

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

CWP-17177-2023

DATE OF DECISION: 19.09.2023

M/S RAMPRASTHA PROMOTERS AND DEVELOPERS LTD.

.....PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Kewal Krishan, Advocate, for
Mr. Mukul Goyal, Advocate,
for the petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

HARPREET KAUR JEEWAN, J.

[1] The petitioner has filed the present Writ Petition under Article 226 of the Constitution of India praying *inter alia* to direct respondent No. 1 to protect the petitioner from the order 27.03.2023 (Annexure P-3) passed by the Adjudicating Officer of the Haryana Real Estate Regulatory Authority, Gurugram, whereby the warrants of arrest against the Directors of the petitioner-company has been issued. The petitioner has further sought quashing of the impugned order dated 21.08.2018 (Annexure P-1) passed by the Haryana Real Estate Regulatory Authority-respondent No. 2, (hereinafter referred to as the 'Authority'), whereby the petitioner has been directed to hand over the possession of the constructed unit within a time frame and further directed to pay the interest on account of delay in handing over the possession of the constructed unit.

FACTS ON RECORD

[2] As per the brief facts on record, the petitioner/promoter is developing a project named “The Edge Tower” located at Sector 37-D, Ramprastha City, at Dwarka Expressway, Gurugram, under a promoter license issued by the competent authority. Respondent No. 3 is a home buyer of residential unit No. A-401 under the said project and he agreed to purchase the said unit for a total sale consideration of ₹1,11,14,583/-. The apartment buyer's agreement was executed on 11.11.2014 and respondent No. 3 paid a sum of ₹95,86,080/- to the petitioner/promoter.

[2.1] Respondent No. 3 filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short 'the Act') against the petitioner before the Authority (respondent No. 2), *inter alia* contending that the petitioner agreed to deliver the possession of the unit by 30th November 2015. The possession was not delivered and even the promoter has not paid any compensation @ ₹5/- per square feet of the super area per month, in terms of an agreed Clause 17(a) of the apartment buyer's agreement dated 11.11.2014.

[2.2] The petitioner contested the said complaint and filed a written reply taking various objections and it was denied that possession date was agreed to be 31.08.2012. The petitioner *inter alia* contended before the Authority that there was no intentional delay in completing the construction on their part and the project was immediately started after the approval of the building plan w.e.f. 13.08.2009.

[2.3] The said compliant was decided by respondent No. 2 by passing the impugned order dated 21.08.2018 (Annexure P-1) whereby the

petitioner/promoter was directed to hand over the possession of the said unit by 31.12.2018 as per the commitment and it was further held that the petitioner-promoter is duty bound to pay the interest at the prescribed rate, i.e. 10.45% for every month of delay from the due date of possession, i.e. 30.11.2015 till the actual date of handing over the possession. The petitioner-promoter was further directed to pay interest w.e.f. 30.11.2015 to 21.08.2018 on account of delay in handing over the possession and the said interest was ordered to be paid within a period of 90 days from the date of the decision. The subsequent interest was ordered to be paid by 10th of each succeeding month.

CASE OF THE PETITIONER:-

[3] It is the case of the petitioner that the project got delayed on account of various reasons which were beyond the control of the petitioner. There were various road blocks and hindrances including approvals from different authorities. Apart from this, the Government also started various social schemes like the National Rural Employment Guarantee Act (NREGA) and the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), which led to shortage of labour/workforce in the real estate market. The petitioner faced extreme water shortage and there was also shortage of supply of construction material. On account of these reasons, the directions given by the Authority for handing over the possession by 31.12.2018 could not be complied with.

[3.1] The petitioner has further alleged that the said order is not justified. As such, the same was challenged before the Haryana Real Estate Appellate Tribunal, Chandigarh (for short 'the Tribunal'), by way of filing

an appeal bearing No. 72 of 2018, alongwith an application for waiver of pre-deposit. In the meantime, the Hon'ble Supreme Court in **Technimont Pvt. Ltd. vs. State of Punjab and others** (in CA-7358-2019), decided on 07.10.2019, upheld the imposition of pre-deposit laid down under the provisions of Section 43 (5) of the Act. In view of the said order passed by the Hon'ble Apex Court, the petitioner and other builders filed a petition before this Court bearing No. RERA-APPL-34-2019, with the prayer *inter alia* that imposition of pre-deposit is onerous and unreasonable. The said petition was dismissed vide order dated 13.01.2022, however the petitioner was allowed 04 weeks time to comply with the conditions regarding pre-deposit in order to sustain the appeal. The petitioner could not make the pre-deposit due to his financial hardships. As such, the appeal was dismissed on the ground of non-compliance of pre-deposit as laid down under the provisions of Section 43 (5) of the Act.

[3.2] It is further the case of the petitioner that in the meantime, an execution petition was filed before the Adjudicating Officer whereby execution of the said order dated 21.08.2018 was sought and arrest warrants against the Directors of the petitioner company have been issued after the response was filed by the petitioner, which is illegal as the petitioner was unable to execute the direction issued under the impugned order for the reasons which were beyond his control.

ARGUMENTS BY THE PETITIONER'S COUNSEL

[4] Learned counsel for the petitioner submitted that there is no intentional default on the part of the petitioner. The project got delayed on account of circumstances which were beyond the control of the petitioner.

However, the Authority has not considered the facts and circumstances of the case while passing the impugned order, which is liable to be set aside. Consequently, the issuance of warrant of arrest against the Directors of the petitioner-company by the Adjudicating Officer of respondent No. 2-Authority are also illegal as it was not possible to comply with the impugned order.

FINDING & REASONS:-

[5] We have considered the aforesaid submissions.

[6] The complaint filed by respondent No. 3 under Section 31 of the Act was allowed by the Authority (respondent No. 2) by observing that as per Clause 15 (a) of the apartment buyer's agreement, the possession of the said apartment was to be handed over by 31.08.2012 with a grace period of 120 days. The buyer's agreement was executed on 11.11.2014 and the due date of handing over the possession as per the said agreement is 31.12.2018 and even by counting the grace period, the said period was already over much prior to execution of the agreement. The Authority further observed that the agreement was signed blindly and without going through the terms of the said agreement. However, it was observed that both the parties mutually agreed that due date for handing over the possession was 30.11.2015. It was further observed that there was a delay of 02 years, 08 months and 23 days in delivery of the possession till the date of the passing of the impugned order.

[6.1] While passing the impugned order, the Authority further considered Clause 17(a) of the apartment buyer's agreement, whereby it was agreed by both the parties to the agreement that the promoter would

pay compensation @ ₹5/- per square feet of super area per month till the date of grant of the possession to the allottee. After considering the contentions raised in the reply filed by the petitioner, the Authority further relied upon an affidavit filed on behalf of the petitioner/promoter on 21.08.2018 affirming various facts including that 'OC' (Occupation Certificate) for 05 towers had already been obtained and development work is under progress for 10 towers. It was also affirmed that construction of 17 floors out of 18 floors is already completed where the complainant's apartment was situated. The direction to hand over the possession of the said unit by 31.12.2018 was given by the Authority on the basis of its observations made in paragraph No. 26 of the impugned order wherein the submissions made by the counsel for the petitioner/promoter that the project is almost complete and they shall offer possession of the said unit by 31.12.2018, were recorded.

[7] Keeping in view the aforesaid facts and circumstances, we find no illegality in the directions issued by the Authority to make the delivery of possession in a time bound manner. Since the delivery of the possession was delayed and the petitioner had already received a substantial amount of the total sale consideration of the unit as such, grant of interest by the Authority on account of delay in delivery of the possession of the unit is also justified.

[8] Despite that payment of a sum of ₹95,86,080/- which is approximately more than 85% of the price of the unit price was made, the home buyer was not delivered the possession of the unit. The home buyer had specifically pleaded before the Authority that there was a written

apartment buyer's agreement specifying a date for handing over the possession. The home buyer has also pleaded that he made the payment after availing a housing loan from a bank amounting to ₹99,29,737/- and the moratorium period of 30 months had already expired and he had to pay an additional cost by way of paying the interest on account of delay and delivery of the possession. The home buyer had also pleaded that there is a specific clause in the home buyer agreement for payment of compensation in case of delay and delivery of the possession. Keeping in view these facts and circumstances, the equity is against the petitioner.

[9] Apart from this, the petitioner has himself pleaded that the appeal against the impugned order was dismissed on account of non-payment of statutory pre-deposit as defined under Section 43 (5) of the Act. Section 43 (5) of the Act provides that any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter and proviso to sub-section (5) of Section 43 specifically provides that in case of an appeal filed by a promoter, he has to first deposit 30% of the penalty or such higher percentage as may be determined by the appellate Tribunal or the total amount to be paid to the allottee including interest and compensation imposed upon him. Section 43 of the Act reads as under:-

“43. *Establishment of Real Estate Appellate Tribunal.*

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the-- (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) *The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.*

(3) *Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.*

(4) *The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:*

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) *Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:*

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

[10] The petitioner has himself pleaded that he filed an application before this High Court bearing No. RERA-APPL-34-2019 with a prayer

that imposition of pre-deposit is onerous and unreasonable. However, the said application was dismissed vide order dated 13.01.2022 passed by this Court and the petitioner was granted 04 weeks time to comply with the conditions of pre-deposit in order to sustain the appeal. It is not the case of the petitioner that after passing of the said order passed by this High Court, the petitioner had approached the appellate authority for perusing his appeal by way of depositing the statutory pre-deposit.

[11] The petitioner has a statutory remedy to file an appeal under Section 43 (5) of the Act, which he had availed and as per his own version, the said appeal has been dismissed. He has neither challenged the said order nor he could show any illegality in the order of dismissal of appeal which as per his own pleadings was on account of non-deposit of statutory pre-deposit.

[12] The petitioner could not even show any illegality in the impugned order dated 27.03.2023 (Annexure P-3), passed by the Adjudicating Officer, whereby the arrest warrants against the Directors of the JD (petitioner) were issued as a coercive method for implementation of the impugned order dated 21.08.2018 (Annexure P-1). Before passing the said order, a show cause notice was issued to the Director of the JD but no reply was filed by the JD (petitioner). As such, no grounds are made out for staying the implementation of the impugned order dated 21.08.2018 (Annexure P-1), or for setting aside the warrants of arrest issued against the Director (s) of the petitioner-company in the execution proceedings.

[13] Keeping in view the above, the present petition is devoid of

any merits and is accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

September 19, 2023
nitin

Whether Speaking

Whether Reportable

Yes/No

Yes/No