IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

107 ***2023:PHHC:104620-DB***

CWP-28266-2022
Date of Decision: 11.08.2023

Sushil Bindal .....Petitioner(s)

Versus

Real Estate Regulatory Authority, Punjab and others ....Respondent(s)

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

Present: Mr. Divyadeep Walia, Advocate, for the petitioner.

Mr. V.G. Jauhar, Addl. A.G., Punjab.

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G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the order dated 11.05.2022 (Annexure P-11) whereby, in execution, the Real Estate Regulatory Authority, Punjab at Chandigarh has directed that recovery certificate be issued by the Collector, SAS Nagar, Mohali for Rs.26,42,137/-, which is inclusive of the interest element of Rs.10,65,137/- plus principal amount of Rs.15,77,500/-.

2. The said authority was only executing its earlier order dated 09.07.2021 (Annexure P-8) wherein the said amount as such had been directed to be paid alongwith interest as per the State Bank of India's highest marginal cost of lending rate (as of then) plus 2%, which was the statutory mandate as such as Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (in short 'the 2016 Act') read with Rule 16 of the Punjab State (Regulation and Development) Rules, 2017.

3. Counsel for the petitioner has tried to convince us on the merits of the case while trying to take out flaws in the order of the Authority which is sought to be executed. It is pertinent to notice that the petitioner, who was arrayed as respondent No.2 before the authority, was represented by a counsel at that point of time. The said order dated 09.07.2021 was never challenged before this Court and only when the order in the execution application has been passed after almost a year on 11.05.2022, the petitioner filed the writ petition. The argument raised by the counsel that it was an unregistered project and, therefore, the provisions of the 2016 Act would not be applicable would be of no consequence in view of the observations made by the Apex Court in ***M/s. Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others, 2022 (1) RCR (Civil) 357.*** A three-Judge Bench was examining the provisions of the 2016 Act and the Rules in that case of Uttar Pradesh whereby under Rule 2(h) of Uttar Pradesh Real Estate (Regulation & Development) Rules, 2016, definition of "Ongoing Project' provided that where a completion certificate had not been issued, the project was to be brought within the ambit of ongoing project. The Apex Court specifically dispelled the argument raised that a project which was started in the year 2010-11 would be absolved of the responsibility while providing protection only to those developers who had completed the project by holding that the Act then would not be of retrospective character but where the project was still ongoing, the liability under the Act was upheld by holding out that the allottee cannot be left in a lurch and the Act was a beneficial piece of Legislation. The relevant part reads thus:-

> *"37. Looking to the scheme of Act 2016 and Section 3 in particular of which a detailed discussion has been made, all "ongoing projects" that*

commence prior to the Act and in respect to which completion certificate has not been issued are covered under the Act. It manifests that the legislative intent is to make the Act applicable not only to the projects which were yet to commence after the Act became operational but also to bring under its fold the ongoing projects and to protect from its inception the inter se rights of the stake holders, including allottees/home buyers, promoters and real estate agents while imposing certain duties and responsibilities on each of them and to regulate, administer and supervise the unregulated real estate sector within the fold of the real estate authority.

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42. What the provision further emphasizes is that a promoter of a project which is not complete/sans completion certificate shall get the project registered under the Act but while getting the project registered, promoter is under an obligation to prescribe fresh timelines for getting the remaining development work completed and from the scheme of the Act, we do not find that the first proviso to Section 3(1) in any manner is either violative of Articles 14 and 19(1)(g) of the Constitution of India. The Parliament is always competent to enact any law affecting the antecedent events under its fold within the parameters of law.

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47. The legislative power to make the law with prospective/retrospective effect is well recognized and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.

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51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

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54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.

4. Reliance can be placed upon the Punjab State Real Estate (Regulation and Development) Rules, 2017 wherein also, Rule 2(h) provided for "ongoing projects" and covered real estate projects which were ongoing and in which "development" and "development works" as defined under Sections 2(s) and 2(t) of the Act were still under way. Exclusion was thus only of the area on which partial completion or occupation certificate had been obtained by the promoter of the project. Therefore, the order of refund which had been directed vide order dated 09.07.2021 was passed by the Authority which was within its jurisdiction in view of the provisions of the said Act.

5. We are of the considered opinion that the private respondent is entitled for the benefits as such of the amounts on account of buy back of plot and there was a refund to be given to him. It is also to be noticed that there

were litigations earlier also and a part of the amount had been refunded in pursuance to the earlier statement *inter se* regarding the buy back of plot No.154. The balance amount was due which had led to the filing of the petition and led to the passing of the order whereby refund had been directed which has now been sought to be executed. The procedure being followed by the Executing Authority is in accordance with the Rules and does not suffer from any infirmity. In the absence of any challenge to the main order, we are of the considered opinion that the petitioner is not in a position now to question the order of the Executing Court.

6. In such circumstances, we do not feel that it is a fit case to exercise our extra ordinary writ jurisdiction and the present writ petition stands dismissed accordingly.

(G.S. SANDHAWALIA)
JUDGE

11.08.2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No