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

**154**

**RERA-APPL-51-2022 (O&M)**
**Date of decision: 19.12.2022**

JATINDER KUMAR AND OTHERS **..Appellants**

**Versus**

JUBLIANT MALLS PVT. LTD. **..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Ms. Munisha Gandhi, Sr. Advocate
with Mr. Ashwani Gaur, Advocate
Mr. Vaibhav Sharma, Advocate
Mr. Viraj Gandhi, Advocate
for the appellants.

Mr. Rajiv Atma Ram, Sr. Advocate
with Mr. Rajat Khanna, Advocate
Mr. Ashutosh, Advocate
Mr. Gurpreet Singh, Advocate
Mr. Shubham Tandon, Advocate
for respondent.

**ANIL KSHETARPAL, J(Oral)**

1. This appeal under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the '2016 Act') has been filed in order to assail the correctness of the concurrent orders passed by the Real Estate Regulatory Authority (hereinafter referred to as the 'RERA') which was affirmed in appeal by the Haryana Real Estate Appellate Tribunal (hereinafter referred to as the 'Tribunal'). Both the authorities have found that the appellants had only invested the amount of Rs.2,00,00,000/- with the respondents and, therefore, their complaint under the 2016 Act is not maintainable. However, the Appellate Tribunal has directed refund of the amount along with the interest as per the rules.

2. In such circumstances, the question which arises for consideration is that “if RERA comes to a conclusion that there was no

genuine agreement to purchase a plot or apartment, whether such complaint can be decided by the authority constituted under 2016 Act?"

3. There is an agreement to sell dated 29.05.2018 between the parties in dispute. It refers to the area in which the proposed project is sought to be developed. In the agreement to sell, it is written that the appellants have agreed to purchase three plots namely A-7, A-8 and A-9, measuring 392.19 sq. yards each for a sum of Rs.2,64,00,000/-. As per the agreement to sell Rs.2,00,00,000/- were paid by the appellants to the respondent. It is evident from the reading of the agreement to sell that neither the name of the project nor the date of its completion or the date of delivery of possession has been specified in the said agreement. It has also come in evidence that previously the appellants invested the amount with the respondents which was returned. Moreover, there are various highly disputed questions of fact which are contested by the parties. On the one hand, the respondent claims that the appellants signed a buy-back agreement on 29.05.2018, the same date on which the agreement to sell was executed, however, on the other hand, the appellants claimed that the said document is forged.

4. Keeping in view the aforesaid facts, the RERA as well as the Tribunal concluded that the appellants are not the genuine purchasers and in fact the agreement was entered into only to secure the refund of the amount invested.

5. The Tribunal has already directed the respondents to return the amount invested along with the prescribed rate of interest i.e. SBI+MCLR+2%.

6. The learned counsel representing the appellants has shown the Court various documents, wherein the parties have taken different stands. However, this does not help the case of the appellants. The appeal under Section 58 of the 2016 Act is maintainable only on a substantial questions of law as prescribed in Section 100 of the Code of Civil Procedure, 1908. After having heard the learned counsel representing the parties, this Court is of the view that the attention of the Court has not been drawn to any substantial questions of law.

7. Keeping in view the aforesaid facts, the appeal is dismissed with liberty to the appellants to avail their alternative remedy.

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

**December 19th, 2022** **(ANIL KSHETARPAL)**
*Ay* **JUDGE**

*Whether speaking/reasoned : Yes/No*
*Whether reportable : Yes/No*