

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

RERA-APPL-44-2022 (O&M)

Date of decision: 19.09.2022

Reserved on : 12.09.2022

M/s Indiabulls Commercial Credit Ltd.

....Appellant

Versus

Haryana Real Estate Regulatory Authority Gurugram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Randeep Singh Rai, Sr. Advocate with
Ms. Rubina Virmani
Mr. Nitish Pathak, Advocates for the appellant

ANIL KSHETARPAL, J

1. While questioning the correctness of an interlocutory order passed by the Real Estate Regulatory Authority, which later came to be confirmed by the Real Estate Appellate Tribunal, the present appeal has been filed.

2. Some facts are required to be noticed. In a complaint filed by Smt. Nidhi Singh against M/s Irio Victory Pvt. Ltd., the regulatory authority on 04.03.2022, while exercising powers under Section 37 of the Real Estate (Regulation and Development) Act, 2016, issued the following directions:-

“ 92. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the

function entrusted to the authority under section 34 (f):

I.The respondent promoters are in violation of section 3 of the Act of 2016 which is punishable under section 59(1) of the Act of 2016 and accordingly the authority imposes a penalty of Rs. 25 lacs on the promoters' company.

II.The authority directs the respondents promoters to submit an application for registration of that part of the project which is registrable as per present Haryana Rules, 2017 within one month, failing which, the authorised officer of the authority is directed file a complaint before the magistrate of competent jurisdiction for taking cognizance under Section 59 (2)) of the Act of 2016.

III. The authority directs the respondents company to submit record of all allottees in the performa of the DPI within one month. Furthermore, an affidavit shall be submitted by the respondent no.3, who is the Chief Operating Officer of the promoter's company and responsible for running day to day affairs of the company or in case respondent no. 3 is not the Chief Operating Officer, then any authorized representative/key managerial functionary, duly authorized by the Board in its meeting to submit the requisite information required for registration.

iv. The authority directs that the account of the respondents' promoters in which the sale consideration of the already sold unit is being received is freezed till further orders of this authority and the promoters are restrained to withdraw any amount from the said account.

v. The authority ordered an enquiry under section 35[1] to be instituted in the affairs of the respondents' promoters with regard to the issues as mentioned in para 28, 63, 75, and 76 of this order and also other issues enquiry officer specifically in paras where determination about various reliefs has been discussed. The M/s MKPS & Associates, Chartered Accountants, 804, 8th floor, Arunachal Building, 19 Barakhamba Road, New Delhi -110001, an empanelled firm to carry out the said inquiry/ audit/ fact finding in the affairs of the promoter. The firm entrusted this task shall also audit the accounts of the project whether some diversions of funds have been taken place or not. The authority further directs the inquiry officer/ auditing firm/ fact finding team to submit its fact-finding report to the authority within two months. The remuneration shall be payable to enquiry officer / auditing firm/fact finding team as fixed by the authority for conducting this inquiry. Furthermore, the report as submitted by the inquiry officer/auditing firm/ fact finding team be examined by the planning branch of this authority and if violations are noticed, the matter be placed before the authority for initiating further action as per provisions of law. The copy of the said report may also be sent to the complainant and respondent no. 11 with a liberty to them to join as party in the penal proceedings against the promoters. The promoter shall discharge its liability within 3 months of receiving the report and acceptance by the authority.

vi. The respondent promoters are directed to clear all the pending dues as are

ascertained by the inquiry officer/ auditing firm within 1 month of receipt of inquiry report after acceptance by the authority.

vii The respondent promoter's are directed to comply with provisions of section 11 (4) (g) and 11 (4) (h) of the Act of 2016. Accordingly, the respondents' promoters are also directed to settle all dues in view of the provisions contained in section 11,(4)(g) and 11(4)(h) of the Act of 2016 and an affidavit with respect to the settled dues in this regard be submitted in the registry of the authority within 3 of this order.

viii. The authority directs the respondents promoters to deposit the cost.of incomplete development works and payment of dues to the resident welfare association in a separate RERA account to be opened while registering the project.

ix. The authority directs the respondents' promoters to complete the subject project and obtain the completion certificate from the competent authority w.r.t the subject project. The respondents' promoters are also directed declare the timeline for completion of subject project and obtaining the completion certificate from the competent authority.

x. The authority directs the respondents' promoters to transfer the common areas and facilities as per the deed of declaration filed under the provisions of the Haryana Apartment Ownership Act, 1983 and Rules and byelaws made thereunder, within one month if some or all of these have not been transferred earlier to the M/s Victory Valley Condominium Owners Welfare Association.

xi. The authority further directs the planning branch to supply copy of the enquiry report to the complainant and respondents within one month of its receipts in the authority for inviting their objections if any within one month thereafter and authority may thereafter accepts the report with or without modifications.

xii. The directions given in the paras where reliefs have been discussed and not found mention above be also compiled with by all concerned.

3. The relevant direction for the purpose of this appeal is contained in clause V. As directed by the Authority, M/s MKPS & Associate Company, after carrying out forensic audit of the promoter, submitted its report dated 30.05.2022. The authority, on the basis of the report, initiated an action, which led to the order dated 07.06.2022. The relevant observation made by the authority in the order dated 07.06.2022 reads as under:-

“5. In view of the above said findings of the auditor M / s MKPS & Associates, chartered accountants and the fact that the project is still unregistered despite specific orders to that effect passed by the Authority including but not limited to the final judgment dated 04.03.2022, you the addressee No. 1 herein is hereby units + 7 Units as mentioned in above tables until further orders of the Authority.

6.The addressee Nos. 2 to 6 herein are hereby directed to maintain status quo with respect to the said units and further directed not to facutate any sale in the project either directly or indirectly in any

way, shape or form, until further orders of the Authority.

7. These direction are being issued by the authority in exercising of its power given under Section 37 of the Real Estate Regulation and Development) Act, 2016. Which are binding on all concerned, any act of non compliance shall view adversely and the authority shall be constrained to take appropriate action as per law.”

4. Thus, as per the orders, the appellant as well as the promoter have been restrained from alienating the aforesaid units, either directly or indirectly. The authority has also directed further investigation as there are serious allegations of diversion of large scale funds.

5. The appellant is a Group Company of M/s India Bulls Finance Ltd., which has financed the entire project. In fact, in the order dated 04.03.2022, the authority has found that India Housing Finance Limited, in collusion with the promoter, are trying to dispose of the property.

6. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

7. Learned counsel representing the appellant, while drawing the attention of the Court to page 63 of the paperbook, submits that the Executive (Administration and Establishment) of Haryana Real Estate Regulatory Authority has passed the order which is not signed by any memembr of the authority. He submits that neither there is any delegation nor there is any power to delegate to the Executive. He contends that, admittedly, in the present case, the agreements to sell were executed and

registered in favour of the appellant on receipt of 90% of the sale consideration in favour of the appellant, before 20th July, 2021. As per the orders originally passed, the sale of the property before 04.03.2022 was kept out of the purview of the interim directions. He further submits that the authority in violation of the principles of natural justice has passed the impugned order as the appellant was not granted an opportunity of hearing, before passing the impugned order.

8. This Court has analyzed the arguments of the learned counsel. With regard to the first argument of the learned counsel, it may be noticed that the Real Estate Regulatory Authority, while issuing direction on 04.03.2022, had directed a firm of chartered accountants to carry out the said inquiry/audit/fact finding in the affairs of the promoter. It was also observed that the report, as submitted by the inquiry officer/auditor/fact finding team, shall be examined by the Planning Branch of RERA and if violations are noticed, the matter shall be placed before the authority for initiating further action, as per the provisions of law. Pursuant thereto, the report was submitted, which was examined by the appropriate authority at the relevant stage.

9. On 31.05.2022, the office of the Authority, after processing the report alongwith the record, placed the file before a Member of the Real Estate Regulatory Authority. The Member directed the office to initiate the necessary action, especially on the violations pointed out in the audit report while directing the issuance of interim directions to stay the sale of the property of any kind. The Member also directed the office to make a reference for the same. Thereafter, the file was sent to

the Chairman, who countersigned the note. Subsequently, a draft copy of the letter was prepared and submitted for approval, which was granted. In such circumstances, the learned counsel is not correct in contending that the order has not been signed by the authority.

10. As regards the second argument of the learned counsel, it may be noted that the authority has categorically restrained the promoter from sale of the property with effect from 20th July, 2021. It has come on record that there is some material which prima facie shows that M/s K.S.S Properties Pvt. Limited and M/s High Responsible Builders Private Limited were granted license to develop a colony on the concerned property and the promoter as well as M/s Indiabulls Housing Finance Pvt. Ltd. have colluded in disposing of the said property. Hence, the impugned order has been passed. Keeping in view the aforesaid facts, the second argument of the learned counsel has no substance.

11. As regards the last argument, it may be noted that the authority has only passed an interim order. The matter is still pending before the authority. In fact, the appellate authority has observed that non-joining of the appellants as party, in the complaint no.278 of 2021, was beyond the control of the complainant as she could not have visualized that the promoter was in the process of transferring the units to the appellant. Moreover, the appellate Tribunal has already granted liberty to the appellant to knock the doors of the learned authority for modifying/vacating the restraint orders, by taking all the pleas available to it.

12. Lastly, the argument of the learned counsel that the authority has no power to delegate is not required to be examined, particularly when on careful perusal of the photocopy of the order, it is evident that the order was passed by a Member of the Authority which has also been approved by the Chairman.

13. Consequently, finding no merit, the appeal is dismissed. However, before closing the judgment, it is considered appropriate to request the Real Estate Regulatory Authority to conclude its investigation/inquiry in an expeditious manner, positively within a period of next six months, from today.

15. With these observations, the appeal is dismissed.

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

19.09.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE