

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
WA No.470 of 2019

(Arising out of order dated 06.08.2019 passed by learned Single Judge in
WPC- 2624 of 2019)

Amrit Homes Private Limited, R/o Flat Number 101, Block Number 08, Ashoka Ratna Apartment, Khamaardeeh, Raipur, District Raipur, Chhattisgarh. Through Its : Authorized Signatory, Shri Pritpal Sing Bindra S/o. Shri Dalip Singh Bindra, Aged about 62 years, R/o. 17, Zone II, MP Nagar, Bhopal, District – Bhopal, MP.

---- Appellant

Versus

1. M/s Las Vista Residents Welfare Society Through Its President, Shri Kirti Vyas, S/o Shri N C Vyas, R/o VIP Road, Amleedeeh, Raipur, District Raipur, Chhattisgarh.
2. M. Ahuja Project Private Limited Through Its Director, Shri Mahendra Ahuja, R/o Sai Kunj, Shri Kali Mata Mandir, Road Raipur, District Raipur, Chhattisgarh.
3. Raghu Ventures Private Limited Through Its Director, Shri P. Adarsh, R/o 42/245, CSEB Office, Civil Lines Raipur, District Raipur, Chhattisgarh.
4. Shri Vamsi Pericherla R/o 42/245, CSEB Office, Civil Lines Raipur, District Raipur, Chhattisgarh.
5. Chhattisgarh Real Estate Regulatory Authority (RERA) Raipur, Chhattisgarh Through its Chairman, Chhattisgarh Real Estate Regulatory Authority (RERA), Shastri Chowk, Raipur, District Raipur, Chhattisgarh.

-----Respondents

For Appellant : Mr. Piyush Tiwari & Ms. Sapna Agrawal,
Advocates.

For Respondent No.1 : Mr Abhinav Kardekar, Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per PR Ramachandra Menon, CJ

20.11.2019

1. The appeal is against the interference declined by the learned Single Judge with regard to the prayer for granting an 'interim relief'; ie to stay the impugned order passed by the Real Estate Regulatory Authority (RERA) on 06.06.2019.

2. We heard Mr. Piyush Tiwari, learned counsel appearing for the appellant as well as Shri Abhinav Kardekar, Advocate who appeared on behalf of the respondent No.1/Society at length.
3. The gist of the factual matrix is that the appellant, who had formulated a project for development and sale of the property and 'villas'/apartments, had issued a Brochure inviting persons, who were desirous to purchase the 'Villas'. Based on the terms notified and as covered by the Brochure, various allottees invested amounts and it was being pursued accordingly. It is stated that the project was not completed to the full satisfaction of the allottees, as proclaimed/notified; which ultimately led to filing of a complaint before the RERA pointing out the shortcomings and seeking for appropriate directions. The specific contentions raised by the appellant before the RERA was that the matter would not come within the purview of the RERA as it was not an ongoing project; that the Brochure concerned was not applicable and that the layout plan actually approved, was in respect of another Brochure.
4. The rival contentions were sought to be substantiated by the parties before the RERA and after hearing both the sides, the matter was finalized by the said authority, giving appropriate directions, as contained in the last paragraph of the impugned order; which is reproduced hereinbelow for convenience of reference :-

“The amount of Rs.1,52,50,000/- of the corpus fund may be transferred to the applicant society by the respondent No.1 within next two months. From the date of transfer of this amount itself the responsibility of entire maintenance of the colony shall be of the applicant society. In what manner the

corpus fund is to be recovered from all remaining allottees by the applicant society is given in detail in point no.3 for consideration.”

5. This was stated as detrimental to the rights and interest of the appellant and hence it was sought to be challenged by filing the writ petition with the following prayers :-

“(a). That, the present Writ Appeal be allowed and the Reliefs prayed in the Writ Petition be granted and the impugned Order dated 06.08.2019 passed in Writ Petition No.2624/2019 (Annexure -A/1) may kindly be set aside, in the interest of justice, equity fair play and good conscience.

(b). That, any other relief the Hon'ble Court deems fit may kindly be granted to the appellant.”

6. The matter was heard elaborately by the learned Single Judge, who passed a detailed order on 06.08.2019, declining to grant any interim stay for the reasons mentioned therein. This, in turn, is put to challenge in this appeal.
7. The learned counsel for the appellant points out that, by virtue of the rejection of the prayer for interim stay, the appellant has been put to extreme difficulty insofar as, an irreversible process has set in and the appellant cannot be compensated, if ultimately the appellant wins the case. The learned counsel also points out that various aspects including the jurisdiction, the prayer with regard to the transfer of the corpus fund as sought for by the first-respondent and as to the alleged non-completion of the project in respect of the certain amenities have not been properly

adverted to by the RERA or by the learned Single Judge and hence, the challenge.

8. Learned counsel for the first-respondent submits that there is absolutely no merit or bona fides in the submissions insofar as, the directions given by the RERA are only with regard to the further course of action with regard to the sale of the plots, which has been ordered to be done only after completion of the project and after obtaining a 'completion certificate' and that's all. The remaining part is only with regard to transfer of the available corpus fund amount of Rs. Rs.1,52,50,000/- to the first respondent/Society, of course shifting the liability and responsibility to do the maintenance work to the said respondent, from the interest generated from the corpus fund as above. Insofar, as the maintenance of the building and premises has to be done utilizing interest from the corpus funds, the authority given to the first respondent/Society representing all the allottees to carry out the maintenance, making use of interest from the corpus funds and the interference declined by the learned Single Judge does not warrant any interference.
9. The learned counsel for the first respondent further submits that the plea now set-up by the appellant that the original Brochure was only for private circulation and it never acted upon, adding that a separate Brochure was issued to the allottees is far from the track of the truth and all the allottees here, almost 144, are having the same Brochure which was issued by the appellant and they were carried away by the promises as contained in the said Brochure, which has been considered by the RERA.
10. After hearing both the sides, we are of the view that the order passed by the learned Single Judge does not actually decide the issue finally so as

to come with in the purview of the appellate jurisdiction of this Court. The issue is still pending consideration before the Court, as the writ petition is still pending. That apart, the learned counsel for the first respondent/Society submits that the apprehension expressed by the appellant with regard to the alleged irreversible process is not correct and if for any reason the appellant succeeds, the first respondent assures and undertakes that it can be compensated to appropriate extent and the first respondent could be made liable and responsible in this regard. We record the said submission/undertaking.

11. Coming to the legal aspect, appeal is maintainable only as provided under the statute; particularly Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. Section 2(1) carries a 'proviso' as well, which clearly says that no appeal will be maintainable against an interim order. This scope of the said proviso has been explained by a Full Bench of this Court as per the judgment date 25/01/2017 passed in WA No.255/2016, which says that only, if the issue has been decided creating a finality to the lis, will the appeal be maintainable before the Division Bench.

12. In the above circumstances, in view of the observations already made by us, we are of the view that the appeal is not maintainable. Accordingly appeal stands dismissed without prejudice to the rights and liberties of the parties to raise all contentions before the learned Single Judge, including to press for an earlier hearing, if it is permitted by the learned Single Judge.

(PR Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge