Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 116 of 2019

Forum for People's Collective Efforts (FPCE) & Anr. …Petitioners

Versus

The State of West Bengal & Anr. …Respondents

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J U D G M E N T

Dr Justice Dhananjaya Y Chandrachud

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A The challenge

1 The constitutional validity of the West Bengal Housing Industry Regulation Act, 2017 ("**WB-HIRA**"/the "**State enactment**") is challenged in a petition under Article 32. The basis of the challenge is that:

(i) Both WB-HIRA and a Parliamentary enactment – the Real Estate (Regulation and Development) Act, 2016 ("**RERA**"/the "**Central enactment**") are relatable to the legislative subjects contained in Entries 6 and 7 of the Concurrent List (interchangeably referred to as 'List III') of the Seventh Schedule to the Constitution;

(ii) WB-HIRA has neither been reserved for nor has it received Presidential assent under Article 254(2);

(iii) The State enactment contains certain provisions which are either:

a. Directly inconsistent with the corresponding provisions of the Central enactment; or

b. A virtual replica of the Central enactment; and

(iv) Parliament having legislated on a field covered by the Concurrent List, it is constitutionally impermissible for the State Legislature to enact a law over the same subject matter by setting up a parallel legislation.

Nuances apart, this, in substance, is the essence of the challenge.

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B Legislative history

2 Before Parliament enacted the RERA in 2016, the state legislatures had enacted several laws to regulate the relationship between promoters and purchasers of real estate. Among them was the West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 (the "**WB 1993 Act**"). This legislation of the State of West Bengal was reserved for and received Presidential assent, following which it was published in the Official Gazette on 9 March 1994. Many other States enacted laws on the subject, including among them:

(i) The Maharashtra Housing (Regulation and Development) Act, 2012 (the "**Maharashtra Act**"), which received Presidential assent on 2 February 2014; and

(ii) The Kerala Real Estate (Regulation and Development) Act, 2015 (the "**Kerala Act**"), was enacted by the State Legislative Assembly on 3 February 2016.

3 On 14 August 2013, the Bill for enactment of the RERA was introduced in the Rajya Sabha. The Bill was passed by the Rajya Sabha on 10 March 2016, and by the Lok Sabha on 15 March 2016. The law received the assent of the President on 25 March 2016, and was published in the Official Gazette on the next day. RERA was then partially enforced on 1 May 2016[1], while the rest of its provisions were enforced on 19 April 2017[2]. The Maharashtra Act was specifically repealed by

[1] Sections 2, 20 to 39, 41 to 58, 71 to 78 and 81 to 92.
[2] Sections 3 to 19, 40, 59 to 70, 79 to 80.

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RERA[3], while the Kerala Act was repealed by the State Legislative Assembly through the Kerala Real Estate (Regulation and Development) Repeal Act, 2017[4].

4 In the State of West Bengal, draft rules under the RERA were framed on 18 August 2016 but no further progress was made in that regard. On 16 August 2017, the motion for passing the WB-HIRA Bill was adopted in the State Legislative Assembly. The State enactment received the assent of the Governor of West Bengal on 17 October 2017. *Inter alia*, the WB-HIRA repealed the WB 1993 Act[5]. The remaining provisions of WB-HIRA were enforced by a notification[6] dated 29 March 2018, issued by the Governor of the State of West Bengal in exercise of the power conferred by sub-section (3) of section 1 of WB-HIRA. Thereafter on 8 June 2018, the State of West Bengal framed rules under WB-HIRA.

C RERA - the legislative process

5 The Standing Committee on Urban Development (2012-2013) of the Fifteenth Lok Sabha submitted its Thirtieth Report on the Real Estate (Regulation and Development) Bill, 2013 (the "**RERA Bill 2013**") pertaining to the Ministry of Housing and Urban Poverty alleviation. While adopting the draft report on 12 February 2014, the Committee emphasized the need for enacting a comprehensive legislation to

[3] "Section 92. Repeal: The Maharashtra Housing (Regulation and Development) Act, 2012 is hereby repealed."
[4] Its Statement of Objects and Reasons noted "… As per clause (1) of article 254 of the Indian Constitution, if any provision of a law made by the legislature of a State is repugnant to any law made by the Parliament, the law made by the legislature of a State shall become void. Therefore the Government have decided to repeal the Kerala Real Estate (Regulation and Development) Act, 2015."
[5] "86. Repeal and Savings. (1) The West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993 is hereby repealed."
[6] No. 18-HIV/3M-3/17 (PART-2)

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regulate the real estate sector. The backdrop is succinctly summarized in the prefatory paragraphs of the report, which are set out below:

> "Over the past few decades, the demand for housing has increased manifold. In spite of Government's efforts through various schemes, it has not been able to cope up with the increasing demands. Taking advantage of the situation, the private players have taken over the real estate sector with no concern for the consumers. Though availability of loans both through private and public banks has become easier, the high rate of interest and the higher EMI has posed additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. At this juncture the need for the Real Estate (Regulation and Development) Bill is felt badly for establishing an oversight mechanism to enforce accountability of the Real Estate Sector and providing adjudication machinery for speedy dispute redressal.
>
> 1.2. The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums."

6 Upon being introduced in the Rajya Sabha, the RERA Bill 2013 was referred to a twenty-one member Select Committee, on a motion adopted by the House on 6 May 2015. The Committee held seventeen sittings – nine in Delhi and the remaining in different parts of the country. As many as 445 persons appeared before the Select

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Committee drawn from different categories and groups of stakeholders - representatives of consumers; resident welfare associations; promoter – builders; banks and financial institutions; Housing Ministries of all the States and Union Territories; law firms and independent experts in the field of real estate. Following a press communique, the Select Committee invited suggestions and views from the members of the public, receiving a total of 273 suggestions. It further visited Kolkata, Bengaluru, Mumbai and Shimla to interact with stakeholders in various parts of the country. While discussing diverse issues which were presented before it by stakeholders, the Select Committee noted the grievances of consumers, many of whom were duped by unscrupulous promoters and were made to run from pillar to post to secure possession of the apartments which were agreed to be sold or a refund of their moneys. The plight of the consumers is highlighted in the following passage in the report of the Select Committee, which was presented before the Rajya Sabha on 30 July 2015:

> "**(i) Consumers and Resident Welfare Association**
> The Committee came across many instances of standalone projects where the consumers were fleeced by the unscrupulous promoters. These consumer invested their hard earned money for their dream houses which turned out to be a nightmare for them while they run from pillar to post either to get the possession of their apartment or refund of their money back and fighting cases in the courts. The consumers were unanimous in their submission that they have no means to know about the real status of the project for example whether all the approvals have been obtained, who is holding the title of the land, what is the financing pattern of the project and what has been the past record of the builder, etc As a result, they invested their money without having any information about the project. In many cases, they were not given what was promised to them and in almost all the cases

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the project was delayed. Submitting their views on the Bill, they highlighted the following points:-

a) There should not be any deemed provision for the registration of project by promoter. The projects should be registered only after thorough scrutiny.
b) Any housing project should commence only after obtaining al the approvals by the promoter and they should have access to all the documents before entering into agreement of sale.
c) The advance cost of apartment, plot or building before entering into written agreement should not be more than one lakh or 5 % of the cost of apartment whichever is less (Clause 13(1).
d) There should be model “agreement for sale” which should be appended to the Bill.
e) In case of default by a promoter, they should be given refund of money at the market rate prevailing at that time with interest.
f) There should be one criterion for selling a flat i.e. the carpet area which should be clearly defined and should not be linked to National Building Code which can be damaged any time independent of the Bill.
g) The definition of the term ‘advertisement’ should be made more exhaustive and the definition of the term ‘allottee’ should also include the association of allottees or group of allottees so that they can in case of need take up the cause collectively.
h) Information relating to various clearances, credentials of promoter i.e., cases pending against, defaults in payments in the past, projects left in between in the past, etc. water harvesting environmental impact, net worth of promoters and financing pattern etc. should be given.
i) Regarding the provision to keep 50% of the amount realized for the project from allottees in a separate account, it was demanded that this amount should not be less than 70%.
j) On structural defect after handing over the possession, it was demanded that the liability of promoter should be increased from 2 years to 5 years.
k) In case any project is abandoned by a promoter the way out suggested in clause 16 is inappropriate. In such an eventuality, the promoter be subjected to heavy penalty and compelled to carry the project through rather than considering the suggested options which were not practicable.
l) In case of default, allottees are charged penalty at much higher rate of interest compared to default on the part of the promoter.

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m) There should not be any exemption to any project from the provisions of this Bill in respect of area and number of flats.
n) Timely formation of the association of allottees and handing over of the common areas to the association for management at the earliest.
o) Parking areas accommodation for domestic help to be dealt as per the Supreme Court Judgment."

7 In bringing about a balance between the need to protect consumers with the necessity of encouraging investment in the real estate sector, the Committee observed that while it shared the concerns of consumers, many of whom have to suffer because of 'fly by night operators', it was cognizant of the position that the real estate sector was largely being developed through private promoters, all of whom could not be tarred with the same brush. The Select Committee observed that there was a need to ensure that a renewed impetus is provided for the growth of the real estate sector to fulfill the government's objective of ensuring housing for all, while at the same time protecting the interest of consumers. The Committee struck a legislative balance between these objects, seeking to "stand by the good consumer and the good promoter".

8 Following the report of the Select Committee, the Real Estate (Regulation and Development) Bill, 2016 (the "**RERA Bill 2016**") was introduced. The Statement of Objects and Reasons accompanying the RERA Bill 2016 emphasizes the basic rationale for the enactment of the legislation:

"**STATEMENT OF OBJECTS AND REASONS**
The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent

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years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. **The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.**

2. In view of the above, **it becomes necessary to have a Central legislation, namely the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector**. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

3. **The proposed Bill will ensure greater accountability towards consumers and significantly reduce frauds and delays as also the current high transactions costs. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions set minimum standards of accountability and a fast-track dispute resolution mechanism. The proposed Bill will induct professionalism and standardization in the sector, thus paving the way for accelerated growth and investments in the long run."**

(emphasis supplied)

9 The legislative background antecedent to and ultimately culminating in the enactment of the RERA indicates: *firstly*, the circumstances which gave rise to the need for comprehensive Parliamentary legislation on the subject; *secondly*, the

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specific inadequacies in the development of the real estate sector which were a source of exploitation of purchasers; *thirdly*, the legislative policy underlying the enactment of the law; and *fourthly*, the context in which specific statutory provisions have been adopted as the instrument for bringing about orderly development and growth of the real estate sector. The legislative background demonstrates the concern of the policy makers that the unregulated growth of the real estate sector, accompanied by a lack of professionalism and standardization, had resulted in serious hardship to consumers. The real estate sector is of crucial significance to meet the demand for housing in the country. While remedies were provided to consumers by the Consumer Protection Act, 1986, this recourse was “curative” and did not assuage all the concerns of buyers on the one hand and promoters on the other hand in the sector. There existed an asymmetry of information between promoters and buyers of real estate. Buyers lacked adequate information about the title to the land, the nature of the development, pricing of projects and the progress of construction. A lack of standardization and uniformity was a key factor restraining the balanced growth and development of the real estate sector. The Central enactment sought to remedy the drawbacks of the existing regulatory framework in the country by establishing a real estate regulatory authority to ensure that transactions between promoters and buyers are governed by the twin norms of efficiency and transparency. It sought to bring about accountability towards consumers and to significantly reduce frauds, delays and high transaction costs. While imposing duties and responsibilities on promoters and purchasers, RERA sought to achieve its objectives by ensuring:

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(i) Symmetry of information between promoters and purchasers;

(ii) Transparency of contractual conditions;

(iii) Threshold standards of standardization of accountability; and

(iv) A fast-track dispute resolution mechanism.

Besides the Statement of Objects and Reasons, the long title to the legislation dwells on the purpose of the law in the following terms:

> "An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

10 As such, the legislative background underlying the enactment of the RERA demonstrates a clear emphasis on:

(i) Standardization;

(ii) Uniformity; and

(iii) Symmetry of information.

These elements provide the justification for enacting a comprehensive legislation which is uniformly applicable to all parts of the country.

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D Salient features – RERA

11 Before we proceed further, some of the salient features of the RERA need to be noticed:

(i) The expression 'real estate project' is defined in Section 2(zn):

> "(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

(ii) The expression 'apartment', which is adverted to in the definition of real estate project under Section 2(zn), is defined in Section 2(e) as follows:

> "(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;"

(iii) The provisions of the RERA are comprised in ten Chapters. Broadly, the division is as follows:

Chapter I	Preliminary
Chapter II	Registration of Real Estate Projects and Registration of

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	Real Estate Agents
Chapter III	Functions and Duties of Promoters
Chapter IV	Rights and Duties of allottees
Chapter V	The Real Estate Regulatory Authority
Chapter VI	Central Advisory Council
Chapter VI	The Real Estate Appellate Tribunal
Chapter VII	Offences, Penalties and Adjudication
Chapter IX	Finance, Accounts, Audits and Reports
Chapter X	Miscellaneous

(iv) RERA mandates the registration of real estate projects and real estate agents. The salient features of this process are:

a. Mandatory registration of real estate projects with the real estate regulatory authority is required before the promoter can advertise, market, book, sell or offer for sale or invite persons to purchase a plot, apartment or building in a real estate project;

b. Mandatory registration of real estate agents before facilitating the sale or purchase of plots, apartments or buildings in real estate projects;

c. Mandatory public disclosure of all project details by promoters;

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d. Promoters are required to make a mandatory public disclosure of all registered projects on the web-site of the authority including lay out plans, land titles, statutory approvals, agreements;

(v) RERA also provides the functions and duties of promoters, in the following terms:

a. Disclosure of all relevant information relating to the project;

b. Adherence to approved plans and project specifications as approved by competent authorities;

c. Obligations regarding veracity of advertisements or prospectus;

d. Transfer of title by a registered deed of conveyance;

e. Refund of monies in case of default;

f. Prohibition on accepting more than ten per cent of the cost as advance without entering into a written agreement for sale;

g. Rectification of structural defects for a specified period from the date of possession;

h. Formation of an association, society or cooperative society of allottees and the execution of a registered deed of conveyance;

(vi) It also provides the rights and obligations of allotees, which are:

a. Obtaining information about sanctioned plans, lay outs and specifications approved by the competent authority;

b. The date wise time schedule for completion of the project including provisions for essential amenities;

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c. Claiming possession, including possession of the common areas by the association;

d. Refund in the event for default;

e. Duty to make payments of consideration for the sale of the apartment, plot or building together with interest as prescribed;

f. Duty to take possession;

(vii) Establishment of a real estate authority by the appropriate government (the State government in a State with corresponding provisions for Union territories), with the following details provided:

a. Composition of the authority;

b. Qualifications for appointment to the authority;

c. Removal of members and conditions of service;

d. Functions of the authority include the growth and promotion of the real-estate sector;

(viii) RERA also provides for the establishment of a Central Advisory Council to advise and make recommendations to the Central government on all matters concerning the implementation of RERA, on major questions on policy, towards protection of consumer interest, to foster the growth and development of real-estate sector and on any other matter as assigned by the Central government.

(ix) It also establishes the Real-Estate Appellate Tribunal, provides the following details about the institution:

a. Establishment;

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b. Settlement of disputes and appeals;

c. Composition;

d. Conditions of service;

e. Powers;

f. Appeals;

(x) RERA notes the offences, penalties and adjudication, along with:

a. Delegated legislation;

b. Power of the appropriate government to make rules;

c. Framing of regulations by the authority; and

(xi) Finally, Sections 88 and 89 of the RERA provide as follows:

> "88. **Application of other laws not barred**.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.
>
> 89. **Act to have overriding effect**.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

E Salient provisions of WB-HIRA

12 The long title to the State enactment describes the purpose and content of the legislation as:

> "An Act to establish the Housing Industry Regulatory Authority for regulation and promotion of the housing sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish a mechanism for

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> speedy dispute redressal and for matters connected therewith or incidental thereto."

Its preamble is in the following terms:

> "Whereas it is expedient to establish the Housing Industry Regulatory Authority for regulation and promotion of the housing sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish a mechanism for speedy dispute redressal and for matters connected therewith or incidental thereto."

The above excerpts indicate that the State enactment purports to set up a regulatory authority for the housing industry. Save and except for this emphasis on the housing industry, the broad purpose of the State enactment coincides with RERA. Before we set out a comparative table of the corresponding provisions of WB-HIRA and RERA, it is necessary to note at the outset that there is, in most of the substantive provisions, a complete overlap of the provisions contained in the two statutes. Evidently, the Bill for the introduction of WB-HIRA in the State legislature was prepared on the basis of the RERA as a drafting model. Hence, during the course of this judgment, the provisions of the State enactment which are at variance to those in the Central enactment will be delineated separately. However, at this stage, a sampling of some of the crucial provisions would indicate that they are identical in their entirety, in the State of West Bengal's WB-HIRA and RERA which has been enacted by Parliament. This identical nature is evident from the tabulated statement set out below, in which the identical provision is placed in the middle (as extracted

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from the RERA), while it is flanked with its relevant Section number and title from RERA and WB-HIRA on both sides:

Section and Title of RERA	Provision	Section and Title of WB-HIRA
2(b) – Definition of “advertisement”	(b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;	2(a) – Definition of “advertisement”
2(d) – Definition of “allottee”	(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;	2(c) – Definition of “allottee”
2(e) – Definition of “apartment”	(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;	2(d) – Definition of “apartment”
2(j) – Definition of	(j) "building" includes any structure or erection or	2(h) – Definition of

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
"building"	part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;	"building"
2(k) – Definition of "carpet area"	(k) "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. *Explanation.*— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;	2(j) – Definition of "carpet area"
2(n) – Definition of "common areas"	(n) "common areas" mean— (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the stair cases, lifts, staircase and lift lobbies, fir escapes, and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces; (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service	2(m) – Definition of "common areas"

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
	personnel; (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy; (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use; (vii) all community and commercial facilities as provided in the real estate project; (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;	
2(zk) – Definition of “promoter”	(zk) "promoter" means— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or	2(zj) – Definition of “promoter”

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
	placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public. *Explanation*.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;	
2(zm) – Definition of "real estate agent"	(zm) "real estate agent" means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each	2(zl) – Definition of "real estate agent"

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
	other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;	
2(zn) – Definition of "real estate project"	(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;	2(zm) – Definition of "real estate project"
3 – Prior registration of real estate project with Real Estate Regulatory Authority	(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that	3 – Prior registration of real estate project with Real Estate Regulatory Authority

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	stage of registration. (2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required— (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act; (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act; (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project. *Explanation*.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.	
4 – Application for registration of real estate projects	(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by	4 – Application for registration of real estate projects

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	the regulations made by the Authority. (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:— (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter; (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending; (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases; (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority; (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency	

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	evacuation services, use of renewable energy; (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project; (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees; (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any; (i) the number and areas of garage for sale in the project; (j) the names and addresses of his real estate agents, if any, for the proposed project; (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project; (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:— (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person; (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;	

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	(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be; (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose: Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project: Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project. *Explanation*.— For the purpose of this clause, the term "schedule bank" means a bank included in the Second Schduled to the Reserve Bank of India Act, 1934; (E) that he shall take all the pending approvals on	

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	time, from the competent authorities; (F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and (m) such other information and documents as may be prescribed. (3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.	
5 – Grant of registration	(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days. (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. (2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of	5 – Grant of registration

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	the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project. (3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause (1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be	
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 specified by regulations made by the Authority: 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. *Explanation*.— For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or	6 – Extension of registration

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	any other calamity caused by nature affecting the regular development of the real estate project	
7 – Revocation of registration	(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that— (a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder; (b) the promoter violates any of the terms or conditions of the approval given by the competent authority; (c) the promoter is involved in any kind of unfair practice or irregularities. *Explanation*.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:— (A) the practice of making any statement, whether in writing or by visible representation which,— (i) falsely represents that the services are of a particular standard or grade; (ii) represents that the promoter has approval or affiliation which such promoter does not have; (iii) makes a false or misleading representation concerning the services; (B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not	7 – Revocation of the registration

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	intended to be offered; (C) the promoter indulges in any fraudulent practices. (2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registraton, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation. (3) 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. (4) The Authority, upon the revocation of the registration,— (a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration; (b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8; (c) shall direct the bank holding the project back	

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	account, specified under subclause (D) of clause (I) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8; (d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary. Revocation of registration.	
8 – Obligation of Authority consequent upon lapse of or on revocation of registration	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 the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority: Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act: Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.	8 – Obligation of Authority consequent upon lapse of or on revocation of registration
9 – Registration of real estate agents	(1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3,	9 – Registration to real estate agents

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	being sold by the promoter in any planning area, without obtaining registration under this section. (2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed. (3) The Authority shall, within such period, in such manner and upon satisfying itself of the fulfillment of such conditions, as may be prescribed— (a) grant a single registration to the real estate agent for the entire State of Union territory, as the case may be; (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules or regulations made thereunder: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter. (4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered. (5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall	

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	be quoted by the real estate agent in every sale facilitated by him under this Act. (6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed. (7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisified that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit: Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.	
10 – Functions of real estate agents	Every real estate agent registered under section 9 shall— (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority; (b) maintain and preserve such books of account, records and documents as may prescribed; (c) not involve himself in any unfair trade practices,	10 – Functions of real estate agents

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	namely:— (i) the practice of making any statement, whether orally or in writing or by visible representation which— (A) falsely represents that the services are of a particular standard or grade; (B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have; (C) makes a false or misleading representation concerning the services; (ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered. (d) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be; (e) discharge such other functions as may be prescribed.	
11 – Function and duties of promoter	(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including— (a) details of the registration granted by the Authority; (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be,	11 – Functions and duties of promoter

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	booked; (c) quarterly up-to-date the list of number of garages booked; (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate; (e) quarterly up-to-date status of the project; and (f) such other information and documents as may be specified by the regulations made by the Authority. (2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto. (3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:— (a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority; (b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.	

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	(4) The promoter shall— (a) be responsible for all obligations, responsibilties and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed. (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be; (c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees; (d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;	

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	(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project; (f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act; (g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal	

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	charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person; (h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be; (5) The promoter may cancel the allotment only in terms of the agreement for sale: Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause. (6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.	
12 – Obligations of promoter regarding veracity of the advertisement or prospectus	Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice,	12 – Obligations of promoter regarding veracity of the advertisement or prospectus

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	advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.	
13 – No deposit or advance to be taken by promoter without first entering into agreement for sale	(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.	13 – No deposit or advance to be taken by promoter without first entering into agreement for sale
14 – Adherence to sanctioned plans and project specifications by the promoter	(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.	14 – Adherence to sanctioned plans and project specifications by the promoter

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	(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make— (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee. *Explanation*.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc. (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the	

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	project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building. *Explanation*.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only. (3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.	
15 – Obligations of promoter in case of transfer of a real estate project to a third party	(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority: Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots	15 – Obligations of promoter in case of transfer of a real estate project to a third party

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	or buildings as the case may be, in the real estate project made by the erstwhile promoter. *Explanation*.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only. (2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees: Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.	
16 – Obligations	(1) The promoter shall obtain all such insurances	16 – Obligations of

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of promoter regarding insurance of real estate project	as may be notified by the appropriate Government, including but not limited to insurance in respect of — (i) title of the land and building as a part of the real estate project; and (ii) construction of the real estate project (2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees. (3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee. (4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.	promoter regarding insurance of real estate project
17 – Transfer of title	(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified	17 – Transfer of title

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	period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. (2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.	
18 – Return of amount and compensation	(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other	18 – Return of amount and compensation

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	reason, he shall be liable on demand to the allottees, 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, 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: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force. (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.	
19 – Rights and duties of allottees	(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information	19 – Rights and duties of allottees

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	as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter. (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale. (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4. (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder. (5) The allottee shall be entitled to have the	

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	necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter. (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any. (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6). (8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee. (9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same. (10) Every allottee shall take physical possession	

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	of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be. (11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.	
20 – Establishment and incorporation of Real Estate Regulatory Authority	(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act: Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority: Provided further that, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be: Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the	20 – Establishment and incorporation of Housing Industry Regulatory Authority

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	purposes under this Act: (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.	
21 – Composition of Authority	The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.	21 – Composition of Authority
22 – Qualifications of Chairperson and Members of Authority	The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration: Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the	22 – Qualifications of Chairperson and Members of Authority

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	Central Government or State Government: Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.	
23 – Term of office of Chairperson and Members	23. (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixtyfive years, whichever is earlier and shall not be eligible for re-appointment. (2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.	23 – Term of office of Chairperson and Members
24 – Salary and allowances payable to Chairperson and Members	(1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure. (2) Notwithstanding anything contained in sub-sections (1) and (2) of section 23, the Chairperson or a Member, as the case may be, may,— (a) relinquish his office by giving in writing, to the appropriate Government, notice of not less than three months; or (b) be removed from his office in accordance with	24 – Salary and allowances payable to Chairperson and Members

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	the provisions of section 26 of this Act. (3) Any vacancy caused to the office of the Chairperson or any other Member shall be filled-up within a period of three months from the date on which such vacancy occurs.	
25 – Administrative powers of Chairperson	The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.	25 – Administrative power of Chairperson
26 – Removal of Chairperson and Members from office in certain circumstances	(1) The appropriate Government may, in accordance with the procedure notified, remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be,— (a) has been adjudged as an insolvent; or (b) has been convicted of an offence, involving moral turpitude; or (c) has become physically or mentally incapable of acting as a Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. (2) The Chairperson or Member shall not be removed from his office on the ground specified under clause (d) or clause (e) of sub-section (1)	26 – Removal of Chairperson and other Members from office in certain circumstances

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	except by an order made by the appropriate Government after an inquiry made by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges	
27 – Restrictions on Chairperson or Members on employment after cessation of office	(1) The Chairperson or a Member, ceasing to hold office as such, shall not— (a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office: Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined under clause (45) of section 2 of the Companies Act, 2013, which is not a promoter as per the provisions of this Act; (b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to, the Authority; (c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public; (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with	27 – Restrictions on Chairperson or Members on employment after cessation of office

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	which he had direct and significant official dealings during his term of office as such. (2) The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.	
28 – Officers and other employees of Authority	28. (1) The appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson. (2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.	28 – Officers and other employees of Authority
29 – Meetings of Authority	(1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority. (2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting. (3) All questions which come up before any	29 – Meetings of Authority

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	meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote. (4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application: Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.	
30 – Vacancies, etc., not to invalidate proceeding of Authority	No act or proceeding of the Authority shall be invalid merely by reason of— (a) any vacancy in, or any defect in the constitution of, the Authority; or (b) any defect in the appointment of a person acting as a Member of the Authority; or (c) any irregularity in the procedure of the Authority not affecting the merits of the case	30 – Vacancies, etc., not to invalidate proceeding of Authority
31 – Filing of complaints with the Authority or the adjudicating officer	(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be. *Explanation*.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered	31 – Filing of complaints with the Authority

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	under any law for the time being in force. (2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.	
32 – Functions of Authority for promotion of real estate sector	The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on,— (a) protection of interest of the allottees, promoter and real estate agent; (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project; (c) creation of a transparent and robust grievance redressal mechanism against acts of ommission and commission of competent authorities and their officials; (d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment; (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques; (f) measures to encourage grading of projects on various parameters of development including grading of promoters; (g) measures to facilitate amicable conciliation of	32 – Functions of Authority for promotion of real estate sector

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	disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations; (h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee; (i) to render advice to the appropriate Government in matters relating to the development of real estate sector; (j) any other issue that the Authority may think necessary for the promotion of the real estate sector.	
33 – Advocacy and awareness measures	(1) The appropriate Government may, while formulating a policy on real estate sector (including review of laws related to real estate sector) or any other matter, make a reference to the Authority for its opinion on possible effect, of such policy or law on real estate sector and on the receipt of such a reference, the Authority shall within a period of sixty days of making such reference, give its opinion to the appropriate Government which may therafter take further action as it deems fit. (2) The opinion given by the Authority under sub-section (1) shall not be binding upon the appropriate Government in formulating such policy or laws. (3) The Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies.	33 – Advocacy and awareness measures
34 – Functions of	The functions of the Authority shall include—	34 – Functions of

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Authority	(a) to register and regulate real estate projects and real estate agents registered under this Act; (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted; (c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public; (d) to maintain a database, on its website, for public viewing, and enter the names and photograhps of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked; (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be; (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder; (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act; (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the	Authority

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	provisions of this Act.	
35 – Powers of Authority to call for information, conduct investigations	(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be. (2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:— (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) issuing commissions for the examination of witnesses or documents; (iv) any other matter which may be perscribed.	35 – Powers of Authority to call for information, conduct investigations
36 – Power to issue interim orders	Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority	36 – Power to issue interim orders

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	may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry of until further orders, without giving notice to such party, where the Authority deems it necessary	
37 – Powers of Authority to issue directions	37. The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.	37 – Powers of Authority to issue directions
38 – Powers of Authority	(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder. (2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure. (3) Where an issue is raised relating to agreement, action, omission, practice or procedure that— (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.	38 – Powers of Authority
39 – Rectification	The Authority may, at any time within a period of	39 – Rectification of

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of orders	two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act: Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.	orders
43 – Establishment of Real Estate Appellate Tribunal	(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal. (2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be. (3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member. (4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal: Provided that, until the establishment of an Appellate Tribunal under this section, the	43 – Establishment of Housing Industry Appellate Tribunal

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	appropriate Government shall designate, by order, any Appellate Tribunal Functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act: Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred. (5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter: Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal atleast thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard. *Explanation*.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.	
44 – Application	(1) The appropriate Government or the competent	44 – Application for

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for settlement of disputes and appeals to Appellate Tribunal	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. (2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed: Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period. (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit. (4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be. (5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal: Provided that where any such appeal could not be disposed of	settlement of disputes and appeals to Appellate Tribunal

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	within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period. (6) 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 motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.	
45 – Composition of Appellate Tribunal	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, to be appointed by the appropriate Government. *Explanation*.—For the purposes of this Chapter,— (i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46; (ii) "Technical or Administrative Member" means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.	45 – Composition of Appellate Tribunal
46 – Qualifications for appointment of Chairperson and Members	(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,— (a) in the case of Chairperson, is or has been a Judge of a High Court; and (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least	46 – Qualifications for appointment of Chairperson and Members

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	fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and (c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government, or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government. (2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee. (3) The judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.	
47 – Term of office of Chairperson and	(1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from	47 – Term of office of Chairperson and

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Members	the date on which he enters upon his office, but shall not be eligible for re-appointment: Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years: Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years. (2) Before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such member.	Members
48 – Salary and allowances payable to Chairperson and Members	(1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure. (2) Notwithstanding anything contained in sub-sections (1) and (2) of section 47, the Chairperson or a Member, as the case may be, may:— (a) relinquish his office by giving in writing to the appropriate Government a notice of not less than three months; (b) be removed from his office in accordance with	49 – Salary and allowances payable to Chairperson and Members

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	the provisions of section 49. (3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of three months from the date on which such vacancy occurs.	
49 – Removal of Chairperson and Member from office in certain circumstances	(1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any judicial Member or Technical or Administrative Member of the Appellate Tribunal, who— (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or (c) has become physically or mentally incapable; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest. (2) The Chairperson or Judicial member or Technical or Administrative Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by the Judge of the High Court in which such Chairperson or Judicial member or Technical or Administrative Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those	48 – Removal of Chairperson, Member etc

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	charges. (3) The appropriate Government may suspend from the office of the Chairperson or Judicial member or Technical or Administrative Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference. (4) The appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).	
50 – Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office	(1) The Chairperson or Judicial Member or Technical or Administrative Member, ceasing to hold office as such shall not:— (a) Accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office: Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State of provincial Act or a Government Company as defined under clause (45) of section 2 of the Companies Act, 2013, which is not a promoter as per the provisions of this Act; (b) act, for or on behalf of any person or organisation in connection with any specific	50 – Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office

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	proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or Judicial Member or Technical or Administrative Member had, before cessation of office, acted for or provided advice to, the Authority; (c) give advice to any person using information which was obtained in his capacity as the Chairperson or Judicial Member or Technical or Administrative Member and being unavailable to or not being able to be made available to the public; (d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such. (2) The Chairperson or Judicial Member or Technical or Administrative Member shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.	
51 – Officers and other employees of Appellate Tribunal	(1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit. (2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson. (3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal	51 – Officers and other employees of Appellate Tribunal

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	shall be such as may be prescribed.	
52 – Vacancies	If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellee Tribunal from the stage at which the vacancy is filled.	52 – Vacancies
53 – Powers of Tribunal	(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. (2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure. (3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872. (4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:— (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents;	53 – Powers of Appellate Tribunal

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	(c) receiving evidence on affidavits; (d) issuing commissions for the examinations of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or directing it ex parte; and (g) any other matter which may be prescribed. (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973	
54 – Administrative powers of Chairperson of Appellate Tribunal	The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.	54 – Administrative powers of Chairperson of Appellate Tribunal
55 – Vacancies, etc., not to invalidate proceeding of Appellate Tribunal	No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of— (a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal, or (b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or (c) Any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.	55 – Vacancies, etc., not to invalidate proceeding of Appellate Tribunal
56 – Right to legal representation	The applicant or appellant may either appear in person or authorise one or more chartered	56 – Right to Legal re-presentation

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	accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be. *Explanation*.—For the purposes of this section,— (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; (d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.	
57 – Orders passed by Appellate Tribunal to be executable as a decree	(1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.	57 – Orders passed by Appellate Tribunal to be executable as a decree

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	(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.	
58 – Appeal to High Court	(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908: Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. *Explanation*.—The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated. (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.	58 – Appeal to High Court
59 – Punishment for non-registration under Section 3	(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority. (2) If any promoter does not comply with the	59 – Punishment for non-registration under Section 3

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
	orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.	
60 – Penalty for contravention of Section 4	If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.	60 – Penalty for contravention of Section 4
61 – Penalty for contravention of other provisions of this Act	If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.	61 – Penalty for contravention of other provisions of this Act
62 – Penalty for non-registration and contravention under Sections 9 and 10	If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or buildings, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority	62 – Penalty for non-registration and contravention under Sections 9 and 10
63 – Penalty for failure to comply with orders of Authority by promoter	If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority	63 – Penalty for failure to comply with orders of Authority by promoter
64 – Penalty for	If any promoter, who fails to comply with, or	64 – Penalty for

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failure to comply with orders of Appellate Tribunal by promoter	contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.	failure to comply with orders of Appellate Tribunal by promoter
65 – Penalty for failure to comply with orders of Authority by real estate agent	If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority	65 – Penalty for failure to comply with orders of Authority by real estate agent
66 – Penalty for failure to comply with orders of Appellate Tribunal by real estate agent	If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.	66 – Penalty for failure to comply with orders of Appellate Tribunal by real estate agent
67 – Penalty for failure to comply with orders of Authority by allottee	If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority	67 – Penalty for failure to comply with orders of Authority by allottee
68 – Penalty for	If any allottee, who fails to comply with, or	68 – Penalty for

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failure to comply with orders of Appellate Tribunal by allottee	contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, or with both.	failure to comply with orders of Appellate Tribunal by allottee
69 – Offences by companies	(1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.	69 – Offences by companies

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
	Explanation.—For the purpose of this section,— (a) "company" means any body corporate and includes a firm, or other association of individuals; and (b) "director" in relation to a firm, means a partner in the firm	
74 – Grants and loans by State Government	The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.	70 – Grants and loans by State Government
75 – Constitution of Fund	(1) The appropriate Government shall constitute a fund to be called the 'Real Estate Regulatory Fund' and there shall be credited thereto,— (a) all Government grants received by the Authority; (b) the fees received under this Act; (c) the interest accrued on the amounts referred to in clauses (a) to (b). (2) The Fund shall be applied for meeting— (a) the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to be officers and other employees of the Authority and the Appellate Tribunal; (b) the other expenses of the Authority in connection with the discharge of its functions and	71 – Constitution of Fund

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	for the pruposes of this Act. (3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson. (4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.	
76 – Crediting sums realised by way of penalties to Consolidated Fund of India or State account	(1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India. (2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.	72 – Crediting sums realised by way of penalties to Consolidated Fund of State
77 – Budget, accounts and audit	(1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor General of India. (2) The accounts of the Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor General of India. (3) The Comptroller and Auditor-General and any person appointed by him in connection with the	73 – Budget accounts and audit

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	audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority. (4) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before the House.	
78 – Annual report	(1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government,— (a) a description of all the activities of the Authority for the previous year; (b) the annual accounts for the previous year; and (c) the programmes of work for the coming year. (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union Territory Legislature, where it consists of	74 – Annual report

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Section and Title of RERA	Provision	Section and Title of WB-HIRA
	two Houses, or where such legislature consists of one House, before that House.	
79 – Bar of Jurisdiction	No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.	75 – Bar of Jurisdiction
80 – Cognizance of offences	(1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose. (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.	76 – Cognizance of offences
81 – Delegation	The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85, as it may deem necessary.	77 – Delegation
82 – Power of appropriate Government to supersede Authority	(1) If, at any time, the appropriate Government is of the opinion,— (a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or (b) that the Authority has persistently defaulted in complying with any direction given by the	78 – Power of State Government to supersede Authority

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	appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or (c) that circumstances exist which render it necessary in the public interest so to do, the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under this Act: Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority. (2) Upon the publication of a notification under sub-section (1) superseding the Authority,— (a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1);	

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	and (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government. (3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment. (4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union Territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.	
83 – Powers of appropriate Government to issue directions to Authority and obtain reports and returns	(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time: Provided that the Authority shall, as far as practicable, be given an opportunity to express its	79 – Powers of State Government to issue directions to Authority and obtain reports and returns

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	views before any direction is given under this sub-section. (2) If any dispute arises between the appropriate Government and the Authority as to whether a question is or is not a question of policy, the decision of the appropriate Government thereon shall be final. (3) The Authority shall furnish to the appropriate Government such returns or other information with respect to its activities as the appropriate Government may, from time to time, require.	
84(1) – Power of appropriate Government to make rules	(1) The appropriate Government shall, within a period of six months of the commencement of this Act, by notification, make rules for carrying out the provisions of this Act.	80(1) – Power of State Government to make rules
85(1) – Power to make regulations	(1) The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.	81 – Power to make regulations
87 – Members, etc., to be public servants	The Chairperson, Members and other officers and employees of the Authority, and the Appellate Tribunal and the adjudicating officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.	82 – Members, etc., to be public servants
90 – Protection of action taken in good faith	No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this	84 – Protection of action taken in good faith

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	Act or the rules or regulations made thereunder.	
91 – Power to remove difficulties	(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty: Provided that no order shall be made under this section after the expiry of two years from the date of the commencement of this Act. (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.	85 – Power to remove difficulties

It needs to be emphasized that the tabulated provisions of the State enactment are verbatim a reproduction of the Central enactment in most instances, with minor differences between the provisions (due to RERA being a Central enactment, and WB-HIRA being a State enactment) but those are not relevant for our present discussion. It is also important to note that Section 83 of WB-HIRA provides as follows:

> "83. Application of other laws not barred.- The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

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13 Section 83 corresponds to Section 88 of the RERA. However, there is no provision in WB-HIRA corresponding to Section 89 of RERA, according to which overriding effect has been given to the RERA, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Further, the repealing provisions of the two enactments are distinct. Section 92 of the RERA has repealed the Maharashtra Act, while Section 86(1) of WB-HIRA repeals the WB 1993 Act.

F RERA and WB-HIRA – provisions at variance

14 In the previous section, this judgment has dwelt on the substantial overlap between the provisions of RERA and the subsequently enacted WB-HIRA. However, in this segment of the judgment, it would be necessary to visit the inconsistencies and deviations made in WB-HIRA from the provisions of the RERA. These divergences are indicated in the following tabulation, which has been put on record by the Union of India during its submissions:

S.No.	Particulars	RERA	WB-HIRA
1	Definition of Car Parking Area:	Under the scheme of RERA: Open Car parking areas are covered under the definition of '**common areas**', therefore it cannot be sold. Under, Section 2(n) "common areas" mean—	**Section 2 (i):** 'Car parking area' has been defined to mean '**such area as may be prescribed**'. Further, in WB-HIRA Rules:

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S.No.	Particulars	RERA	WB-HIRA
		(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase; (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings; (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;	Car parking means an area either enclosed or unclosed, covered or open excluding open car parking areas reserved for common areas and facilities to park vehicles located at any level having sufficient drive way and maneuvering space for loading and uploading as sanctioned by the competent authority and includes all types of car parking areas sanctioned by competent authority.
2	Definition of 'Garage'	Section 2(y): 'Garage' has been defined to mean 'a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an un-enclosed or uncovered parking space such as 'open parking areas'.	Section 2 (x): 'Garage' has been defined to mean 'garage and parking space as sanctioned by the Competent Authority'.
3	Planning Area	RERA applies to only those real estate projects which are located within the planning area notified by the appropriate government or a competent authority to be a planning area.	There exists no separate concept of a planning area. WB-HIRA applies to all projects in the State of West Bengal.
4	"Force Majeure" events for the purpose of 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 specified by regulations made by the Authority.	Section 6: Force Majeure events 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 or any other circumstances as may be prescribed.

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S.No.	Particulars	RERA	WB-HIRA
		Under, Section 6, they are limited to 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.	It gives the wider discretion to regulatory authority/State to give extension to real estate project's registration and it may adversely affect the interest of homebuyers.
5	Power of the Regulatory Authority	Section 38 (3): Where an issue has effect of monopoly situation, the authority has power to make suo-motu reference to the Competition Commission of India in certain cases.	No such power to make suo-motu reference to the Competition Commission of India. It may also affect the interest of homebuyers.
6	Establishment of Central Advisory Council	Section 41: Provides for establishment of Central Advisory Council, chaired (ex officio) by the Union Minister of Housing. The functions of the Central Advisory Council shall be to advise and recommend the Central Government (i) on all matters concerning the implementation of this Act; (ii) on major questions of policy; (iii) towards protection of consumer interest; (iv) to foster the growth and development of the real estate sector; (v) on any other matter as may be assigned to it by the Central Government.	Section 41: WB-HIRA provides for establishment of State Advisory Council chaired (ex-officio) by State Minister of Housing. However, the purpose of having a Central Advisory Council was entirely different, which can't be substituted by establishing State Advisory Council. Any advisory of Central Government based upon the recommendation of CAC will have no effect in the state of West Bengal.

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S.No.	Particulars	RERA	WB-HIRA
		Recently, during COVID-19 global pandemic time, To address the concerns of homebuyers, who have invested their lifetime savings not deprived of delivery of their dream house/flat and to ensure the completion of projects, based upon the recommendations of Central Advisory Council (CAC) on 13th May, 2020 Ministry has issued the necessary advisory to all States/Union Territories and their Regulatory Authorities for issuance of requisite orders/ directions under the enabling provisions of RERA to invoke force majeure clause and extend the completion date 'suo motu' or revised / extended completion date for all real estate projects registered under RERA for a period of 6 months, where completion date expires on or after 25th March, 2020. However, the stakeholders (homebuyers & promoters) of West Bengal got deprived as they were not covered under the purview of RERA.	
7	Compounding of Offences	Section 70: Provides for compounding of offences under the Act.	There is no such provision.
8	Factors for adjudging quantum of compensation or interest.	Section 71(1): provides that Regulatory Authority shall appoint an adjudicating officer for purpose of adjudging compensation under sections 12, 14, 18 and section 19, who	Section 40(3): Factors stated in WB-HIRA for adjudging the quantum of compensation or interest, payable by a promotor,

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S.No.	Particulars	RERA	WB-HIRA
		is or has been a District Judge to be an adjudicating officer.	allottee or real estate agent, as the case may be, are required to be considered by the Regulatory Authority. The power to adjudging compensation has also been given to Regulatory Authority which is being chaired by administrative person not judicial person.
9	Court which may try offences	Section 80(2): No Court inferior to Metropolitan Magistrate or a First Class Judicial Magistrate shall try any offence punishable under the Act.	There is no such provision.
10	Section 84(2)	This provision contained illustration in regard to the exercise of the rule making power.	There is no such provision.
11	Power to make regulation	Section 85(2) contains illustration in regard to the nature of regulations.	There is no such provision.
12	Overriding effect	Section 89: RERA has been given overriding force and effect	There is no such provision.

15 Now, it is in this backdrop that it becomes necessary to consider the submissions made by the parties.

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G Submissions

G.1 For the petitioners

16 Mr Devashish Bharuka, learned Counsel appearing on behalf of the petitioners urged the following submissions:

(I) Nature of RERA and WB-HIRA

a. The subject of both the central and the state enactments is covered by Entries 6 and 7 of the Concurrent List to the Seventh Schedule to the Constitution;

b. RERA is a complete and exhaustive code which regulates the contractual relationship between a builder/promoter and a buyer/consumer in the real estate sector and provides remedial measures. Parliament has indicated an intent to occupy the whole field;

c. RERA regulates the rights and obligations between promoters and buyers of real estate in addition to the provisions of the Indian Contract Act, 1872. The enactment, in ensuring the actual transfer of property to the buyer furthers the objects of the Transfer of Property Act, 1882. It provides for the enforcement of contracts through remedial measures which are in addition to the remedies provided in the Consumer Protection Act, 1986 and its successor legislation of 2019. RERA, in other words, is a special statute governing the real estate sector encompassing rights and obligations found in different central enactments; and

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d. WB-HIRA covers the identical field of regulating the contractual behavior of promoters and buyers in real-estate projects. The state law is a 'copy-and paste' replica of the central legislation (except for certain provisions which are inconsistent with RERA) and covers the field which is occupied by the central enactment.

(II) WB-HIRA is repugnant to RERA

a. The subjects of both sets of legislations are contained in Entries 6 and 7 of the Concurrent List;

b. The state law does not fall either under the subject of land (Entry 18, List II[7]) or industry (Entry 24, List II). That WB-HIRA does not fall under Entry 24, List II is evident from the meaning of the expression 'industry' as explained in the following decisions:

- *Tika Ram Ji v State of UP,* (1956) SCR 393 at pg. 412, 420 [5-Judges]
- *Calcutta Gas Co. Ltd. v State of West Bengal,* (1962) Supp. 3 SCR 1 [5-Judges]
- *ITC Ltd. v Agricultural Produce Market Committee & Ors.,* (2002) 9 SCC 232 [5-Judges]
- *Accountant and Secretarial Services Pvt. Ltd. v UOI* (1988) 4 SCC 324 [2-Judges]
- *Ashoka Marketing Ltd. v Punjab National Bank*, (1990) 4 SCC 406 [5-Judges]

[7] Interchangeably referred to as 'State List'

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- *Indu Bhushan Bose v Rama Sundari Debi,* (1969) 2 SCC 289 [5-Judges]

c. The tests of repugnancy as enunciated in the judgments of this Court are three-fold: *First*, there may be a direct inconsistency or conflict between the actual terms of the competing statutes; *Second*, even if there is no direct conflict, where Parliament has intended to occupy the entire field by enacting an exhaustive or complete code, the state law in the same field would be repugnant and inoperative; and *Third*, a conflict may arise where the State Legislature has sought to exercise its powers over the same subject matter as the legislation by Parliament;

d. RERA being an exhaustive code regulating the contractual relationships between promoters and buyers in the real-estate sector, WB-HIRA entrenches on an occupied field and is hence repugnant and *void* under Article 254(2) of the Constitution;

e. WB-HIRA was not reserved for the assent of the President and is hence not protected by Article 254(2) nor would the state enactment be protected by Article 255 which applies only to a situation where a 'recommendation' or 'previous sanction' is required to be given by the Governor or the President; and

f. Without prejudice to the earlier submissions on the doctrine of occupied field, there are inconsistencies between RERA and WB-HIRA. The state legislature has made several changes which tilt the law in favour of the promoter – builder. For example:

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1. Though, the adjudication of compensation under the RERA is entrusted to an adjudicatory officer who is a judicial officer, this provision for an adjudicating officer does not find place in the state enactment.
2. Changes have been made in the definition of the expression's 'garage' and 'force majeure'.
3. Removal of the concept of planning area in the state legislation.
4. Change in the jurisdictional court which takes cognizance of offences;

(III) Complete change of stance by the State government.

a. At the time when WB-HIRA was enacted by the state legislature, it was intended to govern the field of housing industry under Entry 24 of List II in the State of West Bengal and not the field of 'contracts' and 'transfer of property' under Entries 6 and 7 of List III. This is evident from the following circumstances:

1. The Statement of Objects and Reasons of the Bill from when it was introduced in the state legislature, specifically notes that housing comes under the ambit of industry which is why the state decided to enact its own legislation;
2. The long title of the state enactment seeks to establish a housing industry regulatory authority for regulation and promotion of the housing sector;
3. The Governor of West Bengal was not informed of RERA when assent was sought;

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4. Even in the counter affidavit filed in this Court, the State government has pleaded that "as per WB-HIRA, housing comes under the meaning of 'industry'"; and
5. Once it is conceded during the course of oral submissions that the legislation does not fall under Entry 24 of List II but Entries 6 and 7 of List III, the entire edifice of the legislation being referable to the State List is negatived and the state enactment is *void* under Article 254(1).

(IV) Effect of Sections 88 and 89 of RERA:

a. It is common ground that both the central and state laws fall under the subjects of legislation contained in the Concurrent List;
b. The State of West Bengal has submitted that Sections 88 and 89 of RERA allows the States to by-pass the requirement of Presidential assent under Article 254(2) to enact a statute which is substantially identical to RERA for creating parallel regimes across the country;
c. Accepting this submission and allowing the State to provide a "duplicate regime would result in complete chaos in the real-estate sector;
d. At the time when RERA was enacted several state laws were in existence including

State Act	Date of Presidential assent
Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale,	12.12.1963

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management and Transfer) Act, 1963	
Karnataka Ownership Flat (Regulation of the promotion of Construction, Sale, Management and Transfer) Act, 1972	29.06.1973
Gujarat Ownership Flats Act, 1973	28.06.1973
Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987	15.05.1987
West Bengal (Regulation of Promotion of Construction and Transfer by Promoters) Act, 1993	09.03.1994
Punjab Apartment and Property Regulation Act, 1995	02.08.1995

The above state laws covered certain areas beyond what is covered by RERA. Hence, Section 89 read with the proviso to Article 254(2) impliedly repeals such provisions to the extent to which they overlap with the RERA. Significantly, the state legislations covering the same subject matter were enacted in Maharashtra in 2012 and in Kerala in 2015. By Section 92 of RERA, Parliament repealed the Maharashtra legislation while Kerala repealed its own law in 2017;

e. The legislative history of RERA would indicate that there was a clarion call for a uniform national law in the real-estate sector for some time;

f. Section 88 of RERA stipulates that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force while

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Section 89 gives overriding force and effect to RERA notwithstanding anything inconsistent contained in any other law for the time being in force;

g. The expression “for the time being in force” may, according to context and intent refer to either

   1. a specific period of time or
   2. to all periods of time.

   Since RERA is remedial and regulatory, it is to operate together with existing laws including the Consumer Protection Act for the purpose of providing wholesome statutory protections- both to promoters and consumers. Section 89 gives overriding effect to RERA over inconsistent existing laws;

h. Sections 88 and 89 do not prohibit the enactment of laws by Parliament or the state legislatures in future. However, in the case of a future state law covering the same field, its validity has to be tested only on the touchstone of Article 254 without reference to Sections 88 or 89. In the event of a future Parliamentary law, its effect and impact would be tested on the general principles of interpretation of statutes such as general and special laws, an earlier and later law and the rule of harmonious construction. The State cannot enact a law on the subject matter without seeking Presidential assent;

i. The expression “in addition to and not in derogation of” was intended to indicate that the remedies in RERA are addition to those provided by other

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statutes including the Consumer Protection Act and the Insolvency and Bankruptcy Code, 2016 ("**IBC**").

j. Provisions analogous to Sections 88 and 89 of the RERA are contained in several other central statutes on the subjects in the Concurrent List some of which are tabulated below:

Central Law under List III	**Addition and not in Derogation provision**	**Overriding over other Inconsistent laws**
Electricity Act, 2003 (List III, Entry 38)	Sec. 175	Sec.174
Limited Liability Act, 2008 (List III, Entry 7)	Sec. 71	--
The Commercial Courts, 2015 (List III, Entries 11-A, 13, 46)	--	Sec. 21
Insolvency and Bankruptcy Code, 2016 (List III, Entry 9)	--	Sec. 238
The Mental Healthcare Act, 2017 (List III, Entry 16)	--	Sec. 120
The Fugitive Economic Offenders Act, 2018 (List III, Entry 1)	Sec. 22	Sec. 21

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If the interpretation of the State of West Bengal is accepted, the States would have an open hand to legislate by enacting a parallel regime as in the case of WB-HIRA without obtaining Presidential assent. This would destroy the federal legislative scheme of the primacy of Parliament under Article 254.

(V) Applicability of Article 256

a. The interpretation placed by the State of West Bengal on Sections 88 and 89 is contrary to the request of the Union of India to the State to repeal WB-HIRA and to notify the rules under RERA;

b. The State was under a constitutional mandate to act under Article 256 rather than enacting its own law without Presidential assent under Article 254(2); and

c. The enactment of a parallel regime for implementing provisions analogous to RERA in the State of West Bengal will create serious inconvenience and absurdity and render the entire scheme of RERA as a uniform national regulation, unworkable. Under RERA, the State government acts as a delegate of Parliament whereas with WB-HIRA, the State has shifted its role to that of a delegator.

(VI) Upon the declaration of WB-HIRA as unconstitutional, the 1993 legislation in West Bengal may also be declared as repealed in view of the following:

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a. Section 89 of the RERA impliedly repeals all earlier state acts with Presidential assent under the proviso to Article 254(2); and

b. In the alternative, Section 86 of WB-HIRA which repeals WB 1993 Act may be severed by applying the doctrine of severability.

On the above grounds, it has been submitted that WB-HIRA is *void* for want of legislative competence.

G.2 For the Union of India

17 Ms Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the Union of India urged the following submissions:

(I) Background and Statement of objects of RERA

a. The legislative background before the enactment of the RERA in 2016 indicates that a comprehensive exercise was carried out by the Select Committee of the Rajya Sabha which heard the views of stakeholders from across the country;

b. Parliament has enacted RERA, as the Statement of Objects and Reasons indicates, having due regard to

1. The necessity of a central legislation to provide effective protection to real estate buyers and protect them from exploitation;

2. The need to ensure uniformity and standardization of business practices;

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3. The key purpose of RERA is to ensure uniformity, transparency, efficiency, symmetry, standardization and efficacious dispute resolution;

c. While enacting the RERA, Parliament by its definition of "appropriate government" in Section 2(g) entrusted wide powers to the State governments including the power to frame rules and regulations.

d. Some of the salient features of RERA include

1. Registration of real estate projects;
2. Registration of real estate agents;
3. Mandatory disclosers of project details on the web-site of the authority;
4. Fast track dispute settlement mechanism;
5. Establishment of a Central Advisory Council to recommend policy measures for protecting consumer interest and ensure faster growth and development of the real estate sector; and
6. Establishment of a real estate regulatory authority and appellate tribunal for oversight of real estate transactions and to settle disputes by imposing interest and compensation.

(II) Constitutional validity

a. The validity of RERA has been upheld by the Bombay High Court[8] (except for Section 46(1)(b));

[8] **WP 2737 of 2017**, decided on 6 December 2017

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b. As many as 29 States and Union Territories have notified rules under RERA as of the date of the filing of the counter affidavit;

c. As on date, 34 States and Union Territories have notified the rules (with the sole exceptions of Nagaland where the process is going on and West Bengal which has enacted its separate legislation). The provisions of WB-HIRA bear an uncanny resemblance to RERA and large portions of the State legislation have been copied verbatim from the central legislation;

d. The Statement of Objects and Reasons of WB-HIRA also indicates that the purpose was to regulate and promote the housing sector in an efficient and transparent manner in the interests of consumers. The objects of the state legislation are synonymous with RERA and the State statute deals with the same subject matter in an identical manner. The State of West Bengal in effect has set up a parallel mechanism and parallel regime which is similar to the RERA on a majority of counts; and

e. Though in the counter affidavit, the State of West Bengal sought to justify the state law primarily under Entry 24 of List II of the Seventh Schedule, this stand has been specifically given up at the time of the oral submissions.

(III) Article 254 of the Constitution and repugnancy

Repugnancy of a statute enacted by the state legislature with a central statute on a subject in the concurrent list may arise in any one or more of the following modes: *First*, there may be an inconsistency or conflict in the actual terms of competing

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statutes; *second*, though there is no direct conflict between a State and Central statute, the latter may be intended to be an exhaustive code in which event it occupies the whole field, excluding the operation of the state law on the subject in the concurrent list; and *third*, even in the absence of an actual conflict, repugnancy may arise when both the State and Central statutes seek to exercise power over the same subject matter;

a. First test of repugnancy: direct conflict

There is a direct inconsistency between several provisions of the RERA and WB-HIRA:

1. Under the RERA open car parking areas are covered by the definition of 'common areas' in Section 2(n), indicating therefore that they cannot be sold; on the other hand in the State enactment, Section 2(i) allows the car parking area to be prescribed by rules made by the state government;
2. The definition of 'garage' in Section 2(y) of RERA does not include unenclosed or uncovered parking spaces such as open parking areas, whereas Section 2(x) of WB-HIRA defines the expression 'garage' to mean parking spaces as sanctioned by the competent authority;
3. RERA applies only to those real estate projects situated in a planning area while there is no concept of a planning area in the state legislation;

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4. Section 6 of the RERA specifically confines *force majeure* events to specific eventualities whereas the corresponding provision of state enactment is much wider leaving it to be prescribed by the rules;
5. Under Section 38(3) of RERA, the Authority has been entrusted with the power to make a reference to the Competition Commission of India in the event of a monopoly situation while there is no such provision in the state enactment;
6. While Section 41 of the RERA provides for a Central Advisory Council to advise and recommend the Central government on specific matters, the corresponding provision of WB-HIRA provides for the establishment of a State Advisory Council chaired by the State Minister of Housing;
7. Unlike Section 70 of RERA which has a provision of compounding of offences, there is no corresponding provision in WB-HIRA;
8. Section 71(1) provides for the appointment of an adjudicating officer of the rank of a district judge by the regulatory authority for adjudging compensation. Section 40 of WB-HIRA entrusts the adjudicatory function to the administrative regulatory authority without providing for a judicial officer; and
9. Section 80(2) of the RERA provides that no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate First Class shall try an offence under the RERA, while there is no such provision in WB-HIRA.

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The Central government has established a fund of Rs 25,000 crores (known as the SWAMIH) to provide for last mile funding for projects which are net-worth positive and registered under RERA, including those projects declared as NPAs or those which are the subject matter of proceedings before the NCLT under the IBC. If the state law is allowed to hold the field, buyers of real estate projects in the State of West Bengal which are not registered under the RERA will lose the benefit of the above provision.

b. Second test of repugnancy: Occupied field

1. The entire subject of WB-HIRA is the same as RERA as a result of which the state law is repugnant to the central legislation;
2. The enforcement of the RERA would be completely obstructed in the State of West Bengal if WB-HIRA is given effect to;
3. Sections 88 and 89 of RERA cannot be construed in isolation. While Section 88 permits the existence of other laws in addition to RERA, this would not apply to other legislation which would completely derail, obstruct and assault the very existence of RERA;
4. In the decision in **Pioneer Urban Land & Infrastructure Ltd** vs **Union of India**[9], the provisions of three central enactments were construed harmoniously namely RERA, the Consumer Protection Act, 1986 and the IBC. Construing these enactments harmoniously, the Court held that the IBC and Consumer Protection Act as well as RERA provide

[9] (2019) 8 SCC 416

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concurrent remedies to allottees of flats which can be exercised at their option; and

5. Even assuming that Sections 88 and 89 of RERA are construed as an intent of the Parliament to not occupy the field exhaustively, they cannot be implied to allow the operation of State laws which completely eclipse and encroach upon RERA so much so that the existence of RERA is impossible as long as WB-HIRA is given effect to by the State.

c. Third test of repugnancy: implied repeal

1. The subject matter of both the enactments is the regulation of the real estate sector;
2. WB-HIRA stands in the State of West Bengal in place of RERA. Both cannot stand together. As a matter of fact, while WB-HIRA is fully operational in the State of West Bengal, RERA is non-operational;
3. The only exception would be where the State legislation contains distinct matters which are of a cognate and allied nature. However, in the present case, WB-HIRA deals on all fours with the subject matter of RERA and not with any distinct matter which is cognate or allied; and
4. The state enactment has created an identical but parallel and mutually exclusive regime in the State of West Bengal, which cannot co-exist with the regime which is enacted under RERA.

On the above grounds, it has been submitted that the state enactment fails all the three tests of repugnancy. While the failure of the first test would only require WB-

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HIRA to yield to RERA to the extent of the repugnancy, since the State enactment in the present case completely obstructs and hinders the Parliamentary law, the repugnancy is, according to the submission, absolute and complete.

G.3 For the State of West Bengal

18 Mr Rakesh Dwivedi, learned Senior Counsel appearing on behalf of the State of West Bengal has urged the following submissions:

(I) RERA does not cover the whole field and is not exhaustive:

a. An analysis of RERA would indicate that its objective is to regulate and promote the real estate sector and to ensure the sale of plots, apartments, buildings and real estate projects in an efficient and transparent manner. The other object is to protect consumer interest and establish an adjudicating mechanism for speedy resolution of disputes, including appeals;

b. A survey of the provisions of RERA would indicate that it is based on plans sanctioned and approved by competent authorities under state enactments. The sanctioned plan provides a specific period for construction and local bodies are responsible for the sanctioning of plans under local laws. Similarly, local authorities provide for completion certificates. The diverse provisions of RERA contemplate the jurisdiction of local authorities governed by state laws in the matter of sanctioning of plans and completion of construction projects. This is supported by

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references to the planning area (Section 2(zh)) and appropriate government (Section 2(g) of RERA); and

c. The provisions of Sections 88 and 89 of RERA indicate that the central legislation is not a complete or exhaustive code on the subject matter legislated upon by Parliament.

(II) Constitutional validity

a. While enacting RERA in exercise of its legislative powers under Articles 245 and 246 of the Constitution, Parliament has enacted the legislation on the subjects assigned to it under Entries 6 and 7 of List III of the Seventh Schedule which pertain to transfer of property and contracts not relating to agricultural land. Since the enactment in the State of West Bengal follows the provisions of RERA "broadly and substantially", the state enactment would also be covered by Entries 6 and 7 of List III of the Seventh Schedule;

b. In the Counter Affidavit filed by the State of West Bengal it was contended that the State enactment falls under Entry 24 of List II, as it deals with the housing industry. This contention is not correct and is not being pressed. This is for the reason that the ambit of Entry 24 of List II has been explained in the decisions of the Constitution Bench in **Tika Ramji** vs **State of UP**[10] and **ITC Ltd** vs **Agricultural Produce Market Committee**[11]

[10] (1956) SCR 393
[11] (2002) 9 SCC 232

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to exclude those subjects which are specifically included in the other Entries of List III in the Seventh Schedule; and

c. In view of the above position, Entry 24 of List II will not cover the field which is covered by Entries 6 and 7 of List III. Hence, the present case has to be adjudicated upon by considering both RERA and WB-HIRA as being referable to subjects in Concurrent List. Consequently, the Court will have to determine as to whether Article 254 has a nullifying effect on the state enactment.

(III) Article 254 and Repugnancy

a. In view of the language of Article 254, the state law would be *void* only if it is in consistent with and repugnant to a law made by Parliament in the Concurrent List and, in such an event, only to the extent of the repugnancy;

b. Repugnancy would arise if there is a conflict between a state enactment and central enactment which cannot be reconciled or if the central enactment occupies the whole field completely and exhaustively. Applying the above tests, there is no repugnancy or inconsistency between WB-HIRA and RERA. Irrespective of Sections 88 and 89 of RERA, Article 254 is not attracted;

c. The submission of the petitioner is based on the substantial identity between WB-HIRA and RERA. This substantial identity is indicative of consonance, conformity and symmetry. Identity of subject matter does not

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constitute inconsistency or repugnancy, particularly when the central enactment is not a complete and exhaustive code; and

d. In the present case, the state law is complementary to the central law.

(IV) Sections 88 and 89 of RERA

a. Sections 88 and 89 indicate that RERA was not intended by Parliament to be a complete and exhaustive code nor is it intended to be exclusive in operation. Sections 88 and 89 allow other laws to operate and wherever there is an inconsistency with RERA, the central act would prevail.;

b. Sections 88 and 89 indicate a Parliamentary intent that RERA should co-exist with other legislations;

c. Section 88 refers to “any other law for the time being in force”. Such an expression has been construed by this Court to cover laws which were operating when RERA was enacted as well as laws made after the enforcement of RERA;

d. The expression ‘laws for the time being in force’ has been deployed in Section 2(zr) and Section 18(2) of RERA as well as in Section 89. This supports the contention of the State of West Bengal;

e. Parliament has chosen to repeal only the Maharashtra Act by way of Section 92 of RERA. Prior to WB-HIRA, in the State of West Bengal, the WB 1993 Act was operating. Parliament did not repeal this Act. The WB 1993 Act was repealed only by Section 86 of WB-HIRA to align the State Act with the RERA. The fact that Parliament repealed only the

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Maharashtra Act indicates that RERA does not evince any intention to shut out other state enactments. On the contrary the Parliamentary intent is to make RERA permissive and accommodative of state legislation;

f. The fact that other states had not enacted a law like WB-HIRA does not take away the plenary legislative powers of the State of West Bengal;

g. In exercise of the rule making power under Section 80(1) of the WB-HIRA, the State of West Bengal has framed rules on 5 June 2018. A dedicated web-site has been made operational. The regulatory authority has been established on 23 July 2018 while its Chairperson and Members were appointed on 25 June 2020 and 30 June 2020. The Appellate Tribunal has been established on 29 July 2019 and both the Authority and the Appellate Tribunal are adjudicating all complaints; and

h. One of the reasons for enacting WB-HIRA was to enable the State to have its own State Advisory Council for advising and recommending to the State government on the implementation of the law on major questions of policy, protection of consumer interest and development of the real estate sector.

(V) The few inconsistencies between WB-HIRA and RERA are of a minor nature:

a. There is no real conflict with the provisions of RERA under which an adjudicating officer decides disputes as to compensation under Section 71. Under Section 31, a complaint can be filed both before the 'Authority' and the 'Adjudicating Officer'. Under WB-HIRA, the Authority decides and there

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is an appeal provided to the Tribunal and then to the High Court. Consequently, there is no conflict;

b. While under WB-HIRA, the Chairperson of the Tribunal can be removed in consultation with the Chief Justice of the High Court, as in the case of RERA, both Acts contemplate an enquiry by a Judge of the High Court. This secures the independence of the Chairperson;

c. As regards the definition of 'garage,' 'planning area,' and '*force majeure*', there is no significant difference. RERA adopts a declaration of planning area in the law relating to Town and Country Planning of the State and hence a separate provision in the State Act is not required. Similarly, the definitions of 'garage' and *force majeure* are not variant;

d. The State Advisory Council is to act in compliance with the rules framed by the Central government. Where the rules have not been framed by the Central government or there is an issue which is not governed by the Central Act, the State can prescribe a rule or policy on the recommendation of the State Advisory Council. Sections 83 and 84 of RERA contemplate a role for the State in this regard;

e. Under RERA grants are made by the Central government whereas under WB-HIRA grants are given by the State government. This does not result in a conflict. The State cannot provide for grants by the Central government. Moreover, there is nothing to prevent the Central government from making a grant under Article 282 of the Constitution;

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f. Even if the Central Act provides certain additional features which are absent in the State Act, the State Act would be bound to treat those as being superimposed on the State law in view of Section 89 of RERA. Moreover, a Removal of Difficulties Order can be issued under Section 85 of WB-HIRA; and

g. Article 256 of the Constitution does not enable the Union Executive to give directions to the State legislature. Federalism is a basic feature of the Constitution. WB-HIRA follows the principle of cooperative federalism. The Union government has no authority to direct the State legislature to repeal its law.

These submissions will now fall for analysis.

H Analysis

H.1 Entry 24, List II – West Bengal's 'housing industry' defense

19 The interesting feature of the case with which we commence the discussion is that when it was enacted, WB-HIRA was intended to cover the field of 'housing industry' under Entry 24 of List II. The Statement of Objects and Reasons to the WB-HIRA Bill notes that:

> "2. Since the **'housing'** comes under the periphery of **'industry'**, it is contemplated that the State Government should go for its **own State Legislation**… …"

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20 The long title to the state enactment explains that WB-HIRA is "an act to establish Housing Industry Regulatory Authority ("HIRA") for regulation and promotion of housing sector…".

21 In the Counter Affidavit which has been filed on behalf of the State of West Bengal before this Court the subject of the legislation is asserted to fall within the purview of the following Entries in the **State List** of the Seventh Schedule to the Constitution:

- Entry 5- Local Government
- Entry 18- Land
- Entry 24- Industries subject to the provisions of entries 7 and 52 of List I
- Entry 35- Works, lands and buildings vested in or in the possession of the State
- Entry 64- Offences against laws with respect to any of the matters in this List
- Entry 66- Fees in respect of any of the matters in this List, but not including fees taken in any court.

Even as among the above Entries, the Counter Affidavit substantively dwells on Entry 24 of the State List. The defense in the Counter is that (i) housing as an industry falls in Entry 24 of the State List; (ii) Entry 24 is subject to the provisions of Entries 7[12] and 52[13] of List I; (iii) there is no declaration by Parliament within the

[12] "7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war."
[13] "52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

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meaning of Entries 7 or 52; (iv) WB-HIRA falls within the ambit of 'industry' in Entry 24 of the State List. That indeed is the basis of the Counter Affidavit. Paragraphs 15, 16 and 17 of the Counter are extracted below:

> "15. It is most respectfully submitted that, **as per WBHIRA "housing" comes under the meaning of "Industry"**. Therefore, the State Government ought to go for curated legislations, specific to the need of the State. Furthermore, State law can also be amended by the State itself without approaching the central government as and when the occasion arises to meet the necessity of the people of the state. That, even the **Real Estate Activities being an industry' vests in the State Legislature competence to enact a legislation on the subject matters by virtue of Entry 24 of the State List in the Seventh Schedule to the CoI since the matter falls within the purview of the State list unless brought under the Control of the Union by the relevant Legislation.**
>
> 16. That it is imperative to note that Entry 24 of State List in its widest amplitude takes in all Industries. In other words, the l**egislative power of the State under Entry 24 of State List is eroded only to the extent to which control was assumed by the Union pursuant to a declaration made by parliament under Entry 52 of Union List. In the absence thereof, under Entry 52 of Union List, the State Legislature will have power to legislate under Entry 24 of State List.** That under Entry 52 of the Union List, it is required that an express declaration be made by the Parliament, an abstract declaration is not contemplated. In the event the Parliament passes a law containing a declaration specifying the industry and indicating the nature and extent of the Union control over the concerned industry, then to that limited extent the State's legislative power is curtailed. **It is reiterated that even in the case of a declaration under Entry 52 by the Central Government, "industry" as a whole is not taken out of Entry 24 of the State List.**
>
> 17. That, in furtherance of the above, it is further submitted that a perusal of RERA exhibits that there is no declaration even in the abstract that the Union intends to assume control over the real estate sector."
>
> **(emphasis supplied)**

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22 As a matter of fact, it has also been urged that Entries 6 and 7 of the Concurrent List would not cover the subject of the housing industry since the field covered by these Entries "merely enables the manner and mode in which property is to be transferred and contracts are to be executed". This submission is sought to be buttressed by stating that WB-HIRA is merely an extension of RERA with a wider purview of the housing industry as opposed to RERA which deals with a limited extent only with real estate. In other words, since the legislation falls under Entry 24 of the State List, there was – in the submission - no necessity of reserving the law for the assent of the President.

23 Faced with the judgments of this Court defining the ambit of the expression "industry" in the Union and the State Lists, the basis of asserting the legislative competence of the State legislature ('industry' in Entry 24 of List II) over the subject of the State enactment as set out in the Counter Affidavit has been specifically given up in the course of the oral submissions in this Court. As a matter of fact, the written submissions which have been placed on the record during the course of the hearing specifically state that the claim of WB-HIRA being referable to Entry 24 of the State List "as it deals with housing industry" is "not accurate and is not being pressed". The reason which has been adduced is that the ambit of Entry 24 of List II has been explained to exclude from within its fold subject matters which are specifically included in the other Entries of the three Lists of the Seventh Schedule.

24 Before proceeding with the discussion any further, it would be necessary for this Court to dwell on the concession which has been made on behalf of the State of

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West Bengal. The concession is based on a correct assessment of the ambit of the expression 'industry' in the three lists. In **Tika Ramji** vs **State of UP**[14] ("**Tika Ramji**"), there was a challenge to the validity of the UP Sugarcane (Regulation of Supply and Purchase) Act 1953 under which the UP Sugarcane Supply and Purchase Order 1954 was made. The *vires* of the Act was challenged on the ground that the Act was respect to the subject of industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, within the meaning of Entry 52 of List I. Parliament enacted the Industries (Development and Regulation) Act 1951 declaring that it was expedient in the public interest that the Union should take in its control the industries specified in the First Schedule which included the industry engaged in the manufacture or production of sugar. In **Tika Ramji** (supra), the argument was that the expression 'industries' should be construed as not only including the process of manufacture or production but also activities antecedent, such as acquisition of raw-material and subsequent, such as the disposal of finished products. A Constitution Bench of this Court held that the expression 'industry' in its wide sense would be capable of comprising three different aspects: first, raw materials which are an integral part of the industrial process; second, the process of manufacture and production; and third, distribution of the products of the industries. The Court held that the process of manufacture or production would be comprised in Entry 24 of List II except where the industry is a controlled industry when it would fall under Entry 52 of List I. The Constitution Bench rejected the contention that the expression "industries" in Entry 52 of List I was wide

[14] 1956 SCR 393

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enough to encompass the power to legislate in respect of raw material said to be an integral part of the industrial process or the distribution of the products of the industry.

25 The decision in **Tika Ramji** (supra) was followed by a Constitution Bench in **Calcutta Gas Co. (Proprietary)** vs **State of West Bengal**[15] which held that the expression 'industry' in all the three Lists must be given the same meaning and since ordinarily, industry is in the field of State legislation, the word must be construed in such a manner that no entry in List II is deprived of its entire content. A Constitution Bench of this Court in **ITC Ltd.** vs **Agricultural Produce Market Committee**[16] reiterated the principles which have been enunciated in **Tika Ramji** (supra)**.** Justice YK Sabharwal, (as the learned Chief Justice then was), speaking for himself and Justice Brijesh Kumar, reiterated the principles which were adopted by the Constitution Bench in **Tika Ramji** (supra). After considering the precedents of this Court, the judgment reiterated the principles enunciated in **Tika Ramji's** (supra) case. In a concurring judgment, Justice Ruma Pal noted:

> "126. To sum up: **the word "industry" for the purposes of Entry 52 of List I has been firmly confined by Tika Ramji [1985 Supp SCC 476: 1985 Supp (1) SCR 145] to the process of manufacture or production only**. Subsequent decisions including those of other Constitution Benches have reaffirmed that Tika Ramji case [AIR 1956 SC 676 : 1956 SCR 393] authoritatively defined the word "industry" — to mean the process of manufacture or production and that it does not include the raw materials used in the industry or the distribution of the products of the industry. Given the constitutional framework, and the weight

[15] AIR 1962 SC 1044
[16] (2002) 9 SCC 232

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> of judicial authority it is not possible to accept an argument canvassing a wider meaning of the word "industry". Whatever the word may mean in any other context, it must be understood in the constitutional context as meaning "manufacture or production"."
>
> (**emphasis supplied**)

26 In view of the settled exposition of the ambit of Entry 24 of List II to the Seventh Schedule, there can be no manner of doubt that the subject of WB-HIRA is not 'industries' within the meaning of Entry 24. Both the central legislation – RERA and the State legislation – WB-HIRA have substantially similar provisions. These provisions seek to regulate the contractual relationship between builders/promoters and their buyers in the real estate sector. They recognize rights and obligations *inter se* promoters, buyers and real estate agents. Both the State law and the Central law provide for remedial measures to enforce compliance with contractual rights and corresponding obligations. Hence, quite correctly, the arguments before this Court have been addressed on the basis that the subject of both the central and the state legislations – RERA and WB-HIRA falls under Entries 6 and 7 of the Concurrent List to the Seventh Schedule. Entries 6 and 7 are extracted below:

> "6. Transfer of property other than agricultural land; registration of deeds and documents.
>
> 7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land."

Now it is true that the edifice of the defense which was set up before this Court in the Counter Affidavit is premised on the State enactment being a law on the subject

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of 'industries' falling within the ambit of Entry 24 of the State List. The genesis of this defense traces its origin to the Statement of Objects and Reasons accompanying the Bill when it was introduced in the State legislature in West Bengal. Indeed, the long title also indicates that the State legislation sought to establish a ***Housing Industry*** Regulatory Authority ("**HIRA**"). But these references in the Statement of Objects and Reasons; the long title and the Counter Affidavit do not preclude the State of West Bengal from asserting, in the course of the submissions, that the State legislation in pith and substance is not one which is on the subject of industries within the meaning of Entry 24 of List II and that it falls within the ambit of Entries 6 and 7 of List III. Indeed, as we have noticed in the earlier part of this judgment, there is a substantial overlap between the provisions of RERA and WB-HIRA. Even the inconsistencies which have been noticed earlier are on the same subject matter. The provisions of RERA essentially seek to regulate the contractual relationship between builders/promoters and purchasers in the real estate sector. RERA, truly speaking, falls within the ambit of Entries 6 and 7 of the Concurrent List. The substantial overlap between the state and the central legislation is evident on a comparative analysis of the two legislations which has been alluded to in the earlier part of this judgment. The State of West Bengal is not precluded from seeking to sustain its legislation on the basis that in pith and in substance it falls within the ambit of Entries 6 and 7 of the Concurrent List. The analysis of the constitutional challenge in the present case must therefore proceed on the basis that both the central legislation – RERA, and the state legislation – WB-HIRA, fall within the subjects embodied in Entries 6 and 7 of List III of the Seventh Schedule. That

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indeed is the foundation on which submissions have been urged and the further analysis is based. In a matter involving the constitutional validity of its law the State of West Bengal has not been precluded by this court from urging the full line of its defense.

H.2 The Constitutional Scheme of Article 254 and repugnancy

27 The distribution of legislative powers in Part XI of the Constitution envisages that Parliamentary legislation extends to the entire territory of India or its part while state legislation extends law to the whole or any part of a state. Under Article 246[17], the legislative power to make laws "with respect to" any of the matters enumerated in List I of the Seventh Schedule – the Union List – is entrusted to Parliament. Clause (1) of Article 246 which embodies this principle is prefaced with a non-obstante provision which gives it precedence over clauses (2) and (3). Article 246 (2) enunciates the principles governing the exercise of legislative power "to make laws with respect to any of the matters enumerated in List III of the Seventh

[17] "246. Subject matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule (in this Constitution referred to as the State List)

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List."

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Schedule, the Concurrent List. Clause (2) begins with a non-obstante provision which gives it precedence over Clause (3). Clause (2) embodies the principle that Parliament and (subject to clause (1)) the legislature of any State have the power to make laws with respect to any of the matters in List III. Clause 3 stipulates that the legislature of any State has the exclusive power to make laws for the State or any part of it "with respect to any of the matters enumerated in List II", the State List. Some of the salient features of Article 246 need to be noticed.

(i) An exclusive power has been entrusted to Parliament to legislate on matters enumerated in List I;

(ii) The plenary power entrusted to Parliament to legislate with respect to a matter enumerated in List I is reaffirmed by the non-obstante provision which operates notwithstanding anything in Clauses (2) and (3);

(iii) On matters which have been enumerated in List III:

   a. Parliament has the power to make laws notwithstanding clause (3); and

   b. The State legislature also has the power to make laws subject to clause (1).

(iv) The State legislatures have the exclusive powers to make laws for the State or any part of it with respect to matters in List II, this power being subject to clauses (1) and (2);

(v) Clauses (1) and (2) of Article 246 employ non-obstante provisions in respect of

   a. The exclusive power entrusted to Parliament over List I matters;

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b. The power entrusted to Parliament over List III matters;

(vi) Though, the legislature of a State has exclusive power to make laws with respect to matters on the State List, this is subject to clauses (1) and (2).

28 Parliament, under Article 248, has been entrusted with the residuary powers of legislation (subject to Article 246A) to make any law with respect to any matter which is not enumerated in the Concurrent or State Lists. The 101st Amendment to the Constitution, which came into force from 16 September 2016, inserted Article 246A[18] to make a special provision with respect to the goods and services tax. Article 246A begins with a non-obstante provision, giving it overriding force over Articles 246 and 254. Under clause (1), Parliament and, subject to clause (2), the legislature of a State has the power to make laws with respect to goods and services tax imposed by the Union or by the State. Under clause (2), Parliament has been entrusted with the exclusive power to make laws with respect to goods and services tax where the supply of goods, services or both takes place in the course of inter-state trade and commerce.

[18] "(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation. - The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council."

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29 Article 254[19] contains provisions for inconsistencies between laws made by Parliament and by the legislatures of the States. Clause (1) of Article 254 stipulates that where a State law "is repugnant" to a Parliamentary law which Parliament is competent to enact or to a provision of an existing law "with respect to one of the matters enumerated in the Concurrent List", then the law made by Parliament is to prevail and the law made by the legislature of a State shall "to the extent of the repugnancy" be *void*. The provisions of clause (1) are subject to clause (2). Clause (1) also provides that in the event of a repugnancy between a law enacted by the State legislature with a provision of a law made by Parliament which it is competent to enact or to a provision of an existing law with respect to a matter enumerated in the Concurrent List, the law enacted by Parliament is to prevail whether it was enacted before or after the State law or, as the case may be, the existing law. Clause (1) of Article 254 is however made subject to clause (2) which envisages that if a State law on a matter enumerated in the Concurrent List contains a provision which is repugnant to an earlier law of Parliament or an existing law with respect to

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[19] 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State

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the subject matter, the law made by the legislature of the State will prevail in the State if it is has been reserved for the consideration of the President and has received such assent. Despite the grant of Presidential assent, the Parliament is not precluded from enacting any law with respect to the same matter in future including a law adding to, amending, varying or repealing the law made by the legislature of the State.

30 Some of the salient features of Article 254 may be noticed at this stage:

(i) **Firstly**, Article 254(1) embodies the concept of repugnancy on subjects within the Concurrent List on which both the State legislatures and Parliament are entrusted with the power to enact laws;

(ii) **Secondly,** a law made by the legislature of a State which is repugnant to Parliamentary legislation on a matter enumerated in the Concurrent List has to yield to a Parliamentary law whether enacted before or after the law made by the State legislature;

(iii) **Thirdly**, in the event of a repugnancy, the Parliamentary legislation shall prevail and the State law shall "*to the extent of the repugnancy"* be *void*;

(iv) **Fourthly**, the consequence of a repugnancy between the State legislation with a law enacted by Parliament within the ambit of List III can be cured if the State legislation receives the assent of the President; and

(v) **Fifthly**, the grant of Presidential assent under clause (2) of Article 254 will not preclude Parliament from enacting a law on the subject matter, as stipulated in the proviso to clause (2).

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31 A long line of precedent of this Court has developed on the content of the concept of repugnancy as envisaged in Article 254. It becomes necessary to visit some of those precedents in order to prepare a jurisprudential foundation for addressing the central challenge in the present case. In **Zaverbhai Amaldas** vs **State of Bombay**[20] ("**Zaverbhai**"), the contention of the State was that as a result of the Essential Supplies (Temporary Powers) Act (Act 24 of 1946) which was followed by amendments in 1948-1949 and 1950, Section 2 of Bombay Act 36 of 1947 had become inoperative. The amendments of 1948 and 1949 were made when Section 107(2) of the Government of India Act was in force. At the time when the Amending Act of 1950 was enacted, the Constitution had come into operation. Justice TL Venkatarama Aiyar speaking for the Constitution Bench, held that there was no express repeal of the Bombay Act by Central Act 52 of 1950 in terms of the proviso to Article 254(2). Hence, the question to be decided was whether the amendments made to the Essential Supplies (Temporary Powers) Act by the Central legislature in 1948, 1949 and 1950 were "further legislation" under Section 107(2) of the Government of India Act, 1947 or a "law with respect to the same matter" falling within Article 254(2). In this context, the Court held:

> "8…The important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter". **If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application. The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the**

[20] (1955) 1 SCR 799

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> **Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."**
>
> (**emphasis supplied**)

Dealing with the issue, the Court held that a State legislation whose subject matter is identical to a law enacted by the Parliament would be repugnant under Article 254(1):

> "11. It is true, as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that **if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law.** We must accordingly hold that Section 2 of Bombay Act 36 of 1947 cannot prevail as against Section 7 of the Essential Supplies (Temporary Powers) Act 24 of 1946 as amended by Act 52 of 1950."
>
> (**emphasis supplied**)

32 The judgement of the Constitution Bench in **Tika Ramji** (supra) explained the concept of repugnancy arising by reason of both Parliament and the State legislature having operated in the same field in respect of a matter enumerated in the Concurrent List. Justice NH Bhagwati adopted the three tests of repugnancy on inconsistency spelt out by Nicholas' text on the Australian Constitution and observed:

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> "27. Nicholas in his *Australian Constitution*, 2nd Ed., p. 303, refers to three tests of inconsistency or repugnancy:—
>
> (1) There may be inconsistency in the actual terms of the competing statutes (*R.* v. *Brisbane Licensing Court*, [1920] 28 CLR 23).
>
> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code (*Clyde Engineering Co. Ltd.* v. *Cowburn*, [1926] 37 CLR 466).
>
> (3) **Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter** (*Victoria* v. *Commonwealth*, [1937] 58 CLR 618; *Wenn* v. *Attorney-General (Vict.)*, [1948] 77 CLR 84)."
>
> (**emphasis supplied**)

Section 109 of the Australia Constitution Act of 1900[21] envisages a style of federalism and repugnance in similar terms to the Indian Constitution. Therefore, Australian jurisprudence would also be instructive in interpreting repugnance between provisions of the State law against Parliamentary enactments. The Constitution Bench in **Zaverbhai** (supra) thereafter moved on to cite other judgments of the High Court of Australia, observing:

> "28. Isaacs, J. in *Clyde Engineering Company, Limited* v. *Cowburn* [(1926) 37 CLR 466, 489] laid down one test of inconsistency as conclusive: "If, however, a competent legislature expressly or implicitly evinces its intention to cover the whole field, that is a conclusive test of inconsistency where another Legislature assumes to enter to any extent upon the same field".
>
> Dixon, J. elaborated this theme in Ex parte *McLean* [(1930) 43 CLR 472, 483]:

[21] "109. Inconsistency of laws.—When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

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"**When the Parliament of the Commonwealth and the Parliament of a State each legislate upon the same subject and prescribe what the rule of conduct shall be, they make laws which are inconsistent, notwithstanding that the rule of conduct is identical which each prescribes, and Section 109 applies.** That this is so is settled, at least when the sanctions they impose are diverse. But the reason is that, by prescribing the rule to be observed, the Federal statute shows an intention to cover the subject-matter and provide what the law upon it shall be. If it appeared that the Federal law was intended to be supplementary to or cumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter".

To the same effect are the observations of Evatt, J. in *Stock Motor Plough Ltd.* v. *Forsyth* [(1932) 48 CLR 128, 147]:

"It is now established, therefore, that State and Federal laws may be inconsistent, although obedience to both laws is possible. **There may even be inconsistency although each law imposes the very same duty of obedience. These conclusions have, in the main, been reached, by ascribing "inconsistency" to a State law, not because the Federal law directly invalidates or conflicts with it, but because the Federal law is said to "cover the field".** This is a very ambiguous phrase, because subject-matters of legislation bear little resemblance to geographical areas. It is no more than a cliche for expressing the fact that, by reason of the subject-matter dealt with, and the method of dealing with it, and the nature and multiplicity of the regulations prescribed, the Federal authority has adopted a plan or scheme which will be hindered and obstructed if any additional regulations whatever are prescribed upon the subject by any other authority; if, in other words, the subject is either touched or trenched upon by State authority" (**emphasis supplied**)

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33 The decision has also adverted to a judgment of Justice BN Rau, speaking for the Calcutta High Court in **O P Stewart** vs **B K Roy**[22], where it was observed:

> "29…
>
> at p.632 "It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say, "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified"."

Significantly, after comparing the gamut of impugned provisions before it, in holding that no provision of the impugned Act and the Rules made by the UP legislature and its delegate stood invalidated by any provision contained in Act 65 of 1951 as amended in 1953 or 1955 and the Sugarcane Control Order 1955 issued under it, the Constitution Bench held:

> "31. In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject-matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly

[22] AIR 1939 Cal 628

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> or impliedly evinced an intention to cover the whole field. It would be necessary, therefore, to compare the provisions of Act 65 of 1951 as amended by Act 26 of 1953, Act 10 of 1955 and the Sugar Control Order, 1955 issued thereunder with those of the impugned Act and U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 passed thereunder.
>
> 34…**Suffice it to say that none of these provisions do overlap, the Centre being silent with regard to some of the provisions which have been enacted by the State and the State being silent with regard to some of the provisions which have been enacted by the Centre.** There is no repugnancy whatever between these provisions and the impugned Act and the Rules framed thereunder as also the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 do not trench upon the field covered by Act 10 of 1955. There being no repugnancy at all, therefore, no question arises of the operation of Article 254(2) of the Constitution and no provision of the impugned Act and the Rules made thereunder is invalidated by any provision contained in Act 65 of 1951 as amended by Act 26 of 1953 or Act 10 of 1955 and the Sugarcane Control Order, 1955 issued thereunder."(**emphasis supplied**)

34 To complete this trinity of cases we may next advert to the decision in **Deep Chand** vs **State of UP**[23]. The Constitution Bench dealt *inter alia* with the issue as to whether the provisions of the Uttar Pradesh Transport Service (Development) Act, 1955 where repugnant to the provisions of a subsequent Parliamentary enactment– the Motor Vehicles (Amendment) Act 1956. As in the case of **Tika Ramji** (supra), the Court cited the three pronged test of repugnancy formulated by Nicholas in his text on the Australian Constitution. The Constitution Bench recorded that the decision in **Tika Ramji** (supra) had accepted the three rules with the decision in **Zaverbhai** (supra) having laid down a similar test. Reformulating the principle, Justice K Subba Rao in his separate opinion observed:

[23] (1959) Supp (2) SCR 8

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> "28…
> Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:
> (*1*) Whether there is direct conflict between the two provisions;
> (*2*) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and
> (3) **Whether the law made by Parliament and the law made by the State Legislature occupy the same field…**"
> (**emphasis supplied**)

The judgment noted that a comparison of the provisions of the UP Act and the Amending Act indicated that both the legislations were intended to operate "*in respect of the same subject matter in the same field*". Justice K Subba Rao noted that the unamended Motor Vehicles Act 1939 did not make any provision for the nationalization of transport services but the States introduced amendments to implement the scheme of nationalization of road transport. With a view to introduce a Union law throughout the country, Parliament enacted the Amendment Act by inserting Chapter IVA in the Motor Vehicles Act, 1939. This object, the Court ruled, would be frustrated if the argument that both the UP Act and the Amending Act should co-exist in respect of schemes to be framed after the Amendment Act, were accepted. Additionally, the learned judge also observed that the provisions of the scheme, the principles of compensation and the manner of its payment differed in the two Acts.

35 In **State of Orissa** vs **M/s M A Tulloch**[24], the legislation in issue was the Orissa Mining Areas Development Fund Act, 1952 under which certain areas were constituted as mining areas and the State government was empowered to levy a fee

[24] (1964) 4 SCR 461

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at a percentage of the value of the mined ore at the pit's mouth. Entry 23 of the State List covers "regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union". Entry 54 of the Union List deals with "regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". The Parliament subsequently enacted the Mines and Minerals (Development and Regulation) Act, 1957 which contains the declaration envisaged by the latter part of Entry 54 of the Union List. The High Court had held that on the coming into force of the Central Act, the Orissa Act ceased to be operative by reason of the withdrawal of legislative competence since the entry in the State List is subject to a Parliamentary declaration and a law enacted by Parliament. Justice N Rajagopala Ayyangar, speaking for the Constitution Bench, dealt with the issue of repugnancy in the following observations:

> "14…Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. **The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance.** Where such is the position, the inconsistency is demonstrated not by a

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> detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation."
>
> (**emphasis supplied**)

The Court held that the intent of the subsequent Parliamentary enactment was to cover the entire field and there was an implied repeal of the Orissa Act.

36 In 1979, a Constitution Bench in **M Karunanidhi** vs **Union of India**[25] ("**M Karunanidhi**") revisited the issue of repugnancy in the context of the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973. Though the State legislation was subsequently repealed, it was urged that during the time that it was in force, it was repugnant to the provisions of the India Penal Code, the Prevention of Corruption Act and the Criminal Law (Amendment) Act, 1952. The State Act had the assent of the President. Hence by virtue of Article 254(2), it was urged that the aforementioned Central Acts stood repealed and could not revive even after the State Act was repealed. Justice S Murtaza Fazal Ali formulated the principles governing repugnancy in the following observations:

> "8…
>
> 1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
>
> 2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.
>
> 3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the

[25] (1979) 3 SCC 431

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> constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.
>
> 4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

The Constitution Bench held that although the ingredients of criminal misconduct as defined in Section 5(1)(d) of the Prevention of Corruption Act were substantially the same in the State Act as in the Central Acts, the prescribed punishment varied. The Court held that the State Act did not contain a provision repugnant to the Central Acts but it was "a sort of complementary Act which runs pari passu the Central Acts". The Court held:

> "37. Last but not the least there is a very important circumstance which completely and conclusively clinches the issue and takes the force out of the argument of Mr Venugopal on the question of repugnancy. It would be seen that in the original State Act, Section 29 ran thus:
>
> "*Act to override other laws, etc.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court or other authority."
>
> This section underwent an amendment which was brought about by Tamil Nadu Act 16 of 1974 which substituted a new

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Section 29 for the old one. The new section which was substituted may be extracted thus:

"*Saving*—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public man from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him."

This amendment received the assent of the President on April 10, 1974 and was published in the Tamil Nadu Government Gazette Extraordinary dated April 16, 1974. We have already shown that although the State Act was passed as far back as December 30, 1973 it received the assent of the President on April 10, 1974, that is to say, on the same [Ed. : But see paras 4 and 7 of this judgment and 1974 MLJ (Stat.) Mad. Acts p. 2 wherein it is stated that Act II of 1974 was assented to by the President on Dec. 30, 1973 and published in T. N. Govt. Gaz. Extra., Pt. IV, S. 2 at p. 5, dated Jan. 2, 1974] date as Act 16 of 1974. The Act was however brought into force on May 8, 1974 when the new Section 29 which had already replaced the old section and had become a part of the statute. Therefore, for all intents and purposes the State Act cannot be read in isolation, but has to be interpreted in conjunction with the express language contained in Section 29 of the State Act. This section has in unequivocable terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition to and not in derogation of any other law for the time being in force" which manifestly includes the Central Acts, namely, the Penal Code, 1860, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts referred to above. The second part of Section 29 also provides that nothing contained in the State Act shall exempt any public man from being proceeded with by way of investigation or otherwise under a proceeding instituted against him under the Central Acts. It is, therefore, clear that in view of this clear intention of the legislature there can be no room for any argument that the State Act was in any way repugnant to the Central Acts. We have already pointed out from the decisions of the Federal Court and this Court that one of the important tests to find out as to whether or not there is repugnancy is to ascertain the intention of the legislature regarding the fact that the dominant legislature allowed the subordinate legislature to operate in the same field pari passu the State Act."

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Since the State Act created distinct and separate offences with different ingredients and different punishments, it was held not to collide with the Central Acts. Another feature of the State Act in **M Karunanidhi** (supra) was that as originally enacted, the legislation contained a provision (Section 29) giving overriding effect to its provisions, notwithstanding anything inconsistent contained in any other law for the time being in force". Subsequently, by Tamil Nadu Act 16 of 1959, a new Section 29 was substituted. The substituted Section 29 provided that the provisions of the Act were in addition to and not in derogation of any other law for the time being in force and nothing in the Act would exempt a "public man" from any proceeding by way of an investigation or otherwise, which might apart from the Act be instituted against them. The amendment received the assent of the President on 10 April 1974 and was published in the Gazette on 16 April 1974. The State Act though enacted in December 1973 received the assent of the President subsequently. Interpreting the provisions of the substituted Section 29, the Constitution Bench held:

> "37…
>
> This section has in unequivocable terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition to and not in derogation of any other law for the time being in force" which manifestly includes the Central Acts, namely, the Penal Code, 1860, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts referred to above. The second part of Section 29 also provides that nothing contained in the State Act shall exempt any public man from being proceeded with by way of investigation or otherwise under a proceeding instituted against him under the Central Acts. It is, therefore, clear that in view of this clear intention of the legislature

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>
> (**emphasis supplied**)

37 A three judge Bench of this Court in **Hoechst Pharmaceuticals Ltd.** vs **State of Bihar**[26], considered the constitutional validity of Section 5(1) of the Bihar Finance Act, 1981 which provided for the levy of a surcharge on every dealer, whose gross turnover during a year exceeded Rs 5 lacs, in addition to the tax payable by him. The Act received the assent of the President. The challenge was on the ground that the price fixation of essential commodities in general and drugs and formulations in particular was an occupied field by various Control orders issued by the Union government under Section 3(1) of the Essential Commodities Act 1955, Justice AP Sen, speaking for the three judge Bench, rejected the arguments of the appellant that there was a repugnancy between sub-Section (3) of Section 5 which was relatable to Entry 54 of List II and the Control order issued by the Central government under Section 3(1) of the Essential Commodities Act relatable to Entry 33 of List III. The Court held that the question of repugnancy under Article 254(1) between a law made by Parliament and the law made by the State legislature arises only in case both the legislations occupy the same field with respect to one of the

[26] (1983) 4 SCC 45

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matters enumerated the Concurrent List and there is a direct conflict between the two laws. Article 254(1), it held, has no application to cases of repugnancy due to overlapping found between List II on the one hand and Lists I and III on the other. In such a case, the State law will fail not because of the repugnancy to the Union law but due to want of legislative competence. The Court rejected the argument that sub-Section (3) of Section 5 being a State law must be struck down as *ultra vires* on the ground that the fixation of the price of essential commodities was an occupied field covered by central legislation. The power of the State legislature to make a law with respect to the levy and imposition of a tax on the sale or purchase of goods (relatable to Entry 54 of List II) and to make ancillary provisions is plenary and was not subject to the power of Parliament to make a law under Entry 33 of List III. There was therefore no question of a clash between the two laws and the question of repugnancy, the Court held, "does not come into play".

38 In **State of Kerala** vs **Mar Appraem Kuri Company Ltd.**[27], a Constitution Bench dealt with the question as to whether the Kerala Chitties Act, 1975 became repugnant to the Chit Funds Act, 1982 enacted by Parliament on the date when the Parliamentary legislation received the assent of the President or subsequently, when a notification was issued under Section 1(3) bringing the Central Act into force in the State of Kerala. On comparing the Central and State statutes in the course of the judgment, Chief Justice SH Kapadia, noticed various provisions of the State Act in conflict with the Central legislation. The High Court had also noticed several

[27] (2012) 7 SCC 106

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inconsistencies. The Court held that the Act of 1982 was enacted as a Central legislation to ensure uniformity in the provisions applicable to Chit Fund institutions throughout the country. There was thus an intent to occupy the entire field falling under Entry 7 of List III. A significant aspect of the Central legislation was Section 3 which gave overriding effect to the law enacted by Parliament. Moreover, Section 90 provided for the repeal of State legislations, manifesting, in the view of the Court, an intent of Parliament to occupy the field hitherto occupied by the State legislations. The Court observed that every aspect relating to the conduct of chits as was covered by the State Act had been touched upon by the Central Act in a more comprehensive manner. The Court held that on the enactment of the Central legislation on 19 August 1982, intending to occupy the entire subject of chits under Entry 7 of List II, the State Legislature was denuded of its power to enact a law on the subject.

39 A two judge Bench of this Court in **Innoventive Industries Ltd.** vs **ICICI Bank**[28] ("**Innoventive Industries**"), dealt with the provisions of the Maharashtra Relief Undertakings (Special Provisions) Act 1958 vis-à-vis the provisions of the IBC. Speaking through Justice RF Nariman the court held that the IBC is an exhaustive code on the subject matter of insolvency in relation to corporate entities, referable to Entry 9 of List III of the Seventh Schedule which deals with "bankruptcy and insolvency". On the other hand, the subject covered by the Maharashtra legislation fell within Entry 23 of List III which deals with "social security and social

[28] (2018) 1 SCC 407

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insurance; employment and unemployment". IBC was held to prevail after adverting to the earlier line of precedent, the Court formulated the three tests of repugnancy in the following terms:

> "51.6. Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.
>
> 51.7. Though there may be no direct conflict, a State law may be inoperative because the Parliamentary law is intended to be a complete, exhaustive or exclusive code. In such a case, the State law is inconsistent and repugnant, even though obedience to both laws is possible, because so long as the State law is referable to the same subject-matter as the Parliamentary law to any extent, it must give way. One test of seeing whether the subject-matter of the Parliamentary law is encroached upon is to find out whether the Parliamentary statute has adopted a plan or scheme which will be hindered and/or obstructed by giving effect to the State law. It can then be said that the State law trenches upon the Parliamentary statute. Negatively put, where Parliamentary legislation does not purport to be exhaustive or unqualified, but itself permits or recognises other laws restricting or qualifying the general provisions made in it, there can be said to be no repugnancy.
>
> 51.8. A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject-matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be

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> repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject-matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy."

40 Our journey of tracing the precedents of this Court, commencing from **Zaverbhai** (supra) up until **Innoventive Industries** (supra) indicates a thread of thought dwelling on when, within the meaning of Article 254(1), a law made by the legislature of a State can be considered to be repugnant to a provision of a law made by Parliament with respect to one of the matters in the Concurrent List which Parliament is competent to enact. The doctrine of repugnancy under Article 254(1) operates within the fold of the Concurrent List. Clause (1) of Article 254 envisages that the law enacted by Parliament will prevail and the law made by the legislature of the State shall be void "to the extent of repugnancy". Clause (1) does not define what is meant by repugnancy. The initial words of Clause (1) indicate that the provision deals with a repugnancy between a law enacted by the State legislature with: (i) A provision of a law made by Parliament which it is competent to enact; or (ii) To any provision of an existing law; and (iii) with respect to one of the matters enumerated in the Concurrent List.

41 The initial part of Clause (1) alludes to a law enacted by a state legislature being "repugnant" to a law enacted by Parliament or to an existing law. The concluding part of clause 1 provides for a consequence, namely that the State law would be void "to the extent of the repugnancy" and the Parliamentary enactment shall prevail. The concept of repugnancy emerges from the decisions of this Court

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which have elaborated on the context of clause (1) of Article 254. Clause (2) of Article 254 has also employed the expression "repugnant" while providing that a law enacted by the legislature of a State which is repugnant to a law enacted by Parliament or an existing law on a matter within the Concurrent List shall, if it has received the assent of the President, prevail in the State. The decisions of this Court essentially contemplate three types of repugnancy:

(i) The *first* envisages a situation of an absolute or irreconcilable conflict or inconsistency between a provision contained in a State legislative enactment with a Parliamentary law with reference to a matter in the Concurrent List. Such a conflict brings both the statutes into a state of direct collision. This may arise, for instance, where the two statutes adopt norms or standards of behavior or provide consequences for breach which stand opposed in direct and immediate terms. The conflict arises because it is impossible to comply with one of the two statutes without disobeying the other;

(ii) The *second* situation involving a conflict between State and Central legislations may arise in a situation where Parliament has evinced an intent to occupy the whole field. The notion of occupying a field emerges when a Parliamentary legislation is so complete and exhaustive as a Code as to preclude the existence of any other legislation by the State. The State law in this context has to give way to a Parliamentary enactment not because of an actual conflict with the absolute terms of a Parliamentary law but because the

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nature of the legislation enacted by Parliament is such as to constitute a complete and exhaustive Code on the subject; and

(iii) The *third* test of repugnancy is where the law enacted by Parliament and by the State legislature regulate the same subject. In such a case the repugnancy does not arise because of a conflict between the fields covered by the two enactments but because the subject which is sought to be covered by the State legislation is identical to and overlaps with the Central legislation on the subject.

42 The distinction between the first test on the one hand with the second and third tests on the other lies in the fact that the first is grounded in an irreconcilable conflict between the provisions of the two statutes each of which operates in the Concurrent List. The conflict between the two statutes gives rise to a repugnancy, the consequence of which is that the State legislation will be void to the extent of the repugnancy. The expression 'to the extent of the repugnancy' postulates that those elements or portions of the state law which run into conflict with the central legislation shall be excised on the ground that they are void. The second and third tests, on the other hand, are not grounded in a conflict borne out of a comparative evaluation of the text of the two provisions. Where a law enacted by Parliament is an exhaustive Code, the second test may come into being. The intent of Parliament in enacting an exhaustive Code on a subject in the Concurrent List may well be to promote uniformity and standardization of its legislative scheme as a matter of public interest. Parliament in a given case may intend to secure the protection of vital

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interests which require a uniformity of law and a consistency of its application all over the country. A uniform national legislation is considered necessary by Parliament in many cases to prevent vulnerabilities of a segment of society being exploited by an asymmetry of information and unequal power in a societal context. The exhaustive nature of the Parliamentary code is then an indicator of the exercise of the State's power to legislate being repugnant on the same subject. The third test of repugnancy may arise where both the Parliament and the State legislation cover the same subject matter. Allowing the exercise of power over the same subject matter would trigger the application of the concept of repugnancy. This may implicate the doctrine of implied repeal in that the State legislation cannot co-exist with a legislation enacted by Parliament. But even here if the legislation by the State covers distinct subject matters, no repugnancy would exist. In deciding whether a case of repugnancy arises on the application of the second and third tests, both the text and the context of the Parliamentary legislation have to be borne in mind. The nature of the subject matter which is legislated upon, the purpose of the legislation, the rights which are sought to be protected, the legislative history and the nature and ambit of the statutory provisions are among the factors that provide guidance in the exercise of judicial review. The text of the statute would indicate whether Parliament contemplated the existence of State legislation on the subject within the ambit of the Concurrent List. Often times, a legislative draftsperson may utilize either of both of two legislative techniques. The draftsperson may provide that the Parliamentary law shall have overriding force and effect notwithstanding anything to the contrary contained in any other law for the time being in force. Such a provision is indicative

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of a Parliamentary intent to override anything inconsistent or in conflict with its provisions. The Parliamentary legislation may also stipulate that its provisions are in addition to and not in derogation of other laws. Those other laws may be specifically referred to by name, in which event this is an indication that the operation of those specifically named laws is not to be affected. Such a legislative device is often adopted by Parliament by saving the operation of other Parliamentary legislation which is specifically named. When such a provision is utilized, it is an indicator of Parliament intending to allow the specific legislation which is enlisted or enumerated to exist unaffected by a subsequent law. Alternatively, Parliament may provide that its legislation shall be in addition to and not in derogation of other laws or of remedies, without specifically elucidating specifically any other legislation. In such cases where the competent legislation has been enacted by the same legislature, techniques such as a harmonious construction can be resorted to in order to ensure that the operation of both the statutes can co-exist. Where, however, the competing statutes are not of the same legislature, it then becomes necessary to apply the concept of repugnancy, bearing in mind the intent of Parliament. The primary effort in the exercise of judicial review must be an endeavour to harmonise. Repugnancy in other words is not an option of first choice but something which can be drawn where a clear case based on the application of one of the three tests arises for determination.

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H.3 Repugnancy – RERA and WB-HIRA

43 While proceeding with the analysis on the basis of the above foundation, two aspects of the RERA must be noticed at the fore-front. Firstly, the RERA factors in the existence of municipal or local authorities constituted under State legislation whose powers and functions in regard to the development of land are regulated by legislation enacted by the State legislatures. The RERA recognizes that local bodies constituted under laws enacted by the State legislatures regulate diverse aspects of construction activity as an incident of the development of land. Secondly, in diverse provisions, the RERA has imposed the duty of complying with its regulatory provisions upon the 'appropriate government'. This expression encompasses, in respect of matters relating to the State, the State government. In the case of Union Territories, the definition of the expression 'appropriate government' in Section 2(g) is bifurcated into three categories:

(i) A Union Territory without a legislature;

(ii) The Union Territory of Puducherry; and

(iii) The Union Territory of Delhi.

44 Parliament while enacting the RERA has imposed the obligation to secure compliance with its provisions in diverse aspects upon the State governments. Each of these two facets needs to be developed and analyzed for the purpose of the discussion.

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45 The statutory dictionary which is adopted in the provisions of Section 2 contains various definitions which expressly recognize the existence of State enactments regulating construction activities. The definition of the expression 'commencement certificate' in Section 2(m) is as follows:

> "(m) "commencement certificate" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;"

The definition of the expression "commencement certificate" adverts to a building or construction permit issued by "the competent authority" to allow or permit the promoter to begin the development work on an immoveable property in accordance with the sanctioned plan. This definition incorporates the notion of a "competent authority" (which is defined in Section 2(p)), and of a sanctioned plan (which is defined in Section 2(zq)). The expression 'competent authority' is defined as follows:

> "(p) "competent authority" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;"

The above definition refers to a local authority or an authority created or established under any law for the time being in force by the appropriate government, exercising authority over land within its jurisdiction, with powers to permit the development of immoveable property.

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46 The expression ‘sanctioned plan’ is defined in Section 2(zq) in the following terms:

> “(zq) "sanctioned plan" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;”

47 The expression ‘planning area’ is defined in Section 2(zh) in the following terms:

> “(zh) "planning area" means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;”

The above definition of a planning area clearly incorporates a reference to its designation by an appropriate government or a competent authority including an area designated for ‘future plannned development’ under the law relating to town and country plaining for the time being in force, and as revised from time to time. The definition implicitly recognizes the existence of town and country planning legislation in the State governing planned development and the existence of development plans authorized and sanctioned under the terms of such legislation.

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48 In a similar manner, the definition of the expression ‘completion certificate’ in Section 2(q) recognizes that the real estate project has been developed according to the plan, layout plan and specifications duly approved by the competent authority as provided for in local laws. Section 2(q) is in the following terms:

> “(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;”

49 The expression ‘local authority’ is defined in Section 2(zc) as follows:

> “(zc) "local authority" means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;”

The above definition recognizes the existence of municipal corporations, municipalities or Panchayats and local bodies constituted under any law for the time being in force for providing municipal services or basic services in respect of the areas under its jurisdiction.

50 The definition of “occupancy certificate” in Section 2(zf) is as follows:

> “(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;”

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The above definition recognizes that occupancy certificates are issued by a competent authority permitting the occupation of the building under local laws upon being satisfied that the building has provision for civic infrastructure such as water, sanitation or electricity.

51 Among the definitions provided in Section 2, clause (zr) stipulates that:

> "(zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws"

In other words, those expressions and words which are used in the RERA but for which there is no definition in Section 2 are to have a meaning ascribed to them "in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate government".

52 The above provisions of RERA are indicative of the fact that Parliament was conscious of the position that diverse activities relating to construction projects are governed by municipal and local legislation. There is an existence in the States of various regimes of town and country planning governed by State enactments and regulations have been framed under them. Likewise, municipal and local laws govern diverse aspects of construction activity in real estate projects including the application for development, nature and extent of permissible development on land, issuance of commencement certificates allowing the promoter to begin development of an immoveable property, completion certificates certifying the completion of the

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construction project in accordance with the sanctioned plans and the grant of occupation permission to occupy the constructed areas.

53 All the definitions which we have adverted to clearly postulate the existence of State legislation which governs and regulates construction activity through municipal and local bodies. The RERA naturally has not attempted to supplant these State enactments which govern the permissible use of land for development, the applicable norms for construction activity, the nature and extent of development permissible on land falling within municipal and local areas and the process of carrying out construction from its initiation to completion. In not intruding into this area, the RERA has followed the distribution of legislative powers. Entry 5 of List II to the Seventh Schedule, as we have seen earlier, deals with local government, including the constitution and powers of municipal corporations and other local authorities for the purpose of local self-government or village administration. The control over development activities under municipal and local laws is governed by State legislation.

54 The second aspect of RERA which deserves emphasis is that its diverse provisions are regulated and enforced by the real estate regulatory authority which is constituted under Section 20 by the appropriate government. The appropriate government as noticed in Section 2(g) means the State government in respect of matters relating to the State. The appointment of the real estate regulatory authority is envisaged to be made by the appropriate government under Section 21. The power of removal is entrusted to the appropriate government under Section 26. The

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appointment of officers and employees of the authority is entrusted to the appropriate government under Section 28. Section 32 requires the authority to make recommendations to the appropriate government or the competent authority, as the case may be, to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector. The authority is entrusted with regulatory functions to ensure compliance with the substantive norms envisaged from Sections 3 to 19. Section 3 requires the promoter to first register a real estate project with the real estate regulatory authority before advertising, marketing, booking, selling or offering for sale or inviting persons to purchase a plot, apartment or building in a real estate project. The authority receives applications for registration under Section 4 and it has a statutory role under Section 5 in regard to the grant of registration, in Section 6 for the extension of registration and in Section 7 for the revocation of registration. Upon the lapsing or revocation of the registration, the authority is entrusted with certain powers under Section 8. Likewise, in the sphere of regulating real estate agents, the authority is entrusted with the power of registration under Section 9. Chapter III of the RERA specifies the functions and duties of promoters. Section 11 requires the promoter upon the grant of registration to create a web-page on the website of the authority. Sections 12 and 13 impose positive obligations on the promoter. Section 14 requires the promoter to adhere to sanctioned plans, layouts and specifications as approved by the competent authority. Section 18 provides for the return of the amount received by the promoter and payment of compensation if the promoter has failed to complete and is unable to give possession of an apartment, flat or building. The rights and duties of allottees are

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specified in Section 19. Significantly, Section 31 envisages the filling of complaints with the authority or an adjudicating officer in the event that there has been a violation or contravention of the provisions of the Act or its rules and regulations by a promoter, allottee or real estate agent. The authority has wide ranging powers under Sections 38 and 40 to impose a penalty or interest for a contravention of the obligations cast upon promoters, allottees and real estate agents.

55 Besides the above provisions, the RERA has provided for the establishment of a Real Estate Appellate Tribunal by the appropriate government in Chapter VII. Consistent with the provisions of Sections 43 to 57, the real estate regulatory authority has a vital role to play in regard to the imposition of penalties under Chapter VIII prescribes penalties for contravention of the provisions of the Act.

56 Besides the establishment of the real estate regulatory authority, the RERA has, in Section 71[29], contemplated the appointment of adjudicating officers for

[29] "**71. Power to adjudicate.**
(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 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: Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.
(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application: Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.
(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply

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adjudging compensation under Sections 12, 14, 18 and 19. These adjudicating officers are to be appointed by the authority in consultation with the appropriate government.

57 Chapter IX provides for finance, accounts, audits and reports. Under Section 73, the Central government is empowered to make grants and loans to the authority upon due appropriation by Parliament. A similar power is entrusted to the State government under Section 74. Section 75 contemplates the constitution of a fund called the Real Estate Regulatory Fund by the appropriate government. Section 77 requires the preparation of a budget and maintenance of accounts and other records as well as preparation of an annual statement of accounts by the authority in such form as is prescribed by the appropriate government in consultation with the Comptroller and Auditor General of India. The annual report of the authority is under Section 78(2) required to be placed before each House of Parliament, or as the case may be, before the State legislature or Union Territory legislature. Section 82 entrusts to the appropriate government the statutory powers to supersede the authority. Section 83 empowers the appropriate government to issue directions to the authority. Section 84 entrusts a rule making power to the appropriate government. This review of the provisions of the RERA emphasizes the second facet of the law which is that the statutory duty to ensure the implementation of the legislation is entrusted to the appropriate government which in the case of the states means the state government.

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with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case any be, as he thinks fit in accordance with the provisions of any of those sections."

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58 Now, it is in this background that it becomes necessary to analyze the provisions of Sections 88 and 89 of the RERA. Section 88 stipulates that the application of other laws is not barred: the provisions of the legislation "shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force". At the same time, Section 89 provides for overriding effect to the provisions of the RERA when it stipulates that it "shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force". The interpretation of these provisions and their interplay will have an important bearing on the outcome of the present controversy. This is because, as we noticed earlier in this judgment, the State of West Bengal had originally supported its legislative authority over the subject governed by WB-HIRA on the ground that the state enactment falls within the ambit and purview of List II of the Seventh Schedule. However, though this submission was specifically pressed in the counter affidavit, it has been expressly given up in the oral and written submissions tendered before this Court by the State of West Bengal. The submission now of the State of West Bengal accepts that in essence and in substance, WB-HIRA contains a substantial overlap with the provisions of the RERA and is a law which the State legislature enacted in exercise of its legislative authority under Article 246(2) while legislating on subjects in the Concurrent List. The State of West Bengal submitted that WB-HIRA, like the RERA is enacted with reference to the subjects incorporated in Entries 6 and 7 of List III of the Seventh Schedule. Simply put, the submission of the State of West Bengal is four-fold: *firstly*, though there is a substantial overlap between the State and the Central enactments and both of them govern the same

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subject matter and field, there is no constitutional prohibition on the State legislature enacting legislation on a subject in the Concurrent List which is virtually identical to central legislation in the same list; *secondly*, Section 88 of the RERA contains an expression that its provisions shall be in addition to, and not in derogation of any other law for the time in force; this being an indicator that Parliament contemplated that the RERA can co-exist with analogous State legislation; *thirdly*, the inconsistencies between WB-HIRA and RERA are of a minor nature and wherever the State enactment contains provisions at variance with the Central law, the former will have to yield to the latter, and *fourthly*, the provisions of Section 92 of the RERA demonstrate that where Parliament intended to repeal a specific State legislation – Maharashtra Act No II of 2014 - only that legislation was repealed.

59 While considering these submissions which have been articulated by Mr Rakesh Dwivedi, learned Senior Counsel, it becomes necessary to dwell on two lines of precedent of this Court. The first line of precedent analyses provisions analogous to Section 88 of the RERA and would shed light on what is the ambit of a provision which states that the statute is in addition to and not in derogation of any other law for the time being in force. The second line of precedent explores the meaning of the expression 'in any other law for the *time being* in force'. Does this expression in Section 88 freeze the applicability of that provision to laws which were in force when the RERA enacted or does it also apply to laws which may be enacted subsequently?

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H.3.1 Meaning of "is in addition to and not in derogation of any other law"

60 The first line of precedent will facilitate judicial evaluation of Section 88. In **M D Frozen Foods Exports Private Limited** vs **Hero Fincorp Limited**[30], a Bench of two judges of this Court analyzed three issues of which the first is of relevance to the present case. That issue was:

> "11.1. (*i*) Whether the arbitration proceedings initiated by the respondent can be carried on along with the SARFAESI proceedings simultaneously"

The appellant in that case had borrowed monies from the respondent by creating a mortgage against deposit of title deeds. The account became a non-performing asset resulting in the lender invoking the arbitration clause of the agreement with the borrower. Prior to it, a notification was issued under which the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") were applied to certain non-banking financial institutions, including the respondent. The respondent issued a notice under Section 13(2) of the SARFAESI Act. In the course of the arbitration proceedings, an interim order was passed from which proceedings were carried in appeal under Section 37 of the Arbitration and Conciliation Act 1996, resulting in the dispute travelling to this Court. Sections 35 and 37 of the SARFAESI Act are in the following terms:

> "**35. The provisions of this Act to override other laws**.— The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for

[30] (2017) 16 SCC 741

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> the time being in force or any instrument having effect by virtue of any such law.
>
> ***
>
> **37. Application of other laws not barred**.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

61 Justice Sanjay Kishan Kaul adverted to the above definition in the course of the judgment. The Court noted the earlier decision in **Transcore** vs **Union of India**[31] holding that by virtue of Section 37, the SARFAESI Act is in addition to and not in derogation of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 ("**RDDB Act**"). The "only twist" was that instead of the recovery process being under the RDDB Act, the Court was concerned with an arbitration proceeding. In this context, the Court observed:

> "30. The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debt Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. [*HDFC Bank Ltd.* v. *Satpal Singh Bakshi*, 2012 SCC OnLine Del 4815: (2013) 134 DRJ 566] That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the SARFAESI Act."

[31] (2008) 1 SCC 125

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There was, in other words, no question of an election of remedies and the provisions of the SARFAESI Act provide a remedy in addition to the provisions of the Arbitration Act. SARFAESI proceedings, the Court held, are in the nature of enforcement proceedings, while arbitration is an "adjudicatory process".

62 In **KSL and Industries Limited** vs **Arihant Threads Limited**[32] ("**KSL and Industries**"), a three judge Bench of this Court considered a reference made by a two judge Bench following a difference of opinion on the interpretation of Section 34 of the RDDB Act. In that case, the High Court had set aside the order of the Debts Recovery Appellate Tribunal, in view of the bar contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act 1985 ("(**SICA**"). Section 32 of the SICA contained a provision giving overriding force notwithstanding anything inconsistent contained in any other law except the Foreign Exchange Regulation Act 1973 and the Urban Land (Ceiling and Regulation) Act 1976, among other instruments. Section 32(1) was as follows:

> "**32.Effect of the Act on other laws**.—(1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the memorandum or articles of association of an industrial company or in any other instrument having effect by virtue of any law other than this Act."

[32] (2015) 1 SCC 166

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The RDDB Act which was a later enactment of 1993 contained Section 34 giving it overriding effect:

> "**34.Act to have overriding effect**.—(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
>
> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."

Now, sub-Section (1) of Section 34 gives overriding effect to the RDDB Act notwithstanding anything inconsistent contained in any other law for the time being in force. On the other hand, sub-Section (2) provides that the provisions of the Act and its rules would be in addition to and not in derogation of certain other named statutes. Adverting to the provisions of Section 34(2), Justice SA Bobde (as the learned Chief Justice then was) observed;

> "36 **[Ed.: Para 36 corrected vide Official Corrigendum No. F.3/Ed.B.J./61/2014 dated 25-11-2014.] .** Sub-section (2) was added to Section 34 of the RDDB Act w.e.f. 17-1-2000 by Act 1 of 2000. There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the legislature intends that such an enactment shall coexist along with the other Acts. It is clearly not the intention of the legislature, in such a case, to annul or detract from the provisions of other laws. The term "*in derogation of*" means "*in abrogation or repeal of*". *The Black's Law Dictionary* sets forth the following meaning for "derogation":

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> "*derogation*.—The partial repeal or abrogation of a law by a later Act that limits its scope or impairs its utility and force."
>
> It is clear that sub-section (1) contains a non obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. SICA is undoubtedly one such law."

The Court held that the effect of sub-Section (2) was to preserve the powers of the authorities under the SICA and save the proceedings from being overridden by the RDDB Act. The Court held that both SICA and the RDDB Act were special laws within their own sphere:

> "39. There is no doubt that both are special laws. SICA is a special law, which deals with the reconstruction of sick companies and matters incidental thereto, though it is general as regards other matters such as recovery of debts. The RDDB Act is also a special law, which deals with the recovery of money due to banks or financial institutions, through a special procedure, though it may be general as regards other matters such as the reconstruction of sick companies which it does not even specifically deal with. Thus the purpose of the two laws is different."

The Court noticed that Section 34(2) of the RDDB Act specifically provides that its provisions would be in addition to and not in derogation of the other laws mentioned in it, including SICA. The expression 'not in derogation' was then construed in the following observations:

> "49. The term "not in derogation" clearly expresses the intention of Parliament not to detract from or abrogate the provisions of SICA in any way. This, in effect must mean that Parliament intended the proceedings under SICA for reconstruction of a sick company to go on and for that purpose further intended that all the other proceedings

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> against the company and its properties should be stayed pending the process of reconstruction. While the term "proceedings" under Section 22 of SICA did not originally include the RDDB Act, which was not there in existence. Section 22 covers proceedings under the RDDB Act."

Consequently, the Court answered the reference by holding that the provisions of SICA, in particular Section 22, shall prevail over the provisions for the recovery of debts in the RDDB Act.

63 To complete this trinity of judgments between 2015 and 2019, there is a three judge Bench decision of this Court in **Pioneer Urban Land and Infrastructure Limited** vs **Union of India**[33]. This Court considered a challenge to the constitutional validity of the amendments made in 2018 to the IBC 2016, pursuant to a report of the Insolvency Law Committee. Under the amended provisions, allottees of real estate projects were deemed to be financial creditors, triggering the applicability of the Code to real estate developers. The three judge Bench considered, in the course of its decision, the provisions of the RERA. The Court adverted to the provisions of Sections 88 and 89 of the RERA on the one hand and to Section 238 of the IBC which is in the following terms:

> "**238. Provisions of this Code to override other laws**.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Justice RF Nariman speaking for the three judge Bench noted that

[33] (2019) 8 SCC 416

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(i) There is no provision analogous to Section 88 of the RERA in the IBC and the latter is meant to be a compete and exhaustive statement of the law insofar as its subject matter is concerned;

(ii) While the non-obstante clause of RERA came into force on 1 May 2015, the non-obstante clause of IBC came into force on 1 December 2016; and

(iii) The amendments to the IBC had come into force on 6 June 2018.

In this backdrop, the Court did not accept the submission that RERA being a special enactment would have precedence over the IBC which is a general enactment dealing with insolvency. In this backdrop, the Court observed:

> "25…From the introduction of the Explanation to Section 5(8)(*f*) of the Code, it is clear that Parliament was aware of RERA, and applied some of its definition provisions so that they could apply when the Code is to be interpreted. **The fact that RERA is *in addition to and not in derogation of* the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies.** Also, it is important to remember that as the authorities under RERA were to be set up within one year from 1-5-2016, remedies before those authorities would come into effect only on and from 1-5-2017 making it clear that the provisions of the Code, which came into force on 1-12-2016, would apply in addition to RERA."
>
> (**emphasis supplied**)

The Court noted the decision in **KSL & Industries** (supra) in which it was held that notwithstanding the non-obstante clause contained in the RDDB Act which was later in time than the non-obstante clause in the SICA and the principle that the later Act would prevail over the earlier, this principle was departed from only because of the

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of the presence of a provision, like Section 88 of the RERA, which was contained in the RDDB Act which made it clear that the Act was meant to be in addition and not in derogation of other statutes. Distinguishing the decision, the Court observed:

> "27. In view of Section 34(2) of the Recovery Act, this Court held that despite the fact that the non obstante clause contained in the Recovery Act is later in time than the non obstante clause contained in the Sick Act, in the event of a conflict, the Recovery Act i.e. the later Act must give way to the Sick Act i.e. the earlier Act. Several judgments were referred to in which ordinarily a later Act containing a non obstante clause must be held to have primacy over an earlier Act containing a non obstante clause, as Parliament must be deemed to be aware of the fact that the later Act is intended to override all earlier statutes including those which contained non obstante clauses. This statement of the law was departed from in *KSL & Industries* [*KSL & Industries Ltd.* v. *Arihant Threads Ltd.*, (2015) 1 SCC 166 : (2015) 1 SCC (Civ) 462] only because of the presence of a section like Section 88 of RERA contained in the Recovery Act, which makes it clear that the Act is meant to be in addition to and not in derogation of other statutes. In the present case, it is clear that both tests are satisfied, namely, that the Code as amended, is both later in point of time than RERA, and must be given precedence over RERA, given Section 88 of RERA."

Therefore, the Court held that RERA and the IBC must be held to co-exist and in the event of a clash, RERA must give way to the IBC.

H.3.2 Meaning of "law for the time being in force"

64 The second line of precedent has been relied upon by Mr Rakesh Dwivedi on behalf of the State of West Bengal, as an aid to the construction of the expression "law for the time being in force". In the decision of the Constitution Bench in

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Sasanka Sekhar Maity vs **Union of India**[34], Justice AP Sen construed the provisions of the second proviso to Article 31-A(1) of the Constitution and the expression "any law for the time being in force". The argument was that this expression must mean the West Bengal Estate Acquisition Act, 1953 only. Rejecting the submission, the Constitution Bench held:

> "27. Such a construction, if we may say so, would create a serious impediment to any kind of agrarian reform. The ceiling on agricultural holdings, once fixed cannot be static, unalterable for all times. **The expression "any law for the time being in force" obviously refers to the law imposing a ceiling. Here it is the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) and now the West Bengal Land Reforms (Amendment) Act, 1971 (W.B. Act 12 of 1972) which introduced Chapter II-B imposing a new ceiling on agricultural holdings of *raiyats*. That is the law for the time being in force, and no land is being acquired by the State under Section 14-L within the ceiling limits prescribed therein.**
>
> 28. It will be noticed that the second proviso to Article 31-A(1) refers to the "ceiling limit applicable to him", which evidently refers to the law in question and not earlier law, that is Section 6(1) of the West Bengal Estates Acquisition Act, 1953. It will be noticed that both Section 4(3) and Section 6(2) of the West Bengal Land Reforms Act, 1955 stood deleted by the West Bengal Land Reforms (Amendment) Act, 1971 (President's Act 3 of 1971) and thereafter by the West Bengal Land Reforms (Amendment) Act, 1972 with retrospective effect from February 12, 1971."
>
> **(emphasis supplied)**

65 In **Thyssen Stahlunion GMBH** vs **Steel Authority of India**[35], a two judge Bench of this Court considered the expression "for the time being in force" in the context of an arbitration agreement and agreed with the view of the High Courts of

[34] (1980) 4 SCC 716
[35] (1999) 9 SCC 334

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Bombay and Madhya Pradesh, which had held that the expression not only refers to the law in force at the time when the arbitration was entered into but also to any law that may be in force in the conduct of the arbitration proceeding. Speaking for the bench, Justice DP Wadhwa held:

> "35. Parties can agree to the applicability of the new Act even before the new Act comes into force and when the old Act is still holding the field. There is nothing in the language of Section 85(2)(a) which bars the parties from so agreeing. There is, however, a bar that they cannot agree to the applicability of the old Act after the new Act has come into force when arbitral proceedings under the old Act have not commenced though the arbitral agreement was under the old Act. **Arbitration clause in the contract in the case of Rani Constructions (Civil Appeal No. 61 of 1999) uses the expression "for the time being in force" meaning thereby that provision of that Act would apply to the arbitration proceedings which will be in force at the relevant time when arbitration proceedings are held. We have been referred to two decisions — one of the Bombay High Court and the other of the Madhya Pradesh High Court on the interpretation of the expression "for the time being in force" and we agree with them that the expression aforementioned not only refers to the law in force at the time the arbitration agreement was entered into but also to any law that may be in force for the conduct of arbitration proceedings, which would also include the enforcement of the award as well.** The expression "unless otherwise agreed" as appearing in Section 85(2)(a) of the new Act would clearly apply in the case of Rani Constructions in Civil Appeal No. 61 of 1999. Parties were clear in their minds that it would be the old Act or any statutory modification or re-enactment of that Act which would govern the arbitration. We accept the submission of the appellant Rani Constructions that parties could anticipate that the new enactment may come into operation at the time the disputes arise. We have seen Section 28 of the Contract Act. It is difficult for us to comprehend that arbitration agreement could be said to be in restraint of legal proceedings. There is no substance in the submission of the respondent that parties could not have agreed to the application of the new Act till they knew the provisions thereof and that would mean that

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> any such agreement as mentioned in the arbitration clause could be entered into only after the new Act had come into force. When the agreement uses the expressions "unless otherwise agreed" and "law in force" it does give an option to the parties to agree that the new Act would apply to the pending arbitration proceedings. That agreement can be entered into even before the new Act comes into force and it cannot be said that agreement has to be entered into only after the coming into force of the new Act."
>
> **(emphasis supplied)**

66 The decision of a two judge Bench in **Municipal Corporation of Delhi** vs **Prem Chand Gupta**[36], considered Regulation 4(1) of the Services Regulations of 1959 which commenced with the expression "Unless otherwise provided in the Act or these regulations, the rules for the time being in force and applicable to government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers and other municipal employees". The Court rejected the submission that the rules for the time being in force would be those which were in existence when the Services Regulations of 1959 were promulgated and not any later rules. Justice SB Majmudar held that whenever the question of the regulation of conditions of service of municipal officers comes up for consideration, the relevant rules in force at that time have to be looked into. As such, the scope and ambit could not be frozen as of 1959. Hence, the phraseology "rules for the time being in force" would necessarily mean rules in force from time to time and not the rules in force only at a fixed point of time in 1959.

[36] (2000) 10 SCC 115

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67 Another two judge Bench of this Court in **Yakub Abdul Razak Memon** vs **State of Maharashtra**[37], while construing the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its interplay with Terrorist and Disruptive Activities (Prevention) Act, 1987, speaking through Justice P Sathasivam (as the learned Chief Justice was then), held:

> "1554. Section 1(4) of the JJ Act was added by amendment with effect from 22-8-2006. In fact, this provision gives the overriding effect to this Act over other statutes. However, it reads that the Act would override "anything contained in any other law for the time being in force". The question does arise as to whether the statutory provisions of the JJ Act would have an overriding effect over the provisions of TADA which left long back and was admittedly not in force on 22-8-2006. **Thus, the question does arise as what is the meaning of the law for the time being in force. This Court has interpreted this phrase to include the law in existence on the date of commencement of the Act having overriding effect and the law which may be enacted in future during the life of the Act having overriding effect.** (Vide Thyssen Stahlunion GmbH v. SAIL [(1999) 9 SCC 334 : AIR 1999 SC 3923] and MCD v. Prem Chand Gupta [(2000) 10 SCC 115 : 2000 SCC (L&S) 404] .)"
>
> **(emphasis supplied)**

68 In **Union Territory of Chandigarh** vs **Rajesh Kumar Basandhi**[38], Justice Brijesh Kumar considered the expression "for the time being in force" in the *law lexicon* and held that it must be interpreted keeping in mind the context in which it is used:

> "10. A perusal of the meaning of the expression "for the time being" by different authors, based on decided cases makes it

[37] (2013) 13 SCC 1
[38] (2003) 11 SCC 549

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> clear that it cannot be said that it must in every case indicate a single period of time. It may be for an indefinite period of time depending upon the context in which the phrase is used. It is also evident that generally it denotes an indefinite period of time, meaning thereby, the position as existing at the time of application of the rules, maybe, amended or unamended. Therefore, to come to a conclusion as to whether it is for one time or for indefinite period of time, the context, purpose and the intention of the use of the phrase will have to be seen and examined."

69 Similarly, in **Department of Customs** vs **Sharad Gandhi**[39], a two judge Bench of this Court considered a case where the respondent had been discharged of offences under Sections 132 and 175 of the Customs Act, 1962. The Additional Chief Metropolitan Magistrate allowed an application for discharge holding that there was a complete bar with regard to prosecution under the Customs Act, 1962, and that the Collector of Customs only had the power to confiscate the goods and impose a penalty for a breach of Section 3 of the Antiquities and Art Treasurers Act, 1972. Amongst other issues, the Bench had to interpret the meaning of Section 30 of the Antiquities and Art Treasurers Act, 1972, which reads as follows:

> "30. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Ancient Monuments Preservation Act, 1904 (7 of 1904) or the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or any other law for the time being in force."

Justice KM Joseph, speaking for the two judge Bench, observed:

> "39. **We would think that though the words "any other law for the time being in force" have been used, the context**

[39] (2020) 13 SCC 521

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for the use of the provision is not to be overlooked. We have referred to the relevant provisions of the two specific enactments which show that the said legislation also deals with antiquities as it deals with cognate subjects, namely, ancient monuments and archaeological sites. The common genus is manifest. The legislative intention was to declare that the Antiquities Act should not result in the provision contained in allied or cognate laws being overridden upon passing of the Antiquities Act. Full play was intended for the provisions contained in relation to antiquities contained in the two enactments. Despite the passage of the Antiquities Act, a prosecution for instance would be maintainable if a case is otherwise made out under the two enactments in relation to antiquity. The Antiquities Act in other words is not to be in derogation of those provisions. They were to supplement the existing laws. It is therefore in the same context that we should understand the words "any other law for the time being in force". For instance, there may be laws made by the State Legislatures which relate to antiquity. There may be any other law which deal with a subject with a common genus of which the specific law would be an integral part. It is all such laws which legislature intended to comprehend within the expression "any other law for the time being in force". Take for example, a case where there is a theft of an antiquity. Can it be said that the prosecution under Section 379 would not be maintainable. The answer will be an emphatic No. Certainly, the prosecution will lie. The Sale of Goods Act, 1930 which relates to movable items generally will be applicable, to the extent that it is not covered by any provision in the Acts in question. The Contract Act, 1872 may continue to be applicable. But it is not the question of applying general laws that engage the attention of the legislature. **The intention behind Section 30 was as noted is to provide for any other law which deal with antiquity to continue to have force and declare its enforceability even after passing of the Antiquities Act. In that view of the matter we are of the view that the words "any other law for the time being in force" must be construed as ejusdem generis.**"

(emphasis supplied)

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70 These decisions indicate that the expression "any other law for the time being in force" does not necessarily mean, such laws as were in existence when the statutory provision was enacted. To the contrary, it widely considered to means not just the laws which were in existence when the statutory provision was enacted but also such laws which may come into existence at a later stage. On the other hand, another line of judicial precedent also suggests the meaning to be ascribed to the expression must bear color from the context in which it appears, and not devoid of it.

71 For instance, in **National Insurance Company Limited** vs **Sinitha**[40], in the context of a policy of insurance, the expression "for the time being in force" was held to mean provisions then existing. The decision related to Sections 144 and 163A of the Motor Vehicles Act, 1988, in which Section 163A was subsequently inserted. In the context of adjustment of compensation, a two judge Bench of this Court held that Section 144 would not override Section 163A because of the use of the expression "laws for the time being in force" would encompass only existing provisions of the Motor Vehicles Act, 1988, and not those inserted in the Act later. Speaking for the Bench, Justice JS Khehar (as the learned Chief Justice was then) observed:

> "16. Section 144, it may be pointed out, is a part of Chapter X of the Motor Vehicles Act, 1988, which includes Section 140. Section 144 of the Act is being extracted herein:
>
> "144.Overriding effect.—The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force."

[40] (2012) 2 SCC 356

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> Even though Section 144 of the Act mandates that the provisions of Chapter X (which includes Section 140) have effect notwithstanding anything to the contrary contained in any other provision of the Act or in any other law for the time being in force, Section 144 of the Act would not override the mandate contained in Section 163-A for the simple reason that Section 144 provided for such effect over provisions "for the time being in force" i.e. the provisions then existing, but Section 163-A was not on the statute book at the time when Section 144 was incorporated therein. Therefore the provisions contained in Chapter X would not have overriding effect over Section 163-A of the Act.
>
> 17. As against the aforesaid, at the time of incorporation of Section 163-A of the Act, Sections 140 and 144 of the Act were already subsisting, as such, the provisions of Section 163-A which also provided by way of a non obstante clause, that it would have by a legal fiction overriding effect over all existing provisions under the Act as also any other law or instrument having the force of law "for the time being in force", would have overriding effect, even over the then existing provisions in Chapter X of the Act because the same was already in existence when Section 163-A was introduced into the Act."

This again indicates that it is the statutory context and scheme which will determine the nature and ambit of the expression "any other law for the time being in force".

72 In the case of the RERA, the expression "law for the time being in force" is used in Section 89 as well as in Section 2(zr) and Section 18(2). Section 2(zr), as noticed earlier, stipulates that words and expression used in the Act, but not defined in it and defined in any law for the time being in force or in municipal laws or other relevant laws of the appropriate government, shall have the meaning assigned to them in those laws. Evidently, a law for the time being in force in Section 2(zr) is not frozen in point of time as on the date of the enactment of RERA. Likewise, Section

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18(2) of the RERA imposes an obligation to the promoter to compensate allottees for the loss caused due to a defective title to the land and the provision stipulates that the claim for compensation shall not be barred by limitation provided "under any law for the time being in force". However, in Section 89, "law for the time being in force" is used in general sense of all the provisions of the Act, *vis-à-vis*, provisions of other Acts.

H.3.3 Knitting it together

73 From our analysis of the provisions of RERA on the one hand and of WB-HIRA on the other, two fundamental features emerge from a comparison of the statutes. *First*, a significant and even overwhelmingly large part of WB-HIRA overlaps with the provisions of RERA. These provisions of the RERA have been lifted bodily, word for word and enacted into the State enactment. *Second*, in doing so, WB-HIRA does not complement the RERA by enacting provisions which may be regarded as in addition to or fortifying the rights, obligations and remedies created by the Central enactment. The subject of the provisions of the State enactment is identical, the content is identical. In essence and substance, WB-HIRA has enacted a parallel mechanism and parallel regime as that which has been entailed under the RERA. The State legislature has, in other words, enacted legislation on the same subject matter as the Central enactment. Not only is the subject matter identical but in addition, the statutory provisions of WB-HIRA are on a majority of counts identical to those of the RERA. Both sets of statutes are referable to the same entries in the

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Concurrent List – Entries 6 and 7 of List III – and the initial effort of the State of West Bengal to sustain its legislation as a law regulating 'Industry" within the meaning of Entry 24 of List II has been expressly given up before this Court (as we have explained, for valid reasons bearing on the precedents of this Court).

74 In assessing whether this overlap between the statutory provisions of WB-HIRA and the RERA makes the former repugnant to the latter within the meaning of that expression in clause (1) of Article 254, it becomes necessary to apply the several tests which are a part of our constitutional jurisprudence over the last seven decades. Repugnancy can be looked at from three distinct perspectives. The first is where the provision of a State enactment is directly in conflict with a law enacted by Parliament, so that compliance with one is impossible along with obedience to the other. The second test of repugnancy is where Parliament through the legislative provisions contained in the statute has enacted an exhaustive code. The second test of repugnancy is based on an intent of Parliament to occupy the whole field covered by the subject of its legislation. In terms of the second test of repugnancy, a State enactment on the subject has to give way to the law enacted by Parliament on the ground that the regulation of the subject matter by Parliament is so complete as a code, so as to leave no space for legislation by the State. The third test of repugnancy postulates that 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. Repugnancy in the constitutional sense is implicated not because there is a conflict between the provisions enacted by the State legislature

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with those of the law enacted by Parliament but because once Parliament has enacted a law, it is not open to the State legislature to legislate on the same subject matter and, as in this case, by enacting provisions which are bodily lifted from and verbatim the same as the statutory provisions enacted by Parliament. The overlap between the provisions of WB-HIRA and the RERA is so significant as to leave no manner of doubt that the test of repugnancy based on an identity of subject matter is clearly established. As the decision in **Innoventive Industries** (supra) emphasizes, laws under this head are repugnant even if the rule of conduct prescribed by both the laws is identical. This principle constitutes the foundation of the rule of implied repeal. The present case is not one where WB-HIRA deals not with matters which form the subject matter of the Parliamentary legislation but with other and distinct matters of a cognate and allied nature. WB-HIRA, on the contrary, purports to occupy the same subject as that which has been provided in the Parliamentary legislation. The state law fits, virtually on all fours, with the footprints of the law enacted by Parliament. This is constitutionally impermissible. What the legislature of the State of West Bengal has attempted to achieve is to set up its parallel legislation involving a parallel regime.

75 But the submission which has been articulately presented before the Court on behalf of the State of West Bengal is that Section 88 of the RERA itself allows for the existence of State statutes by enacting Sections 88 and 89, which stipulate that its provisions shall be in addition to and not in derogation of the provisions of any other law for time being in force and override only inconsistent provisions. For the

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purpose of the present discussion, we may accept the hypothesis of the State of West Bengal that the expression "any other law for the time being in force" does not, in the context of Section 88, imply the applicability of the provision only to laws which had been enacted before the RERA. Conceivably, as the judgments of this Court construing similar expressions indicate, the trend has been to broadly configure the meaning of the expression by extending it to laws which were in existence and those which may be enacted thereafter. In other contexts, such an interpretation has not been accepted but, for the purpose of the discussion, we will proceed on the hypothesis which has been put forth by the State of West Bengal that 'law for the time being in force' within the meaning of Section 88 would also include subsequent legislation. The submission is that since Section 88 allows for the existence of other laws by adopting the 'in addition to and not in derogation of' formula, Parliament did not intend to exclude State legislation even though it is identical to that which has been enacted by Parliament. This submission is also sought to be buttressed by adverting to Section 92 of the RERA, under which only the Maharashtra Act was repealed.

76 Now, in assessing the correctness of the submission, it is necessary to construe Section 88 in its proper perspective. Unless this is done, the Court would be doing violence to the intent of Parliament and to the constitutional principles which are embodied in Article 254. Parliament envisaged in Section 88 of the RERA that its provisions would be in addition to and not in derogation of other laws for the time being in force. True enough, this provision is an indicator of the fact that

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Parliament has not intended to occupy the whole field so as to preclude altogether the exercise of legislative authority whether under other Central or State enactments. For instance, Section 71 of the RERA specifically contemplates (in the proviso to sub-Section (1)) that a complaint in respect of matters covered by Sections 12, 14, 18 and 19 is pending in the adjudicating *fora* constituted by the Consumer Protection Act, 1986. The person who has moved the consumer forum may withdraw the complaint and file an application before the adjudicating officer constituted under the RERA. The effect of Section 88 is to ensure that remedies which are available under consumer legislation, including Consumer Protection Act, 2019, are not ousted as a consequence of the operation of the RERA. Of course, it is also material to note that both sets of statutes, namely the Consumer Protection Act(s) and the RERA, have been enacted by the Parliament and both sets of statutes have to be therefore harmoniously construed. Section 88 of the RERA does not exclude recourse to other remedies created by cognate legislation. Where the cognate legislation has been enacted by a State legislature, Section 88 of the RERA is an indicator that Parliament did not wish to oust the legislative power of the State legislature to enact legislation on cognate or allied subjects. In other words, spaces which are left in the RERA can be legislated upon by the State legislature by enacting a legislation, so long as it is allied to, incidental or cognate to the exercise of Parliament's legislative authority. What the State legislature in the present case has done is not to enact cognate or allied legislation but legislation which, insofar as the statutory overlaps is concerned is identical to and bodily lifted from the Parliamentary law. This plainly implicates the test of repugnancy by setting up a

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parallel regime under the State law. The State legislature has encroached upon the legislative authority of Parliament which has supremacy within the ambit of the subjects falling within the Concurrent List of the Seventh Schedule. The exercise conducted by the State legislature of doing so, is plainly unconstitutional.

77 The statutory overlaps between WB-HIRA and the RERA cannot be overlooked, as noted above. But quite apart from that, there is an additional reason why the test of repugnancy engrafted in clause (1) of Article 254 is attracted. This is because several provisions of the WB-HIRA are directly in conflict and dissonance with the RERA. Where a State enactment in the Concurrent List has enacted or made a statutory provision which is in conflict with those which have been enacted by Parliament, it may in a given case be possible to excise the provision of the State statute so as to bring it into conformity with the Parliamentary enactment. But the present case, as we shall demonstrate, involves a situation where valuable safeguards which are introduced by Parliament in the public interest and certain remedies which have been created by Parliament are found to be absent in WB-HIRA. This is indicated from the following provisions:

(i) Section 2(n) of the RERA contains a statutory definition of the meaning of 'common areas'. Parliament has defined the expression to mean what is set out in sub-clause 1(i) to (iii) which includes open parking areas. The WB-HIRA contains a definition of the expression 'common areas' in Section 2(m). While this definition is *pari materia*, WB-HIRA has enacted the definition of the expression 'car parking area' in Section 1 to mean such area as may be

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prescribed in exercise of the rule making power. The rules framed by the State government define the expression to mean an area either enclosed or uncovered or open excluding open car parking areas reserved as common areas and to exclude all types of car parking areas sanctioned by the competent authority;

(ii) Section 2(y) of the RERA defines the expression 'garage' so as not to include an unenclosed or uncovered parking space such as open parking area. On the other hand, Section 2(x) of WB-HIRA defines the expression 'garage' to mean garage and property space as sanctioned by the competent authority;

(iii) Section 6 of the RERA provides for an extension of a registration under Section 5 on an application by the promoter due to *force majeure.* The explanation exhaustively defines *force majeure* to mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the development of the real estate project. The provisions of Section 6 of the WB-HIRA, in contrast, while defining *force majeure* also incorporate "any other circumstances prescribed", thereby giving a wider discretion to the regulatory authority or the State to give extensions of registration to real estate projects in a manner which may prejudicially affect the interest of home buyers;

(iv) Section 38(3) of the RERA empowers the real estate regulatory authority in a monopoly situation to make a *suo motu* reference to the Competition Commission of India. No such provision is made in the State enactment.

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Hence, a valuable safeguard to protect home buyers in the RERA has been omitted. Section 38(3) of the RERA is in the following terms:

> "(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that— (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or (b) has effect of market power or monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India."

(v) Section 41 of the RERA is a pivotal provision under which the Central government is to establish a Central Advisory Council. The Minister of the Central government dealing with Housing is to be the *ex officio* Chairperson. The membership of the Central Advisory Council is stipulated in Section 41(3). Section 41 provides as follows:

> "41. (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council. (2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council. (3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified. (4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector."

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The functions of the Central Advisory Council are provided in Section 42 of the RERA, which reads as follows:

> "42. Functions of Central Advisory Council.
> (1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government,— (a) on all matters concerning the implementation of this Act; (b) on major questions of policy; (c) towards protection of consumer interest; (d) to foster the growth and development of the real estate sector; (e) on any other matter as may be assigned to it by the Central Government. (2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1)."

WB-HIRA on the other hand, provides for the constitution of a State Advisory Council under Section 41, which is in the following terms:

> "41. Establishment of State Advisory Council.- (1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the State Advisory Council.
> (2) The Minister to the Government of the State of West Bengal in charge of the Department dealing ·with Housing shall be the ex officer Chairperson of the State Advisory Council.
> (3) The State Advisory Council shall consist of representatives of the Finance Department, Department of Industry, Commerce & Enterprises, Department of Urban Development and Municipal Affairs, Department of Consumer Affairs, Law Department, five representatives of the Real Estate Regulatory Authorities to be selected by rotations, and any other State Government department as notified.
> (4) The State Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector."

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Section 42 of WB-HIRA, which defines the functions of the State Advisory Council, is as follows:

> "42. Functions of State Advisory Council.- (1) The functions of the State Advisory Council shall be to advise and recommend the State Government,-
> (a) on all matters concerning the implementation of this Act;
> (b) on major questions of policy;
> (c) towards protection of consumer interest;
> (d) to foster the growth and development of the real estate sector;
> (e) on any other matter as may be assigned to it by the State Government.
> (2) The State Government may specify the rules to give effect to the recommendations of the State Advisory Council on matters as provided under sub-section (1)."

The State legislature while enacting WB-HIRA has replaced the Central Advisory Council, which has a major policy making role, with the State Advisory Council. Though the functions of the State Advisory Council are similar, its power is to advise and recommend to the State government in distinct in contrast to the functions of the Central Advisory Council, which is to make policy recommendations to the Central government on the subjects contemplated in clauses (a) to (e) of Section 42. As a consequence, the advisory role of the Central government, based on the recommendations of the Central Advisory Council, has been completely eroded in the provisions of WB-HIRA;

(vi) While Section 70 of the RERA contains a provision for compounding of offences, but WB-HIRA does not contain any such provision;

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(vii) Section 71(1) of the RERA provides that the regulatory authority shall appoint adjudicating officers for the purpose of adjudging compensation under Sections 12, 14, 18 and 19. The adjudicating officer is required to be a person who is or has been a District Judge. WB-HIRA does not contain any provision for appointment of adjudicating officers for the purpose of adjudging compensation. Under Section 40(3) of WB-HIRA, this power is entrusted to the regulatory authority and not to a judicial person or body. The fact that an appeal against the orders of the regulatory authority lie to the Appellate Tribunal and thereafter to the High Court cannot gloss over the fact that the valuable safeguard of appointing judicial officers as adjudicating officers for determining compensation under the RERA has not been enacted in WB-HIRA; and

(viii) Section 80(2) of the RERA provides that no Court inferior to a Metropolitan Magistrate or JMFC shall try an offence punishable under the Act. No such provision is contained in WB-HIRA.

78 The above analysis indicates an additional reason why there is a repugnancy between WB-HIRA and RERA- the above provisions of the State enactment are directly in conflict with the Central enactment. Undoubtedly, as Article 254(1) postulates, the legislation enacted by the State legislature is void “to the extent of the repugnancy”. But the above analysis clearly demonstrates that in material respects, WB-HIRA has failed to incorporate valuable institutional safeguards and provisions intended to protect the interest of home-buyers. The silence of the State

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legislature in critical areas, as noted above, indicates that important safeguards which have been enacted by Parliament in the public interest have been omitted in the State enactment. There is, in other words, not only a direct conflict of certain provisions between the RERA and WB-HIRA but there is also a failure of the State legislature to incorporate statutory safeguards in WB-HIRA, which have been introduced in the RERA for protecting the interest of the purchasers of real estate. In failing to do so, the State legislature has transgressed the limitations on its power and has enacted a law which is repugnant to Parliamentary legislation on the same subject matter.

H.4 Lack of Presidential Assent for WB-HIRA

79 Finally, another argument raised before us by the petitioner's was that WB-HIRA had not received the President's assent under Article 254(2) of the Constitution, which was necessary since it was going the occupy the same field as the RERA, a law which had been enacted by the Parliament. This becomes important since a Constitution Bench of this Court in **Rajiv Sarin** v. **State of Uttarakhand**[41] ("**Rajiv Sarin**"), speaking through Justice Mukundakam Sharma, has held the two requirements for repugnancy under Article 254 to be as follows:

> "45. **For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent.** The test for determining such repugnancy is indeed to find out the dominant intention of both the legislations and whether such dominant intentions

[41] (2011) 8 SCC 708

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> of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject."
>
> **(emphasis supplied)**

80 Since we have already answered with the first requirement, the second remains. However, the State of West Bengal initially argued that WB-HIRA did not require presidential since it had been enacted under List II, but that argument has now been given up before this Court, as already noted above, and it is admitted that it comes under List III (the same as RERA). Further, it has also been clarified by us, rejecting their argument, that Sections 88 and 89 of the RERA did not implicitly permit the States to create their own legislation creating a parallel regime alongside the RERA which would have not required presidential assent. Hence, it is clear that WB-HIRA did not have presidential assent and was repugnant to RERA under Article 254.

81 Therefore, this issue of whether presidential assent was needed remains merely academic. Having said so, we note that issues related to Presidential assent under Article 254(2) have been settled by a Constitution Bench of this Court in **Rajiv Sarin** (supra), wherein it was held:

> "Presidential assent and Article 254(2) of the Constitution

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63. It is in this context, that the finding of this Court in Kaiser-I-Hind (P) Ltd. [(2002) 8 SCC 182] at para 65 becomes important to the effect that "pointed attention" of the President is required to be drawn to the repugnancy and the reasons for having such a law, despite the enactment by Parliament, has to be understood. It summarises the point as follows at pp. 215-16 as follows:

"65. The result of the foregoing discussion is:

1. It cannot be held that the summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.

2. (a) Article 254(2) contemplates 'reservation for consideration of the President' and also 'assent'. Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the contemplated State legislation and the reasons for having such law despite the enactment by Parliament.

(b) The word 'assent' used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

(c) In case where it is not indicated that 'assent' is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3. Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require the assent of the President in case of repugnancy."" (**emphasis supplied**)

As such, it is abundantly clear that the State of West Bengal would have had to seek the assent of the President before enacting WB-HIRA, where its specific repugnancy with respect to RERA and its reasons for enactment would have had to be specified.

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Evidently, this was not done. However, since we have already held WB-HIRA to be repugnant to RERA, this issue becomes moot.

I Conclusion

82 Before the WB-HIRA, the State legislature had also enacted the WB 1993 Act. Upon receiving the assent of the President, the Act was published in the Calcutta Gazette, Extraordinary on 9 March 1994. Some of the salient provisions of the Act are detailed below:

(i) Section 3 provides for registration of promoters who construct or intend to construct a building and for obtaining permission for construction;

(ii) Section 4 provides for the validity of the certificate of registration and for cancellation;

(iii) Section 5 provides for appeals;

(iv) Section 6 provides for adjudication of disputes by an officer appointed by the State government for adjudication;

(v) Section 7 provides that the promoter shall before taking any advance payment for deposit, which shall not be more than 40 per cent of the sale price, enter into a written agreement for sale which shall be registered;

(vi) Section 8 restrains additions or alterations without the consent of the transferee and for rectification of defects;

(vii) Section 9 contains a prohibition on a promoter creating a mortgage or charge without the consent of the purchaser after entering into an agreement;

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(viii) Section 10 requires the formation of a co-operative society;

(ix) Section 11 provides for the promoter to covey title to the co-operative society;

(x) Section 12 provides for insurance against loss or death;

(xi) Section 13 provides for penalties;

(xii) Section 14 provides for offences by companies;

(xiii) Section 15 provides for rule making powers;

(xiv) Section 16 provides for exemption to constructions by the State Government Housing Board and by the Housing and Urban Development Corporation; and

(xv) Section 17 provides for repeals and the earlier legislation of 1972 is repealed.

The above provisions are repugnant to the corresponding provisions which are contained in the RERA. These provisions of the WB 1993 Act impliedly stand repealed upon the enactment of the RERA in 2016, in accordance with Sections 88 and 89 read with Article 254(1) of the Constitution. Hence, we clarify with abundant caution that our striking down of the provisions of WB-HIRA in the present judgment will not, in any manner, revive the WB 1993 Act, which was repealed upon the enactment of WB-HIRA since the WB 1993 Act is itself repugnant to the RERA, and would stand impliedly repealed.

83 For the above reasons, we have come to the conclusion that WB-HIRA is repugnant to the RERA, and is hence unconstitutional. We also hold and declare that as a consequence of the declaration by this Court of the invalidity of the provisions of WB-HIRA, there shall be no revival of the provisions of the WB 1993 Act, since it would stand impliedly repealed upon the enactment of the RERA.

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84 Since its enforcement in the State of West Bengal, the WB-HIRA would have been applied to building projects and implemented by the authorities constituted under the law in the state. In order to avoid uncertainty and disruption in respect of actions taken in the past, recourse to the jurisdiction of this Court under Article 142 is necessary. Hence, in exercise of the jurisdiction under Article 142, we direct that the striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment

85 The writ petition is accordingly stand allowed in the above terms.

86 Pending application(s), if any, stand disposed of.

……..…..….....…….....J.
[Dr Dhananjaya Y Chandrachud]

…..…..…...….....…….....J.
[M R Shah]

New Delhi;
May 4, 2021

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