130 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RERA-17-2020 (O&M)
Date of decision: 15.12.2022

M/s Pivotral Infrastructure Pvt. Ltd.

....Appellant

Versus

Sharad Avasthi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Tushar Sharma, Advocate for the appellant

Mr. Denson Joseph, Advocate for respondent no.1 and 2

Mr. Adarsh Jain, Advocate for respondent no.3

ANIL KSHETARPAL, J (Oral)

1. While invoking the jurisdiction under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the '2016 Act'), the promoter assails the correctness of the order passed by the Haryana Real Estate Appellate Tribunal (hereinafter referred to as 'HREAT). The appellant has been directed to pay Rs.2,50,870/- alongwith interest at the rate specified in the rules, on account of refund of excess transfer fee, amounting to Rs.1,48,500/- and Rs.1,02,370/- for delayed possession of the residential apartment.

2. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. Learned counsel representing the appellant has made the following two submission:-

1) The excessive transfer fee was paid on 25.09.2013 whereas the

complaint was filed in the year 2018. He submits that the claim of the respondents was barred by limitation.

2) The respondents, on adjustment, signed an agreement dated 20.12.2017. Hence, they were estopped from filing the complaints.

4. On the other hand, learned counsel representing the respondents submits that the payment plan was linked with the construction, hence, the cause of action for filing the complaint would accrue only when the possession is handed over. He further submits that the HREAT has correctly observed that the settlement deed dated 20.12.2017 was executed under pressure as the actual physical possession of the premises was not given.

5. In a construction linked payment plan, the payment is made in stages. Ultimately, the parties settle their account once the building is complete and the physical possession is handed over. The Appellate Authority has found that the appellant charged excess transfer fee to the extent of Rs.1,48,500/-. Learned counsel representing the appellant is unable to dispute the fact that this is not in accordance with the contract. In such circumstances, the genuine claim of the respondents cannot be rejected by taking a hyper technical view of the matter.

6. As regards the alleged settlement dated 20.12.2017, it may be noted that the promoter demanded Rs.11,00,000/- approximately before delivering the physical possession of the property. Accordingly, the respondents were forced to pay the amount of Rs.9,00,000/- even before the possession was delivered. In such circumstances, the settlement deed ,if any, signed on 20.12.2017, has correctly been held to

be a result of undue influence. The aforesaid contract was signed by the respondents under such circumstances as would have put undue pressure on their minds while entering into the contract.

7. As per Section 58 of the 2016 Act, the Regular Second Appeal is maintainable only on a substantial question of law, as provided under Section 100 of the Code of Civil Procedure, 1908. Learned counsel representing the appellant has failed to draw the attention of the Court to any substantial question of law involved in the present case.

8. Hence, dismissed.

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

15.12.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No