

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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1. RERA-APPL-1-2021(O&M)

Date of decision: 27.09.2022

M/S VIPUL LIMITED

..Appellant

Versus

TATVAM RESIDENTS WELFARE ASSOCIATION AND ORS.

..Respondents

2. RERA-APPL-36-2021(O&M)

TATVAM RESIDENTS WELFARE ASSOCIATION

..Appellant

Versus

M/S VIPUL LIMITED AND ORS.

..Respondents

3. RERA-APPL-37-2021(O&M)

TATVAM RESIDENTS WELFARE ASSOCIATION

..Appellant

Versus

M/S VIPUL LIMITED AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aashish Chopra, Sr. Advocate
with Ms. Rupa Pathania, Advocate
Ms. Nitika Sharma, Advocate
for the appellant (in RERA-APPL-1-2021)
for respondent No.1 (RERA-APPL-36 & 37-2021).

Mr. Chetan Mittal, Sr. Advocate
with Mr. Mayanak Aggarwal, Advocate
for the appellant (RERA-APPL-36 & 37-2021)
for respondent No.1 (in RERA-APPL-1-2021).

Mr. Manuj Kaushik, Advocate
Mr. Sandeep Saini, Advocate
for DHBVNL (in RERA-APPL-1, 36 and 37-2021).

Mr. Lokesh Sinhal, Advocate
for respondent No.5 (in RERA-APPL-1, 36 and 37-2021).

ANIL KSHETARPAL, J(Oral)

While remitting the matter back to the Authority constituted under the Real Estate (Regulation and Development) Act, 2016, the Appellate Tribunal has made the following observations:-

“42. Before parting with this order, it is pertinent to mention that the TRWA have taken over the aforesaid essential services without any execution of the impugned order. This Tribunal has directed the TRWA to file the affidavit of its president vide order dated 10.07.2019. As per the affidavit dated 30.08.2019 filed by Sh. Somesh Jawarani, the president of the TRWA, it is alleged that the essential services were taken over in terms of the impugned order dated 02.05.2019, in consultation with the grounds officials of the promoter. In the affidavit, the particulars of those ground officials are not disclosed. There is also no material on record to show that the said ground officials were competent and authorised by the promoter to hand over the services to TRWA. It is an admitted case that the TRWA has not filed any execution petition before the Id. Authority to execute the impugned order dated 02.05.2019 and to take over the aforesaid services. Thus , taking over of the services by the office bearers of TRWA is not in accordance with law. Rather, they have taken the law in their hand . For this act of the then office bearers/members of executive of TRWA whose names and particulars have been disclosed in the affidavit dated 23.11.2020 filed by Sh. Mukesh Mittal, the Vice - President of the TRWA, the promoter shall be at liberty to initiate the appropriate civil or criminal proceedings before the appropriate forum in accordance with law, if so advised.

43. It is further the admitted fact that now the TRWA is taking care of the essential maintenance services mentioned above for the last more than one and half years, it will not be desirable to put the clock back, rather it will cause the disruption of the maintenance services which will result in utter inconvenience and hardship to the residents of Tatvam Villas. So, the TRWA is allowed to carry on with these maintenance services as interim arrangement at its own costs as directed Id. Authority in the impugned order dated 02.05.2019, however, it will be subject to the decision of the complaint by the Id. Authority.”

The promoter as well as the Resident Welfare Association have

filed these three appeals. It is not in dispute that pursuant to the order passed by the Appellate Tribunal, the Competent Authority i.e. Real Estate Regulatory Authority has started examining the matter. The grievance of the promoter is that the Resident Welfare Association has taken over the possession of the four categories of essential services without following the due procedure laid down in the law, although, the Association was not entitled thereto.

On the other hand, the grievance of the Welfare Association is that the Appellate Tribunal has exceeded its jurisdiction while observing that the promoter shall be at the liberty to initiate the appropriate civil and criminal proceedings before the appropriate forum in accordance with law. He submits that when the matter was being remitted back to the Competent Real Estate Regulatory Authority, therefore, the Appellate Tribunal should not have made the aforesaid observations.

It is not in dispute that for the time being, the Welfare Association is managing the affairs of the four essential services. It is also not in dispute that the matter is pending before the Real Estate Regulatory Authority. After having addressed the arguments at some length, the learned counsel representing the parties have come to a consensus. They pray for disposal of these appeals with the direction to the Real Estate Regulatory Authority to conclude the proceeding within a period of six months. Till then, the observations made in paras reproduced above will be kept in abeyance and the Real Estate Regulatory Authority will take a final call while deciding the matter. It shall be open to the promoter to file an application for passing the interim orders, if prayed for.

With all these observations, the appeals are disposed of.

All the pending miscellaneous applications, if any, are also
disposed of.

September 27th, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned

:

Yes/No

Whether reportable

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Yes/No