

4-DAY SPECIAL LECTURE SERIES ON THE LEGAL REGIME GOVERNING REAL ESTATE LAWS

Organized by

**CENTRE FOR RESEARCH AND STUDIES IN LAND, MINING AND REAL ESTATE
LAWS**

WEST BENGAL NATIONAL UNIVERSITY OF JURIDICAL SCIENCES (WBNUJS)

ABOUT WBNUJS

The *West Bengal National University of Juridical Sciences* ('WBNUJS') is a premier national law university consistently ranked as one of India's top legal educational institutions. It was established under the WBNUJS Act, 1999 (West Bengal Act IX of 1999). It is a university within the meaning of subsection (f) of Section 2 and Section 12-B of the UGC Act, 1956, and has permanent affiliation from the Bar Council of India.

Over the years, NUJS has produced several outstanding lawyers and scholars. With a rich set of faculty and students from diverse backgrounds, drawn from almost all corners of India, the academic community of the law school has made a name for itself in more than one field of law. This establishes an aura of excellence, devotion to the highest standards of academic integrity, and commitment to duty of service to one and all.

The Chief Justice of India is the Chancellor of NUJS and is also the Chairman of the General Council, the supreme policy-making body of the University. Under the current guidance of its Vice-Chancellor, *Prof. (Dr.) Nirmal Kanti Chakrabarti*, one of the most respected and renowned legal scholars in India and backed by a rich and diverse faculty, the University strives to continue with its history of merit in various domains of law.

For more information, please visit the official website of NUJS at www.nujs.edu.

ABOUT CENTRE FOR STUDIES AND RESEARCH IN LAND, MINING AND REAL ESTATE LAWS

The Centre for Research and Studies in Land, Mining, and Real Estate Laws ('CRSLMREL') was set up at WBNUJS during the academic year 2019-20. The Centre functions under the leadership and supervision of *Dr. M.P. Chengappa* [Assistant Professor (Law), NUJS].

Issues related to land acquisition, real estate, and mining laws are fundamental to questions pertaining to environmental law, the efficacy of regulatory regimes, the functioning of the market economy, and social welfare. Therefore, discourse around the land, mining, and real estate laws are critical. Many law firms across the country have dedicated teams, especially for this purpose. The pendency of cases pertaining to these fields shows that land acquisition, real estate related disputes, and mining regulations form a very crucial field in the legal industry.

CRSLMREL aims to create awareness and encourage discussions in the aforementioned fields in academia by conducting studies, consulting with stakeholders, creating resource materials, and conducting capacity-building programs with industry professionals.

For further information, please visit www.landandmininglaw.com, or write to mpchengappa@nujs.edu, or crslmrel@nujs.edu.

PROPOSED PANELS FOR THE SEMINAR

1. RERA and the Future Ahead

The Real Estate Regulation Act ('*RERA*'), which had been requested by the real estate industry for a long time, was ultimately passed in 2016. RERA was mainly developed in order to provide accountability to allottees, safeguard their interests, and achieve information symmetry between the promoter and allottees.

As the responsibility currently rests with only a select group of stakeholders, primarily project promoters, and there are no clear consequences for authorities who fail to meet deadlines, it is critical that we address concerns about the authorities' lack of accountability in order to support RERA in achieving its true goal.

It should be a top priority to set up a single-window clearance because it will greatly streamline the approval process, cut costs, and reduce delays. The "Modern Building Bye-Laws," which emphasise digitising paperwork and approval processes, including some approvals into master plans, and outsourcing specific procedures on behalf of authorities to cut down on approval and clearing times, can also be utilised as a guide. Additionally, non-automatic approvals could be accelerated through a risk-based classification of building plans.

2. Due Diligence

Real estate transaction values are rising, and the organised sector is becoming more involved. These factors have raised awareness of the risks associated with real estate transactions and highlighted the necessity of identifying and minimising those risks. The method for reaching

these goals is undoubtedly "Legal Due Diligence" of Real Estate (whether of developed residential/commercial/industrial properties or of unoccupied expanses of land).

The most crucial element of a real estate acquisition, after having a thorough understanding of the commercials, is likely a due diligence study. This procedure has the capacity to influence both the commercials and the transaction's viability as a whole. It is crucial to understand that factors like title, approved use, legality of building, encumbrances, and easements may have an impact on the property's very character and its suitability for the transaction's economic needs.

3. Joint Development Agreement

The current era is one of collaboration, where resources from many agencies are pooled and coordinated in order to take use of their varying levels of competence. Joint development agreements, in which the landowner and the developer pool their resources and efforts to develop real estate, have become a common paradigm. The joint development agreement is a commercial convenience agreement wherein both parties aim to utilise their respective resources as effectively and without a significant financial expenditure as possible. The developer uses his knowledge and skills in real estate project development and marketing, and the landowner gives his previously owned land. Different types of cooperative development agreements have developed over time as a result of the growth of the real estate business. Real estate development under joint development agreements has also been made possible by the skyrocketing land costs.

4. Consumer Rights

The real estate industry has never been trouble-free, and given the tremendous increase in the sale and acquisition of properties over the past few decades, the problems there have grown. Numerous avaricious builders entice unwary buyers with deceptive purchase offers or annoy them in various ways by offering subpar services. The Real Estate Regulatory Authority Act does not restrict the jurisdiction granted under the Consumer Protection Act, 1986 to handle and deal with complaints filed by consumers (homebuyers) of real estate projects registered under the Real Estate (Regulation and Development) Act, 2016, according to the Hon'ble Supreme Court in a landmark decision dated November 02, 2020 in the case of *M/s Imperia Structures Ltd v Anil Patni & Another*1 ('*RERA*'). For homeowners and allottees, the Supreme Court's decision represents a significant turning point. The same can be deduced from a number of findings in the current judgement, including the recognition of extra remedies and concurrent

remedies under the RERA and the Consumer Protection Act. It also draws attention to the recently passed Consumer Protection Act of 2019, which includes and grants homeowners and allottees a similar position and set of rights.

5. Arbitration, Conciliation and Dispute Resolution

A rising trend of customer discontent with dealings with real estate developers and service providers has been highlighted by the Real Estate (Regulation and Development) Act ('RERA'). Growing consumer resentment and an increase in complaints filed with the regulator are the results of project delivery delays, cost escalations during construction, unfavourable builder-buyer agreements, the prevalence of several unfair trade practises, and the absence of an effective enforcement mechanism. This has put the Real Estate Regulatory Organizations Authorities under a lot of strain. The panel will talk about the difficulties and chances associated with conciliatory and conciliatory mediation in real estate cases under the RERA Act.

6. Supreme Court and Implementation of RERA decisions

One of the most significant rulings in the real estate industry was delivered by the Hon'ble SC in the matter of *Newtech Promoters and Developers v. State of UP and Others* in November 2021. As far as the homebuyers are concerned, the Supreme Court's clarification of several RERA provisions would come as a lifesaver.

The court observed that the clear and definite language of the statute is retroactive in nature. It had been carefully enacted to ensure that the interest of consumers in the real estate industry is protected. Sections 13, 18(1), and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. Therefore, we can say that it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act.

In its observations, the Supreme Court held that it is clear from the scheme of the Act that the power of adjudication has been given to both the Regulatory Authority and Adjudicating Officer. Although the Act specifies the distinct terms like 'refund', 'penalty', 'interest', and 'compensation, the combined reading of Sections 18 and 19 clearly indicate that when it comes to refunding of the amount, and interest on refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, the Regulatory Authority has the power of to examine and determine the outcome of the complaint. And it is under Sections 12, 14, 18, and 19, where the Adjudicating officer has the power to determine the relief sought

by the complainant, evident upon reading Sections 71 and 72 under the Act. If the adjudication under Sections 12, 14, 18, and 19 other than compensation as envisaged, is extended to the Adjudicating officer, that might expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71, and that would be against the mandate of the Act.

The court in its observation held that under Section 81 of the RERA Act 2016, the Authority is empowered by the general or special power to delegate its power to any member of the authority, subjected to the conditions prescribed in the Act. The court was of the opinion that all the other powers exercised by the Authority could be delegated to any of its members for the speedy disposal of complaints, through the general or special order. In this particular case, under Section 31, the power to decide the case was delegated to a single member of the Authority.

It was also stated by the Hon'ble court that there is a certain kind of inconsistency in the powers of the Regulatory Authority regarding the refund of the amount received by the promoter, and Section 18 and Section 40(1), by which such refunds can be referred to. While balancing the construction of the purpose of the Act, as the right of recovery is allowed in Section 40(1) of the Act, keeping in mind the intention of the parliament to provide for a speedy recovery of the amount invested by the allottee, along with the interest brought upon himself thereon, is self-explanatory. However, if Section 40(1) is strictly construed, and it is understood to mean that only the penalty and interest on the principal amount are recoverable as the amount overdue of land revenue, it would defeat the brake purpose of the Act.

7. Insolvency and Bankruptcy Code, 2016

Real estate for long has been considered the most beneficial and sought-after avenue for investors in India. After having witnessed ex-potential growth over the past couple of decades, the market trends indicate that investment in the real estate has stagnated. Homebuyers were dissuaded from investing in real estate given the heavily delayed and terminally sick housing projects hemorrhaging their investments.

The recourses available to distressed home buyers were to either file a consumer complaint before the Consumer Disputes Redressal Forum or before Real Estate Regulatory Authority (RERA), wherein the relief al-though effective, would have taken years to receive. With growing popularity of Insolvency and Bankruptcy Code speedy relief given by the National Company Law Tribunal (“NCLT”), home buyers decided to approach the NCLT, forcing the tribunal to decide whether a home buyer would qualify as an ‘operational creditor’ or ‘financial

creditor'. The National Company Law Appellate Tribunal (NCLAT) held that home buyers were to be classified as 'financial creditors' due to the assured return scheme in the contract, in which there was an arrangement wherein it was agreed that the seller of the apartments would pay 'assured returns' to the home buyers till possession of property was given. It held that such a transaction was in the nature of a loan and constituted a 'financial debt' within the Code.

Interestingly, the home buyers who had an assured returns clause in their agreement could file an insolvency petition and others could not. However, after initiation of insolvency process the other home buyers could submit their claim to the resolution professional. This conundrum was addressed by the Government by introducing the amendment no. 26 of 2018 vide The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 on August 17, 2018, granting homebuyers also referred to as the 'Real Estate Allottee' (allottee) a status of "Financial creditor". This amendment was a suggestion made by the Insolvency Law Committee in its report in March 2018. An explanation was added to Section 5(8)(f) of the Code, clarifying that allottees are to be treated as financial creditors so that they can trigger the insolvency process under Section 7 of the IBC.

Organising committee:

- ✚ **Patron-in-Chief:** *Prof. Prof. Dr. Nirmal Kanti Chakrabarti, Hon'ble Vice Chancellor, WBNUJS*

- ✚ **Director of the Program:** *Dr. M.P, Chengappa, Director Centre for Research and Studies in Land, Mining and Real Estate Laws & Assistant Professor, WBNUJS*

- ✚ **Student Co-ordinators of the Program:** *Sakshi Sharma, Khushi Dharewa, Arundhati Rajput, Tauseef Ali, and Vaibhav Chitneni.*