02.09.2024
Sl. No.4(ML)
srm

W.P.A. No. 17410 of 2024

Janapriyo Real Estate Pvt. Ltd. & Anr.

Versus

The State of West Bengal & Ors.

Mr. Pratip Mukherjee,
Mr. Aditya Chakraborty,
Mr. Sudip Basu
…for the Petitioners.

Mr. Sirsanya Bandyopadhyay,
Mr. Ritesh Kumar Ganguly
…for the State-respondents.

Mr. N.C. Bihani,
Mrs. P.B. Bihani
…for the Respondent No. 3.

Mrs. Shyamali Mitra …Respondent No.4 (in Person)

1. The writ petition has been filed challenging the order passed by the West Bengal Real Estate Appellate Tribunal. An appeal lies before the High Court under Section 58 of the West Bengal Real Estate (Regulation and Development) Rules, 2021, on the grounds akin to Section 100 of the Code of Civil Procedure. In the absence of rules, the jurisdiction of the writ court has been invoked. This decision is restricted to the power of judicial review of the writ court.

2. It is the contention of the petitioners that the West Bengal Real Estate Regulatory Authority (competent authority) and the

West Bengal Real Estate Appellate Tribunal, lacked jurisdiction to entertain the dispute and pass orders. Hence, the order of payment of the principal amount along with interest at the SBI prime lending rate, plus 2%, should not have been passed. According to the petitioners, the respondent No.4 was essentially seeking specific performance of a contract entered into between the respondent No.4 and the petitioner No.1. The proceeding before the competent authority was not maintainable in view of the disputed questions of fact. Complicated questions of facts had arisen, which should be decided by a civil court, upon acceptance of evidence.

3. The next limb of argument of the petitioners is that even assuming that the competent authority had the jurisdiction, the prayers of the respondent No.4 in the complaint could not be entertained by invoking Section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the said Act). Section 18 of the said Act was not at all applicable. Section 18 of the said Act deals with return of amount and compensation when the promoter fails to give possession of the apartment or of a plot or a building to the consumer. In the instant case, it is not a case of failure of the promoter to give possession of the plot. Rather, the allegation is that the promoter did not act in accordance with the terms

and conditions of the agreement and had committed breach thereof. It is urged by Mr. Mukherjee that Section 18(1)(a) of the said Act provides that only if the plot is not handed over in accordance with the agreement or the project cannot be completed, the provisions of Section 18 can be applied. In the instant case, the project is ongoing and several plots have been sold. Thus, the stage of invocation of Section 18 of the said Act had not arrived. The petitioners had forwarded the draft deeds of registration time and again, which the respondent no. 4 failed to confirm. Her willingness to register the deeds was absent. Instead, she and her husband pointed out various defects, thereby, delaying the process of registration. Under such circumstances, the writ petition should not be entertained and the orders should be quashed.

4. Further contention is that even if the competent authority was of the view that the promoter had failed to give possession of the plot, in that event, evidence should have been accepted in terms of Section 35 of the said Act. The authority is vested with the powers of a civil Court and such power requires determination of the disputed questions of fact, by weighing the evidence that is adduced by each of the parties. Even the appellate tribunal under Section 53 of the Act should have accepted evidence of the petitioners. As none of the facts leading to the proceedings were admitted, the adjudication

should have been like that of a civil court. A proper adjudication was necessary, and there was no room for any discretion.

5. Reliance has been placed on the decision of the Hon'ble Apex Court in the matter of Anurag Kumar Singh & Ors. vs. State of Uttarakhan & Ors. reported in 2016 SCC OnLine SC 1103.

6. Mr. Bihani, learned Advocate appearing on behalf of the West Bengal Real Estate Regulatory Authority, i.e. the respondent No.3 submits that the writ petition should not be entertained on the factual disputes. Judicial review had a limited scope and both the competent authority and the appellate tribunal had accepted evidence in the form of notarized affidavits. It is further contended that the adjudication process, as referred to in the rules, would neither be relevant nor applicable in this case, as the question of adjudication would arise only if there was a prayer for compensation and payment of interest thereon. This is a case where the complainant had approached the authority under Section 18 of the said Act. The promoter had failed to complete the project, abandoned the project, terminated the contract and forfeited the deposit.

7. Referring to the order of the learned tribunal, Mr. Bihani submits that the issue as to whether Section 18 of the Act would be applicable or not, was decided by the appellate

tribunal. The tribunal also negated the allegation of the petitioners that a civil suit should have been filed alleging breach of the agreement, instead of approaching the authority.

8. Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel, appearing for the respondent No.2, that is, the appellate authority and the State of West Bengal, submits that the scope of judicial review by invoking Article 226 of the Constitution of India is limited to cases of violation of principles of natural justice, enforcement of fundamental rights and against an order passed without jurisdiction. Referring to the law, it is submitted that the Act was established for regulation and promotion of the real estate sector, to ensure sale of plots, apartments or buildings in such real estate projects, in an efficient and transparent manner, in order to protect the interest of the consumer.

9. The letter written by Mr. D G Bagchi, the administrative officer of the petitioner No.1, to the husband of the respondent No.4 revealed that in answer to the queries made with regard to the registration of the deed, the administrative officer informed him that a concrete decision had not been taken by the West Bengal government regarding the registration, mutation, conversion and implementation of GST. The respondent No.4 was asked to wait until the Puja of 2017, for further information. This, according to the learned tribunal,

did not indicate that the project had been completed and the petitioners were willing to register the plot in the name of the respondent No.4. The provisions of the said Act were rightly invoked in the above context. The orders were not passed without jurisdiction.

10. Heard learned advocates for the respective parties. It appears that the respondent No.4 had booked some plots and entered into two agreements for sale with the petitioner No.1, for allotment of two plots in a scheme named and titled as Kalyani City Enclave for a consideration of Rs.5,30,000/- and Rs.5,77,000/- respectively. As per the terms and conditions, the respondent No.4 had applied in the form of the company on August 26, 2014 and February 3, 2014. Advances were paid towards the booking and the balance was to be paid in 48 equal monthly instalments, from the date of the booking. The deeds further provided that in case of cancellation of bookings of the plots, 30% would be deducted from the amount deposited by the respondent No.4. The project was to be completed and handed over after 48 months from the date of the payment of the first EMI. If the promoter failed to handover the possession, the allottee was entitled to refund of the money with 15% interest on the deposited amount.

11. In this case, while the promoter contends that the allottee delayed the settlement of the draft deed by raising queries, the

respondent No.4 specifically submits that entire money was paid as per the instalments, but the project did not get the required approval and sanction from the necessary authorities. It is contended that the land still remains an agricultural land, whereas it was supposed to be developed as a township. The lease agreements also show that the schedule of facilities as per the brochure on the basis of which the application was made and the allotment was given, indicated that the vendor would provide a lake, playground, park, dustbin, roads, space for school, shopping complex, transformers, etc., within the project. None of these facilities were made complete and available. This aspect has also been looked into by the appellate tribunal while passing the order.

12. Secondly, the appellate tribunal has taken cognizance of the fact that the administrative officer of the petitioner No.1 had informed the husband of the respondent No.4 that he would have to wait for a while before the queries with regard to registration could be given to him and in the said letter, it was recorded that the government of West Bengal had not given any concrete decision regarding registration, mutation, conversion fees. The appellate tribunal arrived at the conclusion that such letter was sufficient proof of the fact that the project was not complete.

13. In my opinion, the contention of Mr. Mukherjee that the promoter was ready to register the plots in the name of the respondent No.4, is defeated. Unless necessary compliances in terms of the West Bengal Town and Country Planning Act or any other local law applicable were completed and the land was converted into a '*bastu*' for building of the township, it cannot be said that Section 18 of the Act would not be applicable. Section 18 provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement, the allottees may wish to withdraw from the project without prejudice to any other remedy available and the amount received by the promoter with the interest at the rate as prescribed under the rules, shall be returned.

14. Rule 17 of the West Bengal Real Estate (Regulation and Development) Rules, 2021 provides that the interest payable would be at the prime lending rate of SBI plus 2%. As this Court is of the view that the failure of the promoter to handover possession upon completing the project was not a breach, clause 11 of the agreement will not be applicable. Instead, Section 18 (1) was rightly involved in this case. Section 18 (1) (b) clearly provides that the allottee should be returned the money if the allottee wishes to withdraw. Although in this case the allottee had not asked for

withdrawal from the project, the queries of the allottee with regard to the *bona fide* of the said project and the legality thereof were answered with a cancellation and forfeiture, by the promoter. This, the appellate tribunal found was not permitted under the agreement because there was no clause for termination of the agreement at the instance of the promoter. This was treated as a case which was covered under section 18(1)(b)

15. The contention of Mr. Mukherjee that the project is still ongoing is irrelevant in the context as it is an admitted position that none of the authorities have given the necessary sanctions. Project is also not complete insofar as, the facilities are concerned. This is apparent from the communication of the administrative officer, which the tribunal relied upon. The writ petition does not indicate that such fact finding was erroneous. Mr. Mukherjee's contention that Section 35 should have been followed and further evidence should have been accepted, is of no benefit in view of the fact that Section 35 also provides that evidence by way of affidavits could be accepted. In the case in hand, the competent authority had accepted evidence filed on the basis of notarized affidavits. The records do not reveal that the petitioner intended to file further evidence or adduce further oral evidence or also produce their

witnesses before the authority. These submissions are afterthoughts.

16. Coming to the order of the authority, i.e., the respondent No.3, this Court finds that the authority had accepted notarized affidavits with all relevant documents and had come to the specific finding that the delivery of the plot should have been done within August 25, 2018, that is, 48 months from the first EMI payment. The agreement for sale was entered into on October 10, 2014. The complainant did not get possession, but when the complainant raised issues with regard to correction of the draft sale deeds and communications were going on between the parties, the petitioners cancelled the agreement on March 25, 2019 and unilaterally forfeited the entire amount paid by the complainant. This was found to be contrary to the agreement and the authority was of the specific view that the petitioners had failed to handover the plot after necessary development of the project within the scheduled time, that is, within August 25, 2018 and therefore was liable to pay back the principal along with the prescribed rate of interest. Provisions of Rules 17 and 18 of the Rules read with Section 18 of the Act were applied.

17. The promoters filed two appeals from the two orders. Both the appeals were heard analogously and by a single order, both the appeals were disposed of, *inter alia*, holding that the

observations and findings and the directions of the authority were in accordance with law.

18. The appellate authority recorded the gist of the complaint and the grounds of challenge in the appeals, namely, (a) lack of competence, (b) adjudication by civil court, (c) wrongful invocation of Section 18 of the said Act, (d) failure to accept evidence.

19. The appellate authority held that the agreements were entered into for sale of plots. Advances were paid. As per the terms and conditions of the agreements, on payment of the rest of the consideration money in instalments, the plots were to be transferred to the complainant by registered sale deeds and possession thereof were to be delivered. As per the agreement, the project was supposed to have various facilities like blacktop roads, drainage system, lake, playground, park, grass fields, shopping complex, transformer, etc. Section 3 of the Act required the promoter to register the project with the regulatory authority from the date of commencement of the Act. The project was not completed. All complaints under the WBHIRA stood transferred to the competent authority under the order of the Hon’ble Apex Court and the competent authority rightly took up the matter and passed orders. Mr Mukherjee's contentions that as the legality and validity of the cancellation of the agreements for sale was the issue, the civil

court should be the appropriate court for adjudication of the matter, was taken note of. Mr. Mukherjee's contention that the appellant had a counterclaim against the respondent and the disputed questions of facts should not have been entertained by the competent authority, were also recorded. The contentions of the respondent No.4 were recorded and the tribunal came to the following conclusions:-

(a) All documents relied upon by either party were part of the records. The notarized affidavits contained all relevant documents.

(b) Section 35 of the Act provided that the regulatory authority could accept evidence by affdavits.

(c) Section 53 of the Act provided that the appellate tribunal shall not be bound by the Civil Procedure Code and could set up its own procedure. All that was required to be done was to comply with the principles of natural justice.

20. It was held that the series of correspondence between the parties, starting from August 5, 2017 upto the written complaint made before the Officer-in-Charge, displayed that the timeline as fixed in the agreements had been adhered to. The entire consideration money for purchase of the plots had been paid. It was found by the appellate tribunal that no steps were ever taken by the petitioners to deliver possession of the

plots and register the deeds. The tribunal recorded that only at the intervention of the local police station, the petitioners 'sprang up' and made an endeavour to finalize the draft deed of conveyance. However, as it was noticed from the documents on record that in the process of finalization the petitioners suddenly cancelled all the agreements by a letter dated March 25, 2019 and forfeited the entire amount paid by the respondent No.4., the order of the competent authority was upheld. The agreement did not permit such cancellation and forfeiture, at the instance of the promoter. Allotment, registration and handing over possession were integral parts of the agreement. There was no need to take further evidence under Section 35 as all the documents were on record. The law also permits the tribunal to frame its own proceedings. Section 79 of the Act bars a civil suit. Finally, the communication by the Administrative Officer clearly showed that the requisite, approvals, sanctions were awaited.

21. The cancellation was contrary to the agreement and there was failure on the part of the petitioners to complete the project and handover the plot. Thus the provisions of Section 18 were rightly invoked. This court does not find and illegality, irrationality and arbitrariness in the order of the appellate tribunal.

22. Although Mr. Mukherjee, learned advocate submits that the draft deeds were sent within two months from the letter asking the petitioners to await the approvals, it is still not the case of the petitioners that the requisite approvals, conversation etc., had been obtained.

23. Under such circumstances, no interference is called for. The writ petition is dismissed accordingly.

24. There shall be no order as to costs.

25. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)