

HIGH COURT OF CHHATTISGARH, BILASPURWrit Appeal No.756 of 2018*{Arising out of order dated 27-8-2018 passed by the learned Single Judge
in W.P.(C)No.2374/2018}*

M. Ahuja (I) (P) Ltd., Through Director Mahendra Ahuja, S/o Late
Prahlad Rai Ahuja, 34 Yrs., R/o Sai Kunj, Near Kalimata Temple,
Civil Lines, Raipur (C.G.)

(Petitioner)
---- Appellant

Versus

1. Shakti Punj Engineers Pvt. Ltd., through the Director R.P. Sinha,
Golden Homes, Near VIP Club, Khamardih, Raipur, District Raipur
(C.G.)
2. State of Chhattisgarh, Through Secretary, Housing and
Environment Department, Mantralaya, Raipur.

---- Respondents

For Appellant:	Mr. Prafull N. Bharat, Advocate.
For Respondent No.1:	Mr. Hemant Gupta, Advocate.
For Respondent No.2 / State: -	Mr. Gagan Tiwari, Deputy Govt. Advocate.

Hon'ble Shri P.R. Ramachandra Menon, CJ and
Hon'ble Shri Sanjay K. Agrawal, J.

Order On Board

Sanjay K. Agrawal, J

27/06/2019

1. This writ appeal is directed against the order passed by the learned
Single Judge by which the writ petitioner's / appellant's writ petition
preferred under Article 226 of the Constitution of India has been
dismissed affirming the order of the Chhattisgarh Real Estate
Regulatory Authority (for short, 'the RERA') constituted under the
provisions of the Real Estate (Regulation and Development) Act,
2016 (for short, 'the Act of 2016') by which the RERA has passed
order on 17-7-2018 under Section 37 of the Act of 2016 making

certain directions including payment of ₹ 31 lacs to the Residents Welfare Society towards construction of swimming pool which was promised by the appellant herein.

2. Mr. Prafull N. Bharat, learned counsel appearing for the appellant / petitioner, would vehemently submit that in the brochure published by the petitioner inviting home buyers for purchase of flat which it has constructed in the name of Greenglory Residential Project at Shankar Nagar, Khamhardih, Raipur, there is no promise of construction of swimming pool which is apparent from the brochure (Annexure P-4 filed by the petitioner and Annexure R-1 filed by respondent No.1 herein) and as such, no such amount could have been directed by the RERA to be paid to the said Society. He would further submit that in order to grant compensation, the matter is required to be referred by the RERA to the adjudicating authority which was required to be adjudicated under the provisions contained in Section 71 of the Act of 2016. Therefore, the learned Single Judge is absolutely unjustified in dismissing the writ petition affirming the order passed by the RERA directing payment of ₹ 31 lacs in favour of the Residents Welfare Society in lieu of the swimming pool constructed by them which was allegedly promised by the appellant herein, as such, the appeal deserves to be allowed by setting aside the order of the learned Single Judge as well as the order of the RERA.
3. Mr. Hemant Gupta, learned counsel appearing for respondent No.1 / complainant, would submit that the appellant claiming to be a builder clearly in Annexure R-1 filed in the writ petition, has promised to provide a swimming in his project Greenglory which is

one of the reasons which persuaded himself to buy a home at the project Greenglory and which the petitioner / appellant has not provided because of which he made a complaint to the RERA and the RERA has enquired into the matter under Section 35(1) of the Act of 2016 and rightly concluded that the appellant promised for construction of swimming pool to the home buyers in the said project which is based on the material available on record and to which no exception can be taken by the petitioner, as by a well-reasoned and well-merited order, the learned Single Judge looking into the submissions raised by the petitioner and finding no merit has dismissed the writ petition.

4. The learned State counsel would support the order of the RERA.
5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the record with utmost circumspection.
6. The first submission according to the learned counsel for the appellant is that in the brochure which has been filed along with the writ petition as Annexure P-1 and Annexure R-4, only splendid features have been catalogued in which construction of swimming pool has not been promised. Splendid features state as under: -
 1. Grand entrance area.
 2. Each flat provides soothing garden view.
 3. One elevator exclusively caters to two flats per floor.
 4. Well-defined parking space for every flat owner.
 5. Designed pavers in parking area.
 6. Provision of mailbox in lobby.
 7. Club House featuring kids games & amenities.

- 8. Car washing jet.
- 9. Power backup for lifts.
- 10. Rain water harvesting.
- 11. Fire safety and precaution measures.
- 12. 24 hour vigilance security.

7. Though in the features which have been dubbed as splendid features, construction of swimming pool has not been mentioned as splendid features, on a careful perusal of the said brochure / picture, it would clearly show that in front of the said residential project namely Greenglory, the swimming pool has been shown. Though it has not been mentioned in the features mentioned in the body of the said brochure, it clearly establishes that the appellant builder has promised to provide / construct swimming pool in front of residential project and provide the same as one of the amenities to the home buyers which has attracted the complainant. It has rightly been concluded by the RERA that the appellant builder promised to construct and provide swimming pool which he did not construct and in view of that, we are unable to accept the submission of Mr. Bharat.

8. In addition to this, the submission of Mr. Bharat is that it is not the swimming pool, but from the perusal of the picture on the brochure, it appears that it is the swimming pool and on side of the pool, there is a place earmarked for taking sunbath. So, it cannot be held that it is not the swimming pool promised by the appellant builder. The learned Single Judge after due deliberation and submission of the learned counsel for the appellant has reached to a right conclusion that the appellant builder promised in its brochure for construction

of swimming pool for which RERA has rightly directed the petitioner / appellant to pay an amount of ₹ 31 lacs to the Residents Welfare Society of Greenglory for construction of swimming pool. We are in complete agreement with the view expressed by the learned Single Judge.

9. The next contention of Mr. Bharat is that this is an amount of compensation that has been awarded by the RERA and unless the provisions contained in Section 71 of the Act of 2016 are complied with by referring the matter to the adjudicating authority, the order for compensation could not have been passed, as in the State of Chhattisgarh no adjudicating authority has still been appointed to adjudicate the matter under Section 71 of the Act of 2016. We are unable to accept the submission of learned counsel for the appellant, as we have already held that the RERA has only considered and granted the said amount on the ground that the appellant promised to construct swimming pool which it did not construct and therefore the RERA has directed to pay the amount of ₹ 31 lacs to the Residents Welfare Society of Greenglory for construction of swimming pool and the learned Single Judge while negating the plea based on Section 71 of the Act of 2016 has rightly recorded the following finding: -

“14. It appears, payment of Rs.31.00 lacs to the RWS is construed by the petitioner as if the same is a compensation allowed to the RWS whereas, in fact, the said payment is for construction of swimming pool, which was promised in the brochure. It is not by way of compensation for the damages sustained by the flat purchasers on account of petitioner's failure to provide amenities. Therefore, Section 71 of the RERA Act has no application, as there is no adjudication of compensation by way of damages.”

10. In view of the above-stated analysis, we do not find any ground to interdict the order of the learned Single Judge in dismissing the writ petition affirming the order of the RERA resulting into dismissal of writ appeal leaving the parties to bear their own cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

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