

CM No. 4765-CWP-2022 in/and
CWP No. 5063 of 2022
Date of Decision: 05.04.2022

Nidhi Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLR MR. JUSTICE LALIT BATRAPresent: Mr. Bhupender Pratap Singh, Advocate, for the petitioner.
Mr. Ankur Mittal, Advocate, for respondents no. 2 and 3.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner seeks issuance of a writ in the nature of '*mandamus*' directing the Haryana Real Estate Regulatory Authority, Gurugram, through its Chairman, to list and decide the pending applications under the provisions of Sections 36, 63 and 69 of the Real Estate (Regulation and Development Act), 2016, in the complaint titled as **Nidhi vs. Ireo Victory Valley Pvt. Ltd. and others** (CC No. 2785 of 2021), without delay and to dispose of the complaint in a time bound manner.

She further seeks passing of appropriate orders and directions in exercise of the powers of superintendence of this court, to conduct a judicial inquiry into the allegations of external influence and pressure that is being exerted on the Chairman of the Authority (as contended), by builders, politicians, senior officers, and other agencies, to influence the decisions in the matters being adjudicated by the Authority, with reference made to the comments of the Chairman in a TV program called Property Plus, telecast on the TV channel Zee Buninaess, on the 2nd of August 2021.

Today, CM No. 4765 of 2022 has also been filed by the applicant-petitioner, seeking to place on record additional documents as Annexures P-12 to P-30, the most relevant of which would be the order passed by the Haryana Real Estate Regulatory Authority, Gurugram, on 04.03.2022 (Annexure P-13), i.e. after the petition was filed.

Vide the said order, apart from the directions given at the end of the order, it has also been directed as follows, in paragraph 21 of the order:-

“....Accordingly, the authority directed that one more opportunity be given to the promoter to make application for registration of that part of the project which is registrable as per present Haryana Rules, 2017 (which have not been declared ultra-virus so far by the Hon'ble Punjab and Haryana High Court and matter is pending therein) within one month otherwise the authorised officer of the authority is directed to file a complaint before the Magistrate of competent jurisdiction for taking cognizance under Section 59 (2) of the Act as despite the repeated directions by the authority to register the subject project, the respondent promoters have failed to comply with the said directions which is a violation of Section 3 of the Act and punishable under Section 59 (2) of the Act ibid. Shri Sumeet Nain, Engineer Executive of the authority, is authorized to file a criminal complaint on behalf of this authority and hire the services of an advocate/public prosecutor, if required, in case application for registration is not made within one month. The respondent promoter is also directed to submit record of all allottees in the performa of the DPI within one month.”

Thereafter, certain other directions in the context of the above have also been given.

Whereas we *prime facie* may agree with what the petitioner is contending as regards the manner in which sales are alleged to have been made after an order dated 20.07.2021 was passed by the Authority; however, it is seen from the order Annexure P-13 that even as regards action against the promoter (not even made a party to the petition), the Authority has ordered various measures, including freezing of the companys' accounts in which sales considerations have been received after an order passed by the Authority on 20.07.2021 (directing that no such sales be further made).

Consequently, the petition is disposed of leaving the petitioner to avail of her remedy of appeal, if she so wishes, with it also to be noticed by this court that even prior to notice of motion having been issued, on an advance copy of the petition received, Mr. Ankur Mittal, Advocate, appears for the respondent-Authority and submits that the issue of what is an “ongoing project” and what is not, is subject matter of a Special Leave Petition filed before the Supreme Court, bearing SLP (C) No. 13005 of 2020 (in one particular case), and the whole issue of an anomaly between the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016, and the Rule 2 (o) of the Haryana Real Estate (Regulation and Development), Rules 2017, is also pending before this court in CWP No. 5589 of 2019, which is to come up for hearing on 05.09.2022.

He has further brought to our notice an order passed by a learned Single Judge of this court in RERA-APPL-35-2021 (Emmar India

Ltd. vs. Simmi Sikka and another), observing that the appellate authority was not justified in commenting upon the issue which was already under consideration of the Supreme Court.

Though of course in Division Bench we could have disagreed with that observation, but we find no reason to do so in these proceedings and consequently, the petitioner, as already said, is at liberty to avail of her remedy before the Haryana Real Estate Appellate Tribunal, if she so wishes.

If the petitioner chooses to file an appeal against the order of the Authority, dated 11.03.2022, and there are further violations by the promoter, (with it again mentioned that the promotor is not a party before this court), the petitioner would be at liberty to first bring that to the notice of the learned Tribunal.

**(AMOL RATTAN SINGH)
JUDGE**

April 05, 2022
nitin

**(LALIT BATRA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes