

Chief Justice's Court

Case :- WRIT - C No. - 33749 of 2023

Petitioner :- Mahim Jain

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Vijay Kumar Sharma

Counsel for Respondent :- C.S.C., Mohd. Afzal

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Shri Vijay Kumar Sharma, learned counsel for the petitioner, Mohd. Afzal, learned counsel appearing for the respondent No.7 and learned Standing Counsel, who has accepted notice of the writ petition on behalf of the State-respondents.

2. The writ petitioner is an employee and former Additional Director of M/s Eagle Technoinfra Park Pvt. Ltd. The project is registered with the Real Estate Regulatory Authority.

3. The challenge in the writ petition is to an order dated 6.5.2022 passed by the U.P. Real Estate Regulatory Authority (RERA) whereby and whereunder the Complaint No. NCR145/04/73392/2021 filed by the respondent No. 5 (Home Buyer) under Section 18 read with Section 31 of the Real Estate (Regulation and Development) Act, 2016 has been allowed and the petitioner has been directed to refund the entire amount along with interest @ MCLR + 1% within 45 days from the date of uploading of the order. Subsequently, vide order dated 12.9.2022, the order dated 6.5.2022 was modified and the name of the petitioner appearing in the final order of UPRERA dated 6.5.2022 was replaced by the name of the company M/s Eagle Technoinfra Park Pvt. Ltd. The petitioner has also challenged the recovery citation dated 11.8.2022 issued by the Secretary, RERA.

4. Learned counsel for the petitioner submits that vide rectification order dated 12.9.2022 the name of company, namely, M/s Eagle Technoinfra Park Pvt. Ltd., in which petitioner was working has been substituted in place of petitioner and recovery was ordered to be issued against the M/s Eagle Technoinfra Park Pvt. Ltd. and amended recovery certificate was ordered to be issued. But respondents are continuously harassing the petitioner to make good the payment issued against the recovery certificate and by

putting undue pressure Rs. Two Lacs has been got deposited from the petitioner and receipts have been issued in the name of company, which is unwarranted in the eyes of law. Learned counsel for the petitioner further submits that in this regard petitioner has filed complaint before the District Magistrate, Ghaziabad on 2.9.2023, but no action has been taken so far.

5. Mohd. Afzal, learned counsel appearing for RERA Authority does not dispute the above submissions advanced by learned counsel for the petitioner. He concedes that the amount under the order of the RERA dated 6.5.2022 is to be recovered from the company M/s Eagle Technoinfra Park Pvt. Ltd., and not the petitioner. He submits that it appears that the recovery certificate has been issued against the petitioner as per the uncorrected order of RERA and should not be pressed against the petitioner once the order of RERA stands corrected.

6. We have heard learned counsels for the parties and have perused the record.

7. From the perusal of the records, we find that the original order passed by the RERA dated 6.5.2022 has since been rectified by it vide order dated 12.9.2022 and the name of the company M/s Eagle Technoinfra Park Pvt. Ltd., has replaced the name of the petitioner and RERA has also ordered for issuance of a fresh Recovery Certificate dated 30.9.2022 against the company. This fact is admitted to the counsel representing RERA.

8. In view of the admitted facts, the impugned recovery certificate cannot be pressed against the petitioner and the respondent Authorities are directed not to proceed against the petitioner on the strength of the Recovery Certificate dated 11.8.2022. It shall, however, be open for the respondent to proceed against the company M/s Eagle Technoinfra Park Pvt. Ltd., on the strength of the recovery certificate drawn consequent to the rectified order of RERA dated 12.9.2022.

9. Learned counsel for the petitioner submits that the petitioner was coerced into depositing a sum of Rs.2,00,000/- by the respondent No. 5 and receipt in the name of the company was issued. The said sum is liable to be refunded to the petitioner. We are not inclined to grant the relief for refund of the amount of Rs.2,00,000/- deposited by the petitioner against the Recovery Certificate dated 11.8.2022 and leave it open for the petitioner to avail common law remedies available to him under the law to recover the said amount.

10. With the aforesaid observations/directions, the writ petition stands ***disposed of***.

Order Date :- 16.10.2023

Ravi Prakash

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ)