

29th November,
2023
(AK)
07

W.P.A 26707 of 2023

Sugam Griha Nirmaan Ltd. and others
Vs.
The West Bengal Real Estate Regulatory Authority and
others

Mr. Suddhasatva Banerjee
Mr. Shashwat Nayak
Ms. Rituparna Chatterjee
Ms. Khusboo Choudhury
Mr. Dibyendu Ghosh

...for the petitioners.

Mr. N.C. Bihani
Mrs. Papiya Banerjee Bihani

...for the respondent no.1.

Mr. Harpal Singh
Mr. Sayantan Bhattacharjee

...for the respondent no.2.

1. The petitioners have made out an arguable case as to whether the assumption of jurisdiction by the respondent authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 was erroneous, in view of the provisions of Section 3(1), first proviso and explanation to the said Section which exclude the operation of the Act to real estate which has already been completed.

2. In the present case, learned counsel for the petitioners submits that all the towers-in-question have already been completed and completion certificate has

been issued and, as such, the provisions of the 2016 Act are not applicable.

3. Learned counsel appearing for the respondent authorities contends that the provisions of Section 31 are independent and irrespective of Section 3, the latter applying only to registration.

4. It is further contended that the petitioners have only obtained occupancy certificates which do not tantamount to completion of the projects.

5. Learned counsel for the petitioners also relies on a judgment of the Supreme Court in the matter of *M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of UP and others* where it was observed by the Supreme Court, inter-alia, that from the scheme of the Act of 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore vested or accrued rights, if any, in no manner are affected.

6. In view of an arguable question having been raised by the parties as indicated above, the writ petition is required to be heard on its merits.

7. Accordingly, the respondents are directed to file their affidavit-in-opposition within three weeks from date. Reply, if any, shall be filed within one working week thereafter.

8. The matter shall be listed on January 9, 2024 for hearing.

9. There shall be stay of operation of the impugned order dated November 6, 2023 passed by the West Bengal Real Estate Regulatory Authority in Complaint No. WBRERA/COM000542 till January 31, 2024 or until further order, whichever is earlier.

10. All further proceedings of the above complaint case shall also remain stayed till January 31, 2024 or until further order, whichever is earlier.

(Sabyasachi Bhattacharyya, J.)