

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

109+228

Date of Decision: 25.05.2022.

- (1) CWP No.17657 of 2020 (O&M)**
- (2) CWP No.17663 of 2020 (O&M)**
- (3) CWP No.4231 of 2021 (O&M)**
- (4) CWP No.4235 of 2021 (O&M)**
- (5) CWP No.4236 of 2021 (O&M)**
- (6) CWP No.4230 of 2021(O&M)**
- (7) CWP No.4229 of 2021 (O&M)**
- (8) CWP No.4232 of 2021 (O&M)**
- (9) CWP No.4234 of 2021 (O&M)**
- (10) CWP No.4228 of 2021 (O&M)**
- (11) CWP No.4233 of 2021 (O&M)**

Sana Realtors Private Limited

....Petitioner.

Versus

The Haryana Real Estate Regulatory Authority and others

....Respondents.

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

Present: Mr. Manu K. Bhandari, Advocate for the petitioner.

Mr. Ankur Mittal, Advocate with
Ms. Vasundhra Asija, Advocate
for the respondent (RERA).

Ms. Nivedita Chauhan, Advocate,
Mr. Himmat Singh, Advocate, and
Ms. Komal Singh, Advocate
for respondent No.2 (in CWP No.4236-2021).

Amol Rattan Singh, J. (Oral)

CM-7076-CWP-2022 in CWP No.17657 of 2020
CM-6979-CWP-2022 in CWP No.17663 of 2020
CM-7184-CWP-2022 in CWP No.4231 of 2021
CM-7045-CWP-2022 in CWP No.4235 of 2021
CM-7172-CWP-2022 in CWP No.4236 of 2021
CM-7915-CWP-2022 in CWP No.4230 of 2021
CM-7978-CWP-2022 in CWP No.4229 of 2021
CM-7979-CWP-2022 in CWP No.4232 of 2021
CM-8097-CWP-2022 in CWP No.4234 of 2021
CM-8306-CWP-2022 in CWP No.4228 of 2021
CM-8307-CWP-2022 in CWP No.4233 of 2021

Vide these applications, the petitioner in the accompanying petitions seeks to amend the petitions, with Mr. Bhandari, learned counsel appearing for the applicant, submitting that the essence of the amendment is that in case this court does not allow the accompanying petitions and the petitioner is to be relegated to the alternative remedy of an appeal before the Real Estate Appellate Tribunal, to challenge the orders impugned in these petitions, a reasonable time may be given to it to make a pre-deposit before the appeals are heard [in terms of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016].

Notice in the applications.

Counsel for the non-applicant/respondent No.2 (in CWP-4236-2021), accepts notice, with Mr. Mittal learned counsel appearing for the respondent Real Estate Regulatory Authority, accepting notice in all the applications.

Very fairly, learned counsel for the respondents submit that as regards the amendment itself, they do not oppose the applications, but of course as regards the contents of the amended petitions, they would have their arguments to make on the merits thereof.

Consequently, the applications are allowed and the amended writ petitions are ordered to be taken on record to substitute the original petitions filed in each case.

Main Cases

Mr. Bhandari, learned counsel for the petitioner company (hereinafter referred to as the 'developer'), submits that the orders impugned in these petitions need to be treated to be void *ab initio* as they are against the basic principles of natural justice, inasmuch as the petitioner company was never heard in the matter, as would be obvious from the impugned orders themselves, with him further submitting that the complaints filed by the home buyers came up for hearing on different dates during the course of the ongoing pandemic; and consequently were adjourned from time to time without any actual hearing taking place, but on the date of passing of the impugned orders (i.e. 30.10.2020), the matters were taken up and decided in the absence of any representative or counsel for the petitioner company, with no advance intimation given to the effect that the matters would actually be taken up for hearing and would not be adjourned as they were being earlier due to the pandemic.

Whereas that argument is most definitely a tenable argument otherwise and on the principle *audi alteram partem* alone, we may otherwise have interfered in the matter, but Mr. Mittal learned counsel for the respondent RERA, firstly submits that the issue of waiving a pre-deposit to be made prior to an appeal being heard by the Tribunal, has been conclusively decided by the Supreme Court not just in the case of 'M/s

Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and

others', 2022(1) R.C.R. (Civil) 357, but in the case of the petitioner company itself also, i.e. in '**Sana Realtors Private Limited** Vs. **Union of India and others'**, SLP(C) No.13005 of 2020, the SLP has been dismissed in terms of the ratio of the judgment in **Newtechs'** case (supra); and consequently, with an alternative remedy of challenging the impugned orders on the merits/demerits thereof, available with the petitioner before the learned Real Estate Appellate Tribunal, this court would not exercise jurisdiction under Article 226 of the Constitution of India, to entertain these petitions. He specifically refers to paragraphs 78, 136 and 137 of the judgment in **Newtechs'** case (supra), which reads as follows:-

“78. This Court while interpreting **Section 18** of the Act, in ***Imperia Structures Ltd. v. Anil Patni and Another, 2020(10) SCC 783*** held that **Section 18** confers an unqualified right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the home buyer’s agreement in para 25 held as under:-

“25. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as

may be prescribed. The proviso to [Section 18\(1\)](#) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under [Section 18\(1\)](#) or under proviso to [Section 18\(1\)](#). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.”

x x x x

136. It is indeed the right of appeal which is a creature of the statute, without a statutory provision, creating such a right the person aggrieved is not entitled to file the appeal. It is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial litigations and it is always be circumscribed with the conditions of grant. At the given time, it is open for the legislature in its wisdom to enact a law that no appeal shall lie or it may lie on fulfilment of precondition, if any, against the order passed by the Authority in question.

137. In our considered view, the obligation cast upon the promoter of pre-deposit under [Section 43\(5\)](#) of the Act, being a class in itself, and the promoters who are in receipt of money which is being claimed by the home buyers/allottees for refund and determined in the first place by the competent authority, if legislature in its wisdom intended to ensure that money once determined by the authority be saved if appeal is to be preferred at the instance of the promoter after due compliance of pre-deposit as envisaged under [Section 43\(5\)](#) of the Act, in no circumstance can be said to be onerous as prayed for or in violation of Articles 14 or 19(1)(g) of the Constitution of India.” (Emphasis applied in the present order only).

Learned counsel appearing for the complainant (in CWP No.4236-2021), submits that the agreement between the home buyer and the developer was entered into in the year 2010, with the date of delivery of possession of the dwelling units being in the year 2013, but with the home buyer suffering even thereafter for nine years now; and consequently, the petitioner cannot take a “technical plea” of not having been heard by the respondent authority.

Mr. Bhandari however wishes to rebut even that argument on the strength of the judgment of the Supreme Court in **Harbanslal Sahnia and another** Vs. **Indian Oil Corpn. Ltd. And others**, 2003 AIR (SC) 2120 and **Union of India & Ors.** Vs. **Tantia Construction Pvt. Ltd.**, 2011(3) R.C.R. (Civil) 821.

He submits that this court while exercising jurisdiction under Article 226 of the Constitution of India, in such a situation, would interfere in the matter and set aside the impugned orders, while directing the respondent authority to pass fresh orders after duly hearing the petitioner.

It is also to be noticed that learned counsel for the petitioner has submitted that possession was actually offered in the year 2017, but was not taken by the home buyer, which counsel for the home buyer in CWP No.4236 of 2021 strongly refutes.

That issue obviously is not to be gone into by this court and would be looked at by the Tribunal after taking into consideration the pleadings and arguments raised before it on both sides.

Though Mr. Bhandari wishes to make submissions on the merits of other arguments sought to be raised by the home buyer, we are not

at all going into that issue, which would be naturally considered by the learned Tribunal, in all aspects thereof.

Thus, having considered the matter, as already said, though otherwise we would be in agreement with learned counsel for the petitioner on the principles of *audi alteram partem* as a basic principle of natural justice, yet, looking at the fact that the Real Estate (Regulation and Development) Act, 2016, has been specifically enacted by Parliament to protect the interests of home buyers and the Supreme Court (in paragraph-78 of the judgment) in **Newtech**' (supra) has held as has been reproduced hereinabove and has further specifically held to the effect that the right of home buyer under the Act is an unqualified right and (in paragraph-137) has held that in no circumstance can the condition of a pre-deposit as envisaged under Section 43(5) of the Act, said to be onerous or in violation of Articles 14 or 19(1)(g) of the Constitution of India, these petitions would not be entertained by this court, specially with Mr. Mittal having specifically pointed to the fact that the Supreme Court (in the case of **Newtech**), had also specifically dealt with the issue as decided in the case of '**Tecnimont Pvt. Ltd. (Formerly Known As Tecnimont ICB Private Limited) Vs. State of Punjab and Others**', and after having duly considered the matter in the light of the jurisdiction of a High Court to waive the condition of a pre-deposit under Article 226 of the Constitution of India, has still gone onto hold as has been held specifically (in paragraph-137) of **Newtechs**' case (supra). Consequently, these petitions are dismissed.

However, naturally, the petitioner would be at liberty to file appropriate appeals before the learned Real Estate Appellate Tribunal after

making a pre-deposit as required in terms of Section 43(5) of the Act of 2016, in each case.

Upon Mr. Bhandari's request, a time of 30 days is granted to the petitioner to make the pre-deposit before the Tribunal and if the appeals are filed within the aforesaid period of 30 days, the issue of limitation would not come in the way of the petitioner.

(AMOL RATTAN SINGH)
JUDGE

(LALIT BATRA)
JUDGE

25.05.2022
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No