

**IN THE WEST BENGAL REAL ESTATE APPELLATE TRIBUNAL
KOLKATA - 700 075**

Present: 1. Justice Rabindranath Samanta
Hon'ble Chairperson
2. Dr. Subrat Mukherjee
Hon'ble Administrative Member

WBREAT/APPEAL NO. - 010/2025

Suman Bhaumik

S/o Bhagirath Bhoumick,
Bhaumick Para, Radhapur, Shyampur-I,
West Bengal – 700 301.

..... Appellant

- Vs -

1. Periwal Constructions L.L.P.

FMC Fortuna Tower, 234/3A, A.J.C. Bose Road,
5th Floor, Suite No. A-1 and A-2,
P.O. & P.S. – Bhownipore, Kolkata – 700 020.

2. M/s. A&J Main & Co. (Engineers) L.L.P.

20, O.C. Ganguly Street, P.O. & P.S. – Bhawanipore,
Kolkata – 700 020.

..... Respondents

Mr. Dhruva Brata Basu, Advocate
Ms. Paromita Chowdhury, Advocate

For the Appellant

Mr. Arindam Banerjee, Advocate
Mr. Debabrata Kundu, Advocate

For the Respondents

Judgment on : 11.11.2025

Rabindranath Samanta, J:-

Aggrieved by an Order dated 31/01/2025 passed by the learned West Bengal Real Estate Regulatory Authority (hereinafter referred to as the 'Regulatory Authority') in WBHIRA Registration No: HIRA/P/HOW/2019/000502 extending the registration of a project, the Appellant Suman Bhaumik has approached this Tribunal by preferring this appeal.

By the impugned Order the learned Regulatory Authority extended the registration of the project namely 'Essense' for the period from 31/03/2025 to 31/12/2026.

Background facts which are necessary for adjudication of the appeal may be adumbrated as follows:

The Respondent No.1/Promoter Perival Constructions L.L.P. applied for registration of a project namely 'Essense' before the West Bengal Housing Industry Regulatory Authority under the provisions of West Bengal Housing Industry Regulation Act, 2017. Allowing the application the West Bengal Housing Industry Regulatory Authority granted the registration for the project and the registration was valid for a period of 4.8 years commencing from 06/09/2019 and ending with 30/06/2024. While the construction of the project was going on, a worldwide pandemic broke out due to COVID-19. In view of such pandemic situation the designated Authority under the West Bengal Housing Industry Regulatory Authority vide memo dated 29/05/2020 extended the registration of the project for a period of 9 (nine) months treating the effects of COVID-19 as *force majeure*. Thereby, the registration of the project was extended from 01/07/2024 to 30/03/2025. Thereafter, the Promoter, again by submitting an application to the learned Regulatory Authority sought for extension of the project upto 31/12/2026.

The Appellant/Allottee states that he booked a flat being No. T1B/10A on the 10th Floor of the project at the consideration of Rs.74,64,164/- (Rupees Seventy-Four Lac Sixty-Four Thousand One Hundred and Sixty-Four only) and a Letter of Allotment dated 03/01/2022 was issued to him by the Promoter Perival Constructions L.L.P. Thereafter, he entered into an agreement with the Promoter on 28th March, 2022. In terms of the agreement the Appellant was to get delivery of possession of the flat by 30th June, 2024. Out of the consideration amount of Rs.74,64,164/-, he has already paid Rs.58,06,744/- (Rupees Fifty-Eight Lac Six Thousand Seven Hundred Forty-Four only) to the Promoter in several instalments. The Appellant contends that the learned Regulatory Authority, in exercise of power under Section 6 of the Real Estate (Regulation and Development) Act, 2016, is not empowered to extend the registration of the project till 31st December, 2026. The learned Regulatory Authority ought to have given opportunity of hearing to him before extending the registration for the aforesaid period. He alleges that due to delay to deliver possession of the flat to him, he has suffered immense damages.

Under the aforesaid circumstances, the Appellant prays that the impugned Order dated 31/01/2025 be set aside. Besides, he prays for adequate penalty to be imposed upon

the Promoter and adequate compensation to be paid to him for causing delay in completing the project within the time as specified in the Agreement.

The Respondents in their Affidavit-in-Opposition state that since the Appellant was not a party to the proceeding in which registration of the project was extended, he has no *locus standi* to prefer this appeal. They state that as regards the compensation as sought for by the Appellant and the penalty to be imposed upon them, there was no adjudication on such issue by the learned Regulatory Authority and as such the prayer of the Appellant is not entertainable by this Tribunal. They submit that the learned Regulatory Authority in exercise of its power and discretion vested in Section 6 was within its legal domain to extend the registration of the project upto 31st December, 2026 considering the interest of the Consumers/Allottees. On such grounds and denying the remaining allegations/averments in the Memorandum of Appeal the Respondents seek dismissal of appeal with cost.

As stated above, the project namely 'Essense' at 151, Andul Road, Shibpur, Howrah, West Bengal - 711 103 undertaken by the Promoter Periwal Constructions L.L.P. was registered with the West Bengal Housing Industry Regulatory Authority under the provisions of the West Bengal Housing Industry Regulation Act, 2017 for the period from 06/09/2019 to 30/06/2024. As it appears from a memorandum dated 29/05/2020 annexed to the Affidavit-in-Opposition, due to *force majeure* effects because of the COVID-19, the designated Authority under the West Bengal Housing Industry Regulatory Authority extended the registration of the project for a further period of 9 (nine) months starting from 01/07/2024 and ending with 30/03/2025. The case record called from the learned Regulatory Authority shows that the promoter by submitting an application dated 08/01/2025 sought for extension of the registration of the project for the period from 31/03/2025 to 31/12/2026 on the grounds which are as follows:

- "a) The prolonged impact of the pandemic significantly impacted and hindered normal construction activities, resulting in substantial delays in their project timeline; and
- b) The scarcity of labour and disruptions in the supply chain for construction accessories and equipment, compounded the impediments to progress; and

- c) The financial strains exacerbated the project delays, making adhering to the initially projected completion period challenging; and
- d) Their banker will suspend the operation of the project account due to a lapse of the validity of the project registration period and as a result of such they would be unable to meet their project expenses and would face tremendous financial hardship; and
- e) The aforesaid circumstances of non-payment to their vendors and contractors who are engaged in the said project, the same will lead to further delay and ultimately the customers of the project will suffer a lot; and
- f) They apprehend that dues from their customers who availed home loan for the purchase of flat will not be disbursed by their respective Banker due to the aforesaid reason of expiry of the registration period of their project and this will complicate and/or jeopardize the entire situation; and
- g) Until they get the revised completion date approval they won't be able to communicate straight and clear to the existing allottees for the revised completion period of the project; and
- h) They won't be able to execute the sale Agreement, as the completion period as per actual will not be the same as mentioned in the WBRERA; and
- i) That lapse of validity of registration will badly affect to liquidation of their unsold stock as the purchasers of the same will not be getting home loans either from a bank/financial institution for the purchase of flats; and
- j) There was a impact of **Stop Construction Order** passed by Howrah Municipal Corporation on 20th September, 2022, on grounds of difference in Land Status. The said injunction was removed by Hon'ble Supreme Court on 23rd September, 2024. This 24 month approx., or 733 days injunction, significantly delayed the construction process, causing both financial and mental strain."

Perusal of the impugned Order shows that the learned Regulatory Authority on consideration of the application of the Promoter supported by affidavit allowed the application and extended the registration for the period as stated above by the impugned Order.

Now, the points which fall for our consideration are as follows:

- 1. Has the Appellant *locus standi* to file the appeal?**
- 2. Is the extension of registration granted by the learned Regulatory Authority from 31/03/2025 to 31/12/2026 lawful?**
- 3. Is the Appellant entitled to get order of compensation and penalty as prayed for in the Memorandum of Appeal?**

At the very outset, be it recorded that since the promoter Perival Constructions L.L.P., the Respondent No.1 was the sole applicant in the proceeding for extension of registration, the Respondent No.2 M/s. A&J Main & Co. (Engineers) L.L.P. is not a necessary party to this appeal.

Before we deal with the points, it will be apposite to refer to the West Bengal Housing Industry Regulation Act, 2017 under which the project 'Essense' was registered with the West Bengal Housing Industry Regulatory Authority. A forum namely Forum for People's Collective Efforts (FPCE) challenged the vires of the West Bengal Housing Industry Regulation Act, 2017 before the Hon'ble Apex Court on its constitutional validity. The Hon'ble Apex Court in the decision dated 4th May, 2021 in the case of Forum for People's Collective Efforts (FPCE) Vs. State of West Bengal reported in (2021)3 SCC 599, struck down the Act as *ultra vires* the constitution. However, the Honble Apex Court has observed that striking down of WBHIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of the Judgment. The Hon'ble Apex Court in a subsequent Order dated 12/05/2023 passed in the case of Saptaparna Ray Vs. District Magistrate and Collector, North 24 Parganas and Others [petition for Special Leave to Appeal (C) No. 16908/2022], has held that this principle shall also apply to Orders which were passed whether in original or in the course of execution prior to the date of the Judgment. All such Orders shall be executed in accordance with law, as if, they were issued under the RERA. Therefore, in view of such decision of the Hon'ble Apex Court, the registration of the project granted by the then Housing Industry Regulatory Authority shall remain unaffected and its extension or revocation will be governed by the provision of the Real Estate (Regulation and Development) Act, 2016.

Mr. Dhruva Brata Basu, learned Counsel for the Appellant submits that as the scheme under Section 6 of the Real Estate (Regulation and Development) Act, 2016 (for

short 'RERA Act') displays, the learned Regulatory Authority was not empowered to grant extension of registration for more than one year after the Housing Industry Regulatory Authority extended the registration of the project for 9 (nine) months commencing from 01/07/2024. Mr. Basu argues that the provision under Section 6 of the RERA Act is not directory, but it is mandatory. Mr. Basu points out that the Hon'ble High Court of Judicature of Bombay in the decision dated 6th December, 2017, in the case of Neelkamal Realtors Suburban Pvt. Ltd. Vs. The Union of India and Others, reported in AIR 2018 (NOC) 398 (BOM.) has held that the provisions of Sections 6, 7, 8 and 37 of the RERA Act should be construed harmoniously and in case the Regulatory Authority is satisfied that there are an exceptional and compelling circumstances due to which the Promoter could not complete the project in spite of extension granted under Section 6, then the Authority would be entitled to continue the registration of the project by exercising powers under Section 7(3), 8 or 37 of the RERA Act. Learned Counsel argues that if the Regulatory Authority exercises its authority to grant extension of registration, in that event his client and other Allottees should be given opportunity of hearing. Citing an another decision dated 30/09/2022 passed by the Hon'ble High Court of Judicature of Allahabad in the case of Emaar India Ltd. Thru. Authorized Vs. State of U.P., Deptt. of Housing and Urban, learned Counsel submits that the Regulatory Authority while extending registration of a project should hear the Allottees so that their interests are not affected. Lastly, learned Counsel argues that since the Promoter failed to deliver possession of the flat allotted to his client within the time as specified in the agreement, the Promoter be directed to pay compensation to his client and penalty should be imposed on it for violation of the relevant provisions of the RERA Act.

Per contra, Mr. Arindam Banerjee, learned Senior Counsel appearing for the Respondents submits that since the Appellant was not a party to the proceeding for extension of registration, he has no *locus standi* to prefer this appeal. Learned Counsel, by referring to Section 21 of the General Clauses Act, 1899, submits that an Authority which is empowered to issue order or notification is also empowered to add, to amend, to vary or rescind such order or notification. Referring to the noble object of the RERA Act to protect the interest of consumers, learned Counsel argues that considering the compelling circumstances as narrated in the application, the learned Regulatory Authority was within its legal and justiciable ambit to extend the registration for the period as above, otherwise,

the interest of a number of Allottees will be affected. Learned Counsel further argues that while a particular statutory provision can be interpreted in two ways, one which would lead to absurdity and other which would lead to meaningfulness, it is the interpretation or construction in favour of the meaningfulness of the provision which should be adhered to by the Courts. In support of his submission learned Counsel has cited two decisions - one dated 26/05/2022 passed by the Hon'ble High Court at New Delhi in the case of Praveen Chhabra Vs. Real Estate Appellate Tribunal and the another dated 09/08/2019 passed by the Hon'ble Apex Court in the case of Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India. In such context, learned Counsel submits that the appeal is liable to be dismissed.

As the Memorandum of Appeal shows, the Appellant has preferred this appeal under Section 44, the RERA Act. Section 44(1), the RERA Act, *inter alia*, reads as under:

“44. Application for settlement of disputes and appeals to Appellate Tribunal.- (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.”

According to learned Counsel for the Appellant his client has preferred this appeal in terms of the provision under Section 44(1) of the Act as a person aggrieved by the impugned Order passed by the learned Regulatory Authority.

Ordinarily, an aggrieved person files a complaint with the learned Regulatory Authority or the Adjudicating Officer for any violation or contravention of the provisions of this Act or the Rules and Regulations made thereunder against any promoter or allottee or real estate agent, as the case may be. The appropriate Government or the competent authority is not impleaded as a party in the complaint made under Section 31 of the Act. However, as Section 44(1) of the Act demonstrates, remedies are available to the appropriate Government or the competent authority to challenge any order passed by the Regulatory Authority or the adjudicating officer. Similarly, any person aggrieved by any direction or order or decision of the Regulatory Authority has also been given right to prefer appeal to challenge such direction or order or decision of the Authority. What we feel, it is the legislative wisdom that no authority or person is left remediless if any direction or order or decision passed against it or him/her by the Regulatory Authority or the adjudicating officer is contrary to the law or such order is passed in unjustified manner.

Therefore, we are of the view that the Appellant has *locus standi* to prefer the appeal to challenge the impugned Order passed by the learned Regulatory Authority.

Thus, the point no.1 is answered in the affirmative.

The project 'Essense' undertaken by the Promoter Perival Constructions L.L.P. was registered with the then West Bengal Housing Industry Regulatory Authority on 06/09/2016 for a period of 4.8 years commencing from 06/09/2019 and ending with 30/06/2024. This Tribunal may take judicial notice of this stark reality that due to outbreak of Coronavirus infected disease (COVID-19) worldwide, the normal human life of the people of our Country became almost paralysed on and from the month of March, 2020. Beforehand, such pandemic broke out in different countries of the World. On 19/02/2020, the Ministry of Finance, Government of India issued a notification clarifying that the disruption of supply chain due to the spread of Coronavirus should be construed as a case of natural calamity and *force majeure* clause may be invoked wherever considered appropriate. The Hon'ble Apex Court in the case of Swami Vivekananda Welfare Association Vs. Union of India (2021), acknowledged nationwide lockdown due to COVID-19 as *force majeure* and allowed project extension across the States.

In view of declaring the COVID-19 as pandemic by the World Health Organisation, the notifications issued by the Government of India from time to time and because of lockdown declared, the West Bengal Housing industry Regulatory Authority vide memo dated 29/05/2020 extended the registration of the projects like the project on hand for a period of 9 (nine) months from the date when the project is due to expire. In consequence thereof, the registration of the project 'Essense' was extended from 01/07/2024 to 30/03/2025. In such connection, the provision under Section 6 of the RERA Act may be referred.

Section 6 of the RERA Act reads as under:

"6. Extension of registration.- *The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to **force majeure**, in such form and on payment of such fee as may be prescribed:*

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.”

What it appears to us, there are two segments of the Section. The first segment enjoins that the registration granted under Section 5 may be extended by the Authority on an application made by the promoter due to *force majeure*. As the explanation shows, the expression '*force majeure*' shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project. As observed above, the Government of India by issuing notifications from time to time has declared that the effects of COVID-19 shall be treated as *force majeure* and the Hon'ble Apex Court has also acknowledged it as *force majeure*. In view of the effects of COVID-19 pandemic characterised as *force majeure*, registration of many of the projects throughout the Country has been extended beyond one year. So far as the first segment/part is concerned, there is no time limit upto which the registration of a project may be extended. The Regulatory Authority is vested with discretionary power to extend registration of a project for such period as it deems proper on the grounds of natural catastrophe.

However, the second segment of the Section provides that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year. This segment clearly demonstrates that the Authority may, considering the emerging circumstances as reasonable, extend the registration of the project for a period of one year in aggregate. So far as the second segment is concerned, it has no nexus with the first segment dealing with the issue of extension of registration on the ground of *force majeure*. The Hon'ble High Court of Judicature at Bombay in the case of Neelkamal Realtors Suburban Pvt. Ltd. has categorically held that the provision under Section 6 is not directory, but mandatory in nature.

Now, the issue as raised by the learned Senior Counsel for the Respondents and which needs to be addressed by us is whether the Regulatory Authority has an unfettered power under Section 6 of the RERA Act to amend, vary or rescind the Order of registration granted by it in view of Section 21 of the General Clauses Act, 1899.

As we find, nowhere in Section 6 of the Act, any discretionary power has been vested in the Regulatory Authority to extend the period of registration beyond one year under the second segment. Section 7 of the RERA Act deals with revocation of registration on the reasons as spelt in this Section. Section 7(3) of the Act provides that the Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter. But, as it appears from the case record, neither any complaint was made by any person or Authority nor the Authority on suo motu took any steps for revocation of registration on the grounds as stated in the Section. Therefore, extension of registration of the project under Section 7(3) of the Act, does not apply to the instant matter. On the other hand, Section 8 of the Act, *inter alia*, says that upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including carrying out of the remaining development works by the competent authority or by the association of allottees or in any other manner, as may be determined by the Authority. Therefore, the language of Sections 7 and 8 manifestly indicate that consequent upon lapse of registration due to non-completing the project by the promoter or on revocation, the Authority is left with no other discretion but to consult the appropriate Government for carrying out of the remaining development works by any competent authority or by the association of allottees etc. In such legal scenario, Section 21 of the General Clauses Act, 1899 will not be applicable to the extension of registration. True, the object of the RERA Act, *inter alia*, is to protect of the interest of the Consumers/Allottees. But, while the provisions as extracted above clearly demonstrate the direction in which the provisions of the Section will be construed or constructed, the argument advanced by the learned Senior Counsel for the Respondents in this regard is not acceptable. In such context, to speak in legal parlance, we are of the view that if Section 21, General Clauses Act is invoked to exercise power under the second segment of Section 6 of the Act, floodgates of litigation will be open and that should be avoided.

Since the learned Regulatory Authority was not invited to exercise its authority to revoke registration of the project under Section 7 of the Act, invoking the discretionary

power under Section 7(3) of the Act to extend the registration on further terms and conditions by the Regulatory Authority does not arise. That being so, giving opportunity of hearing to the concerned allottees or the concerned stakeholders on extension of registration instead of revocation also does not arise. In such backdrop, the decisions cited by learned Counsel for the Appellant are not applicable to the factual matrix of the matter on hand.

The prime reason for which the promoter sought extension of registration of the project was that there was an impact of 'stop construction order' passed by Howrah Municipal Corporation on 20th September, 2022 on the grounds of difference in land status and the injunction was removed by the Hon'ble Supreme Court on 23rd September, 2024.

It is alleged by the Appellant that the Promoter constructed the project on a land which it fraudulently showed as "Bastu", but, in fact the land was classified as "Karkhana". Admittedly, for showing classification of the land upon which the project was constructed as "Karkhana" portrayed in the portal 'Banglar Bhumi', the Promoter approached the West Bengal Land Reforms and Tenancy Tribunal. Ultimately, the Promoter approached the Hon'ble Apex Court by preferring a petition for Special Leave to Appeal (C) No. 18068/2024 [A&J Main and Co. (Engineers) L.L.P. Vs. State of West Bengal & Ors.]. The Hon'ble Apex Court by an Order dated 23/09/2024 disposed of the Special Leave Petition by passing the following direction:-

"Leave granted.

As we are dealing with only an interim arrangement, we need not go into the merits. Suffice it is to state that the Appellant has already completed a substantial part of construction. Apart from that, many of the flats have already been sold. Thus, granting an order of injunction prohibiting the Appellant from further construction will not enure to the benefit of any of the parties.

In such view of the matter, we permit the Appellant to put up the construction, subject to the final decision to be taken by the Tribunal.

We make it clear that the appellant will not claim any equity and shall not alienate any of the incomplete flats.

We also request the Tribunal to make an endeavour to conclude the proceedings within a period of six months.

The statement made by learned senior counsel appearing for the Appellant stating that 280 flats out of 400 flats have already been alienated, stands recorded.”

As it is evident, the learned West Bengal Land Reforms and Tenancy Tribunal, in view of the Order passed by the Hon’ble Apex Court as above, vide Order dated 17/02/2025 has directed that the mandate of the Hon’ble Apex Court shall continue till disposal of the application pending before it.

Therefore, the circumstances upon which the Promoter sought extension of registration appear to us to be reasonable and the learned Regulatory Authority was within legal domain to extend the registration in accordance with law. The plea of the Promoter falls within the second segment of Section 6 of the Act. As this segment of the Section mandates, the learned Regulatory Authority may extend the registration upto one year and not beyond that. But, the learned Regulatory Authority instead of extending the registration for the maximum period of one year has extended it beyond one year. The erstwhile West Bengal Housing Industry Regulatory Authority extended the registration of the project for 9 (nine) months from 01/07/2024 to 30/03/2025 in exercise of power under the first segment of Section 6 of the Act because of the effects of pandemic COVID-19 termed as *force majeure*. In such context, the learned Regulatory Authority was vested with discretionary power to extend the registration of the project maximum for one year from 31/03/2025 to 30/03/2026 and not beyond that. In such legal aspect, the extension of registration as granted by the learned Regulatory Authority should be modified to the extent to which it is empowered to grant. Accordingly, the extension of registration shall be for the period from 31/03/2025 to 30/03/2026 on modification of the impugned Order dated 31/01/2025 passed by the learned Regulatory Authority.

Thus, point no.2 is disposed of and partly decided in favour of the Promoter.

Admittedly, the Appellant booked the flat being No.10A in Tower No. T1B in the project namely “Essense” measuring 1206 square feet of super built area, 907 square feet of built up area, balcony area of 44 square feet and carpet area of 783 square feet (more or less) on the 10th floor of the project at 151, Andul Road, Shibpur, Howrah – 711 103 at the consideration of Rs.74,64,164/-. It is evident that with regard to purchase of the flat an agreement for sale was entered into between the allottee and the promoter on 28th March, 2022. As the terms of the agreement suggest, the promoter was to deliver possession of the

flat to the allottee by 30th June, 2024. The Appellant complains that even after the lapse of more than one year from the date on which he was to get possession of the flat, the promoter failed to complete the flat and handover possession of the same completed in all respect. As such, the Appellant submits that penalty be imposed upon the promoter for delaying to complete the project within the period as spelt in the agreement. Besides, he submits that the promoter be directed to pay adequate compensation to him. Learned Counsel for the Appellant submits that this Tribunal, drawing sustenance from the fundamental principles under the Code of Civil Procedure, may grant relief as sought for by his client in terms of Order 41 Rule 33 of the Code of Civil Procedure. However, on the contrary, learned Counsel for the Respondents submits that since the learned Regulatory Authority passed no order or direction as regards payment of penalty or compensation against his clients, this Tribunal should not pass any order or direction towards payment of penalty and compensation by his clients in exercise of power under Order 41 Rule 33 of the Code of Civil Procedure.

True, as held by the Hon'ble Apex Court in the decision in the case of SREI Infrastructure Finance Limited Vs. Tuff Drilling Private Limited, reported in (2018) 11 SCC 470, this Tribunal not bound by the Code of Civil Procedure, may draw sustenance from the fundamental principles underlying the Code of Civil Procedure. In such context, Order 41 Rule 33 of the Code of Civil Procedure may be referred which reads as under:

“Order 41 Rule 33 – Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrease in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.”

It is the contention of the Appellant that even after the expiry of the period as agreed between them, the Promoter failed to complete the flat in all respect and deliver possession of the same to him.

Section 18 of the RERA Act, *inter alia*, provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale, as the case may be, duly completed by the date specified therein, shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act. Besides, an allottee may, in appropriate case, seek compensation in respect of matters covered under Sections 12, 14, 18 and Section 19 of the RERA Act. In order to seek relief to get return of the consideration amount and the interest thereon and the compensation under the provisions as above, an allottee is required to file complaint under Section 31 of the Act either with the Regulatory Authority or the Adjudicating Officer. But, the Appellant approached none of these two forums.

No question was ever raised before the learned Regulatory Authority to initiate appropriate proceedings either to impose penalty or to launch prosecution under the relevant provisions of Chapter-VIII of the RERA Act.

Section 44(6), the RERA Act says that the Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit.

Here, this Tribunal is invited to delve into the matter to decide whether the extension of registration made by the learned Regulatory Authority is lawful or justified. The impugned Order does not speak of awarding any compensation or imposing any penalty against the Promoter.

As the provision under Order 41 Rule 33 of the Code of Civil Procedure, as extracted above says, this Appellate Tribunal may make such Order which ought to have been passed by the learned forum below. But, since no remedy was sought for by the Appellant/Allottee or any of the Allottees either for compensation or for imposing penalty, this Tribunal will

not be within its legal circumference to pass the order or direction as sought for by the Appellant in the Memorandum of Appeal for the first time. Therefore, we are of the view that the claim made by the Appellant in the Memorandum of Appeal before this Tribunal is liable to be dismissed at this stage.

However, this finding / observation shall not prevent the Appellant from approaching the appropriate Authority or Forum or Commission, as the case may be, from seeking relief / reliefs either for refund of consideration amount or for getting interest or compensation in accordance with law.

Accordingly, the point is answered in the negative.

In view of the observations recorded on point nos. 1 and 2, the extension of registration granted by the learned Regulatory Authority **should be from 31/03/2025 to 30/03/2026** instead of 31/03/2025 to 31/12/2026.

In the result, the Appeal is allowed in part on contest against the Respondents, but without cost.

The impugned Order passed by the learned Regulatory Authority is modified to this extent that the extension of registration under Section 6 of the RERA Act **shall be from 31/03/2025 to 30/03/2026** instead of 31/03/2025 to 31/12/2026.

Send down the case record along with a copy of this Judgment to the learned Regulatory Authority for information.

Communicate this Judgment to the parties to the appeal as well as to the learned Advocates for the parties by e-mail immediately.

Urgent Photostat / Certified Copy of this Judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

Sd/-
JUSTICE RABINDRANATH SAMANTA
Chairperson
West Bengal Real Estate Appellate Tribunal

Sd/-
Dr. SUBRAT MUKHERJEE
Technical/Administrative Member
West Bengal Real Estate Appellate Tribunal