



2025:DHC:7476-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 19.08.2025

Judgment pronounced on: 29.08.2025

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RERA APPEAL 5/2024 and CM APPL. 25924/2024

CJ INFRASTRUCTURE PVT LTD & ANR.Petitioners

Through: Sh. Mandeep Singh Vinaik, Mr.
S.K. Sagar, and Mr.
Gaikhuanlung, Advs.

versus

REAL ESTATE APPELLATE TRIBUNAL FOR NCT OF
DELHI AND UT CHANDIGARH & ORS.

.....Respondents

Through: Mr. Siddharth Panda, Adv. for
R-2.

Mr. A. S. Chandhiok, Sr.
Advocate, along with
Ms.Chakshu Thakral, Mr.
Amarjit Singh Bedi, Ms. Riya
Seth, Mr. Varun Chandhiok,
Advs. for R-3.

Ms. Mansi Bajaj and Ms. Nidhi
Tyagi, Advs. for R-8.

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RERA APPEAL 6/2024 and CM APPL. 25926/2024

CJ INFRASTRUCTURE PVT LTD & ANR.Petitioners

Through: Sh. Mandeep Singh Vinaik, Mr.
S.K. Sagar, and Mr.
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Mr. A. S. Chandhiok, Sr. Advocate, along with Ms. Chakshu Thakral, Mr. Amarjit Singh Bedi, Ms. Riya Seth, Mr. Varun Chandhiok, Advs. for R-3.
Ms. Mansi Bajaj and Ms. Nidhi Tyagi, Advs. for R-8.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present two Appeals, the Appellants, namely, M/S CJ Infrastructure Pvt. Ltd. [hereinafter referred to as 'Appellant Company'], assails correctness of two similar orders passed on 27.03.2024 [hereinafter referred to as 'Impugned Order'] by the learned Real Estate Appellate Tribunal, Delhi & Union Territory of Chandigarh [hereinafter referred to as 'REAT'], whereby REAT, while relying on the judgment of the Supreme Court in *Newtech Promoters and Developers Pvt Ltd. vs. State of Uttar Pradesh & Ors.*¹, has dismissed the Appeal of the Appellants on account of failure to make the pre-deposit in terms of Section 43(5) of the Real Estate (Regulation & Development) Act, 2016 [hereinafter referred to as 'RERA Act'].

2. With the consent of learned counsel for the parties, both Appeals are heard together and are being disposed of by this common

¹ (2021) 18 SCC 127



order. For convenience, the facts are primarily drawn from RERA APPEAL 5/2024, captioned ***CJ Infrastructure Pvt. Ltd. &Anr. vs. Real Estate Appellate Tribunal for NCT of Delhi & UT Chandigarh &Ors.***

FACTUAL MATRIX:

3. In the year 2010, the Appellant Company acquired a freehold area at 21, District Centre, Laxmi Nagar, Delhi, where it has constructed a commercial complex (Metroplex East) which comprises 197 units besides common areas like entrance lobby, elevators, staircases, etc. The construction was allegedly completed on 14.02.2013. A licensed Architect issued a certificate declaring the same as fit for occupation. The Appellant Company is alleged to have applied for an Occupancy-cum-Completion Certificate [hereinafter referred to as ‘OCC’] by submitting applications *vide* purported letter dated 14.02.2013, 31.10.2013 and 02.01.2014. However, since no response was received from DDA, it was presumed by Appellants that a sanction was granted under the deemed provision.

4. Further, between 2013 to 2015, the Appellant Company sold or allotted 149 units/shops/apartments to the respective purchasers and registered conveyance deeds were duly executed in their favour. At the time when the office spaces were sold, the market was booming and property prices were rising. Thereafter, there was a downfall in property prices and the market plummeted owing to factors beyond the control of the Appellants and this fall was actuated by market forces. This led to a situation where some purchasers who invested



2025:DHC:7476-DB



their money as an investment could not get good returns on their investment due to the slump in the market.

5. Further, two associations, Metroplex East Welfare Association [hereinafter referred to as 'MEWA'] and the other as Metroplex East Owner Association, which is arrayed as Respondent No.7 herein and which have been formed to look after the interest of the flat buyers and which is their own cooperative and conjoint venture, came into existence. In the month of September 2015, the office bearers of the MEWA entered into a memorandum of understanding with the Appellant Company, in the form of a settlement of some pending grievances that they claimed to have. The Appellants state that they have fulfilled and have already performed all their obligations, and that they are not in default of any of their obligations.

6. Eventually, some individual flat buyers, acting in their individual capacity, have petitioned the authority under RERA Act, which was notified on 1st May 2017. Respondent Nos.3, 4, 5 & 6 are some of these purchasers. They have been arrayed as parties as they are the prime movers in the actions impugned. The principal grievance is that there is no formal OCC of the said building obtained by the Appellant Company. It is the case of the Appellants that the Adjudicating Authority under RERA [hereinafter referred to as 'RERA AA'], while ignoring the objection as to maintainability, passed numerous orders adverse to the interest of the Appellants, without jurisdiction, and has committed a fundamental error in passing the said order.



7. Thereafter, in the year 2022, the Appellant Company filed appeals before the REAT, wherein the question of the applicability of RERA Act in the present set of facts was raised. *Vide* the order dated 22.05.2023, REAT has imposed a condition of pre-deposit of the full amounts adjudicated by the RERA AA and made the continuance of the appeals contingent upon the Appellants fulfilling the condition of the pre-deposit in the impugned order.

8. Further, *vide* the impugned orders, REAT has dismissed the Appeals relying on the mandate of Section 43(5) of RERA Act and the judgment of the Supreme Court in ***Newtech Promoters and Developers (supra)***.

9. In the meantime, on 28.01.2022, the Appellants had filed a writ petition W.P. (C)No. 1978/2022 before this Hon'ble Court, against DDA, praying for a suitable order directing the DDA to issue an OCC. It is noteworthy to mention that the main question in this writ petition is whether or not the Appellants are deemed to have completed the building before enforcement of the RERA Act. The same is pending adjudication before this Hon'ble Court.

CONTENTIONS OF THE PARTIES:

10. The following contentions have been put forth by the Counsel representing the Appellants:

- i. Since no response with regard to the OCC was received, it is deemed to be granted in 2013, and the provisions of the RERA Act will not apply to the property in question.



2025:DHC:7476-DB



ii. Under the provisions of the RERA Act, the RERA AA does not have jurisdiction over the property in question, and the RERA AA & REAT lack the jurisdiction to entertain any of the complaints.

iii. As is evident from the order sheet of REAT, the Appellant Company had even offered the security of immovable property to REAT but the same was rejected.

11. The following contentions have been put forth by the Counsel representing the Respondents:

i. The Appellant Company claims to have applied for an OCC with the DDA in 2013 *vide* purported letters dated 14.02.2013, 31.10.2013, and 02.01.2014. A perusal of the aforesaid letters reveals that the stamp/receipt of Joint Director (Bldg.) C & I is fake.

ii. The alleged fee receipt filed by Appellant Company is of 2017, i.e., 4 years after the alleged application for an OCC.

iii. The Appellant Company has failed to establish that its application for completion was in accordance with the applicable Bye-Laws prior to the claimed deemed approval.

iv. The Appellant Company has claimed that it allegedly applied for completion on 14.02.2013. However, the Fire Safety Certificate is of a subsequent time i.e. 30.10.2013, which is required to be submitted at the time of making the application for completion.



v. The Application for the OCC was examined as per the Unified Building Bye-Laws for Delhi, 2016,² and after numerous opportunities to rectify the shortcomings in the application, the same stood unrectified. Therefore, on 08.09.2021, the application for the OCC was rejected by DDA.

vi. Compliance of Section 43(5) of RERA Act, prior to preferring the appeal, cannot be said to be onerous for violation of Article 14 or 19(1)(g) of the Constitution of India.

12. Learned counsel for parties have not made any other submissions.

FINDINGS AND ANALYSIS:

13. We have heard learned senior counsel for the parties, ably assisted by their associates, and with their assistance, have carefully perused the paper book and material on record.

14. At the very outset, it may be noted that the Appellants have come in Appeal primarily on the ground that the OCC was deemed granted as there was no response from the DDA. At this juncture, a bare perusal of Rule 8(ii) of Building Bye-Laws, 1883, would be appropriate. The same is reproduced hereunder:

“8. (ii) Procedure for Processing of the issue of Occupancy Certificate.

The authority on receipt of the notice of completion, shall inspect the work and sanction or refuse an occupancy certificate, in the proforma given in Appendix 'H' within 60 days from the date of receipt of completion certificate, after which period it shall be deemed to have been approved by the Authority for occupation. Where the occupancy

² UBBL - 2016



certificate is refused the various reasons shall be quoted for rejecting at the first instance itself.”

15. At the same time, it is also pertinent to refer to the corresponding Rule Nos.2.7.10 to 2.7.12 in UBBL – 2016. The same has been reproduced hereunder:

“2.7.10 Deemed OCC:

(a) If the sanctioning authority fails to intimate the owner/ applicant, of its refusal or approval or any intimation, within the time limit stipulated in bye-law 2.7.1, OCC shall be deemed to have been issued. However, the deemed OCC shall be released only after the owner/ applicant informs the sanctioning authority about the deposit of requisite fees and charges, as applicable.

(b) Deemed OCC shall not be construed to authorize any person to do anything in contravention or against the terms of lease or titles of the land or against MPD, any regulations, bye-laws, ordinance, etc.

2.7.11 In case the owner/ applicant fails to remove all the shortcomings communicated by the sanctioning Authority, within 15 days from the date of receipt of such communication, the application shall be rejected and the building permit fees shall be forfeited. The same shall be conveyed to the owner/ applicant accordingly in Form D-2.

2.7.12 In case of any intimation of shortcomings made by the sanctioning authority/statutory body to the owner for compliance; the time period for issue of OCC for various categories of buildings, as specified in bye-law 2.7.1, shall be counted from the date of the receipt of the last communication/ submission made by the owner/ applicant.”

16. In the present case, a bare perusal of the relevant portion of the fresh status report filed on behalf of the DDA on 26.09.2024 clearly reveals that the Appellant has claimed that it allegedly applied for completion on 14.02.2013. However, the Fire Safety Certificate is of subsequent time i.e. 30.10.2013. Additionally, with respect to deposit of fee towards OCC Application, the Appellant has filed a receipt dated 20.04.2017, i.e. 4 years after the alleged application for OCC. Further, a status report dated 27.06.2023 was filed, wherein the



deviations from sanction plan in the said property was apprised to this Court.

17. Therefore, we stand fortified in our conclusion that in the facts of the present case, the OCC cannot be deemed to be granted. To claim that the OCC was deemed granted, the Appellants should have done due diligence on their part. However, the conduct of the Appellants lacks in this regard.

18. Further, it is submitted by the DDA that the OCC Application was examined as per UBBL-2016. The Appellants/Architect did not rectify the shortfalls in the OCC application, and on 08.09.2021, the application was rejected by DDA. The copy of the rejection letter dated 08.09.2021, along with the screenshot of the portal is annexed as Annexure-1 in the pleadings. It is to be noted that in light of the rejection of the OCC, whether the OCC was deemed granted or not holds no value, as the situation at the time of the filing of the Appeal before the REAT is that no OCC exists with the Appellants, therefore RERA Act will be applicable.

19. With regard to the other submission of the parties, this Court is of the view that the present case squarely attracts the provisions of Section 43(5) of the RERA Act, which stipulates as under:

“(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee



including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

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."

20. Section 43(5) of the RERA Act stipulates that a right of appeal to a promoter is pre-conditioned by the deposit of total amount to be paid to an allottee of an apartment as may have been determined by the REAT, before entertaining the appeal and it being heard by the REAT.

21. It be noted here that the words "it shall not be entertained" occurring in the proviso to sub-section (5) of Section 43 is a preliminary injunction. This prevents even the presentation of an appeal. The clause "before the said appeal is heard" ultimately is a final injunction to the process of appellate exercise of jurisdiction. This clearly shuts out even the presentation or physical filing of an appeal before the REAT, as the total amount to be deposited as against compensation is a *sine qua non*.

22. The intent of the legislature while framing Section 43(5) was to prevent any form of exploitation, as the Promoter is in a far more dominant position financially or otherwise, and the allottee, being pitted against such dominants, requires protection of his lifetime savings in such investments. This object in no way prejudices the promoters, but only seeks to protect an allottee from any form of exploitation or hardship that may be faced by an allottee in the event he does not get his due return under the terms of the agreement.



23. Further, the principles governing the scope of Section 43(5) stand crystallized in the judgment of the Apex Court in ***Newtech Promoters and Developers Pvt Ltd.*** (*supra*) is particularly instructive, and reads as follows:—

“136. In our considered view, the obligation cast upon the promoter of pre-deposit under Section 43(5) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the homebuyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the Authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under Section 43(5) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Article 14 or Article 19(1)(g) of the Constitution of India.”

24. Therefore, in light of the abovementioned ratio, the intent of the legislature and the mandate under Section 43(5) of RERA Act, this Court finds that the provision of Sec 43(5) cannot be termed as onerous and the same has to be complied with by the Promoters.

25. In the present case, REAT has made the continuance of the Appeals contingent upon the Appellants fulfilling the condition of the pre-deposit in the Impugned Order. The Appeal has been dismissed by the REAT due to non-fulfilment of the condition pre-deposit. Hence, the condition for pre-deposit has to be complied with by the Appellants for the Appeals to be heard and decided by the REAT.

26. Further, in relation to the rejection of security of immovable property by the REAT, it be noted that there is no provision in the RERA Act which may enable the Appellants to furnish the security of immovable property in lieu of pre-deposit. Therefore, this Court finds



2025:DHC:7476-DB



no merit in the abovementioned contention as it is beyond the purview of the statute.

CONCLUSION:

27. The upshot of the discussion is that we find no error in the judgment impugned in the instant Appeals. Consequently, both Appeals are dismissed in the above terms. Pending application CM 25924/2024, stands disposed of.

28. However, we make it clear that if any of the Appellant intends to revive the appeals before the REAT against the order of the RERA AA, it may apply within 30 days from the date of this order, provided the Appellants comply with the condition of pre-deposit as contemplated under the proviso to Section 43(5) of RERA Act which may be decided by the Tribunal on its own merits in accordance with law. No costs.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.
AUGUST 29, 2025/sg/sh