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REAL ESTATE



FPCE & Anr v. The State of West Bengal & Anr – A step towards strengthening protection of homebuyers

By: Amaresh Kumar Singh, Partner & Rishabha Sharma, Associate

The recent judgment of the Supreme Court (**SC**) in the case of *Forum for People's Collective Efforts (**FPCE**) & Anr v. The State of West Bengal & Anr*[1] is remarkable for its far-reaching effect on strengthening the Real Estate (Regulation and Development) Act, 2016 (**RERA**) and securing the interests of the homebuyers. The Division Bench struck down West Bengal Housing Industry Regulation Act, 2017 (**WB-HIRA**) as unconstitutional. In doing so, the Court held that the State legislature has transgressed the limitations on its power and has enacted a law that is repugnant to the parliamentary legislation on the same subject matter.

Brief background

West Bengal is the only state in the country wherein RERA, till now, had not been implemented. Although draft rules were framed pursuant to RERA in 2016, no further progress was made in that regard. Thereafter, in 2017, the State legislative assembly enacted WB-HIRA which was modeled on RERA and purported to regulate the contractual behavior of promoters and buyers in real-estate projects prevalent in the State. This Act was challenged in a petition under Article 32 of the Constitution by FPCE (**Petitioner**), on the ground that it is constitutionally impermissible for a State legislature to enact a law over the same subject matter by setting up a parallel legislation.

Argument of the Parties

The Petitioner argued that both the Central enactment and the State enactment pertain to same subject matter in Concurrent List to Seventh Schedule of the Constitution, i.e., Entries 6 and 7, and there exists repugnancy between the two. Through RERA, Parliament had intended to create an exhaustive code regulating the contractual relationship between promoters and buyers in the real estate sector. Since WB-HIRA is a 'copy-paste replica' of the Central enactment barring a few cosmetic changes, it is repugnant and void under Article 254 of the Constitution. Additionally, WB-HIRA had not received assent of the President and hence was not protected under Article 254(2) of the Constitution.

The Petitioner also argued that the few inconsistencies that did exist between RERA and WB-HIRA tilted the law in favor of promoters and denied homebuyers of important safeguards incorporated in the Central enactment. A few such inconsistencies that dilute the protective nature of RERA are the absence of any provision regarding 'adjudicating officer'; variation in the definition of 'garage' and 'force majeure', and the removal of the concept of 'planning area' in the State legislation. Lastly, the Petitioner contended that if WB-HIRA was upheld as constitutionally valid, it would incentivize States to enact a similar parallel regime regulating real-estate projects. Such a duplicate regime would result in complete chaos in the real-estate sector and would render the scheme of RERA as uniform national legislation wholly redundant.

Our viewpoint

This decision of SC is laudable as it has acted as a shield against illegal attempts of the States to water down provisions of RERA and fail or omit to implement it. It also comes off as a major respite to the numerous homebuyers in West Bengal who have been denied the same institutional safeguards as are available under the parliamentary regime. It is important to note that RERA was a culmination of a nationwide clarion call for a uniform pan-Indian legislation. This judgment is thus momentous as it reaffirms the position of RERA in the States, secures the interest of the homebuyers, and sends a warning call to all those who attempt to reduce RERA to a dead letter.

[1] Writ Petition (C) No. 116 of 2019

State of West Bengal (**Respondent**) argued that State enactment was complimentary to Central enactment. The question of repugnancy does not arise because Parliament had never intended RERA to be a complete and exhaustive code. To buttress this submission, the Respondent relied upon Section 88 and 89 which explicitly permit other laws to operate alongside RERA and stipulate that wherever there is any inconsistency, the Central enactment would prevail. This clearly indicates that the Parliament had always intended for RERA to co-exist with other legislations. Additionally, Parliament by virtue of Section 92 of RERA had only repealed the Maharashtra Housing (Regulation and Development) Act, 2012, which was the prevailing legislation in the State of Maharashtra prior to RERA. However, no attempt was made to repeal the West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993, the predecessor of WB-HIRA. The purposeful repeal of only the Maharashtra Act is clearly indicative of the fact that RERA does not evince any intention to shut out other State enactments. Rather, the parliamentary intent has always been to make RERA permissive and accommodative of other legislations.

Findings of the Court

SC opined that the overlap between provisions of WB-HIRA and RERA was significant, leaving no doubt that State enactment was repugnant to Central enactment under Article 254 of Constitution. SC grounded its conclusion on following factors:

- The provisions of a statute are directly in conflict with a law enacted by Parliament so that compliance with one is impossible along with obedience to the other
- Parliament has intended to occupy the entire field by enacting an exhaustive and complete code
- The subject matter of the legislation by the State is identical to the legislation which has been enacted by Parliament whether prior or later in point of time

The Court remarked that the provisions of WB-HIRA do not compliment RERA. Instead, WB-HIRA purports to occupy the same field as the Union legislation. Reasoning that the State legislative assembly had lifted provisions word-for-word and incorporated them into a State enactment, the Court held that the aforementioned threshold of repugnancy was met.

Secondly, SC outrightly rejected the respondent's argument that Section 88 and 89 indicate that RERA is not an exhaustive code. Section 88 is the parliament's attempt to ensure that remedies created by cognate legislations such as the Consumer Protection Act, 2019, are not ousted. Thus, the State legislature is competent to enact legislations that are allied to, incidental, or cognate to the exercise of parliament's legislative authority. However, in doing so, the State legislature cannot encroach upon the legislative authority of the parliament which has supremacy within the ambit of the subjects falling within the concurrent list.

Thirdly, SC observed that several provisions of WB-HIRA are in dissonance with RERA, denying the homebuyers of the essential safeguards encapsulated in the Central enactment. Lastly, since WB-HIRA had not received the President's assent under Article 254(2), it is was not shielded from the rigid rule of repugnancy.

In sum, the approach adopted by the Court seems to be predicated on its understanding of the deleterious consequences that would follow if the constitutionality of such parallel legislations was upheld. Not only would it act as an encouragement to States to encroach upon the matters listed in the Concurrent List, but would also denudate RERA of its vigor and render it unworkable.

Recognizing the need to avoid uncertainty and to further protect the interest of homebuyers in the State of West Bengal, SC invoked its powers under Article 142 of the Constitution and declared that the judgment would operate prospectively and would not impact registrations, sanctions, and permissions previously granted under WB-HIRA prior to the date of this judgment.

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