguard the pecuniary interest of the consumers/allottees". It was observed that the Act, obligates a promoter to get a project registered, which is either not complete or is sans completion certificate on the date of commencement of the Act. For the purpose of reference Paras 40, 41, 42,



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45, 46, 51, 52, 53 54 of the Newtech's case (supra) are extracted herein below: -

- 40.** *Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, ex-facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a project has received a*



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completion certificate on the date of commencement of the Act.

41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an on-going project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

42. What the provision further emphasizes is that a promoter of a project which is not complete /sans completion certificate



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shall get the project registered under the Act but while getting the project registered, promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. The Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.

- 45.** *At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary,*



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the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

46. *The consequences for breach of such obligations under the Act are prospective in operation and in case ongoing project, of which completion certificate is not obtained, are not to be covered under the Act, there is every likelihood of classifications in respect of underdeveloped ongoing project and the new project to be commenced.*

51. *Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.*

52. *The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the*



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term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

- 53.** *That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms*



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having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. *From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.*

12. Even the plain language of Section 3 of the Act is unambiguous and restrains the promoter from advertising, marketing, booking, selling or offering for sale any plot, apartment or building in any real estate project or part of it in any planning area without registering the real estate project with the Authority. The first proviso reads that ongoing projects on the date of commencement of the Act, regarding which a completion



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certificate had not been issued, would obligate the promoter to get the project registered within three months from the date of commencement of the Act. An ongoing project has also been defined.

13. Thus only the projects, which stand completed, with a completion certificate would escape the mandate of registration.
14. The consequences of non-registration are severe and explained in Section 3 proviso (1), (2) (b) and Section 59 of the Act , which are extracted hereinbelow: -

“Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.”

2 (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real



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estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

15. Section 31 of the Act deals with filing of complaint and reads that "Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of the Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be".

16. An aggrieved person has not been defined in the Act, which means that this term has to be given a wider and not a restrictive interpretation, in which scenario, any person can come to agitate his grievance before the Authority. If a grievance is made under Section 31 for any violation or contravention of provisions of the Act (as



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the language of the statute suggests) it obviously, can also include the grievance, of an allottee against the promoter for not getting the project registered, besides the other grievances of non-delivery, delayed possession or any other conceivable, or otherwise, of an exploitative situation, where lives' earnings of an individual are at stake in a real estate project.

17. Therefore, the Authority cannot decline intervention on the ground that since the project had not been registered, it could deprive the complainant of a statutory forum to agitate his grievance.
18. The observations of the Hon'ble Supreme Court regarding the retroactive operation of the Act clearly states that projects which are complete and where completion certificate has been obtained, would not require registration, in which eventuality, the provisions of the Act would not be attracted. The 'ongoing project' would require registration in terms of the language of statute and the rules framed thereunder, where an ongoing project has been defined.
19. The Authority was wrong in saying that no complaint would be maintainable, simply on the ground of the



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project being unregistered. It would have to enter upon the complaint, even if it has to arrive at a conclusion of a project being complete or an ongoing one to further conclude about the applicability of the Act. Simply because a project has not been registered, can never form an acceptable reason to deprive an allottee of his statutory right to file a complaint.

20. The language of the statute and the judgment of the Hon'ble Supreme Court do not in any case prescribe such a course. Rather the grievance of an aggrieved person manifesting itself from the complaint has to be dealt with as a primary issue by the Authority and resorting to Section 59 is in addition to such a grievance. One does not come at the cost of another.
21. To our mind, the Authority has to act as a watchdog and proscribe for itself a proactive role to thwart such malpractices, which may be a likely result upon shutting its doors to an aggrieved person, as it has done through the circular and the impugned order.
22. Such a course as the one, adopted by the Authority amounts to thwarting the complaint at the threshold, which could never have been the intention of law. Rather



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it is obligatory upon the Authority to look into the complaint and determine the questions that would arise naturally i.e. Why the project has not been registered?, Is it an ongoing project or one in which completion certificate has been granted? These issues can be determined only if the Authority enters upon the complaint to conclude that the project, if unjustifiably not registered, then why proceedings under Section 59 be not initiated against such a developer. To determine these issues, the Authority necessarily has to embark upon a process envisaged in the Act, after entertaining the complaint. But gross injustice would be a consequence, if the aggrieved persons' complaints are thrown out on a mechanical plea of a promoter that the project is unregistered or does not require registration and the Act does not apply for this reason.

23. The Authority cannot also shut its eyes to its own powers under Section 35, under which it can act suo moto as well, to seek information or explanation relating to the affairs of any promoter; particularly when an allottee makes a grievance of incomplete works as also



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infrastructural development, suggesting the project might still be an ongoing project.

24. We have in Appeal No.12 of 2022 observed as follows: -

20. *Not only this the Authority has vast function to discharge to ensure transparency in the interest of the allottees, promoter and even real estate agency, in which regard it can make adequate recommendations to the appropriate Government. If Section 32 is perused, in particular, Clause (c), it talks of creation of a transparent and robust grievance redressal mechanism against any acts of omission and commission of competent authorities and their officials. Section 32 Clause (c) is as below: -*

(c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;

21. *A conjoint reading of Section 32, 34 and 35 of the Act leave no manner of doubt that the Authority is a watchdog created to ensure transparency in the real estate sector to protect all the players, be it allottees, the promoters or the real estate agents. The underlying emphasis is to protect the interest of an allottee, who is a dwarf compared to the might of the promoters/developers.*



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22. Therefore the Authority has to adopt a proactive role and in cases, where grievances are made of non-completion of development works by placing reliance on completion or partial completion certificates, the Authority should adopt the course suggested in Section 35 of the Act to satisfy itself, so as to ensure that a legal remedy is not rendered illusory.
23. Likewise when a plea is taken that project, which is not registered on account of completion certificate and yet complaint of non-completion of development works are made by the allottees, the Authority should consider resorting to the provisions of Section 3 of the Act because it would then fall in the category of an ongoing project. Section 3 is extracted hereinbelow:-

“Prior registration of real estate project with Real Estate Regulatory Authority.—

- (1) *No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*



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Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

- (2) *Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—*
- (a) *where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:*



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Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*

24. No doubt the language of the statute would state that a project when stand completed, would require no registration but in the event of grievances being made regarding deficiency in development works, it is the bounden duty of the Authority to look closely into the matter, otherwise such pleas can be resorted to by unscrupulous developers/promoters to defeat the valuable rights of the allottees.”



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25. Such being the mandate of law, the Authority was clearly wrong in declining interference in the complaints and that too without applying its mind to the facts of each case, through a generalized circular debarring complaints.
26. A generalized decision through a circular dated 06.12.2021 cannot be sustained and thus the decision of the Authority to this extent of Clause 1(a), (b) is set aside.
27. To make matters worse, in two of the cases (Appeals No.64 of 2022 and 65 of 2022), a decision has been communicated through email by the Secretary, RERA, Punjab. Such a mechanical course that the Authority has prescribed for itself, would defeat the quasi judicial nature of the functioning of the Authority, which was never envisaged in the statute.
28. We are also of the opinion and observe at the cost of repetition that the Authority wrongly interpreted the judgment of the Hon'ble Supreme Court. The retroactive operation of the Act, as observed by the Hon'ble Supreme^{court} and as the language of the statute also suggests would protect a developer from registration and



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consequences of the Act, only in a situation, where the project stood completed with a completion certificate but to establish a fact, whether a project is ongoing or complete to resultantly liberate the promoter of the consequences of the Act are matters of fact to be determined during the course of proceedings initiated by an aggrieved person. The non-applicability of the Act cannot be a presumption to be derived from a fact simplicitor of a project not being registered.

29. The proceedings under Section 59 of the Act is a course available to the Authority in addition to the one that a determination of a complaint would warrant. It is not desirable to ask an allottee/complainant to file a separate complaint to invoke Section 59 of the Act. This is a provision empowering the Authority to penalize a defaulting promoter, once any complaint is filed on issues pointing out deficiencies and default of a promoter, the Authority after entering upon a complaint has to decide from itself, whether a course prescribed under Section 59 has to be resorted to. A separate complaint qua this aspect is not essential.



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30. Consequently the impugned orders in all the appeals are set aside and the matter is remitted back to the Authority to decide the complaints in accordance with law and in light of the observations made above.
31. Disposed of. File be consigned to record room and a copy of this order be filed in the file of the connected appeals and also be communicated to the parties as well as to the Real Estate Regulatory Authority, Punjab.

Sd/-
JUSTICE MAHESH GROVER (RETD.)
CHAIRMAN

Sd/-
S.K. GARG, D & S. JUDGE (RETD.)
MEMBER (JUDICIAL)

please see my judgment on the subsequent pages
ER. ASHOK KUMAR GARG, C.E. (RETD.)
MEMBER (ADMINISTRATIVE/ TECHNICAL)

April 25, 2021
AN



Certified To Be True Copy
Dhanendra Kumar
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

10/05/2022

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REAL ESTATE APPELLATE TRIBUNAL PUNJAB (AT CHANDIGARH)

Appeal No. 60 of 2022

1. Aman Sethi, Flat No. 2, Type-3, Tower-1, CIAB-NABI Campus, Sector-81, Knowledge City, Mohali - 140306, Punjab AND
2. Rakesh Kumari, Flat No.5, Akali Market, Desumajra, Sector-125, Kharar-140301.

.....Appellants

Versus

1. M/s Dara Buildtech & Developers Limited, SCO - 3&4, Surya Enclave, Adj. Yes Bank, Sector-115, Kharar-Landran Road, Mohali-140301 Email: daraestates@hotmail.com
2. The Real Estate Regulatory Authority, Punjab, First Floor, Block-B, Plot No.-3, Sector-18A, Madhya Marg, Chandigarh - 160018
3. The Adjudicating Officer, Real Estate Regulatory Authority, Punjab, First Floor, Block-B, Plot No.-3, Sector-18A, Madhya Marg, Chandigarh - 160018

.....Respondents

Appeal No. 61 of 2022

Ravinder Kumar aged about 59 years, S/o Late Sh. Kewal Ram R/o 2, New Harbans Nagar, Near Shiv Mandir, Jalandhar, Punjab - 144002.

.....Appellant

Versus

Amritsar Improvement Trust, C Block, Ranjit Avenue, Amritsar, Punjab-143001

.....Respondent



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APPEAL NO. 64 OF 2022 AND APPEAL NO. 65 OF 2022**

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Appeal No. 64 of 2022

1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE.
2. Amandeep Bakhshi wife of Sapandeep Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE

Through their power of attorney holder namely Sumesh Kumar son of Sh. Kartara Ram resident of House No. 210, HIG, Sector-71, Mohali, SAS Nagar, Punjab.

.....Appellants

Versus

1. Real Estate Regulatory Authority, Punjab, through its Chairperson, First Floor, Block-B, Plot No.-3, Sector-18A, Madhya Marg, Chandigarh - 160018.
2. M/s Ansal Properties & Infrastructure Ltd, having its registered office at 115, Ansal Bhawan 16 K G Marg, Central Delhi, Delhi through its Managing Director/Director/Authorized Signatory. Email sami@ansalapi.com.
3. M/s Concord Hospitality Private Ltd having its registered office at 1, VPO Bal Sanchander, Airport Road, Ajnala Road, Amritsar, Punjab through its Managing Director/Director/Authorized Signatory Email: rjngill@yahoo.com.
4. Harpinder Singh Gill, Managing Director, Concord Hospitality Private Ltd having its registered office at 1, VPO Bal Sanchander, Airport Road, Ajnala Road, Amritsar, Punjab Email: rjngill@yahoo.com.



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.....Respondents

Appeal No. 65 of 3033

1. Sapandeep Singh Bakshi son of Late Iqbal Singh Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE.
2. Amandeep Bakhshi wife of Sapandeep Bakshi presently residing at 63, Derwent Drive Maidenhead Berkshire- United Kingdom SL6 6LE

Through their power of attorney holder namely Sumesh Kumar son of Sh. Kartara Ram resident of House No. 210, HIG, Sector-71, Mohali, SAS Nagar, Punjab.

.....Appellants

Versus

1. Real Estate Regulatory Authority, Punjab, through its Chairperson, First Floor, Block-B, Plot No.-3, Sector-18A, Madhya Marg, Chandigarh - 160018.
2. M/s Ansal Properties & Infrastructure Ltd, having its registered office at 115, Ansal Bhawan 16 K G Marg, Central Delhi, Delhi through its Managing Director/Director/Authorized Signatory. Email sami@ansalapi.com.
3. M/s Concord Hospitality Private Ltd having its registered office at VPO Bal Sanchander, Airport Road, Ajnala Road, Amritsar, Punjab through its Managing Director/Director/Authorized Signatory Email: rjngill@yahoo.com.
4. Harpinder Singh Gill, Managing Director, Concord Hospitality Private Ltd having its registered office at 1, VPO Bal Sanchander,



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Airport Road, Ajnala Road, Amritsar, Punjab Email:
rjngill@yahoo.com.

.....Respondents

Present: Mr. Aman Sethi, the appellant in Appeal No. 60 of 2022
Ms. Indu Verma, Advocate for the appellant in Appeal No. 61 of 2022
Mr. Sanjiv Gupta, Advocate for the appellants in Appeal No. 64 of 2022 and Appeal No. 65 of 2022.

**QUORUM: JUSTICE MAHESH GROVER (RETD.), CHAIRMAN
SH. S.K. GARG DISTT. & SESSIONS JUDGE (RETD.),
MEMBER (JUDICIAL)
ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./ TECH.)**

**JUDGMENT: (ER. ASHOK KUMAR GARG, CHIEF ENGINEER
(RETD.), MEMBER (ADMN./TECH.))**

(MINORITY VIEW)

1. By this order, I will dispose off above mentioned four appeals filed by the complainants-appellants against the orders passed by Adjudicating Officer (*hereinafter referred to as the Adjudicating Officer or the AO*) of Real Estate Regulatory Authority Punjab (*hereinafter referred to as the Authority*) & by a Single Member Bench of the Authority and against the email sent by the Assistant Manager (Legal) of the Authority, primarily against the decision of



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the Authority declaring that the complaints against the projects that are not registered with the Authority are not maintainable.

2. Appeal No. 60 of 2022 has been filed against the orders dated 27.01.2022 and 07.02.2022 of the Single Member Bench and the Adjudicating Officer respectively in the common/composite complaint bearing AdC No. 00622021UR filed on 09.04.2021 in Form 'N' by the complainants-appellants Mr. Aman Sethi and Ms. Rakesh Kumari against the developer M/s Dara Buildtech & Developers Limited in respect of 2 BHK house applied for by them in developer's project at Dara Affordable Homes, Khunimajra, Sector 115, Mohali that the developer has not got registered with the Authority, seeking the refund of amount paid along with interest and compensation.
3. Appeal No. 61 of 2022 has been filed against the order dated 11.02.2022 of the Single Member Bench in complaint bearing GC No. 00452021UR filed on 09.02.2021 in Form 'M' by the complainant Mr. Ravinder Kumar against the developer Amritsar Improvement Trust in respect of a plot allotted to him in developer's project that the developer has not got registered with the Authority, seeking possession of the plot along with interest for delay in possession and compensation.

4. Perusal of aforesaid orders dated 27.01.2022, 07.02.2022 and 11.02.2022 reveals that (i) in all these three orders, the complaints have been dismissed, without going into the merits of the case, being against the unregistered project and hence allegedly not being maintainable as per decision dated 12.01.2022 of the full



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bench of the Authority in **Dr. Anjali Sharma versus Gupta Builders & Promoters Private Limited and another in Complaint No. RERA/GC/2021** along with other connected matters; (ii) the Secretary of the Authority has been directed to initiate process of issuance of notice under section 59 of the Act to the promoters for getting their project registered at the earliest; and (iii) the complainants have been given liberty to file their complaints afresh, as and when the respective project is registered with the Authority.

5. Appeal No. 64 of 2022 and Appeal No. 65 of 2022 have been filed against the identical order/emails dated 05.01.2022 of the Assistant Manager (Legal) of the Authority in complaints bearing AdC Nos. 02492021UR and 02462021UR each filed on 28.10.2021 in Form 'M' jointly by the complainants Mr. Sapandeep Singh Bakshi and Ms. Amandeep Bakshi against the developer Ansal Properties & Infrastructure Limited and others in respect of a commercial units booked by them in developer's project that the developer has not got registered with the Authority, seeking refund along with interest and compensation.
6. The aforesaid identical emails dated 05.01.2022 of the Assistant Manager (Legal) of the Authority read *"In view of the circular No. RERA/LEGAL/2021/8950 dated 06.12.2021 passed in consonance with the order 11.11.2021 passed by the Hon'ble Supreme Court in the case titled "M/s Newtech Promoters And Developers Pvt Ltd versus Sate of UP and others etc" in Civil Appeal No(s) 6745-6749 of 2021, in Complaints against the Projects that are not registered*



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with this Authority are not maintainable. This Complaint is accordingly returned as non-maintainable. Any hard copy of the Complaint along with its Annexures submitted to the Authority may be collected from the Legal Branch within 15 days.”.

7. In all the aforesaid four appeals, the appellants-complainants have also sought the reliefs of setting aside the aforesaid orders and emails dated 27.01.2022, 07.02.2022, 11.02.2022 and 05.01.2022 and entertaining/deciding their complaints.
8. In Appeal No. 60 of 2022, the grounds taken by the appellants inter alia include (i) that aforesaid Judgment dated 11.11.2021 has been passed by Hon'ble Supreme Court of India much after the registration of their complaint by the Authority on 09.04.2021; (ii) that in the judgment dated 24.07.2019 in Appeal No. 49 of 2018 titled “**M/s Silver City Construction Ltd. versus State of Punjab & Ors.**”, this Tribunal has inter alia ordered that “*The Full Bench judgment dated 13.12.2017 passed in complaint No. 3 of 2017 titled as “Bikramjit Singh and others Versus State of Punjab and others” holding that the complaints against promoters in relation to the projects that are not registered with the Real Estate Regulatory Authority, Punjab are not maintainable is declared as no longer good law with reference to para 41(2) thereof.*”; (iii) that as per preamble of the Act, the Act has been enacted for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and also to



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establish an adjudicating mechanism for speedy dispute redressal; (iv) that non-considering the complaints against the unregistered projects as non-maintainable would allow the builders & promoters an undue advantage as they would not be registering their projects from now onwards, will collect money from innocent public against unregistered projects and even if the Authority issues them notices under section 59 of the Act for not registering their projects, they would pay the meagre fine/penalty to the Authority and then would enjoy the money looting business.

9. In Appeal No. 61 of 2022, while relying on paragraphs 37, 44, 45, 47 and 52 of the aforesaid judgment dated 11.11.2021 passed by Hon'ble Supreme Court Of India, the grounds taken by the appellant inter alia include (i) that intent of the Act as also acknowledged by the Apex Court was to bring all ongoing projects within the purview of the Act and within the fold of the Authority without any exceptions whatsoever; (ii) that the home buyers pains and misery were the primary concerns to be addressed via the Act and therefore the legislative intent as also agreed upon by the Supreme Court, to protect their rights, was paramount; (iii) that paragraph 52 removes all elements of doubts by clarifying the Supreme Court's understanding and support of the Act that by necessary implication and unambiguously, all ongoing projects are to be mandatorily under the purview of the Act within the jurisdiction of the Authority without any exceptions whatsoever; (iv) that any promoter would use the excuse of not already being reistered as an escape mechanism because if they do not get



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registered, they would easily manage to avoid the jurisdiction of RERA, and the poor home buyers would continue to suffer, thus rendering the Act ineffective and toothless.

10. In Appeal No. 64 of 2022 and Appeal No. 65 of 2022, the identical grounds taken by the appellants inter alia include (i) that aforesaid Judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India has been misinterpreted by the Authority as the issue before Hon'ble Supreme Court was not whether the provisions of the Act are applicable to unregistered project or not; (ii) that the circular dated 06.12.2021 issued by the Authority is inconsistent with the provisions of the Act; (iii) that the Authority is making efforts to suppress the rights of the allottees, which had been granted to them under the Act; (iv) that apart from RERA, Punjab, no other authority has stopped entertaining the complaints filed against the unregistered projects; (v) that there is no provision in the Act which mandates to file a complaint against builder/promoter only in case of registered projects; (vi) that section 31 of the Act read with Rules 36 & 37 of the Rules provides remedy to the aggrieved person to file a complaint before the Authority or the Adjudicating Officer, as the case may be, without any reference to registered or unregistered project; (vii) that to arrive at the conclusion that the Authority shall only have control over the projects which have been registered with it and not over the projects which have not been deliberately or otherwise got registered with it, would be an interpretation nugatory to the objects sought to be achieved by the Act in its letter and spirit; (viii) that to bring out the unregistered



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projects from the purview of the Act, may violate the legislative intent and will not stand the touchstone of equality as provided under Article 14 of the Constitution of India qua the allottees in the registered and unregistered projects; (ix) that the order by the Authority that it has no jurisdiction over the unregistered project, is without any substance and similar view has been taken by the Real Estate Appellate Tribunal Jaipur, Rajasthan in Appeal No. RAJ RERAC-2018-2370 titled as **Jain Realtors (P) Ltd. Vs. The Registrar of Real Estate Regulatory Authority, Jaipur, Rajasthan and others**, decided on 09.10.2018 and by this Tribunal in Appeal No. 49 of 2018 titled as **M/s Silver City Construction Ltd. versus State of Punjab and others**, decided on July 24, 2019; (x) that the Division Bench of the Hon'ble Bombay High Court in case **Mohammed Zain Khan Vs. Maharashtra Real Estate Regulatory Authority and others**, Writ Petition (Lodging) No. 908 of 2018 decided on July 31st, 2018 has given direction in the complaint tendered online by the Petitioner and other similarly situated complaints, in respect of unregistered projects would be entertained and same will be dealt with in accordance with the procedure being adopted by the Maharashtra Real Estate Regulatory Authority in respect of disposal of complaints in relation to registered projects; (xi) that the project in question falls within the purview of the 'ongoing project' and required registration.



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**MY OPINION IN THE MATTER OF ENTERTAINING THE
COMPLAINTS AGAINST THE UNREGISTERED PROJECTS:**

11. As per circular No. RERA/LEGAL/2021/8950 dated 06.12.2021 issued by the Authority, after considering in detail the judgment dated 11.11.2021 of Hon'ble Supreme Court in case titled '*M/s Newtech Promoters and Developers Pvt Ltd vs State of UP and Others etc.*' in Civil Appeals No(s) 6745-649 of 2021 and other connected matter and after due deliberations in its meeting held on 22.11.2021, the Authority inter alia decided as under:

"1. Complaints against unregistered projects:

- a. *No complaint under Section 31 of the Act filed against any unregistered project shall be entertained. However, proceedings under Section 59 of the Act may be initiated by the Authority against any defaulting promoters on the basis of the evidence available on record.*
- b. *In case of complaints against unregistered projects filed prior to passing of the judgement dated 11.11.2021 but still to be entrusted to the Authority or to the Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgement dated 11.11.2021."*

12. It has not been elaborated in the aforementioned circular dated 06.12.2021 of the Authority as to on which part(s) of the aforesaid judgment dated 11.11.2021 is the aforementioned decision regarding unregistered projects has been taken by the Authority.

13. In view of above, I had deemed it appropriate, in my some earlier minority views in certain appeals, to remand the refund along with interest thereon and compensation parts of the complaints against



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the unregistered projects to the Authority and the Adjudicating Officer respectively to decide the issue of maintainability of complaints in respect of unregistered projects in the light of aforesaid circular dated 06.12.2021 of the Authority and also the provisions of the applicable law.

14. An appeal bearing Appeal No. 52 of 2022 (**Sachin Kumar versus Preet Land Promoters & Developers Pvt. Ltd.**) has been filed before this Tribunal (listed for 02.05.2022) against a common order dated 12.01.2022 passed by the full bench of the Authority in 13 No. complaints (the first/lead complaint of which being the one titled as **“Dr. Anjali Sharma versus Gupta Builders and Promoters Pvt. Ltd. and another”** and mentioned in the orders dated 27.01.2022, 07.02.2022 and 11.02.2022 pertaining to Appeals No.60 and 61 of 2022), all against unregistered projects, wherein it has inter alia been prayed that to entertain his complaint and to order/direct the promoter/developer to deliver possession of plot booked by him along with interest for delay in possession and to impose penalty of 5% of the estimated cost of the project.
15. Vide aforesaid order dated 12.01.2022, the Authority has dismissed all those thirteen complaints as not maintainable and has directed the Secretary of the Authority to examine each file and initiate action under Section 59 of the Act wherever called for and has also made it clear that the complainants would be at liberty to file a fresh complaint as and when the concerned project is registered with the Authority.



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16. In aforementioned Appeal No. 52 of 2022, the grounds taken by the appellant inter alia include (i) that the issue which has been framed by the Authority was not the issue before the Hon'ble Apex Court; (ii) that the respondent had already initiated their action for the registration of the project with the concerned authority (iii) that the Authority had ignored the provisions mentioned in Section 3 of the Act while passing the impugned order.
17. The perusal of aforesaid order dated 12.01.2022 of the Authority reveals that while deciding the question "*Whether after the judgment of the Supreme Court of India in the case of "Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. and Ors" complaints filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 in relation to projects that are not registered with this Authority would be maintainable or not?"*", framed by the Authority in aforesaid thirteen complaints, the Authority has relied primarily on paragraph 54 of aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court which reads as under:

"54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."(emphasis supplied).



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18. While noting the brief background of the issue, the Authority has mentioned in its aforesaid judgment dated 12.01.2022 that (i) the Authority in its judgement titled "Bikramjit Singh and Ors. Vs. State of Punjab and Ors." (Complaint No. 3 of 2017) decided on 13.12.2017 held that complaints filed in relation to projects that were not registered with the Authority would not be maintainable; (ii) that this decision (*of the Authority*) was however upset by the Real Estate Appellate Tribunal Punjab vide its order in the appeal titled "M/s Silver City Construction Ltd. Vs State of Punjab and Ors." (Appeal No. 49 of 2018) decided on 24.07.2019 and it was held that the Authority would hear complaints against all real estate projects whether registered or not; (iii) that this decision (*of this Tribunal*) has been followed till now, when the decision of the Supreme Court of India in 'Newtech Promoters and Developers Pvt. Ltd.' (supra) has caused the Authority to reconsider the matter; (iv) that out of the 5 questions considered by the Supreme Court in its judgment in "Newtech Promoters and Pvt. Ltd. Vs State of U.P. and Ors", for the present purpose, the Authority is only concerned with its decision on the first question i.e. whether the Act is retrospective or retroactive in operation and what will be its legal consequences; (v) that the Court has considered this question in paragraphs 32 to 54 of its judgment and has held that the Act is retroactive in nature and after thorough discussion the court's conclusion in this regard is reflected in paragraph 54 of its judgment (which paragraph has been reproduced above).



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19. After considering the contentions of the learned counsel for the parties in those thirteen complaints as regards the question of maintainability of those complaints all of which were filed in relation to projects not registered with this Authority, the Authority has inter alia held as under:-

“10. To our mind the declaration of law as in para 5 above is clear and unambiguous and admits of no other interpretation than that projects which were already complete or which had obtained the completion certificate at the commencement of the Act are not within the purview of the Act. Further, the Act would apply to on-going projects, and future projects, after they are registered under Section 3 of the Act. These are two positive declarations of law laid down by the Supreme Court of India. The necessary implication of these 2 declarations has to be that projects which are currently not registered with the Authority would not be within the purview of the Act till they are registered.

11. The arguments raised by Counsel for the complainants and Shri Arun Singla (mentioned in para 8 above) have to be considered in the above background. Shri Manoj Vashishtha laid emphasis on paras 45 to 47 of the judgement. These, paras largely relate to the power of Parliament to make law with prospective/retrospective effect. This power is well recognized in law and the conclusive para 54 of the judgement ultimately holds that the Real Estate (Regulation and Development) Act, 2016 is retroactive in character. Next, para 33 of the judgement is largely an exposition of Section 3 of the Act. Similarly paras 85 and 115 of the judgement relied upon by Shri Arun Singla only laid down the principles of interpretation of



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statutes and are not directly relevant to the point at issue. It has also been argued by Counsel that projects which have obtained a Change of Land Use (CLU) should be treated as registered projects and hence complaints in relation to such projects should be maintainable. This argument however does not appeal to us. Obtaining a CLU is an early stage in the development of a project. There are many other stages to be crossed, and approvals to be obtained, before a project is ripe for registration under the Act of 2016. Therefore such a project cannot be treated to be a project registered with the Authority under the Act.

12. From the above discussion, it is clear that none of the arguments raised on behalf of the complainants can be held to militate against the findings recorded in para 54 of the Supreme Court judgement (reproduced in para 5 of this order). As noted earlier, paras 32 to 54 contain the discussion on the question of retroactive or retrospective operation of the Act. Para 54 is the concluding and deciding paragraph and to our mind admits of no other interpretation except to hold that ongoing projects which are not registered are not within the purview of the Act, and hence complaints filed under Section 31 of the Act in relation to such projects would not be maintainable.

13. All these complaints are accordingly dismissed as not maintainable. However, the Secretary of the Authority is directed to examine each file and initiate action under Section 59 of the Act wherever called for. Also it is made clear that the complainants would be at liberty to file a fresh complaint as and when the concerned project is registered with this Authority.”



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20. Perusal of paragraph 10 of the aforementioned judgment dated 12.01.2022 passed by the full bench of the Authority reveals that whereas on one hand the Authority inter alia holds that paragraph 54 of the aforesaid judgment dated 11.11.2022 of Hon'ble Supreme Court of India to the mind of the members of the Authority admits **of no other interpretation except to inter alia hold that the Act would apply to on-going projects, and future projects, after they are registered under Section 3 of the Act and that projects which are currently not registered with the Authority would not be within the purview of the Act till they are registered;** and have concluded under paragraph 12 thereof that **ongoing projects which are not registered are not within the purview of the Act, and hence complaints filed under Section 31 of the Act in relation to such projects would not be maintainable;** but at the same time, in paragraph 13 of the aforesaid judgment dated 12.01.2022 of the Authority, while dismissing all those 13 complaints accordingly as not maintainable, have directed the Secretary of the Authority to examine each file and **initiate action under Section 59 of the Act wherever called for.**
21. If the interpretation, as derived by the Authority itself on the basis of paragraph 54 of the judgment dated 11.11.2021 passed by Hon'ble Supreme Court of India, is that **the Act would apply to on-going projects, and future projects, after they are registered under Section 3 of the Act and that projects which are currently not registered with the Authority would not be within the purview of the Act till they are registered,** then how



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the Authority has decided to initiate action under Section 59 (or any other section) of that very Act in respect of ongoing and future unregistered projects?

22. Such an interpretation by the Authority may provide immunity, not only to the promoters of ongoing unregistered projects, from the application of provisions of the Act, but also to the unscrupulous promoters of future projects who may be enticed by such interpretation not to get their upcoming projects registered with the Authority as per provisions under Section 3 of the Act. Hence, the objectives and purposes, for which the Act was enacted, may get defeated; and the allottees of the unregistered project may be left in lurch, in a helpless and miserable condition, as used to have been before the Act came into force.
23. Unscrupulous promoters may also take shelter behind aforesaid circular No. RERA/LEGAL/2021/8950 dated 06.12.2021, which is stated to be issued by the Authority after considering in detail aforesaid judgment dated 11.11.2021 of Hon'ble Supreme Court and after due deliberations in its meeting held on 22.11.2021 and as per which the Authority has inter alia decided that (i) **no complaint under Section 31 of the Act filed against any unregistered project shall be entertained;** (ii) that however, **proceedings under Section 59 of the Act may be initiated by the Authority against any defaulting promoters on the basis of the evidence available on record;** (iii) that in case of complaints against unregistered projects filed prior to passing of the judgment dated 11.11.2021 but still to be entrusted to the Authority or to the



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Adjudicating Officer, the Registry shall return such complaints as not maintainable in light of the judgment dated 11.11.2021.

24. In paragraph 13 of its aforesaid judgment dated 12.01.2022, the Authority has contemplated initiation of action under Section 59 of the Act against the promoters of the unregistered ongoing/future projects and has held that the complainants would be at liberty to file a fresh complaint as and when the concerned project is registered with the Authority. However, the action initiated against the promoters of unregistered projects may take sufficiently long period of time to get the project registered (in some of the cases, even such action may not result in registration of the project at all, especially when the interpretation of the Authority itself in respect of part of the paragraph 54 of the aforesaid judgment dated 11.11.2021 passed by Hon'ble Supreme Court is that **the Act** would apply to on-going projects, and future projects, after they are registered under Section 3 of the Act and that projects which are currently not registered with the Authority would not be within the purview of the Act till they are registered), leaving the allottees in lurch, in a helpless and miserable condition, at least till the time the project is got registered. Further, even if the project is ultimately registered, the issue of period of limitation may crop up when a complainant files a complaint as and when the concerned project is registered with the Authority.

25. In view of above, it is also apposite to critically look into the following contentions of the learned counsel for the parties before the Authority, that are mentioned in paragraphs 7 to 9 of the



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aforesaid judgment dated 12.01.2022 of the Authority, with some portions thereof emboldened herein to lay emphasis;-

*“7. Shri Manoj Vashishtha appearing on behalf of complainants in GC Nos.0419 of 2021, and 0420 of 2021 contended that **Section 3, 11, and 31 of the Act would be rendered otiose if unregistered projects were left out of the ambit of the Act.** These Sections were crucial to the successful implementation of the Act and any interpretation that held these complaints to be not maintainable would be against the object and purposes of the Act. He drew our attention towards **paras 45, 46 and 47 of judgement of the Supreme Court of India** in support of his contention. These contentions were supported by Shri Anun Bansal, Counsel for the complainant in GC No.0094 of 2021 who **laid stress on para 33 of the judgement of the Supreme Court of India.** He further pointed out that project in relation to which the complaint had been filed was an on-going project since the promoter had received a Change of Land Use (CLU) for this project. It therefore could not be bracketed along with projects that had not even applied for registration but should in fact be taken to be a registered project. A similar argument has been raised by Shri Rishi Kaushal, Counsel for the complainant in GC No.0197 of 2021. He pointed out that the respondent in his complaint had obtained approval for a mega project covering a large area. Under this approval they had developed various projects at different stages and had obtained separate registration for each such project. Though the particular project to which his complaint related was not registered, yet in overall context it should be on the same footing as a registered project. **All Counsel were***



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unanimous that complaints were maintainable and could not be dismissed on this point alone.

8. *The above contentions were supported by Shri Arun Singla, Advocate who actually was a Counsel for the respondent in GC No.0094 of 2021 but deemed it his duty to explain the correct law to the Authority. Shri Arun Singla pointed out paras 85 and 115 of the judgement in support of this contention.*

9. *Shui Vipul Monga, Counsel for the respondent to GC No.0886 of 2021 and other connected matters however argued strenuously in favour of the complaints being dismissed. He pointed out that para 54 of the judgment was unambiguous and admitted of no other interpretation but that complaints in relation to unregistered projects would not be maintainable.”*

26. While deciding the first question (viz “Whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India?”), out of the five questions emerged for the consideration of Hon'ble Supreme Court of India in the batch of appeals in which aforesaid judgment dated 11.11.2021 was passed, Hon'ble Supreme Court has observed/held as under (some portions of which are emboldened herein to lay emphasis):-



“32. The issue concerns the retroactive application of the provisions of the Act 2016 particularly, with reference to the ongoing projects. If we take note of the objects and reasons and the scheme of the Act, it manifests that the Parliament in its wisdom after holding extensive deliberation on the subject thought it necessary to have a central legislation in the paramount interest for effective consumer protection, uniformity and standardisation of business practices and

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transactions in the real estate sector, to ensure greater accountability towards consumers, to overcome frauds and delays and also the higher transaction costs, and accordingly intended to balance the interests of consumers and promoters by imposing certain duties and responsibilities on both. The deliberation on the subject was going on since 2013 but finally the Act was enacted in the year 2016 with effect from 25 th March, 2016.

33. Under Chapter II of the Act 2016, **registration of real estate projects became mandatory** and to make the statute applicable and to take its place under subSection (1) of Section 3, it was made statutory that **without registering the real estate project with a real estate regulatory authority established under the Act, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner a plot, apartment or building, as the case may be in any real estate project but with the aid of proviso to Section 3(1), it was mandated that such of the projects which are ongoing on the date of commencement of the Act and more specifically the projects to which the completion certificate has not been issued, such promoters shall be under obligation to make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. With certain exemptions being granted to such of the projects covered by subsection (2) of Section 3 of the Act, as a consequence, all such home buyers agreements which has been executed by the parties inter se has to abide the legislative mandate in completion of their ongoing running projects.**



34. The term “ongoing project” has not been so defined under the Act while the expression “real estate project” is defined under Section 2(zn) of the Act which reads as under:

“2(zn) “real estate project” means the development of a building or a building consisting of

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apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

35. The Act is intended to comply even to the ongoing real estate project. The expression “ongoing project” has been defined under Rule 2(h) of the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 which reads as under:

“2(h) “Ongoing project” means a project where development is going on and for which completion certificate has not been issued but excludes such projects which fulfil any of the following criteria on the date of notification of these rules:

(i) where services have been handed over to the Local Authority for maintenance.

(ii) where common areas and facilities have been handed over to the Association for the Residents' Welfare Association for maintenance.

(iii) where all development work have been completed and sale/lease deeds of sixty percent of the apartment/houses/plots have been executed.

(iv) where all development works have been completed and application has been filed with the competent authority for issue of completion certificate.”

36. The expression “completion certification” has been defined under Section 2(q) and “occupancy certificate” under Section 2(zf) of the Act which reads as under:



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“2(q) “completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

2(zf) “occupancy certificate” means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;”

37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, **all “ongoing projects” that commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.**

38. The emphasis of Mr. Kapil Sibal, learned senior counsel for the appellant is that the agreement of sale was executed in the year 2010-11, i.e. much before the coming into force of the Act and the present Act has retrospective application and registration of ongoing project under the Act would be in contravention to the contractual rights established between the promoter and



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allottee under the agreement for sale executed which is impermissible in law and further submits that Sections 13, 18(1), 19(4) of the Act 2016 to the extent of their retrospective application is in violation of Articles 14, 19(1)(g) of the Constitution of India.

39. *Mr. Tushar Mehta, learned Solicitor General, on the other hand, submits that a bare perusal of the object and reasons manifest that the Act does not take away the substantive jurisdiction, rather it protects the interest of homebuyers where project/possession is delayed and further submits that the scheme of the Act has retroactive application, which is permissible under the law. The provisions make it clear that it operates in future, however, its operation is based upon the character and status which have been done earlier and the presumption against retrospectivity in this case is ex facie rebuttable. The literal interpretation of the statute manifest that it has not made any distinction between the "existing" real estate projects and "new" real estate projects as has been defined under Section 2(zn) of the Act.*

40. *Learned counsel further submits that the key word, i.e., "ongoing on the date of the commencement of this Act" by necessary implication, ex facie and without any ambiguity, means and includes those projects which were ongoing and in cases where only issuance of completion certificate remained pending, legislature intended that even those projects have to be registered under the Act. Therefore, the ambit of Act is to bring all projects under its fold, provided that completion certificate has not been issued. The case of the appellant is based on "occupancy certificate" and not of "completion certificate". In this context, learned counsel submits that the said proviso ought to be read with Section 3(2)(b), which specifically excludes projects where completion certificate has been received prior to the commencement of the Act. Thus, those projects under Section 3(2) need not be registered under the Act and, therefore, the intent of the Act hinges on whether or not a*



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project has received a completion certificate on the date of commencement of the Act.

41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.*

42. *What the provision further emphasizes is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. The Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.*

43. *In State of Bombay (Now Maharashtra) versus Vishnu Ramchandra, this Court observed that if the part of requisites for operation of the statute were drawn from a time antecedent to its passing, it did not make the statute retrospective so long as the action was taken after the Act came into force.*



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44. To meet out different nature of exigencies, it was noticed by the Parliament that Pan India, large number of real estate projects where the allottees did not get possession for years together and complaints being filed before different forums including under the Consumer Protection Act has failed to deliver adequate/satisfactory results to the consumer/allottees and their life savings is locked in and sizable sections of allottees had invested their hardearned money, money obtained through loans or financial institutions with the belief that they will be able to get a roof in the form of their apartments/flats/unit.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that **such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law.** Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.

46. The consequences for breach of such obligations under the Act are prospective in operation and **in case ongoing project, of which completion certificate is not obtained, are not to be covered under the Act,** there is every likelihood of classifications in respect of underdeveloped ongoing project and the new project to be commenced.

47. The legislative power to make the law with prospective/retrospective effect is well recognized and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the



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completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.

48. *The distinction between retrospective and retroactive has been explained by this Court in **Jay Mahakali Rolling Mills Vs. Union of India and Others**, which reads as under:*

“8. “Retrospective” means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights.”

49. *Further, this Court in **Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others**, held as under:*

“67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

*68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [**Shanti Conductors (P) Ltd. v. Assam SEB**, (2016) 15 SCC 13] of one of the Hon'ble Judges holding that the 1993 Act is retroactive.”*



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50. In the recent judgment of this Court rendered in the case of *Vineeta Sharma Vs. Rakesh Sharma and Others* wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:

“61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.”

51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. **The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.**

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53. *That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*

54. *From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

27. Perusal of the above quoted paragraphs 32 to 53 of aforesaid judgment dated 11.11.2021 passed by Hon'ble Supreme Court reveals that there is no indication in these paragraphs 32 to 53 of the judgment that the Act is not applicable to the unregistered projects; rather, Hon'ble Supreme Court, without any distinction between the registered and unregistered projects, has unambiguously held therein that all "ongoing projects" that commenced prior to the Act and in respect to which completion certificate has not been issued are covered under the Act.



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28. In view of the above, I deem it appropriate to set aside the impugned orders in all these four appeals and to remit the complaints pertaining to these appeals to the Authority to decide the same as per provisions of the law.
29. The appeals are accordingly disposed off. Files be consigned to record room and a copy of this order be filed in the files of the appeals and also be communicated to the parties as well as to the Authority and the Adjudicating officer.

April 25, 2022

Sd/-
ER. ASHOK KUMAR GARG, C.E. (RETD.),
MEMBER (ADMINISTRATIVE/TECHNICAL)



Certified To Be True Copy
T. Anand Singh
Registrar
Real Estate Appellate Tribunal Punjab
Chandigarh

16/05/2022