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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

*CIVIL APPELLATE JURISDICTION*

## SECOND APPEAL (STAMP) NO.9717 OF 2018

***WITH***

## CIVIL APPLICATION NO.683 OF 2018

Lavasa Corporation Limited, ]
Hicon House, ]
Lal Bahadur Shastri Marg, ]
Vikhroli (West), Mumbai – 400083. ] .... Appellant-Applicant

***Versus***

1. Jitendra Jagdish Tulsiani, ]
   501, Tanish Apartments, ]
   Next to Joy Vila, 19th Road, ]
   Khar (West), Mumbai 400 052. ]
2. Real Estate Regulatory Authority, ]
   SRA Administrative Building, ]
   Bandra (East), Mumbai – 400 051. ] .... Respondents

***ALONG WITH***

## SECOND APPEAL (STAMP) NO.18465 OF 2018

***WITH***

## CIVIL APPLICATION NO.791 OF 2018

Lavasa Corporation Limited, ]
Hicon House, ]
Lal Bahadur Shastri Marg, ]
Vikhroli (West), Mumbai – 400083. ] .... Appellant-Applicant

***Versus***

1. Manju Narendra Joshi, ]
   of Mumbai, Indian Inhabitant, ]

Residing at A11/102, Runwal Plaza ]
Co-op. Housing Society Ltd., ]
Kores Road, Vartak Nagar, ]
Thane – 400 606. ]
2. Real Estate Regulatory Authority, ]
SRA Administrative Building, ]
Bandra (East), Mumbai – 400 051. ] .... Respondents

***ALONG WITH***

**SECOND APPEAL (STAMP) NO.18467 OF 2018**

***WITH***

**CIVIL APPLICATION NO.792 OF 2018**

Lavasa Corporation Limited, ]
Hicon House, ]
Lal Bahadur Shastri Marg, ]
Vikhroli (West), Mumbai – 400083. ] .... Appellant-Applicant

***Versus***

1. Girish Vassan Panjwani ]
2. Nidhi Panjwani, ]
Both residents of Mumbai, ]
Indian Inhabitants, ]
Residing at B-504, Raheja Solitare, ]
Off S.V. Road, Goregaon (West), ]
Mumbai – 400 062. ]
3. Real Estate Regulatory Authority, ]
SRA Administrative Building, ]
Bandra (East), Mumbai – 400 051. ] .... Respondents

Mr. Raj Patel, a/w. Mr. Ruturaj Bankar, I/by M/s. Lex Legal and Partners, for the Appellant-Applicant in SA(St.)/9717/2018.

Mr. Kaustav Talukdar, a/w. Mr. Ruturaj Banker, I/by M/s. Lex Legal and Partners, for the Appellant-Applicant in SA(St.)/18465/2018 and SA(St.)/18467/2018.

Mr. Mayur Khandeparkar, a/w. Mr. Tushar Gujjar, Ms. Shweta Merchant and Mr. Deepak Singh, I/by M/s. Solicis Lex, for the Respondents in SA(St.)/18467/2018.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**RESERVED ON : 26TH JULY, 2018.**

**PRONOUNCED ON : 7TH AUGUST, 2018.**

**JUDGMENT :**

1. Heard finally, at the stage of admission itself, with the consent of learned counsel for the Appellant and Respondents.

2. Admit.

3. These three Appeals are preferred, under Section 58 of the Real Estate (Regulation and Development) Act, 2016, *(for short, **"RERA"**)*, by Lavasa Corporation, which is developing a Township Project to construct 'Lake Views' and which is registered under the RERA.

4. These Appeals are raising the common questions of law as to *'whether the provisions of the RERA would apply in case of an 'Agreement to Lease'?';* particularly in the facts of the present case, *'whether the definition of the term"Promoter", as provided under*

*Section 2(zk) in the RERA, would include a 'Lessor',* and *'whether the remedy provided to the 'Allottees' under Section 18 of the RERA can be available only against the 'Promoter', or, in that sense, also against a 'Lessor'?'*

5. The Appellants are aggrieved by the three separate orders passed by the Maharashtra Real Estate Appellate Tribunal in three separate Appeals filed by the Respondents, under Section 43(5) of the RERA, against the orders passed by the 'Adjudicating Authority', under Section 18 of the said Act. By the impugned orders, the Appellate Tribunal has set aside the orders passed by the 'Adjudicating Authority' and held that, the provisions of the RERA are applicable even in case of 'Agreement of Lease' in the present case and, therefore, the Adjudicating Member of the Maharashtra Real Estate Regulatory Authority has jurisdiction to entertain the complaints filed by the Respondents. It was held so, despite the fact that, according to the Appellant, relationship between the Appellant and Respondents is of 'Lessor' and 'Lessee' and there is no sale and/or absolute transfer of right, title and interest in favour of the Respondents with respect to their respective apartments.

6. The factual matrix of the case, in which these questions are raised, can be depicted as follows :-

Respondents claim themselves to be the bonafide purchasers of

their respective apartments in the projects/buildings known as “Brook View”, which is being constructed at Village Dasve, Taluka Mulshi; “Belshore”, which is being constructed at Bhugaon Taluka; and “Lake View”, which is being constructed at Mulshi Taluka, respectively, in Pune District by the Appellant herein. In pursuance of the negotiations between the parties, the 'Agreements of Lease' came to be executed between them on various dates in the years 2014, 2013 and 2010, respectively. As per the said 'Agreements', the Respondents have booked the apartments on the basis of lease for the period of 999 years in the Township Scheme of the Appellant. They had paid most of the consideration amount, which is, approximately, to the extent of 80% of the sale price. They have also paid substantial amount towards the stamp-duty and the registration charges.

7. As per the 'Agreements of Lease' executed between the parties, the project was to be completed and the possession of the apartments was to be handed over to the Respondents within a period of 24 months. After waiting bonafidely for all these six to seven years for getting the project completed and after making several enquiries with the Appellant about the progress of the said project, the Respondents found that there are no chances of the project being completed in a near future. Hence, after the Appellant registered itself with the RERA, Respondents approached the 'Adjudicating Authority' under the MahaRERA with an application,

under Section 18 of the RERA, for compensation with interest for every month of the delay in handing over possession of the apartments and for various other reliefs, to which they are entitled under the RERA.

8. Appellant, however, on its appearance before the Adjudicating Authority, challenged the very applicability of the provisions of the RERA to the 'Agreements of Lease' entered into by the parties contending *inter alia* that, the Respondents are the 'Lessees', as the 'Agreements' entered into between the parties are clearly the 'Agreements of Lease' and not an 'Agreement of Sale'. Therefore, such 'Agreements of Lease' being specifically excluded from the ambit of the RERA, the Adjudicating Authority under the RERA has no jurisdiction to entertain the complaints.

9. After perusing the complaints, 'Agreements of Lease' and the provisions of RERA, the Adjudicating Authority was pleased to hold that, as the definition of the 'Allottee', as given in Section 2(d) of the RERA, does not include a person, to whom such plot, apartment or building, as the case may be, is given “on rent”; and as the definition of the 'Promoter', as given in Section 2(zk) of the RERA, includes only the person, who has constructed or caused to be constructed a building or apartment for the “purpose of selling” and thereby excluding from its purview the “purpose of lease” and in this case, as admittedly, the

'Agreements' executed by the Appellant with the Respondents are the 'Agreements of Lease', such 'Agreements' cannot fall within the purview of the provisions of RERA. Hence, as the remedy under Section 18 of the RERA is available only, against the Promoter's failure, under Section 31 of the said Act, which confers jurisdiction on the Adjudicating Authority, only when there is violation or contravention of the provisions of the RERA or the Rules and Regulations made thereunder, it was held that, the MahaRERA has no jurisdiction to entertain the present complaints or the dispute and, accordingly, dismissed the complaints for want of jurisdiction.

10. When Respondents challenged this order of the Adjudicating Authority before the Maharashtra Real Estate Appellate Tribunal, the Appellate Authority, however, after perusal of the 'Agreement of Lease' as a whole and after considering the object and purpose of the RERA, was pleased to hold that, though the 'Agreements' between the parties are titled as 'Lease Agreements', in effect, they are the agreements of “absolute sale” and, therefore, the provisions of the RERA will be applicable. The Appellate Tribunal also held that, the Appellant has got itself registered under the provisions of the RERA and, therefore, now it is precluded or estopped from contending that the provisions of the RERA are not applicable thereto. In this respect, the Appellate Tribunal has relied upon the 'Principle of Estoppel', laid down in Section 115 of the

Evidence Act and, thus, allowed the Appeals and held that the 'Adjudicating Officer' of MahaRERA has jurisdiction to entertain the complaints on its merits. The matters were, therefore, directed to be placed before the 'Adjudicating Officer' of MahaRERA, to be decided in accordance with law.

11. While challenging these orders of the Appellate Tribunal, the submission of learned counsel for the Appellant is that, the impugned orders are clearly against the express provisions of the RERA and hence, they cannot be sustainable in law. To substantiate this submission, learned counsel for the Appellant has taken this Court initially through various clauses in the 'Agreements of Lease', including the title thereof, to submit that, such 'Agreements' in no way can be called as 'Agreements of Sale'. It is submitted by him that, the parties had entered into the 'Agreements of Lease', knowing fully well that those were the 'Agreements' to book the apartment *"on lease for 999 years"* in the project of the Appellant. The definitions given in the 'Agreements of Lease' also clearly indicate and prove that it was purely a transaction of lease and not of sale. It is submitted that, the 'Agreements' nowhere use the terms 'sale', 'sale-consideration' or 'purchase price', but, the 'lease' and 'rent'. The term 'Rent' is defined to mean, *'the yearly rent amount payable by the customer to the Appellant-Lavasa, once the lease is actually granted in respect of the apartment'*. As per Clause No.5.1 of the

Agreement, the *"Annual Lease Rent"* is fixed at Rs.1/- only, for the said apartment. Clause No.7 defines the *"Rent"* as *"yearly rent"* of Rs.1/- for the lease of the said apartment'. Clause No.9.1 of the Agreement also states that, possession was to be given, subject to the Respondents making timely payment of the deposit amount against the *"lease premium"* installments for the ultimate *"grant of lease"* of the said apartment.

12. Thus, it is submitted that, the reading of the 'Agreement' in its entirety is more than sufficient to prove that, it was an 'Agreement of Lease' and in no way an 'Agreement of Sale', so as to attract the provisions of the RERA. It is submitted that, even the Respondents themselves are aware that it is an 'Agreement of Lease' and in their complaints filed before the MahaRERA, they have stated in paragraph No.4(A)-1 that, it was an 'Agreement of Lease' and they are the genuine and bonafide 'Lessees' in respect of the apartments. They have further stated in paragraph No.3 of the complaint that, they had agreed to book an apartment *"on lease for 999 years"*. In paragraph No.5 of the complaint, they have further stated that, it was an 'Agreement of Lease' of apartment with the Appellant for booking of the said apartment. In paragraph No.9 thereof, they had further stated that, they had called upon the Appellant to comply with the 'Agreement for Lease' of apartment, as mandated in law. Thus, it is submitted that, when as per

the own case of the Respondents, they had entered into 'Agreements of Lease' with the Appellant and now also, they are seeking compliance of the said 'Agreements of Lease', the question of attracting the provisions of the RERA does not arise in the present case.

13. In this respect, learned counsel for the Appellant has also relied upon the definition of the term 'Promoter', as given in Section 2(zk) of the RERA, which contemplates a person, who constructs or caused to be constructed an apartment *"for the purpose of selling".* It is urged that, the very definition of the term 'Allottee', as given in Section 2(d) of the RERA, specifically provides that, Allottee does not include a person to whom such plot, apartment or building, as the case may be, *"is given on rent".* Even the definition of the term 'Real Estate Project', as given in Section 2(zn) of RERA, means the development of a building or a building consisting of apartments for the *"purpose of selling"* all or some of the said apartments. Hence, it follows that, the Legislature has made its intention very clear of excluding from the purview of the provisions of the RERA an 'Agreement of Lease' or the case where the premises are given on rent.

14. Here in the case, it is, therefore, submitted that the remedy under Section 18 of the RERA, which is available only against a "Promoter", cannot be available against the Appellant, who is not the "Promoter" and

when the Respondents are not the “Purchasers” or the “Allottees”, but the “Lessees”. According to him, even combined reading of Sections 18 and 31 of the RERA, which provide for filing of complaints under Section 18 of the said Act to the Adjudicating Officer, makes it clear that the Adjudicating Officer can entertain such complaint, only if the complaint is filed under Section 18 of the RERA. Here in the case, as the complaint does not come within the parameters of Section 18 of the RERA, the Respondents not being the 'Allottees', nor the Appellant is the 'Promoter', nor it is a 'Real Estate Project', undertaken for the purpose of “selling” of the apartments, the 'Adjudicating Officer' had rightly held that, it has no jurisdiction to entertain such complaints filed by the Respondents.

15. It is urged that, the Appellate Tribunal has, however, misconstrued the provisions of the RERA, misread the contents of the 'Agreement of Lease' and thereby violated the provisions of the RERA by expanding its scope. It is submitted that, the legislative intent was very clear of not to apply the provisions of the RERA to the 'Agreement of Lease'. However, the Appellate Authority has gone beyond the legislative intent and interpreted the provisions of the RERA to include even the 'Agreement of Lease'. Hence, according to learned counsel for the Appellant, the impugned orders passed by the Appellate Tribunal call for interference in these Second Appeals.

16. Secondly, it is submitted that, the Appellate Authority has

committed an error in invoking the 'Principle of Estoppel', as laid down in Section 115 of the Indian Evidence Act, 1872. It is urged that, the project undertaken by the Appellant in the name of “Lavasa” is a very huge and large project and the registration of the project is sought only in respect of some of its components. Moreover, registration of the project under the RERA cannot be a sole test to invoke the provisions of the said Act. According to learned counsel for the Appellant, if registration under the RERA can be the sole test for applying the provisions of the said Act, then, applying the same logic, the RERA will not be made applicable to the projects, which are not registered. That cannot be the intention of the Legislature. Therefore, according to him, merely because the Appellant has sought registration under the RERA, it is not precluded or estopped from raising the contention that, as the 'Agreements' executed with the Respondents are that of 'Agreements of Lease' and the status of the Respondents is only of a 'Lessee' and not that of a 'Purchaser', their complaints cannot be entertained under the RERA. It is submitted that, as those complaints are clearly under Section 18 of the RERA and to these Respondents, therefore, RERA cannot be made applicable and hence, the Adjudicating Authority, under Section 31 of RERA, has no jurisdiction to entertain those complaints. According to learned counsel for the Appellant, on this score also, the Appellate Tribunal has committed an error in law, which is required to be rectified in these Second Appeals.

17. Per contra, learned counsel for the Respondents has taken this Court through the 'Objects and Reasons' of the RERA and also its various provisions to advance his submission that, it is applicable wherever the project is undertaken for development of the property and for handing over possession of the apartment, after its development, on payment of consideration amount. Here in the case, it is submitted that, the 'Agreement of Lease' is to be read as a whole to understand its real purport and object. According to him, the various clauses in the 'Agreement'; especially the clause relating to the period of lease and also the payment of consideration amount, clearly go to prove that the 'Agreement' was for long term duration of lease, to the extent of 999 years; thereby clearly indicating that, it was an 'Agreement of Sale' and not an 'Agreement of Lease', though it was titled as such. In his submission, mere title or nomenclature of 'Agreement' cannot determine its real nature. Here in the case, it is urged that, more than 80% of the consideration amount is already paid to the Appellant. Even the stamp-duty and the registration charges are paid on the purchase price of the apartments. Therefore, in the real sense, it is an 'Agreement of Sale'.

18. It is further submitted by learned counsel for the Respondents that, the definition of the term “Allottee”, as given in Section 2(d) of the RERA, in relation to a real estate project means, a person to whom a plot, apartment or building, as the case may be, has been allotted, sold

*(whether as freehold or leasehold)* or *"otherwise transferred"* by the Promoter. Thus, it is submitted that, this definition includes not only the freehold plots, but also the leasehold plots. It is urged that, the definitions of the terms 'Promoter' and 'Real Estate Project', as given in Sections 2(zk) and 2(zn) of the RERA, are also required to be read in that context, as they clearly makes the intention of the Legislature clear that the Legislature not only wanted the sale to be included, but also any other transaction relating to leasehold.

19. In this case, according to learned counsel for the Respondents, in the real sense, the apartment is not only *"allotted"*, but *"sold"* to the Respondents, though the 'Agreement' may have been titled as that of a lease. Moreover, it is urged that, the terms of the 'Agreement' make it clear that, the 'Lease-Deed' is yet to be executed. The rent fixed @ Rs.1/- only, also makes it abundantly clear that, it was an 'Agreement of Sale' and not an 'Agreement of Lease' as such.

20. In this respect, learned counsel for the Respondents has also brought to the attention of this Court the definition of the 'Lease Premium', as given in the 'Agreement of Lease', meaning thereby, *'the premium consideration payable in respect of lease of the apartment'*. It is urged that, Clause No.5.1 uses the term 'Customer' and not the 'Lessee' in the context of the Respondents.

21. According to learned counsel for the Respondents, all the terms and conditions of the 'Agreement of Lease' are *pari materia* to the terms and conditions of the 'Agreement', which is executed under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, *(for short, **"MOFA")***. In this respect, he has drawn attention of this Court to Clause No.10, which deals with *'Common Amenities and Facilities'* and which, according to him, is the classic clause in the 'Agreement' executed under MOFA. Even Clause No.13 thereof relating to *'Statutory Payments'* is also found often in the 'Agreement' executed under the MOFA. In his opinion and submission, therefore, here in the case, the intention of the parties was very much clear as to the "sale" of the said apartment by the Appellant to the Respondents. Hence, in no way, it can be called as an 'Agreement of Lease', though it is titled as such.

22. Moreover, according to him, if the Appellant has subjected itself to the jurisdiction of the RERA by registering under the RERA, which fact is not disputed, then Appellant cannot blow hot and cold at the same time by saying that, the Adjudicating Authority under the RERA has no jurisdiction to entertain the complaint filed under Section 18 of the RERA. It is urged by him that, the provisions of the RERA are beneficial both to the 'Allottee' and also to the 'Promoter'. If the Appellant, in its capacity as 'Promoter', is availing the benefits given under the RERA,

then, under Section 115 of the Evidence Act, Appellant is estopped from contending that the 'Adjudicating Authority' has no jurisdiction to entertain the complaints made under Section 18 of the RERA.

23. As regards the contention of the Appellant that, only some components of the project were registered under the RERA, it is pointed out that, the 'Registration Certificate' does not reflect so. Though under the RERA, there is a specific provision for registration of only part of the project, the Appellant has registered the entire project under the RERA and availed the benefits thereunder. Now by refusing to submit itself to the jurisdiction of the 'Adjudicating Authority' under the RERA, the Appellant is, as good as, calling upon the said Authority not to consider, ignore or revoke its registration. It is submitted that, under the RERA, there is a separate 'Authority' for registration and revocation of the registration. It cannot be done by the 'Adjudicating Authority'. The 'Adjudicating Authority' cannot go behind the 'Registration Certificate' and hold that, the provisions of the RERA are not applicable to the Appellant. According to learned counsel for the Respondents, therefore, there is a great dichotomy in the submissions advanced by learned counsel for the Appellant, which cannot be upheld at all. Therefore, the impugned order passed by the Appellate Tribunal, holding that the provisions of the RERA are equally applicable to the Appellant and the 'Adjudicating Authority' under the RERA has jurisdiction to entertain

the complaints filed by the Respondents, being just, legal, correct and in tune and in consonance with the 'Objects and Reasons' of the RERA, no interference is warranted in the said orders.

24. In the light of these rival submissions, advanced by learned counsel for the parties and having regard to the factual aspects of the case and the provisions of the RERA, the three substantial questions of law are raised in these Second Appeals, on which the Appeals are admitted and the parties were heard finally at the stage of admission itself. Those questions can be stated as follows :-

(i) *Whether the Appellate Tribunal has committed an error in holding that, the provisions of the RERA are applicable to the 'Agreement of Lease' executed between Appellant and Respondents?*

(ii) *Whether the Appellate Tribunal has committed an error in holding that, the 'Adjudicating Authority' under the RERA has jurisdiction to entertain the complaints filed by the Respondents, under Section 18 of RERA?*

(iii) *Whether the Adjudicating Authority, under the RERA, can go behind the 'Registration Certificate' of the Appellant, so as to hold that it has no jurisdiction, though the project is registered under the said Act?*

Point No.1

25. In order to decide these substantial questions of law raised in these Second Appeals, it is necessary to consider in detail the provisions of the RERA, along with its 'Objects and Reasons'.

26. The Real Estate (Regulation and Development) Act, 2016, as its 'Preamble' shows, is enacted by the Legislature,

> *"To establish the 'Real Estate Regulatory Authority' 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 to establish an adjudicating mechanism for speedy redressal and also to establish the Real Estate Appellate Tribunal to hear Appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and Adjudicating Officer and for the matters connected therewith or incidental thereto."*

27. The 'Statement of Objects and Reasons' of the Act shows that, the necessity of enacting such Act was realized by the Legislature after perceiving that,

> *The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with*

*absence of professionalism and standardization and lack of adequate consumer protection."*

28. It was felt that,

> *"Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse thereto is only curative and is not adequate to address all the concerns of buyers and promoters in that sector."*

29. The lack of standardization was found to be a constraint to the healthy and orderly growth of real estate industry. In view of the above, it was found necessary to have a Central Legislation, namely, the RERA, in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector.

30. The RERA is, therefore, enacted to provide for establishment of the 'Real Estate Regulation and Development Authority' for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner. The object of the RERA is stated to be to protect the interests of consumers in the real estate sector, like the Respondents herein.

31. Thus, the RERA is brought on Statute Book to ensure greater accountability towards the consumers and significantly reduce frauds

and delays, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters, by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions and set minimum standards of accountability and a fast track dispute resolution mechanism. The RERA, as stated in its 'Objects and Reasons', was enacted for inducting professionalism and standardization in the sector, thus, paving the way for accelerated growth and investments in the long run.

32. The RERA, therefore, imposes an obligation upon the promoter not to book, sell or offer for sale or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project, without registering the real estate project with the Authority. It makes the registration of real estate project compulsory, in case where the area of land proposed to be developed exceed 500 sq.mtrs. or number of apartments proposed to be developed exceed 8, inclusive of all phases. It imposes an obligation upon the Real Estate Agent also not to facilitate sale or purchase of any plot, apartment or building, as the case may be, without registering himself with the Authority. The Act imposes liability upon the Promoter to pay such compensation to the Allottees in the manner, as provided under RERA, in case if he fails to discharge any obligations imposed on him under RERA.

33. When the Constitutional validity of the RERA was challenged in the case of *Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs. Union of India and Ors., 2017 SCC OnLine Bom. 9302, along with connected matters*, by the various Developers and Promoters on the ground that, its provisions are discriminatory against them, the Division Bench of this Court was pleased to consider all the provisions of the RERA in their entirety and after having regard to its 'Objects and Reasons', held that,

> *"The RERA law is not to be considered as anti-promoter. It is a law for regulation and development of the real estate sector. Under the scheme of the RERA, the promoter's interests are also safeguarded and there is a reason for the same. Unless a professional promoter making genuine efforts is not protected, then very purpose of development of real estate sector would be defeated."*

34. The apprehensions, therefore, expressed on behalf of the Petitioners therein, namely, the Developers, in the said regard were held to be not well founded.

35. From the material placed on record during the course of the hearing, the Division Bench was pleased to observe its realisation that,

> *"A very large number of people spread over various cities across the country have invested their hard-earned money in the real estate project for securing roof over their heads. For millions of people, a*

*dwelling house in this country is still a dream come true. The respective Governments, Corporations have declared beneficial schemes for low and high income groups for allotment of residential houses. However, that is not proving to be sufficient. The hard-earned money of the consumers, their life-time savings were invested in many such projects. It was found that many projects are lying idle for various reasons, due to which public at large, consumers of real estate sector are adversely affected financially and otherwise. A comprehensive law was the need of the day. The Parliament, therefore, thought it fit to comprehend under one umbrella regulatory mechanism for a disciplined growth of the real estate sector."*

36. It was, thus, held that,

*"If the RERA is for the benefits of both the 'Allottees' and the 'Promoters', then there is no substance in the challenge to the Constitutional validity of the said Act."*

37. Thus, it can be seen that, the enactment of the RERA is to meet the need of an hour. The need of the hour is to regulate this real estate industry and to ensure that some standardization and professionalism is brought into this real estate sector, which would help to protect not only the interests of the 'Allottees', the purchasers of the flats/the apartments, who have invested their hard-earned money to get the home of their dream, but also to protect the interests of the 'Promoters',

as without protecting their interests, the interests of the 'Allottees' or the 'Consumers' also cannot be safeguarded. The Act is enacted also to encourage the growth of the real estate industry, so that the common man's dream of a dwelling house can be fulfilled. The RERA is, therefore, essentially for regulation and healthy growth of the real estate sector.

38. The provisions of the Act are hence required to be construed and interpreted keeping in mind these 'Objects and Reasons' of the Act in the backdrop of the facts and reality on ground, which made it necessary to have some comprehensive law on the subject.

39. Section 2 of the Act gives definitions of the important terms used in the Act.

40. In the context of the 'Agreements of Lease', which are executed by the Appellant with the Respondents, in this case, the definitions of the terms “Allottee”, as defined in Section 2(d) of the Act; “Agreement for Sale”, as laid down in Section 2(c) of the Act, the word “promoter”, as defined in Section 2(z) of the Act, and the term “Real Estate Project”, as defined in Section 2(zn) of the Act, are very much relevant for understanding and interpreting the scope of the 'Agreements' entered into by the parties in this case. Hence, they are reproduced as follows :-

*"2(c). "Agreement for Sale" means an agreement entered into between the Promoter and the Allottee.*

*2(d). "Allottee", in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the Promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise, but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.*

*2(zk). "Promoter" means :-*

*(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any development authority or any other public body in respect of allottees of -*

*(a) buildings or apartments, as the case may be, constructed by such authority or body*

*on lands owned by them or placed at their disposal by the Government; or*

*(b) plots owned by such authority or body or placed at their disposal by the Government,*

*for the purpose of selling all or some of the apartments or plots; or*

*(iv) an apex State level Co-operative Housing Finance Society and a primary Co-operative Housing Society, which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

*(v) any other person, who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

*(vi) such other person, who constructs any building or apartment for sale to the general public.*

*2(zn). "Real Estate Project" means the development of a building or a building consisting of 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."*

41. The terms “Apartment” and “Building” are defined in Section 2(e) and 2(j) of the RERA Act, respectively, and they cover not only the residential property, but also the commercial property, such as offices, show rooms, shops or godowns. In that sense, the RERA has wide scope and coverage in the real estate projects.

42. In this context, *vis-a-vis*, these definitions given in the RERA, it would be essential to go through the 'Agreements' executed between the parties. No doubt, it is true, that the 'Agreements' are titled as 'Agreements of Lease'. The word “Rent” is also defined therein to mean *'the yearly rent amount payable by the customer to Lavasa, once the lease is actually granted in respect of the apartment'*. The term 'Annual Rent' is defined to be Rs.1/- and the 'period of lease' is stated to be “999 years”. Clause No.4(xi) of the 'Agreement' is relevant in that respect. It says that, *'under its Township Development Scheme, Lavasa proposes to construct 'Lake Views' on the 'Lots' identified by it and grant on lease, the apartments constructed therein for a period of 999 years on the notionally divided pieces of land termed as “Lots”.'*

43. Clause No.5.1 of the 'Agreement' further provides that, in consideration of the customer having expressly agreed to pay to Lavasa the lease premium, which is in the range of Rs.32 to 40 lakhs, as the case may be, and which is more than 80% of the total consideration amount

and the annual lease rent of Rs.1/- for the said apartment, Lavasa agrees to grant to the customer a lease for a period of 999 years for the said apartment.

44. Clause No.5.2 of the 'Agreement' provides that, the 'Lease Deed' was to be executed only after the development and construction of the said apartment has been fully completed and all the lease premium amounts are paid by the customer to Lavasa. The lease term was to commence from the date of execution of the registration of the 'Lease Deed' by Lavasa in respect of the said apartment in favour of the customer.

45. Clause No.6 of the 'Agreement' lays down the 'Schedule of the Payment', which shows that the payment was to be made as per the progress in the construction and except for some nominal amount, entire consideration was to be paid before possession was to be delivered. This clause is a typical clause, which is normally found in the 'Agreement of Sale' under MOFA. Clause No.9.1 states that, the possession of the apartment was to be handed over within a period of 24 months, on the customer depositing the entire lease premium installments.

46. Further clauses in the 'Agreement', like Clause No.10 pertaining to

'Common Amenities and Facilities'; Clause No.12.1 pertaining to 'Charges and Contributions towards the Maintenance and Amenities'; Clause No.13 relating to 'Statutory Payments' and even other clauses in the 'Agreement' are more or less the same like the ones which are necessarily found in the 'Agreement of Sale' executed under MOFA. As a matter of fact, though these Agreements are titled as 'Agreements of Lease', they are just the replicas of the 'Agreement of Sale', which is executed under the MOFA, except for the words 'lease' and 'rent' used therein.

47. Thus, if the entire 'Agreement' is perused as such, then it becomes apparent on the face of it also, that it cannot be termed or treated as an 'Agreement of Lease', but, in its real purport, it is an 'Agreement of Sale'. The very fact that more than 80% of the entire consideration amount is already paid by the Respondents to the Appellant and the lease premium agreed is only of Rs.1/- per annum, including the clause relating to the period of lease of 999 years, are self-speaking to prove that, in reality, the transaction entered into by the parties is an 'Agreement of Sale' and not an 'Agreement of Lease'; though it is titled as such. The law is well settled that the nomenclature of the document cannot be a true test of its real intent and the document has to be read as a whole to ascertain the intention of the parties.

48. Needless to state that, in an 'Agreement of Lease', the 'Lessee' does not pay more than 80% of the consideration amount towards the price of the said apartment. In an 'Agreement of Lease', the rent cannot be Rs.1/- per annum only, for such an apartment, market rate of which is more than Rs.40 lakhs. In an 'Agreement of Lease', parties do not pay the registration charges and stamp duty on the market value of the said apartment. The 'Agreement of Lease' also cannot be for such a long term for '999 years'. This long period of lease in itself is sufficient to hold that, it is not an 'Agreement of Lease', but, in reality, an 'Agreement of Sale'.

49. In this context, learned counsel for the Appellant has rightly placed reliance on the Judgment of the Madras High Court in the case of *Commissioner of Income Tax, Tamil Nadu-III Vs. M/s. Rane Brake Linings Ltd., Chenai, in Tax Case (Appeal) No.1031 of 2007; decided on 7th April 2014)*, wherein, reliance was placed on the Judgment of the Hon'ble Apex Court in the case of *R.K. Palshikar (HUF) Vs. CIT, M.P., Nagpur and Bhandara, 1988 (172) ITR 311*, holding that,

> *"Having regard to the lease of plot for 99 years, it is clear that, under the lease in question, the Assessee has parted with an asset of an enduring nature, namely, the rights to possession and enjoyment of the properties leased for a period of 99 years, such transaction amounts to transfer of capital assets, as contemplated under Section 12B of the Income Tax Act, 1922."*

50. Relying on this decision of the Apex Court in this Judgment, the Madras High Court has also held that,

> *"Having regard to the fact that the period of lease was of 99 years, it was as good as a lease in perpetuity or a permanent lease in as much as an alienation as a sale"*. It was further held that, *"the mere use of the word 'lease' or the fact that a long term is fixed would not by itself make the document in lease. The payment of lumpsum amount also does not make it a permanent lease any the less an alienation than a sale"*.

51. Here in the case, the period of lease being of '999 years'; it is as good as the transaction in perpetuity. The payment of entire consideration amount and the lease premium @ Rs.1/- per annum only, further make the intention clear that, it was not an 'Agreement of Lease', but, clearly an alienation, which can be called as 'sale'.

52. As to the contention of learned counsel for the Appellant that this Judgment of the Madras High Court pertains to the assessment under the Income Tax Act, in my considered opinion, even if it is so, the ratio laid down therein, which is pertaining to the legal aspects as to when the document titled as a 'lease' can be considered as an 'alienation by sale' is equally applicable to the facts of the present case also.

53. In this respect, this Court has also to consider the provisions of the RERA, which are required to be construed, having regard to its objects and reasons. When the very object of the RERA is to protect the consumers, the persons, who have invested their hard-earned money by entering into an 'Agreement', which is in the nature of purchase of the apartment itself, mere nomenclature of the document as 'Agreement of Lease' will not in any way take away the rights given to them by the statute.

54. Though much reliance is placed by learned counsel for the Appellant on the definition of the word “Allottee”, as given in Section 2(d) of the RERA, to contend that the Allottee does not include a person to whom such plot, apartment or building, as the case may be, is *“given on rent”*, it must be remembered that, the definition of the term 'Allottee' in the present context includes even when the plot sold is a *“freehold or leasehold”*. To that extent, it has to be held that, the definition of 'Allottee' also includes the 'Lease Agreement', though it may not include such Agreement, when the apartment is in its real sense given purely on rent and it is, in reality, an 'Agreement of Rent and Lease' and not, in effect, a transaction of sale. The object of the RERA, it may be recalled, is to regulate the real estate industry, to ensure greater accountability towards consumers and significantly to reduce frauds and delays, to bring into it the standardization, professionalism and the transparency,

so that interests of the consumers are protected. In that view of the matter, the intention of the Legislature was to protect those persons like Respondents, who have invested substantial amounts in the real estate projects. Hence, they are required to be called as 'Consumers' or 'Allottees'. If they are excluded from the definition of 'Allottee' and thereby from the protection given under the Act, by giving restrictive meaning to the term 'Allottee', the very object of the Act would stand frustrated.

55. Here in the case, Respondents have already invested more than 80% of the consideration amount of the said apartment in the Real Estate Project of the Appellant. Their interests in the project undertaken by the Appellant are that of the 'Allottees', who have entered into such 'Agreements' for the purpose of purchase of the said flat/apartment. The object of the RERA cannot be to exclude such persons, who have invested huge amount in the Real Estate Project, may be under the 'Agreement of Lease' and taken such apartment on the lease of '999 years', which transaction is, in reality, the transaction of sale.

56. As rightly submitted by learned counsel for the Respondents, the definitions of the terms “Allottee”, “Promoter” and “Real Estate Project” are required to be construed harmoniously in the light of the 'Objects and Reasons' of the RERA. As held by the Hon'ble Supreme Court in the case of *R.S. Raghunath Vs. State of Karnataka, (1992) 1 SCC 335*,

> *"When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate, but proper to read that provision in its context. The 'context' means, 'the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute and the mischief, that it was intended to remedy."*

57. It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. Every clause of a statute has to be construed with reference to the context of the other clauses of the Act, to make a consistent enactment of the whole statute. An isolated consideration of the definitions may not give justice to the objects and reasons of the Act and the intention of the Legislature.

58. In this context, the 'Heydon's Rule of Suppression of Mischief' is required to be considered and highlighted. In *Heydon's case (76 ER 637)*, it was held that,

> *"For the sure and true interpretation of a statute in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:*
>
> *1st – What was the common law before the making of the Act ?*
>
> *2nd – What was the mischief and defect for which the common law did not provide ?*

*3rd – What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and*

*4th – The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."*

59. Thus, what was the mischief, which is tried to be suppressed by enactment of this Act, needs to be considered. In respect of this enactment, the mischief was to ameliorate the sufferings of the persons, who have invested their hard-earned money in the real estate sector. The object of the RERA is to protect the 'Allottees' and simplify the remedying of the wrongs committed by the 'Promoter'. The RERA assures completion of project in time-bound manner. The main object is to ensure accountability on the part of the Real Estate Sector and to provide a comprehensive, effective and speedy remedy to the persons, who have invested large sums of money for having a home of their dreams. The very enactment of the Act was found necessary, because it was noticed that all over the country in large number of projects, the Allottees did not get possession for years together. Huge amount of money was found locked in. Hence, to suppress this mischief and to

provide effective remedy to the consumers, this law was enacted. One of the modes prescribed under the Act to regulate the Real Estate Sector was to impose some penalty on the Developer, who has failed to complete the project in stipulated time. The provisions of Section 18 of the Act are in that way compensatory in nature. As held by this Court in the case of *Neelkamal Realtors Suburban Pvt. Ltd. (Supra)*,

> *"When the 'Promoter' is, in effect, constructing the apartments for the 'Allottees' and the 'Allottees' make the payment of premium, the Act requires the 'Promoter' to pay interest to the 'Allottees', whose money it is, when the project is delayed beyond the contractual/agreed period. When the 'Allottee' has parted with entire consideration for purchase of the apartment and still he is not given possession and the 'Promoter' is enjoying the benefit of the said amount of consideration, it is expected under the Act that he is bound to pay compensation to the 'Allottee'. In other words, it becomes a case of unjust enrichment on the part of the 'Promoter', if he is not liable to compensate the 'Allottees' by paying interest on the amount retained by him, the 'Authority' under the RERA also can impose penalty or interest on the 'Allottees' for contravention of the obligations cast upon both of them, in view of Section 38 of the Act. Thus, the legislation has done balancing of rights and liabilities of 'Promoters' and 'Allottees'."*

60. Now here in the facts of the present case, the Appellant has availed more than 80% of the consideration amount of the apartments booked

by the Respondents. Respondents had also paid registration charges and stamp-duty on the purchase price of the said apartments. Therefore, they are now entitled to get the benefits, which are given under the Act to such Allottees, as in that sense, they become the 'Allottees' of the apartments. Depriving them from enjoying the remedy available under Section 18 of the Act is as good as allowing the unjust enrichment on the part of the Appellant. That will defeat the object of the Legislature, with which this Act was enacted.

61. Once it is accepted that the Act was legislated to bring some discipline, professionalism, transparency and standardization in all the projects of real estate sector, then excluding from its scope the 'Agreements' like the ones, executed in the present case, is as good as frustrating the very object of the said Act. If the object of this Act is to ensure greater accountability towards consumer and reduce delays in completion of the real estate projects, then to hold that the agreements of the present nature, in which the Respondents have invested the substantial amount of consideration with an expectation of completion of the project within 24 months, as assured in the 'Agreements', is nothing but defeating the very purpose of the Act. Therefore, as held in Heydon's Rule, the interpretation of the statute has to be not only to suppress the mischief, but also to advance the remedy and also to suppress subtle inventions and evasions for continuance of the mischief. Interpretation

of the provisions should be such as it will add force and life to the cure and remedy according to the true intent of the makers of the Act and not to defeat that intent.

62. The provisions of any statute for that matter, as held by the Apex Court in the case of *Tata Engineering & Locomotive Co. Ltd. Vs. State of Bihar and Anr., (2000) 5 SCC 346*, are required to be considered in their practical application, as to how they will achieve the object of the Act. In this Judgment, the Hon'ble Apex Court has very lucidly and effectively held that;

> *"15. 'Statutes', it is often said, should be construed not as theorems of Euclid, but with some imagination of the purposes, which lie behind them, and to be too literal in the meaning of words is to see the skin and miss the soul. The method suggested for adoption, in cases of doubt as to the meaning of the words used, is to explore the intention of the Legislature through the words, the context, which gives the colour, the context, the subject-matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their literal sense, are interpreted from the context and scheme underlying in the text of the Act. The decision in Utkal Contractors & Joinery (P) Ltd. Vs. State of Orissa, (1987) 3 SCC 279, case also emphasizes the need to construe the words in a provision in the context of the scheme underlying the other provisions of the Act as well, which ultimately was considered to be in tune with the object set out in the 'Statement of the Objects and Reasons' and in the*

*'Preamble'. Apart from the fact that the observations contained in the decision have to be understood in the light of the issue raised and exercise undertaken by the Court therein, the fallacy in the submission on behalf of the Appellant lies, though not in the principles of construction to be adopted, but in the assumption of the counsel to confine or restrict and construe the law in question to be one made to regulate the trade of sawing, contrary to the very 'Preamble', which reads,*

> *"to make provisions for regulating in the public interest the establishment and operation of saw-mills and saw-pits and trade of sawing for the protection and conservation of forest and the environment"."*

63. It needs to be emphasized that, the too literal meaning of the words given in the Statute is to not understand the scheme underlying the provisions of the Act. The intention of the Legislature has to be gathered not only from the terms used, but also from the 'Objects and Reasons' and 'Preamble' to the said legislation. Here in the case, the very 'object' of this comprehensive legislation is to ensure that, the consumers do not suffer, by whichever name or nomenclature they are called or under whichever document, they entered into an 'Agreement'. In the very 'Objects and Reasons' of the Act, it was clearly stated that, the Consumer Protection Act, 1986, is though available as a forum to the 'Buyers' in the real estate market, the recourse is only curative and is not adequate to

address all the concerns of the 'Buyers' and 'Promoters' in that sector. Hence, it was found that, for this lack of adequate consumer protection, which, to some extent, was given by the specific statute, like MOFA, being not available in other statutes and to all the consumers to protect their interests effectively, this Act was enacted. Now allowing the Respondents to remain out of the purview of this Act, merely because their 'Agreements' are titled as 'Agreement of Lease', will not give justice to the provisions of this Act also.

64. Another object of the Act was also to bring under the umbrella of 'Adjudicating Authority' all the disputes between the Buyers on the one hand and the Promoters, Developers and Development Authorities on the other hand in respect of the Real Estate Projects undertaken by them. The Division Bench of this Court in the case of *Neelkamal Realtors (Supra)* has considered this adequate mechanism provided under the Act for balancing rights of 'Allottees' and 'Promoters', by observing in paragraph No.124, as follows :-

> "The entire scheme of the RERA is required to be kept in mind. It is already submitted during the course of hearing that, in many cases, helpless Allottees had approached Consumer Forum, High Courts, Apex Court in a given fact situation of the case. The Courts have been passing orders by moulding reliefs by granting interest, compensation to the Allottees and issuing directions for timely completion of project, transit accommodation during completion of

> project, so on and so forth. Under the RERA, now this function is assigned to the Authority, Tribunal. An Appeal lies to the High Court. Under one umbrella, under on regulation and one law, all the issues are tried to be resolved."

65. Thus, it can be seen that the object of establishing this 'adjudicating mechanism' was to provide for speedy dispute redressal by bringing all the disputes under one umbrella. This 'redressal mechanism' is to ensure that, the consumers like the Respondents, who have invested their large amount of hard-earned money in the real estate projects, should get its returns at the earliest, either in the form of completion of the projects and possession of the apartments, or, by way of compensation with interests. If the Respondents, who have invested such money, are not allowed to approach this 'Adjudicating Authority', established under the RERA, and the 'Adjudicating Authority' merely holds that, as the 'Agreement' is titled as an 'Agreement of Lease', it has no jurisdiction to entertain their grievances raised under Section 18 of the said Act, then such interpretation cannot be in consonance and in tune with the object of the Act.

66. The Appellate Tribunal has, therefore, rightly held that, if one has to adopt the object-oriented approach, then without even doing violations to the plain language used in the statute, such approach can be adopted in the instant case, keeping in mind the principle that

legislative futility is to be avoided, so long as interpretative possibility permits. These are the observations of the Hon'ble Apex Court in the case of *CIT Vs. N.C. Budhraja and Co., 1994 Supp (1) SCC 280*, quoted with approval in the case of *K.N. Farms Industries Private Limited Vs. State of Bihar and Others, (2009) 15 SCC 275*;

> *"19. The Courts, while interpreting the provisions of any Act, should, no doubt, adopt an object-oriented approach, keeping in mind the principle that, legislative futility is to be avoided so long as interpretative possibility permits. But, at the same time, the Courts will have to keep in mind that, the object-oriented approach cannot be carried to the extent of doing violence to the plain language used in the statute, by re-writing the words of a statute in place of the actual words used, or, by ignoring definite words used in the statute."*

67. Here in the case, as regards the word "Allottee", as a matter of fact, it can never be the intention of the Legislature to exclude long term leases from the purview of the Act; otherwise, the Legislature would not have used the words 'freehold' or 'leasehold', when it has defined the term 'Allottee', under Section 2(d) of the Act.

68. Moreover, exclusion of such long term lease from the purview of the Act would be defeating the very object of the Act. The Developer-Promoter may, in such cases, by executing the 'Agreement' with the

nomenclature as the 'Agreement of Lease', can very conveniently escape from the clutches of the provisions of this Act. When the Legislature has stated in the definition of the term 'Allottee' that it does not include the person, to whom the plot, apartment or building is *"given on rent"*, the intention of the Legislature was only to exclude pure 'Agreements of Lease' or the 'rent', as the Lessees therein have not invested the substantial amount, like purchase price, of the apartment in completion of the project. One may also include therein licenses, but one cannot exclude the persons, who have invested more than 80% of the purchase price of the apartment. One also cannot exclude the transactions, in which the apartment was to be built and then the possession thereof was to be handed over on payment of the entire consideration amount at the market rate. Such 'Agreements' can in no way be called as 'Agreements of Lease' at all. The intention of the Legislature, which is found reflected in the 'Objects and Reasons' of the Act and its various provisions, makes it abundantly clear that, to all the projects, wherein the possession of the apartments is to be handed over in consideration of the sale price or the market price, such projects are included under the purview of this Act. It has to be held that, the Legislature would have never intended to exclude the persons like the Respondents, who have invested their hard-earned money in such projects, from the protective and beneficial provisions of this Act.

69. As held by this Court in the case of *Neelkamal Realtors Suburban Pvt. Ltd. (Supra)*,

> *"The provisions like Section 4(2)(l)(D) of RERA, which contemplates that, 'promoter' should deposit 70% of the amounts realized for the real estate project from the 'Allottees' in a separate account, which means that 30% of the amounts realized by the 'Promoter' from the 'Allottees' will be retained by him and in such case, if the 'Promoter' defaults to handover possession to the 'Allottees' in the agreed time-limit or the extended one, then the 'Allottees' shall reasonably expect such compensation from the 'Promoter' till the handing over of the possession, are necessarily incorporated; because, it was noticed by the 'Select Committee' and the 'Standing Committee' of the 'Parliament' that, huge sums of money collected from the 'Allottees' were not utilized fully in the projects, or, the amounts collected from the 'Allottees' were diverted to other sectors, than the concerned project."*

70. Here in the case also, the consideration amount for the apartments agreed to be handed over to the Respondents is already obtained by the Appellant. As per the 'Agreement', the possession of the apartments was to be delivered within 24 months from that date; however, even after the lapse of 7 years, the Respondents have not received the possession; thereby indicating default on the part of the Appellant in fulfilling his obligations. If such 'Allottees', like the Respondents herein, cannot be

kept out of the purview of the Act, which is clearly enacted with express intent to ensure that, they get the succor. At the cost of repetition, it has to be stated that, the mischief, to suppress which, the Act was enacted, was that there was no law regulating the real estate sector development work and obligations of 'Promoters' and 'Allottees'. This need was felt by the 'Parliament', because, it was noticed that, all over the country, in large number of projects, the 'Allottees' did not get possession for years together and huge sums of money of the 'Allottees' was locked in such projects. Hence, if, in the similar situation and fact, the funds of the Respondents are locked in the development projects of the Appellant, they cannot be deprived from the benefit of this Act, merely on the count that the 'Agreements' executed by them with the Appellant are titled as 'Agreement to Lease' and not 'Agreement of Sale'.

71. Here the Hayden's Rule of Suppression of Mischief needs to be applied with full force and if that Rule is applied, then the provisions of the RERA are required to be held as equally applicable to the long term leases, like the present one of “999 years”; or, where the substantial amount of consideration is already obtained by the 'Developer'. Then the definitions of the terms 'Allottee', or, 'Real Estate Project', or, even that of 'Promoter', are required to be interpreted in that context and not in isolation, by placing reliance simplicitor on the word 'selling' used in these three definitions. As rightly submitted by learned counsel for the

Respondents, the word 'selling' is grammatical variation of the word “sold”, used in section 2(d) of the Act in the definition of the term “Allottee”. If the allotment of a plot, apartment or building, as the case may be, can be whether as a freehold or as leasehold, then the word 'selling' used in the definitions of 'Promoter' and 'Real Estate Project' also includes the allotment of a plot by lease. Merely because the Legislature has excluded the allotment, when it is given on rent, it does not exclude the long term lease like the present one. That will be defeating and frustrating the object of the Act and hence, it has to be held that the Appellate Tribunal has rightly held that, so far as the present case is concerned, considering the long term lease of '999 years', it would definitely amount to sale.

Point Nos.2 and 3

72. In the facts of the present case, there is one more reason to hold that Respondents' complaints filed under Section 18 of the Act are maintainable before the 'Adjudicating Authority'. It is because the Appellant itself has registered this project under the RERA and accepted its liabilities under the Act.

73. Section 3 of the RERA in this respect is assuming significance and it can be reproduced as follows :-

***Section 3 : "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:*

*Provided that, projects that are on-going 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:*

*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.*

*Explanation - For the purpose of this Section, where the Real Estate Project is to be developed in phases, every such phase shall be considered a stand alone Real Estate Project, and the Promoter shall obtain registration under this Act for each phase separately."*

74. This Section thus makes registration of the project mandatory for its sale. As per Clause (2) of Section 3, the RERA is made applicable even to the projects that are on-going on the date of commencement of the RERA and for which, Completion Certificate has not been issued. In respect of such projects also, Promoters are required to register the projects with the Real Estate Regulatory Authority within three months from the commencement of the RERA, with an option that they can register entire real estate project or part of it. The specific *'Explanation'* to the Section 3 of the RERA provides that, where the real estate project

is to be developed in phases, every such phase shall be considered as a stand alone real estate project and the Promoter shall obtain registration under this Act for each phase separately. This *'Explanation'* is important for the purpose of the present litigation, as here in the case, the Appellant has already got itself registered under RERA, by making an application under Section 4 of the said Act. The 'Registration Certificate' is produced on record proving that, the entire project as such is registered and not only certain components thereof. It is not the case of the Appellant also that only some parts of the components of the said project are registered. Though it is contended that, the RERA is applicable only to some part of the project, despite that, the entire project is registered under the RERA, as is evident from the 'Registration Certificate'.

75. Hence, there is definitely some substance in the submission advanced by learned counsel for the Respondents that, if the Appellant has registered itself under the RERA, it follows that Appellant has submitted itself to the jurisdiction of the RERA. Now Appellant cannot contend that the provisions of Section 18 of the RERA are not applicable to it, as the 'Agreements' executed with the Respondents are 'Agreements of Lease' and not an 'Agreement of Sale'. As rightly submitted by learned counsel for the Respondents, by registering itself under the RERA and availing the benefits, which were available under

the RERA, now Appellant cannot approbate and reprobate by contending that, the said provisions are applicable only to a particular aspect and not to the complaints, which are filed by the Respondents and that too merely on the count that, the 'Agreements' executed with the Respondents are the 'Agreements of Lease' and not 'Agreement of Sale'. By volunteering to register itself under the RERA, Appellant has surrendered itself to the jurisdiction of the Adjudicating Authority, established under the RERA. The option was available to the Appellant to register only part of the project and not the entire or part of the project, in respect of which the 'Agreements of Lease' are executed. The Appellant had not exercised that option. Without any qualification or reservation, Appellant has registered the entire project with RERA. Appellant cannot, therefore, contend that, the Adjudicating Authority established under the RERA has no jurisdiction to entertain the complaints filed by the Respondents-Allottees under Section 18 of the said Act. The provisions of the RERA cannot be bifurcated in the sense that, only in respect of certain aspects, the Appellant can avail benefit of the said Act; by registering itself and as per its convenience, whenever Appellant has to comply with the obligations therein, it can raise contention that the provisions of the RERA are not applicable, because it is an 'Agreement of Lease'. The provisions of Section 115 of the Evidence Act definitely prevents, precludes and estopps the Appellant from doing so.

76. Moreover, if the Appellant is permitted to raise such defence, it would be as good as allowing the 'Adjudicating Authority', established under the RERA, to go behind the Registration Certificate for holding that the said registration under RERA is not applicable to the project of the Appellant. Can the Adjudicating Authority do so? The answer has to be in the negative, if the scheme of the RERA is considered. It is pertinent to note that, under the RERA, there are two different Authorities established; one is Real Estate Regulatory Authority, which is defined under Section 2(1) and established under Section 20 of the RERA. It is conferred with the jurisdiction to entertain the application for registration of the projects. As can be seen from the provisions of Sections 3 and 4 of the RERA, application for registration of real estate project is to be made to this Real Estate Regulatory Authority, established under Section 20 of the said Act. Chapter 'V' of the RERA deals with the *'Establishment and Incorporation of the Real Estate Regulatory Authority'*. Section 21 thereof deals with *'Composition of the said Authority'* and Section 22 thereof deals with *'Qualification of Chairperson and Members of the Authority'*. It is for this Authority to consider whether to grant registration or not and in case of breach of terms and conditions on the part of the Promoter, whether to revoke the said registration under Section 7 of the Act. The Rules framed under the RERA are more than sufficient to that effect.

77. As against it, the Adjudicating Authority under the RERA is defined in Section 2(a) as the 'Adjudicating Officer' appointed under sub-section (1) of Section 71. This 'Adjudicating Authority', as can be seen from Section 71(1) of the Act, is established for the purpose of adjudging the compensation under Sections 12, 14, 18 and 19 of the said Act. Section 31 provides that, the complaints are to be filed by the aggrieved persons under the RERA with the 'Adjudicating Authority' for any violation or contravention of the provisions of this Act.

78. Therefore, the 'Authority', which grants registration under RERA, is different than the 'Authority', which is established to adjudicate the grievances of the aggrieved persons under the said Act. One Authority cannot encroach on the jurisdiction exercised or to be exercised by the another Authority. Here in the case, the 'Registration Certificate' to the Appellant is granted by the Regulatory Authority, established under Section 20 of the said Act and now the Appellant is calling upon the 'Adjudicating Authority', established under Section 71 of the RERA, to go behind that 'Registration Certificate' and to hold that the provisions of RERA are not applicable to the Appellant.

79. In my considered opinion, this course is not permissible under the law to challenge the Registration Certificate issued by one 'Authority' before the another 'Authority' and calling upon that 'Authority' not to

consider such 'Certificate of Registration' and then to hold that the RERA is not applicable to the said project. Once there is registration under the RERA, then it follows that, all the provisions of the RERA become applicable to such project, unless some phases are specifically excluded from registration. It also becomes applicable to the persons, who have invested in the said real estate project. It is applicable both, to the Appellant and also to the Respondents. The Appellant, after having taken the advantage of registration under the RERA, cannot turn back and say that the provisions of the RERA are not applicable to the complaints made by the Respondents in respect of the very same project.

80. As submitted by learned counsel for the Appellant, it may be true that, the registration alone cannot be a test to decide whether the provisions of the RERA are applicable or not; because, in that case, if the project is not registered, then, it will not be possible to accept that the provisions of the RERA are not applicable to such projects. However, in my considered opinion, this reasoning or logic cannot be applicable to the instant case, as Section 3 of the RERA mandates registration. It clearly provides that, no promoter shall even 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 the RERA. Even in respect of ongoing projects also, this mandate applies, unless it is shown that, 'Completion Certificate' has been already issued. The word used in Section 3(1) and the Proviso to Section 3 in respect of 'ongoing project' is “shall”, thereby making the intention of the legislature clear that, in respect of those ongoing projects also, the registration has to be sought within a period of three months from the date of commencement of the Act. Sub-clause (2) of Section 3 provides for some exceptions, where registration of real estate project shall not be required and those exceptions are pertaining to the projects, where the area of land proposed to be developed does not exceed 500 sq.mtrs., or, the number of apartments proposed to be developed does not exceed 8, inclusive of all phases, or, where the Promoter has received Completion Certificate prior to commencement of the Act. One more exception laid down in Clause (c) of sub-section (2) of Section 3 is that, when the project undertaken is 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; otherwise, for all other Development Projects, the registration under the RERA is mandatory.

81. The Appellant had, therefore, no choice but to get their project registered under the RERA, considering that it was for development of

the plot, exceeding the area of more than 500 sq.mtrs. and it was for the number of apartments exceeding 8, inclusive of all phases. The Appellant's project is also not completed; at-least, as no Completion Certificate is obtained and, therefore, it is an on-going project. Thus, when the Registration Certificate for such real estate project was compulsory, in order to book, sell or offer for sale the plots or apartments constructed therein, and it was obtained accordingly, then Appellant can no more contend that such Registration Certificate will not be applicable for the construction of the apartments in the said project and to the Allottees, who have entered into 'Agreements' in respect of the said apartments.

82. It is pertinent to note that, if, according to the Appellant also, the project undertaken was not of *"development"* and *"sale of the apartments"* constructed therein, then the Appellant was not bound to register the same and would not have registered the same, under Section 3 of the RERA. If the Appellant has also understood the 'Agreements' executed with the Respondents as only 'Agreements of Lease', then Appellant could have very well avoided the registration under the RERA; because, in that case, Appellant could have contended that, it is not bound by Section 3 of the RERA, as the project was not undertaken for *"sale of the flats"* or the apartments, but only for the purpose of giving the apartments *"on rent"*. The very fact that the Appellant has got itself

registered under the RERA makes it necessary to infer that, the Appellant was very well aware that this project was for sale of the apartments constructed in the project and that is why, it was bound by the provisions of the RERA.

83. Moreover, here there is no question of applying the logic that, if the project is not registered, whether the RERA will not be applicable, even if it is otherwise proved to be a project of development, because, as per the mandate of the RERA, all the real estate projects are now required to be registered, if the apartments therein are constructed for the purpose of sale or otherwise. The fact that the Appellant has, therefore, registered the project also makes it necessary to infer that, the Appellant has invited upon itself the applicability of the provisions of the RERA, as Appellant is also fully aware that whatever 'Agreements' executed by it with the Respondents are in the nature of sale, though they are titled as 'Agreements of Lease'.

84. Thus, having regard to the totality of the facts and circumstances and the terms and conditions of the 'Agreements', having regard to the entire purport and object of the Act, it has to be held that, the dispute in the present case definitely falls within the jurisdiction of RERA. The interplay of all the provisions contained in the Act, coupled with the real purport of the 'Agreement of Lease', leads to no other inference, but to

hold that, the complaints filed by the Respondents before the 'Adjudicating Officer', under Section 18 of the Act, are definitely maintainable and the 'Adjudicating Officer' is having the jurisdiction to entertain and decide those complaints. The mechanical interpretation given by the 'Adjudicating Officer' to the provisions of the Act, merely focusing on the nomenclature of the 'Agreement', was clearly defeating the object of the Act and hence, it was rightly set aside by the Appellate Tribunal.

85. These Second Appeals, therefore, hold no merits; hence, stand dismissed.

86. In view thereof, the Civil Applications pending therein do not survive and the same are disposed of as infructuous.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**