

MAHARERA

CA. Ashwin Shah, CA. Mahadev Birla

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

Case law study

Niranjan Dashpute and Ors V/s Rajkumar N Saste and Ors

This article attempts to discuss the issues in respect of the maintainability of the complaint and right of land owner to stop the work due to dispute arises between the land owner and developer.

Issues:

Whether the complaint filed by the complainant is maintainable under the RERA as complainant is filed by the developer?

Whether Land owner can stop the construction work due to non-compliance of terms and conditions of development agreement executed between the land owner and developer.

Whether the developer is liable to rectify the defects in construction work?

Provisions:

As per Section 31 (1) 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 this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation. —For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force

As per provision of Section 14(1) of the RERA, it is the duty of the promoter to developed and complete the project as per the plan sanction and project specification.

Provision of Section 11(4)(b) put a responsibility on promoter to obtain occupancy certificate /completion certificate.

As per Section 14(3) of RERA, if any structural defect or other defect in workmanship, quality or provision of service or other obligation as per agreement to sale bring to the notice of promoter than the such defect will be rectify by the promoter within 30 days form such notice.

Section 3(2)(i) of Maharashtra Ownership of Flat Act, 1963 prohibits the promoter from inducting any person without completion certificate into the flats and it's also prohibits the buyer from entering into possession of such flat without occupancy certificate or the completion certificate

Maharashtra Municipal corporation act prohibits the occupation of the building without occupancy or completion certificate and it is offence.

In the matter of M/s Sion Kamgar Co-Operative Housing Society Ltd v/s Municipal Corporation of Greater Mumbai- writ petition number 829 of 2013 it was held by the Hon'ble Bombay High Court that occupying the building without occupancy or certificate can not be permitted in Law.

Fact of the Case:

In the present case the complaint was filed by the developer with the allegation that land owners are obstructing the developer from completing the project and for fitting the fire safety system therefore the occupancy certificate/completion certificate has not been granted by the planning authority. While the landowner being a respondent has alleged that complainant being a developer has not transferred the title of the unit allotted to landowner and even parking is also not allotted as per agreed terms. Further it was brought to the notice of the Hon'ble authority that the complainant has used the poor quality of material in the project, the defect in the construction work is not rectified and the amenities in the project is also not provided to the 45 customers who has taken a possession in the project.

Conclusion:

The present complaint filed is maintainable under Section 31 of RERA.

It was held that landowner is also the co-promoter as per provision of section 2(zk) and co-promoter is also equal liable for compliance of RERA provision therefore landowner cannot obstruct the construction work of project.

It was held that developer being a promoter are liable to complete the project and to provide the amenities as per sanctioned plan and to rectify the construction defect without any charges.

The RERA Authority shall bring the matter to the notice of learned Municipal Commissioner for taking legal action against the offender according to law.