

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22219 of 2019

Date of decision: May 06, 2020.

Ansal Lotus Melange Projects Private Limited

... Petitioner

Versus

Punjab State Consumer Dispute Redressal Commission and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Sangram Singh Saron, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is stated to be a private limited company incorporated under the Companies Act, 1956 (for short 'Act'), dealing in the development of real estate in various states of India, including the State of Punjab.

This writ petition has been filed, seeking quashing of order dated 22.11.2017 as well as order dated 23.05.2019, Annexures P-3 and P-4, respectively, passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh(for short 'SCDRC').

A complaint under Section 17 of the Consumer Protection Act, 1986(for short 'C.P.Act'), was filed by respondents No. 2 and 3, seeking a refund of the amount of ₹18,11,578/-along with interest at the rate of 18% per annum, besides compensation. It is averred in the complaint that the present petitioner/builder had come up with the project known as 'City Centre' at Kharar-Landran Road, District Mohali and had offered units/shops

for sale in the said project. Respondents No. 2 and 3, sought to purchase the said units, as detailed in the complaint, for the amount detailed therein as well. Application form dated 21.09.2010 along with the requisite cheques was submitted by them. Shop No. 33, Upper Ground Floor(UGF) was allotted on 23.11.2010 for the total sum of ₹18, 11, 578/- (₹17, 60, 593/- as the Basic Sale Price and ₹50,985/- as service tax). Loan of ₹12,50,000/- was obtained by respondents No. 2 and 3, at the rate of 13.5% per annum out of which ₹10 lakhs stood disbursed to the present petitioner. Possession of the unit was to be delivered within 3 years from the date of booking/allotment, but the petitioner has claimed to have failed to hand over, not only the possession thereof within the stipulated period but it is also claimed by the respondents that no development work was carried out by the petitioner at the site.

Complaint was resisted by the present petitioner. The petitioner raised an objection that respondents no. 2 and 3 were not consumers as defined under the C.P. Act, as the unit was purchased for a commercial purpose to run tuition business and not for personal use. Respondents no. 2 and 3, were also stated to be defaulters and that the alleged period of three (03) years for delivery of possession was tentative and was to run from the date of receipt of all requisite sanctions/approvals/permission from the competent authority/authorities. Therefore, time it was contended, was not the essence of the contract for delivery of possession. Reliance was also placed by the petitioner upon the arbitration clause in the allotment letter. Receipt of ₹ 18, 11, 578/- by the petitioner from respondents no. 2 and 3 for the purchase of the commercial unit was, however, admitted.

Learned SCDRC, vide impugned order dated 22.11.2017, Annexure P-3, held respondents no. 2 and 3, to be entitled to the refund of the amount deposited by them along with interest at the rate of 12% per annum, besides a sum of ₹50,000/- as compensation. The petitioner was directed to comply with the order within 30 days of receipt of copy of order dated 20.11.2017.

The petitioner, admittedly did not challenge order dated 22.11.2017 passed by the learned SCDRC, before the National Consumer Dispute Redressal Commission (for short 'NCDRC').

Respondents no. 2 and 3, filed an execution application, wherein bailable warrants vide order dated 23.5.2019, Annexure P-4, have been issued against the directors of the petitioner company. Present petition was filed in August 2019.

Learned counsel for the petitioner, at the outset was faced with the question of maintainability of this writ petition, as the impugned order dated 22.11.2017, has been passed by the 'SCDRC' and a specific remedy of appeal is specifically provided under the C.P. Act. As per section 19 of the C.P. Act, an efficacious remedy of filing an appeal before the 'NCDRC' is clearly provided. Learned counsel for the petitioner however argued that as the learned 'SCDRC' had no authority or jurisdiction to take cognizance of any matter covered under The Real Estate (Regulation and Development) Act, 2016 (for short 'RERA'), which is a complete code in itself, there is no necessity of filing an appeal before the National Commission. It is vehemently argued that the 'RERA', is a comprehensive enactment, complete in itself and it

deals with all the disputes which may arise between a developer and the allottee. Some of the provisions of the 'RERA', it is submitted came into force w.e.f., 01.05.2016 and by way of a subsequent notification dated 19.04.2017, Sections 3 to 19, 40, 59 to 70, 79 and 80 of 'RERA', came into force w.e.f., 01.05.2017.

Learned counsel for the petitioner refers to Section 79 of 'RERA' to submit that jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter, which is covered under the 'RERA', is barred. It is thus submitted that the option of the consumer to approach the Consumer Forum/Commission under the C.P. Act, came to an end w.e.f., 01.05. 2017. No complaint etc., could thus have been filed before or entertained by the Commission, thereafter and the pending complaints before the Commission were required to be transferred to 'RERA'. It is argued that in view of the conflict between the two legislations i.e., the RERA and the C.P. Act, it is the provisions of 'RERA', which would be applicable and respondents no. 2 and 3 had no right to approach the Consumer Commission. The complaint, if pending should have been returned with liberty to the complainant to avail the remedy available to him/them. It is thus submitted that impugned order dated 22.11.2017 as well as order dated 23. 05.2019 annexed as Annexures P-3 and P-4, respectively, are liable to be set aside for want of jurisdiction. It is further argued that the Consumer Commission being 'coram non judice', it is only a writ court which can set aside the impugned orders dated 22.11.2017 and 23.05.2019. Thus, in this view of the matter, it is urged that the present writ petition is maintainable. In a similar vein it is argued that the provisions of

the 'RERA' and the 'C.P. Act', are not overlapping, but are repugnant and conflicting to each other. Therefore, in such a situation it is the provisions of the 'RERA' which are applicable in the facts and circumstances of the case. The complaint filed by respondent's No. 2 and 3 before the learned 'SCDRC', it is argued is not maintainable. Learned counsel for the petitioner relies upon the judgements of the Hon'ble Supreme Court in **K.P.Manu versus Chairman, Scrutiny Committee for Verification of Community Certificate,(2015) 4 SCC 1** and **Embassy Property Developments Private Limited versus state of Karnataka and others, civil appeal Nos. 9170, 9171 and 9172 of 2019 decided on 03. 12. 2019**. It is thus prayed that this writ petition be allowed and impugned order dated 22. 11. 2017 as well as order dated 23. 05. 2019, Annexures P-3 and P-4 respectively, be set aside.

I have heard learned counsel for the petitioner at length and have gone through the file with his able assistance.

Filing of the complaint before the learned 'SCDRC' by respondents no. 2 and 3 and a decision thereon by the Commission on 22.11.2017, is not in dispute. Petitioner, admittedly, did not challenge order dated 22. 11. 2017 before the National Commission, as provided under Section 19 of the C.P. Act, but chose to challenge the said order in the present writ petition, filed in August 2019.

At this stage, it is relevant to note that some of the provisions of the 'RERA' came into force w.e.f.,01.05.2016 and the rest of them on 01.05.2017. Complaint under Section 17 of the C.P. Act was filed by respondents no. 2 and 3, on 13.07.2017, Annexure P-1. Written

statement/reply, Annexure P-2, was filed by the present petitioner on 27.09.2017. A perusal thereof reveals that undeniably, no objection has been raised by the petitioner in the said written statement/reply in respect to lack of jurisdiction of the Commission in this respect, though learned counsel for the petitioner has argued that the question of jurisdiction can be raised by the petitioner at any stage and even in the absence of any specific objection being raised in the written statement, as the same is a question of law. Be that as it may, I do not find any merit in the arguments raised by learned counsel for the petitioner for the reasons as discussed here under.

There is no dispute that the 'RERA' is a complete code in itself. A regulatory authority has been set up for regulation and promotion of the real estate Sector and to ensure sale of plots, apartments etc., in an efficient and transparent manner, besides protecting the interest of the consumers in this Sector and to further establish an adjudicating mechanism for speedy dispute redressal, besides establishing an Appellate Tribunal for hearing the appeals from the decisions, directions and orders of the Regulatory Authority. However, at the same time Section 88 of 'RERA' specifies that the provisions of this act are not in derogation of the provisions of any other law, for the time being in force. Section 88 of the 'RERA' reads as under:-

“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.”

Learned counsel for the petitioner had been unable to deny that the Hon'ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd and another versus Union of India and others (2019) 8 SCC 416**, while adjudicating upon the Insolvency and Bankruptcy Code, 2016, with respect

to the status of the allottees of the real estate projects/homebuyers, has specifically held that the remedies afforded to the allottees of the plots/apartments etc. , under various statutes are concurrent remedies with the said allottees being in a position to avail their remedies under the C.P Act, RERA as well as triggering of the Bankruptcy Code, 2016. While referring to Section 88 of RERA, the Hon'ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd case(supra)**, observed as under:-

“99. The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.

100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to the allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.”

Reference was also made by the Hon'ble Supreme Court to the proviso to Section 71(1) of the RERA in Para No. 30 of the said judgement, wherein it is observed as under:-

“That another parallel remedy is available is recognised by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection Fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88.”

Therefore, in view of the position as above, it cannot be held that jurisdiction of the Consumer Commission under the C.P. Act is ousted with the promulgation of the 'RERA', so as to render the impugned orders a nullity and non-est. There is no repugnancy or conflict between the 'C.P. Act'

and the 'RERA' as was argued by learned counsel for the petitioner. The remedies sought/availed by respondents no. 2 and 3 under the C.P. Act is clearly overlapping with the provisions of the 'RERA'. The Hon'ble Supreme Court in **Pioneer Urban land case (supra)** has clearly held that in such circumstances an allottee is at liberty to avail any of the remedies available to him under the various statutes in this respect.

In the given facts and circumstances, the judgements of the Hon'ble Supreme Court in **K.P.Manu's case(supra)** and **Embassy Property Developments Private Limited's case(supra)**, are not relevant for the adjudication of the present controversy. The present writ petition, challenging orders dated 22. 11. 2017 and 23.05.2019, is clearly not maintainable, in the wake of the specific remedy of appeal which is provided under Section 19 of the C.P. Act. The petitioner's remedy clearly lies elsewhere.

This writ petition is accordingly dismissed being not maintainable. It is clarified that there is no expression of opinion on the merits of the case in hand.

[LISA GILL]

Judge

May 06, 2020

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

204

**IOIN-CWP-22219 of 2019 in
CWP No. 22219 of 2019**

Ansal Lotus Melange Projects Private Limited

Vs.

**Punjab State Consumer Dispute Redressal Commission and
others**

Present: Mr. Sangram Singh Saron, Advocate
for the petitioner.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Office note perused.

Due to a typographical error, 'The Real Estate (Regulation and Development) Act, 2016', is wrongly mentioned as 'The Real Estate Regulatory Authority, Act 2013', on the third page of the final order dated 06.05.2020.

Final order dated 06.05.2020, is accordingly, ordered to be corrected to the extent that on the third page of order sheet at para no.4, in the fourth line from the bottom, the Act be read as 'The Real Estate (Regulation and Development) Act, 2016', instead of 'The Real Estate Regulatory Authority, Act 2013'.

The corrected order be uploaded and certified copy thereof be issued.

IOIN stands disposed of.

August 25, 2020.
s.khan

**(LISA GILL)
JUDGE**