

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

CWP-11767-2022

Date of Decision : 07.02.2023

Brijesh Kumar and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. Mukesh Kumar Verma, Advocate
for the petitioners.

Mr. V.G.Jauhar, Addl. Advocate General, Punjab.

VIKRAM AGGARWAL, J.

The petitioners purchased flats in a gated community in the name of “The Hermitage Park”, developed by respondent No.7 in Dhakoli, Zirakpur, District SAS Nagar, Punjab. The flats were purchased by the petitioners in 2016 to 2018. Possession was taken over in 2018 and 2019. The total price varied from ₹33,00,000/- (approximately) to ₹50,00,000/- (approximately). The petitioners allege the official respondents to be in league with respondent No.7. They allege that as per the original layout plan (Annexure P-3), 458 apartments with 46 EWS apartments, 29.11% green area, ground coverage of 34.95% with achievable FAR of 1:2.00 were provided. The project had 10 residential towers out of which certain towers were to have 14 storeys with stilt parking whereas other towers were to have 07 storeys with stilt parking. One tower was to have a club having three

floors. However, two revisions in the original layout plan were done without the consent of the allottees in violation of Section 11 and 5 (4) of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as 'the PAPR Act'). The colony was registered by the Real Estate Regulatory Authority, Punjab (hereinafter referred to as "RERA") as an ongoing project. In 2019, purchase of additional FAR was allowed after amendment in the Municipal Bye-Laws. In 2020, third revision in the layout plan was carried out without the consent of the allottees. RERA also gave its consent on 26.07.2021 without seeking the consent of the allottees. The norms laid down by the Fire Department were also violated as a result of which fire tenders would not be in a position to move in case of a fire incident. The petitioners allege that they made various representations to various authorities but to no avail. The petitioners have levelled allegations against respondent No.8 who is a senior functionary in the State of Punjab. Challenge has been laid to the order dated 01.04.2022 (Annexure P-21), passed by respondent No.8 vide which the complaint filed by the petitioners was rejected and the petitioners were advised to file an appeal against the decision dated 22.09.2021 (Annexure P-27) of RERA Department.

We have heard learned counsel for the petitioners and have perused the record.

Learned counsel for the petitioners has submitted that the official respondents are conniving with respondent No.7 and have granted all permissions in an illegal manner. Reference has also been made to the order dated 22.09.2021 (Annexure P-27), passed by the RERA. It has been submitted that the said order is totally illegal and arbitrary and, therefore, deserves to be set aside. Learned counsel has further referred to the order

dated 04.04.2022, passed by the Appellate Tribunal and has contended that the said order is also not sustainable. It has been submitted that the present writ petition raises several issues which had not been raised before the RERA or the Appellate Tribunal and has tried to convince the Court with regard to maintainability of the present writ petition.

We have considered the arguments addressed by learned counsel for the petitioners but are unable to agree with the same.

It would be essential to mention that the petitioners chose not to annexed the order dated 22.09.2021 (Annexure P-27), passed by the RERA as also the order dated 04.04.2022 (Annexure P-32), passed by the Appellate Tribunal when the writ petition was filed and it was only when the Court pointed it out to them, the same were placed on record. The order dated 27.05.2022 passed by a Coordinate Bench of this Court reads as under:-

“Learned counsel for the petitioners submits that the concession granted to respondent no.7 by the Directorate of Local Government, Punjab, vide Annexure P-6, dated 15.07.2020, not only militates against the building byelaws, but also creates 'hassles' for all residents of the area, as even a firebrigade/fire tender cannot now enter a part of the area where certain towers (as have been described in the petition), are located.

It is next submitted that the said respondent has also been granted registration by the Punjab Real Estate Regulatory Authority without an 'appropriate licence' issued by the Government in respect of the project.

Learned counsel for the petitioners would produce before this court the order passed by the Real Estate Appellate Tribunal, granting liberty to the petitioners to approach this court (as has been contended by learned counsel), as also the order passed by the Real Estate Regulatory Authority,

dismissing the complaint of the petitioners, (as was subject matter of the appeal before the Tribunal).

Adjourned to 01.06.2022.”

On 04.07.2022, a query was put to the learned counsel for the petitioners as to how the writ petition would be maintainable when the appeal had been withdrawn.

Learned counsel had sought time to address the arguments on the said issue. However, even today, learned counsel has not been able to justify the filing of the writ petition once the appeal had been withdrawn. First of all, the petitioners should have made all averments in the complaints filed before the RERA. They cannot be permitted to make some averments before the RERA and others before other Courts. Further, the RERA dismissed the complaints by passing a detailed order dated 22.09.2021 (Annexure P-27). While dismissing the complaints, the RERA observed as under:-

“Based on the written submissions and the verbal pleadings, we are of the following view:-

- i. The respondent made valid offer of possession to the complainants after obtaining PCC/OC.
- ii. The complainant took peaceful possession of their apartments, without any dispute or objection.
- iii. The complainants got the conveyance deed duly executed as a confirmation of their respective units being complete.
- iv. No evidence has been provided for any deviation from approval/revised layout plan.
- v. The complainants could not provide any evidence in regards to shortage of covered/basement parking. Also, they failed to give assurance that they will allow peaceful earmarking of covered parking to the various

allottees individually.

vi. The complainants are in default in regards to the maintenance charges, as required to be paid by them in terms of Section 19(6) and hence not entitled to relief of proper upkeep and maintenance of the common areas, by the respondent.

vii. The complainants failed to provide any evidence in support of various other allegations made by them in the complaint.

In view of the above, the complaints are hereby dismissed being devoid of merits. No other relief is made out.”

The petitioners preferred an appeal which they withdrew after arguing the matter at length before the Appellate Tribunal. It is so mentioned in the order dated 04.04.2022 (Annexure P-32). Learned counsel for the petitioners has not been able to justify the filing of the writ petition after the withdrawal of the appeal filed by the petitioners. Once the RERA had given a decision against the petitioners and the appeal against the same had been withdrawn, the petitioners would have no right to file a writ petition. The writ petition is totally misconceived and devoid of merit.

In view of the aforesaid, we are not inclined to interfere and the writ petition is accordingly dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

07.02.2023
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No