

(135)
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 07.08.2023

1.

RERA-APPL-No.85 of 2023

Rise Projects Pvt. Ltd.Appellant

Versus

Sanjay Goel and othersRespondents
2.

RERA-APPL-No.86 of 2023

Rise Project Pvt. Ltd.Appellant

Versus

Sanjay Goel and AnotherRespondents
3.

RERA-APPL-No.87 of 2023

Rise Project Pvt. Ltd.Appellant

Versus

Sandeep PrasharRespondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Amandeep Talwar, Advocate, for the appellant(s).

HARKESH MANUJA, J. (ORAL)

1.

This order of mine shall dispose of abovementioned three appeals as common question of law and facts are involved. For convenience, facts are taken from RERA-APPL-85 of 2023.
2.

By way of present appeal, challenge has been made to the orders dated 16.10.2021 and 27.07.2023 passed by Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred to as “the Authority) and Haryana Real Estate Appellate, Tribunal (hereinafter referred to as “Appellate Tribunal”).

3. In the present case, complaint was filed at the instance of respondent against appellant herein *inter alia* seeking the following reliefs:-

- “(a) Assured return over investment and payment deposited by the respondent allottee.*
- (b) Interest @ 24% per annum w.e.f. from the date of deposits till the date of handing over of actual possession”.*

4. Upon notice, the present appellant appeared and filed a comprehensive written statement taking specific plea to the effect that the issue of “annual return” could not be made subject matter of jurisdiction of the Authority. Initially, the issue of jurisdiction was never pressed for adjudication, however, at the stage of final argument, an application dated 04.10.2021 came to be filed at the instance of present appellant, questioning the jurisdiction of the Authority with the following contentions:

- “(i) The complaints do not fulfil conditions precedent specified in the statute itself which must be met before Authority could exercise its jurisdiction.*
- (ii) That in similar facts and circumstances RERA Gurugram declined its jurisdiction to entertain such matters.*
- (iii) That Authority does not have territorial jurisdiction to deal with prayers made in the complaints because impugned agreements were executed at New Delhi.*
- (iv) That nature of relief sought is specific performance which would fall within the jurisdiction of the Civil Courts and not this Authority.*
- (v) Since relief being demanded is in the nature compensation, jurisdiction under RERA Act, 2016 can only be said to have been vested with the Adjudicating Officer under Section 71.”*

5. Notice of the aforesaid application was served upon the respondent who filed his objection to the same. The Authority vide its order dated 06.10.2021 dismissed the application filed by the appellant with the following observations:-

“(v)It is observed that the relief sought here is in pursuance of Section 18 and Section 19(4). The complainants have not approached the Authority under specific relief Act. They are seeking redressal specifically in accordance with the terms of the agreement. It is observed that almost all reliefs sought under RERA are in the nature of specific reliefs. Delivery of possession of the apartment, or payment of agreed delayed interest etc. are also specific reliefs. If argument of respondents is accepted, it will defeat RERA Act both in letter as well as in spirit. The Authority is, therefore, unable to accept with this argument also of the respondent.....

(vii) The last argument put forward by the respondent is that the relief sought by the complainants is in the nature of compensation, therefore, to deal with subject of compensation Authority has no jurisdiction, but the jurisdiction is that of Adjudicating Officer.

In this regard the Authority refers to the concept of compensation as provided for in the Section 72 of the Act. Section 72 specifies four factors which should be taken into consideration while “adjudicating the quantum of compensation or the interest”. In this case, there is no question of determining any loss or gain attained by either of the parties on account of the defaults has been raised. The agreements made between the parties are categorical and specific. It is a crystal clear stipulation in the agreement stating that quantum of assured return to be paid by the respondent to the complainant on the occurrence of certain events. The amounts to be paid by respondents to the

complainants is pre-determined and not subject to determination. It is not a question of determination of compensation but a question of enforcement of a specific condition of an agreement. It is only the Authority which under Section 19(4) has to enforce the lawful agreement executed between the parties.

For the reasons given herein this argument of the respondent also cannot be accepted.”

6. Aggrieved thereof, the appellant filed first appeal before the learned Appellate Tribunal wherein at the time of admission, the following order was passed on 22.02.2022:

*“Present: Shri Puneet Bali, Ld. Senior Advocate along with
Shri Venket Rao, Advocate,
Ld. Counsel for the appellant.*

(CASE TAKEN UP THROUGH VC)

Office report perused.

Appeal be registered.

Heard.

Ld. Counsel for the appellant contended that there were two separate agreement dated 30th April, 2014 between the parties. The agreement with respect to assured return was separate agreement. He further contended that the dispute regarding assured return does not fall within the purview of the Real Estate (Regulation & Development) Act, 2016 (for short, ‘the Act’). The Real Estate Regulatory Authority can only entertain the complaint with respect to the disputes of delivery of possession, refund of the amount etc. He further contended that the dispute with respect to the assured return can be entertained only by the Civil Court. Thus he contended that the Ld. Real Estate Regulatory Authority has no jurisdiction to entertain the complaint.

Issue notice of the present appeal as well as stay application to the respondent for 28th March, 2020 on filing the copies of the paper book and registered cover etc. Within three days.

In the meantime, the Ld. Authority may continue with the proceedings of the complaint, but will not pronounce the final order.”

7. Later, vide order dated 27.07.2023, the Appellate Tribunal disposed of the appeal with a direction to the Authority to decide the complaint expeditiously, having avoided to express its opinion on merits apprehending its impact upon the Authority at the stage of final determination. Aggrieved against the aforementioned two orders, the present appeal has been filed.

8. Assailing the aforesaid orders, learned Senior counsel submits that in view of Sub-Section 6 to Section 44 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “2016 Act”), the Appellate Tribunal was under a statutory obligation to adjudicate upon the appeal on merits; rather than disposing it of with the directions to the Authority to decide the complaint within a time bound manner. Sub-Section 6 to Section 44 of the 2016 Act is reproduced hereunder:

“6. The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.”

8.(i) Learned Senior counsel further submits that the primary reason recorded by the Appellate Tribunal for not interfering with the impugned order was that the complaint before the Authority was at the final stage though the Appellate Tribunal lost sight of the fact that even

the application was filed at the same stage and yet notice was issued in the appeal also and thus, the final stage of the proceedings before the Authority could not have been taken to be as a bar from disposing of the appeal on merits. In support thereof, learned Senior counsel also relies upon the decision rendered by the Hon'ble Supreme Court in cases of **Dalbir Kaur Dhillon Vs. Punjab Urban Planning and Development Authority, 2001(9) SCC 751** and **Malluru Mallappa(D) thr. LRs. Vs. Kuruvathappa @ Ors., 2020(2) RCR (Civil) 94.**

8. (ii). Learned Senior counsel also relies upon Section 58 of the 2016 Act so as to point out that the appeal before this Court are to be dealt with as if the same having been filed under Section 100 of the Code of Civil Procedure, 1908.

9. I have heard learned Senior counsel for the appellant and with his able assistance gone through the paper-book. I am unable to find substance in the submissions made on behalf of appellant.

10. A meaningful reading of Sub-Section 6 to Section 44 of the 2016 Act, makes it clear that the Appellate Tribunal for the purposes of examining the legality, propriety or correctness of an order or a decision of the Authority either on its own motion or otherwise call for the relevant records and make such order as it thinks fit.

A cumulative reading of two limbs shows that for the purpose of examining legality, propriety or correctness of an order or a decision, the Appellate Tribunal can call for records, however, while examining the same it may pass such order as it thinks fit. Thus, it has not been made mandatory upon the Appellate Tribunal to decide the appeals always on

merits and that is why the legislature in its wisdom used the word “*make such orders as it thinks fit*”.

11. As a settled proposition of law, an appeal is merely a statutory right and its maintainability and adjudication are regulated by the statutory provision which provides right to appeal under a particular statute. Moreover, the judgments cited at the bar by learned Senior counsel relate to the provisions of Code of Civil Procedure, 1908 as well as Consumer Protection Act, 1986 and that too against the final culmination of proceedings and not against the interim orders, in pending proceedings.

12. In the present case, the proceedings are governed by 2016 Act, wherein, the provisions of CPC have been made applicable to a limited extent of seeking discovery and production of the books of accounts or other documents; summoning and enforcing the attendance of persons and their examinations, issuance of commission of examination of witness or documents or any other matter which may be prescribed. In this view of the matter, the Authority or the Appellate Tribunal is free to evolve its own procedure though mandatorily guided by the principle of natural justice as enjoined under sub-Section 8 to Section 38 of the 2016 Act.

13. No doubt, the Appellate Tribunal at the initial stage while entertaining the appeal against the order dated 06.10.2021 passed by the Authority issued notice and even restrained it from pronouncing its judgment by keeping it in a sealed cover, however, at a later stage, on reconsideration of the matter, it considered appropriate not to interfere with the same at the final stage. The purpose of framing preliminary

issue is to shorten the proceedings so as to avoid unnecessary litigation, which is defied in the present case as final hearing has already taken place. Rather than adjudicating upon the issue of jurisdiction in a piecemeal manner at the end of the main proceedings, the Appellate Tribunal acted judiciously while requesting the Authority to dispose of the complaint at the earliest; within a period of two months being deeply conscious of the fact that the proceedings before the Authority already stood culminated and even the arguments were heard & judgment was reserved.

14. At this stage, it may also be clarified that the appellant initially slept over this contention and pressed it only at a belated stage and now by pursuing the proceedings before different Courts, by hanging over this argument, is trying to delay disposal in this case. It is in this circumstance that learned Appellate Tribunal has rightly allowed the Authority to decide the matter in totality so that a conjoint appeal can be filed before the Tribunal so as to bring the entire dispute to rest. By its own conduct, appellant failed to show urgency or gravity in its contention that issue regarding jurisdiction was foundational and thus, required to be decided preliminarily. In the facts and situation, at this stage, issue regarding jurisdiction appears to be debatable and can be heard and decided in substantive appeal; rather than in parts.

15. Equally important, in the given facts, it is only qua one relief out of the two prayed for that plea of jurisdiction has been raised, without there being any dispute that the Authority is competent enough to adjudicate over another issue. Consequently, the adjudication of the issue depending upon conjoint reading and detailed interpretation of the

terms of agreement as well as relevant provisions of 2016 Act would, more appropriately, need to be determined at the final stage while deciding the complaint itself.

16. Considering the aforesaid facts, I am unable to find any reason or justification to interfere with the order passed by the Appellate Tribunal as rightly expressed in the impugned order that any expression of opinion at this stage by the Appellate Tribunal upon the question of jurisdiction of the Authority to deal with the issue of awarding assured return, may cause prejudice to the rights of the parties who shall be otherwise entitled to assail order dated 06.10.2021 which is going to be culminated in the final order to be passed by the Authority by way of statutory appeal as prescribed under Section 44 of the 1956 Act.

17. In view of the discussion made hereinabove, I do not find any merit in the appeals and thus, the same are hereby dismissed.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

07.08.2023
anil/sanjay

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