

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6754 of 2023

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Galaxia Township Housing Private Limited (CIN-U45200BR2015PTC023825) 3rd Floor, Jai Hanuman Complex, In front of Bazar Samiti, Ara, P.S.-Nawada, Ara, District-Bhojpur-802301, Bihar through its Managing Director Mr. Jitendra Tiwari, aged 48(M), Son of Srinath Tiwari, Resident of Village-Baradhi (Surware Ke), P.S.-Dinara, District-Rohtas, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Government of Bihar, Old Secretariat, Patna-800015.
2. The Real Estate Appellate Tribunal, Bihar, Patna through its Registrar, The Real Estate Appellate Tribunal, Bihar, 4th Floor, Pant Bhavan, Bailey Road, Patna-800015.
3. The Real Estate Regulatory Authority, Bihar, Patna, through its Registrar, The Real Estate Regulatory Authority, Bihar, 6th Floor, Bihar State Building Construction Corporation Campus, Hospital Road, Shastri Nagar, Patna-800023, Bihar.
4. Mrs. Devanti Devi, Wife of Mr. Sudarshan Ram, Resident of Gauganj, P.S.-Ara Muffassil Ara, District-Bhojpur-802301, Bihar.
5. Mr. Paritorsh Chaturvedi, Son of Late Krishna Ballabh Chaturvedi, Resident of Krishna Sadan, Station Road, Nawada, P.S. Nawada, Ara, District Bhojpur-802301, Bihar.
6. Mr. Ashutosh Chaturvedi, son of Late Krishna Ballabh Chaturvedi, Resident of Krishna Sadan, Station Road, Nawada, P.S. Nawada, Ara, District Bhojpur-802301, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Pratyush Kumar, Adv. Mr. Rahul Kumar, Adv.
For the Respondent/s	:	Mr. Indeshwari Prasad, AC to GA-3.
For the Respondents	:	Mr. Sanjay Kumar, Adv. Mr. Sunil Pathak, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 24-08-2023

The present writ petition has been filed seeking the
following reliefs:-



“(1) For issuance of writ of certiorari to quash / set aside the order dated 28/11/2022 passed in REAT Appeal No. 68/2022 passed by the Real Estate Appellate Tribunal, Bihar and further to quash / set aside the order dated 09/09/2022 passed in RERA/CC/262/2019 passed by the Real Estate Appellate Tribunal, Bihar, as the aforementioned orders passed by the aforesaid Tribunals suffer from inherent lack of jurisdiction.

(ii) For issuance of appropriate Order / Orders, Direction / Directions for staying all the processes against the petitioner arising out of the order dated 28/11/2022 passed in REAT Appeal No. 68/2022 passed by the Real Estate Appellate Tribunal, Bihar and the order dated 09/09/2022 passed in RERA/CC/262/2019 passed by the Real Estate Appellate Tribunal, Bihar during the pendency of this Writ Application.”

2. Learned counsel for the petitioner has stated that the Appellate Authority without taking into consideration that the authority constituted under the Real Estate Regulatory Authority (hereinafter referred to as ‘RERA’) i.e. the respondent No. 3 does not have the jurisdiction to entertain the petition filed by the respondent No. 4, has grossly erred in passing the impugned order.

3. Learned counsel has stated that when the petitioner has raised the question of jurisdiction of ‘RERA’ in passing the order which was impugned before the Appellate Authority i.e. respondent No. 2. The Appellate Authority ought not to have insisted for depositing the 30 per cent penal amount as a condition precedent for entertaining the appeal filed by the



petitioner. Learned counsel has stated that the Appellate Authority without going into the merits of the case and first deciding the jurisdictional issue raised by the petitioner has passed the impugned order and the same is contrary to the law.

4. Further, the learned counsel has stated that the respondent No. 3 does not have the jurisdiction to entertain the complaint filed by the Respondent No. 4 and pass the impugned order, as the area under development agreement falls outside the notified area. That the order passed by 'RERA' is one without jurisdiction and non-est in the eye of law. Therefore the Appellate Authority should had entertained the appeal filed by the petitioner and decided the issue of jurisdiction first without insisting for payment of 30 per cent of the penal amount levied by 'RERA' as a condition precedent. Learned counsel has relied on the judgement of the Hon'ble Supreme Court in the case of **Jagmittar Sain Bhagat and others Vs. Director, Health Services, Haryana and others, reported in (2013) 10 SCC 136** in support of his case.

5. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the writ petition and stated that the order passed by the second respondent is in consonance with the



provisions of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act') and the law laid down by the Hon'ble Supreme Court. Learned counsel has stated that the petitioner instead of complying with the directions issued by the Appellate Authority has approached this Hon'ble Court with an ulterior motive to escape from paying the 30 per cent penal amount and to defeat the mandatory provisions of 'the Act'. That the petitioner is legally bound to deposit 30 per cent of the penal amount as envisaged under Section 43 (5) of 'the Act' as a condition precedent for entertaining any Appeal and the tribunal has rightly passed the order.

6. Learned counsel for the respondents has stated that the grounds raised by the petitioner with regard to the jurisdiction is legally untenable and relied on the judgement of the Hon'ble Supreme Court in case of **Newtech Promoters and Developers Pvt. Ltd, Vs. State of Uttar Pradesh reported in 2021(13) Scale 466: 2021 JX (SC) 758** to contend that the impugned order is in consonance with the provisions of 'the Act' as well as the law laid down by the Hon'ble Supreme Court in the above cited judgement.

7. A perusal of the order impugned in the present CWJC reveals that the petitioner has filed statutory appeal



before the second respondent against the orders of the 'RERA' i.e. Respondent No. 3 in Case No. RERA/CC/262/2019 dated 09.09.2022. On the complaint of Respondent No. 4, 'RERA' has passed orders on merits and directed the petitioner to refund an amount of Rs. 5,40,300/- along with interest at the marginal cost of SBI MCLR as applicable for three years + 3 per cent within 60 days of issue of the order.

9. Aggrieved by the said order of the RERA, the petitioner has preferred an appeal and the appellate tribunal in consonance with the provisions of 'the Act' more particularly Section 43 (5) has directed the petitioner to deposit 30 per cent of the penal amount granted by 'RERA' vide order dated 09.09.2022 as a condition precedent to entertain the appeal.

10. The learned counsel for the petitioner has vehemently argued that 'RERA' did not have the jurisdiction to pass the order dated 09.09.2022 on the ground that the area which has been developed by the petitioner has not been notified under the Act. However, it is to be noted that in respect of the very same venture the respondent Nos. 5 and 6 have earlier filed an appeal before the appellate authority (**Annexure 3**) and the Appellate Authority has set aside the order of the RERA dated 09.09.2022 to the extent of the Respondent Nos. 5



and 6 only. The Respondent Nos. 5 and 6 have also deposited the 30 per cent of the penal amount as envisaged under Section 43 (5) as a condition precedent for entertaining the said appeal. Further after the said appeal was allowed, the matter was remanded back to 'RERA' for considering the matter afresh and the 30 per cent costs paid by the Respondent Nos. 5 and 6 was also refunded to them. Therefore the argument of the petitioner that the order impugned in the present CWJC cannot be sustained is not correct and legally untenable.

11. The Hon'ble Supreme Court in the case of **Newtech Promoters and Developers Pvt. Ltd. (supra)** more particularly paragraph 122 of the said judgement while interpreting the provisions of the Act has framed the following issue:-

“(122) It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee which includes interest and compensation imposed



on him, if any, or with both, as the a case may be, before the appeal is to be instituted.”

and held as under:-

“(135.)To be noticed, the intention of the instant legislation appears to be that the promoters ought to show their bona fides by depositing the amount so contemplated.

(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.”

12. The judgement relied by the petitioner has no application to the facts of the present case and therefore not of any use, even though there is no quarrel with the proportion of



law laid therein.

13. Having regard to the above legal position laid down by the Hon’ble Supreme Court in the above cited case of **Newtech Promoters and Developers Pvt. Ltd, Vs. State of Uttar Pradesh reported in 2021(13) Scale 466: 2021 JX (SC) 758**, this Court does not find any merit in the present writ petition which warrants any interference by this Court under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

(A. Abhishek Reddy , J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.08.2023
Transmission Date	NA

