

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

114+119

CWP-12704-2022 (O&M).

Date of Decision: 11.07.2022.

Ishan Singh

....Petitioner.

Versus

State of Haryana and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Sanjeev Sharma, Senior Advocate, with
Mr. Vikram Vir Sharda, Advocate
for the petitioner.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

Mr. Ankur Mittal, Advocate, with
Ms. Vasundhra Asija, Advocate and
Ms. Kushaldeep Kaur, Advocate
for respondents No.2 and 3.

Mr. Anand Chhibbar, Senior Advocate, with
Mr. Rajeev Anand, Advocate and
Ms. Shreya Bhakoo, Advocate
for respondent No.4.

Mr. Amit Jhanji, Senior Advocate, with
Mr. Shashank Shekhar Sharma, Advocate
for respondents No.5 to 16.

Amol Rattan Singh, J. (Oral)

1. On 01.06.2022 the following order had been passed by this
court:-

“By this petition, the petitioner seeks issuance of a direction to respondents No.2 and 3 to adjourn the pending proceedings under the provisions of the 'RERA Act' (in respect of the petitioner and respondent No.4), sine-die, till the culmination of the ongoing arbitration proceedings with passing of an Award by the Arbitral Tribunal; and further restraining respondent No.4 from violating the status quo order dated 02.12.2019 (Annexure P/26), passed by the Arbitral Tribunal. The petitioner further seeks to restrain the respondent-developer from acting in furtherance of the order dated 09.02.2022 (Annexure P/33), and the order dated 11.05.2022 (Annexure P/38), passed by the Real Estate Regulatory Authority, Gurugram, and the Real Estate Appellate Tribunal respectively.

Mr. Sharma, learned senior counsel appearing for the petitioner, points to the order passed by the learned Arbitral Tribunal in the matter of arbitration between M/s Spaze Towers Private Limited (respondent No.4 herein) and the petitioner herein (Ishan Singh), with the operative part of that order (copy Annexure P/26), reading as follows:

“After hearing learned counsel for the parties, it is directed that they will maintain status quo as on today till the next date of hearing. It is made clear that the Claimant will not act upon the irrevocable power of attorney till the next date of hearing and the Respondent will also not precipitate matters in any manner whatsoever.

It is stated by learned counsel for the Claimant that an order for de-sealing the property is likely to be passed in a day or so. If such an order is passed, the Claimant may receive the order but not act on it till the next date of hearing.

The parties will not institute any fresh proceedings against each other and will request the concerned authorities, courts and Tribunals for an adjournment in any pending proceedings so that the status quo is not disturbed till the next date of hearing.”

On the other hand, he points to the order passed by learned Appellate Tribunal under the RERA Act, the operative part of which reads as follows:

“Taking into consideration the aforesaid pleas raised by ld. counsel for the parties and in the facts and circumstances of the case as an interim measure, it is ordered that the construction of the project will only be carried out if there is a legal approval of the competent authority under the relevant laws. It is further clarified that there will be no bar in construction if the necessary approvals, as required under relevant laws, are in place. To grant or not to grant the requisite approval will be entirely within the discretion of the competent authority.”

Notice of motion.

Dasti also.

Mr. Bahri accepts notice at the asking of the court on behalf of the respondent No.1.

The remaining respondents be served by normal and dasti process.

Adjourned to 11.07.2022.

To be shown in the urgent motion list.

In view of the specific directions given by the Arbitral Tribunal on 02.12.2019, to the effect that the said order would be brought to the notice of all Courts and Tribunals seized of any proceedings between the parties, which is obviously seen to have been brought the notice of the learned Appellate Authority, it is directed that status quo be maintained as

ordered by Arbitral Tribunal vide the aforesaid order, till the next date of hearing before this Court.

On a specific query to learned senior counsel he has submitted that the Arbitral Tribunal has not announced the Award, though arguments have been heard and the order has been reserved.

However, it needs to be observed that whether or not there is any collusion between any of the parties to try and defeat any complaint filed under the Real Estate Regulatory Act, 2016, (by any home buyer), would also need to be examined by this court.

If there is found to be any such collusion towards that end, this petition would need to be dismissed with exemplary costs to be paid to respondents No.6 to 16.”

2. Thereafter, upon CM-9289-CWP-2022 having been filed by respondent No.4, the following order was passed by this court on 08.07.2022:-

“Vide this application, respondent no.4 in the accompanying petition seeks vacation of the interim order passed by this court on 01.06.2022, for the detailed reasons given in the application.

Notice in the application.

Learned counsel for the non-applicant/petitioner accepts notice.

To be heard on merits on the date already fixed in the accompanying petition, i.e.11.07.2022.

It is made clear that any request for an adjournment made by counsel for the petitioner on that date would entail immediate vacation of the interim order with no further order required to be passed in this regard.”

3. Today Mr. Sharma, learned senior counsel appearing for the petitioner, first submits that this petition had been filed invoking jurisdiction of this court under Articles 226/227 of the Constitution of India and not under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter to be referred as 'the Act of 2016'), in view of the fact that the petitioner is otherwise not actually aggrieved of the orders passed by either Real Estate Regulatory Authority, Gurugram or the Real Estate Appellate Tribunal (dated 09.02.2022 and 11.05.2022, Annexures P-33 and P-38 respectively), but is seeking a stay of the proceedings under the Act of 2016 till the decision of the learned Arbitral Tribunal as is seized of the dispute between the petitioner and respondent No.4; in view of the order passed by the Arbitral Tribunal on 02.12.2019, the operative part of which has already been reproduced by this court in its order dated 01.06.2022; thereby directing that status quo as was existing (on the date of the order dated 02.12.2019), be maintained by parties till the next date of hearing before the Tribunal; and with the parties therein not to institute any fresh proceeding against each other; and further, with a request made to the concerned authorities, Courts and Tribunals (by the Arbitral Tribunal), for an adjournment in any pending proceedings, so that the status quo is not disturbed till the next date of hearing.

Mr. Sharma submits that the proceedings before the Tribunal continued till 30.05.2022, on which date the order in the Award was reserved.

4. He further submits that in terms of the collaboration between the petitioner and respondent No.4 qua the project in question, the petitioner was to be allotted 33% of the “inventory”, i.e. the number of dwelling units constructed in the project, and as such he would also be an allottee (as contended before us) of such units, and in that capacity he had filed a complaint before the Real Estate Regulatory Authority, Gurugram, on 25.07.2018 (copy Annexure P-10), which however was dismissed on 06.12.2018 (a copy of that order being Annexure P-11), holding therein that the parties having entered into a collaboration agreement, therefore, as per the provisions of Sections 5 and 8 of the Arbitration and Conciliation Act, 1996, the matter would not fall within the jurisdiction of Real Estate Regulatory Authority and further, the complainant, i.e. the petitioner herein, had also lodged a complaint with the National Company Law Tribunal, New Delhi. Consequently the complaint before the Real Estate Regulatory Authority was dismissed for want of jurisdiction.

He, thus, submits that the Real Estate Regulatory Authority having refused to entertain the petitioners' complaint and having itself effectively held that the matter would come within the jurisdiction of the Arbitrator/Arbitral Tribunal, it now cannot violate the interim order passed by the Arbitral Tribunal, directing that status quo be maintained.

He submits that therefore the prayer in the petition is for adjournment of proceedings before the Real Estate Regulatory Authority and the Appellate Tribunal *sine die*, till the Award is passed by the learned Arbitral Tribunal.

5. Learned senior counsel for the petitioner further submits that this petition is essentially one seeking that a 'comity of courts/fora' should be maintained, by one Tribunal respecting the orders of the other and maintaining status quo, especially in view of what has been subsequently held by the learned Arbitral Tribunal in its order dated 22.04.2022 (Annexure P-36), the operative part in that regard being as follows:-

“37.4 In the meanwhile, proceedings were initiated by some allottees of the flats in the building constructed by the Claimant, which building is the subject matter of these proceedings. In the proceedings, which were initiated before the Haryana Real Estate Regulatory Authority, an order was passed on 9th February, 2022, in which the further directions were given:-

“40. Both the promoter(s) (collaborator/land owner/licensee) i.e., M/s Spaze Towers Pvt. Ltd. And Sh. Ishan Singh shall complete the remaining construction/development works within a stipulated time period as per license/ registration certificate. However, both shall remain jointly and severally (severally) liable for the payment of delay possession charge and refund of amount of their allotted respective shares. The inter-se dispute between the land owner and the developer cannot be allowed to prejudice the statutory rights of the innocent allottee to get their real estate units on time.”

37.5 It is apparent from a reading of the order passed by the Authority that it is in conflict with the interim order passed by this Tribunal on 2nd December, 2019. Compliance with the order of this Tribunal will result in a violation of the order passed by HRERA and compliance with the order of HRERA will result in a violation of the order passed by this Tribunal.

37.6 Under the circumstances, the conflict will have to be

resolved by an appropriate forum since it cannot be resolved by this Tribunal.

37.7 Therefore, the Tribunal is not inclined to entertain the application filed by the Respondent on 23rd March, 2022 for certain reliefs but leaves it open to the Respondent to take necessary steps in accordance with law to safeguard his interests.”

6. Mr. Chhibbar, learned senior counsel appearing for respondent No.4, on the other hand submits that, firstly, the matter before learned Arbitral Tribunal is one strictly pertaining to a dispute between the two collaborators in the project, i.e. the petitioner and respondent No.4, the petitioner being the land owner and the said respondent being the actual developer of the project on the said land and with the project being constructed at the cost of the said respondent (as contended before us).

He submits that therefore complaints filed by other allottees of the constructed units/units under construction, before the Real Estate Regulatory Authority, cannot be affected by proceedings to which they are not party, i.e. arbitration proceedings; and on that ground alone, the interim order passed by this court, staying the proceedings before the Real Estate Regulatory Authority and the Appellate Tribunal, deserves to be vacated, because the principle of “comity of courts/fora”, in such a situation, would not apply at all.

7. Learned senior counsel for respondent No.4 next submits that completion of the project in any case cannot affect the proceedings before the Arbitral Tribunal, because eventually how the proceeds thereof are to be divided etc. would be subject matter of the dispute before that forum, and at

best damages can be claimed by one of the parties to that dispute against the other; and consequently the rights of third parties, i.e. other allottees in the project, cannot be stalled, especially as the Act of 2016 has an overriding effect over all other laws and statutes prevailing, in terms of Section 89 of that Act, which reads as follows:-

“89. Act to have overriding effect-The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

8. Before going on to consider the aforesaid arguments raised, the operative part of the interim order passed by the learned Arbitral Tribunal, on 02.12.2019, is again reproduced here:-

“After hearing learned counsel for the parties, it is directed that they will maintain status quo as on today till the next date of hearing. It is made clear that the Claimant will not act upon the irrevocable power of attorney till the next date of hearing and the Respondent will also not precipitate matters in any manner whatsoever.

It is stated by learned counsel for the Claimant that an order for de-sealing the property is likely to be passed in a day or so. If such an order is passed, the Claimant may receive the order but not act on it till the next date of hearing.

The parties will not institute any fresh proceedings against each other and will request the concerned authorities, courts and Tribunals for an adjournment in any pending proceedings so that the status quo is not disturbed till the next date of hearing.”

Thereafter, the order dated 22.04.2022 (Annexure P-36 already reproduced above) was passed.

9. The operative part of the order passed by the learned Appellate Tribunal under the Act of 2016, dated 11.05.2022, is also reproduced here, which reads as follows:-

“Taking into consideration the aforesaid pleas raised by ld. counsel for the parties and in the facts and circumstances of the case as an interim measure, it is ordered that the construction of the project will only be carried out if there is a legal approval of the competent authority under the relevant laws. It is further clarified that there will be no bar in construction if the necessary approvals, as required under relevant laws, are in place. To grant or not to grant the requisite approval will be entirely within the discretion of the competent authority.”

10. Thus, the order passed by the learned Appellate Tribunal under the Act of 2016, is again by way of an interim measure, directing that the construction of the project would be 'carried out' if there is legal approval of the competent authorities under the relevant laws (thereby meaning environmental, construction byelaws etc., as is not denied by learned counsel for the parties).

11. Having thus considered the matter, in our opinion, though Mr. Sharma, learned senior counsel for the petitioner, may otherwise have been correct as regards this court exercising jurisdiction under Articles 226/227 of the Constitution of India, to direct that the matter be not further continued by the Appellate Tribunal (under the Act of 2016), simply in view of the

orders earlier passed by a different forum, i.e. the Arbitral Tribunal (requesting all other courts and fora to adjourn the matter till the Award is passed by the Tribunal), however, as regards the impugned order passed by the learned Appellate Tribunal, with it directing that the construction may continue, to complete the project, subject to building and environmental laws etc. being complied with, we see no error in that order and we also would not find it actually to be 'in conflict' with the dispute before the Arbitral Tribunal; inasmuch as, if the construction continues which is to be carried out by respondent No.4, we do not see how the petitioner in any case would be affected by such construction, when there is admittedly a collaboration between him and respondent No.4, with the petitioner having a 33% share in the sale of the “inventory”.

This is other than the fact that Section 89 of the Act of 2016 specifically stipulates that the said Act would override the provisions of all other statutes. The reason for that is only too obvious, inasmuch as the object of the Act itself is to protect the interests of allottees who have spent hard earned money to purchase units (whether commercial or residential units in any particular project), and therefore with ten such allottees having filed complaint(s) before the Real Estate Regulatory Authority for delivery of possession in terms of their contract with the petitioner and respondent No.4, proceedings cannot be stopped in view of a dispute between the petitioner (licensee) and the on-site developer of the project, inter-se.

Obviously the dispute between the petitioner and respondent No.4 being distribution of the assets/payments to be made by one to the other etc., which is subject matter of the proceedings before the Arbitral

Tribunal, would continue culminating in the Award to be passed by that Tribunal.

12. However, it must be noticed that Mr. Sharma, learned senior counsel appearing for the petitioner, has also pointed out that in fact respondent No.4 has filed an application before the Real Estate Regulatory Authority, Gurugram, for modification of its order dated 09.02.2022, to the extent that respondent No.4 may be allowed to also sell the units that it is constructing/ has constructed.

That application is still to be decided by the said Authority, with the petitioner stated to have raised objections to that application.

We see no reason to interfere in those proceedings either at this stage, firstly because distribution of assets/payments to be made by the petitioner to respondent No.4 or vice versa, and the ratio and proportion of distribution of assets etc. between them, would eventually be in terms of the Award to be passed by the Arbitral Tribunal. If, on the other hand the Real Estate Regulatory Authority does not permit sale of the units, then in any case the petitioners' objection would stand allowed by that forum.

However, we do not consider it appropriate to intervene in those proceedings at this stage, with the Hon'ble Arbitral Tribunal in any case having already reserved passing of the Award.

Consequently, this petition is dismissed, with the interim order passed by this court on 01.06.2022 hereby vacated.

Naturally therefore, the construction on the project would continue in terms of the order of the learned Tribunal constituted under the Act of 2016, dated 11.05.2022. As regards the sale of any such flats, that

would be subject matter of decision by the Real Estate Regulatory Authority of Gurugram, and any proceedings thereafter in terms of the Act of 2016.

However, as has already been directed by the learned Appellate Tribunal, any construction to be made will only be after due clearance from all authorities concerned, as regards structural safety, environment etc.

(AMOL RATTAN SINGH)
JUDGE

(LALIT BATRA)
JUDGE

11.07.2022
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No