

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 08.10.2018****Order Delivered On 18.02.2019****WPC No. 2766 of 2018**

1. R.C.P. Infratech Private Limited (Ex-Name R.P. Real Estate Private Limited), Through: Managing Director, Rakesh Kumar Pandey, S/o Late R.C. Pandey, Aged About 52 Years, R/o.A-5, Anupam Nagar, Raipur, District Raipur Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Sharda Devi Agrawal W/o Shri Santosh Kumar Agrawal.
2. Santosh Kumar Agrawal S/o Late Shri J.D. Agrawal.

Both R/o. Champa, District Janjgir-Champa Chhattisgarh, At Present R/o. 311, Santa Colony, Raipur, District Raipur Chhattisgarh.

3. President, Real Estate Regulatory Authority, Shastri Chowk, Raipur, District Raipur Chhattisgarh.

---- Respondent

 For Petitioner

 Mr. Raghvendra Pradhan, Advocate.
C A V Order**By****Prashant Kumar Mishra,J.**

1. Challenge herein is to the order passed by the Real Estate Regulatory Authority (for short 'the RERA') allowing the application of the respondents No.1 & 2 to direct the

petitioner to complete the project along with club house and other amenities mentioned in the brochure for the subject project; obtain completion certificate; and handover possession of the flat to the respondents within two months as also to pay interest of Rs.4,14,000/- to the respondents. At the same time, the respondents No.1 & 2 were directed to pay charges for obtaining electricity connection to the subject flat.

2. The respondents No.1 & 2 purchased the flat No.604 at VIP Heights, Saddu, Raipur constructed by the petitioner. The respondents paid advance amount of Rs.51,000/- and total advance amount of Rs.6,10,000/- paid till 15-10-2012 and thereafter, entered into an agreement on 8-4-2013 to complete the project within 15 months.
3. When the project was not completed during the above said period, the parties agreed to execute another contract for purchase of flat No.601 for Rs.30.00 lacs stipulating that possession of the said flat shall be handed over by February, 2017. Even this agreement was not honoured by the petitioner, therefore, the respondents No.1 & 2 moved an application/complaint before the RERA. It is stated in the complaint that project was not completed by constructing club house and other amenities as mentioned in the brochure, therefore, the petitioner be directed to complete the project as

per brochure and handover possession together with interest on the amount previously paid to the petitioner.

4. From the findings at para 7 of the order impugned it appears the petitioner agreed before the RERA that he is ready to handover possession of the flat within a week after completing Door and Bathroom fittings. This admission of the petitioner has been treated by the RERA to infer that construction of the flat is not yet complete, therefore, case of the respondents No.1 & 2 that terms of the agreement dated 7-5-2016 has been violated is proved. Similarly, the RERA has found prove that the petitioner has failed to construct club house and other facilities as per brochure. This finding is based on petitioner's admission in para 15 of its reply wherein it was stated that the club house is under construction and the same shall be completed along with project. Thus, on the basis of petitioner's admission only the RERA has found that the brochure provided for construction of club house and other amenities, therefore, any person who has purchased the property after seeing the brochure would legitimately expect completion of entire project along with offered amenities and the builder/promoter is bound to provide those facilities, which it had promised to create at the time of entering into agreement.

5. In **M. Ahuja (I) (P) Limited v Shaktipunj Engineers Private Limited** (WPC No.2374 of 2018 decided on 27-8-2018) this Court held thus :

15. It is vehemently argued that there was no promise for construction of swimming pool in the brochure, however, a bare perusal of the brochure at page 32 of the writ petition would demonstrate that it contains photograph of a swimming pool in the middle of the open space facing towers of the flats. If a particular amenity like swimming pool is shown in the photograph of the brochure it will definitely allure and attract the prospective buyers to purchase the flat in the project in which there is a swimming pool. Thus, there was a promise by the petitioner in its brochure for construction of swimming pool for which the RERA has rightly directed the petitioner to pay an amount of Rs.31.00 lacs to the RWS of Greenglory for construction of swimming pool.

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18. Thus, having considered the entire gamut of the matter with its practicality *via-a-vis* the objects and reasons of enactment of the RERA Act, I am convinced that the promise held out by the petitioner in its brochure either in express terms or by showing the picture of the project as it would appear after completion, there was a definite promise for construction of swimming pool. Hence, the order passed by the RERA is within its jurisdiction, which need not be interfered in extraordinary writ jurisdiction, as there does not appear violation of any statutory provision while passing the order impugned.

6. Considering the entire facts situation of the case, more particularly petitioner's admission before the RERA that the project is not complete and possession shall be handed over to

the respondents No.1 & 2 within a week by completing the Bathroom fittings and Doors, I am of the considered view that the order passed by the RERA does not call for any interference.

7. As an upshot, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

Judge
Prashant Kumar Mishra

Gowri