

(2018) 08 RAJ CK 0235

In the Rajasthan High Court

Case No : Civil Writ Petition No.17697 of 2018

**Golden Dunes Buildhome Pvt. Ltd @APPELLANT@Hash State of Rajasthan
& Ors**

Date of Decision : 18-08-2018

Acts Referred:

Real Estate (Regulation and Development) Act, 2016 — Section 12, 14, 18, 19, 20, 22, 43, 45, 46, 58, 71

Citation : (2018) 08 RAJ CK 0235

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Pradeep Kumar Choudhary, N.M. Lodha

Judgement

This writ petition has been filed challenging the order dated 14.06.2018 (Annexure-8) passed by Real Estate Regulatory Authority (Designated) (for short-`RERAâ??).

Learned counsel for the petitioner has argued that as per Section 20 of the Real Estate (Regulation and Development) Act, 2016 (for short-`the Act of

2016), the appropriate Government is required to establish an Authority known as a Real Estate Regulatory Authority within a period of one year from

the date of coming into force of the Act of 2016. The constitution of the authority has to be made as per Section 22 with one Chairperson and other

members to be appointed by the appropriate Government on recommendation of a Selection Committee

consisting of the Chief Justice of the High Court or his nominee, Secretary of the Department dealing with Housing and the Law Secretary, in such

manner as may be prescribed. As per Section 43, the appropriate Government was also required to establish the Real Estate Appellate Tribunal again

within a period of one year from the date of coming into force of the said Act as

Sub-Section (5) thereof provides appeal against the orders of the Authority to the Appellate Tribunal. According to Section 45, the Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial Member and other shall be a Technical or Administrative Member. Qualifications for appointment of Chairperson and Members have been prescribed in Section 46 of the Act of 2017. However, contrary to these provisions, respondent-State has designated Food Safety Appellate Tribunal also as Appellate Tribunal under the Act of 2016. Judgement of the Appellate Tribunal is then further appealable to the High Court under Section 58 of the Act of 2016. Apart from this, Section 71 of the Act of 2016 provides that for the purpose of adjudging compensation under Section 12, 14, 18 and 19, the Authority shall appoint in consultation with the appropriate government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.

Learned counsel for the petitioner submitted that the Act of 2016 came into force with effect from 1st May, 2016 and the period of one year expired on 30th April, 2017, however till date none of the above three authorities have been constituted. It is stated that the Real Estate Regulatory Authority is being headed by the Additional Chief Secretary, Urban Housing and Development. There is no constitution of Tribunal inasmuch as the adjudicating officer has also not been appointed as per law.

This Court is getting number of petitions against the orders passed by the adjudicating officer/RERA raising the argument of their incompetence. The Court faced with this situation called upon the learned Advocate General to invite his attention towards the serious lapse on the part of the State Government.

Issue notice to the respondents. Shri N.M. Lodha, learned Advocate General accepts notice for the respondent nos.1 and 2. Learned counsel for the petitioner shall supply requisite copies of the writ petition to Shri N.M. Lodha. Name of Shri Sheetanshu Sharma, learned counsel be shown in the cause list for respondents.

Since a period of one year and three months has already elapsed after expiry of one year from the date aforementioned provisions of the Act of 2016

came into force i.e. 1st May, 2016, we direct the State Government and especially the Chief Secretary and the Additional Chief Secretary of the

Urban Housing and Development of the Government of Rajasthan to positively constitute all the aforesaid three authorities in accordance with the

provisions of the Act of 2016 within a period of two months from now.

List the matter on 22.10.2018 to see compliance. In the meantime, the operation of the impugned order dated 14.06.2018 (Annexure-8) shall remain

stayed.

A copy of this order be supplied to learned Advocate General for compliance.