

(2019) 11 UK CK 0172
In the Uttarakhand High Court
Case No : Second Appeal No. 203 Of 2019

M/s Eminent Infradevelopers Pvt. Ltd.	APPELLANT
Vs	
Shivaji Radhu	RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Citation : (2019) 11 UK CK 0172

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Shubhang Dobhal

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. This Second Appeal is arising out of the judgement rendered by the Real Estate Appellate Tribunal, in an Appeal No. 13 of 2019, M/s Eminent Infradevelopers Private Ltd. v. Sri Shivaji Radhu on 23.09.2019, which was arising of the judgement dated 30.04.2019, as passed by the Real Estate Regulatory Authority, Dehradun in a Complaint Case No. 93 of 2018, Sri Shivaji Radhu v. M/s Eminent Infra Developers Pvt. Ltd. and as a consequence thereto, the impugned orders under challenge herein, it relates to the liability which has been settled by the learned Tribunal and by the learned Regulatory Authority in relation to the remittance of the amount, as well as the interest payable on it by the developer to the following effect:-

"???????? ???? , ????????? ???? ???? ????????? ? ???? 21.12.2018 ? ???? ????
???? ? ???? ? ? ???? ???? ? ???? ???? ?-1-102, ? ???? ? ? ?
? ???? ? , ????
???? ????? 05.02.2016 ?
???? ? ? ? ? ? ? 2016 ?
? ???? ? / ????
?? , ??0??0??0?"

0 ?? ????????? ?? ?????? ?? ?? ?? ????????? ?????? ?? ????????? ?????????? ?? ???-2 ?? D
 rop ?? ????? ?? ??? ???-1 ?? ??-1 ??? ??-2 ????? ?????? ?? ????? ?? ????? ???-1 ?? ?,
 ??, ??, ??, ?? ??? ?? ????????? ?? ????? 2013 ??? ?? ??? ??? ?????? ?????? ?????, ????
 ?????? ?? ?????? ?????? ????? ????????? ?? ????? ?? ??? ?? ????? ????? ????? ?? ?? ????
 ??? ????? ????????? ???-1 ????????? ?? ????????? ??????? ???/? ??????? ??????? ????? ????? ?
 ????? ????? ?? ????? ?? 02 ??? ??? ??0??0??0??0 ?? ????????? ????? ??????? 31.07.2019 ?
 ? ?????? ??????? ??-1-102 ?? ????????????? ?????? ????? ?? ??? ??????? ??? ?? ?? ????? ?????
 ? ?? ??????? ????????? ????? ?? ?????? ?? ?????? ????? ?? ??????? ?? ?????? ????? ?? ??? ??-
 ??????? (????????? ??? ??????) ?????????, 2016 ?? ????? 18 ??? ??????????? ??-??????
 (????????? ??? ??????) (?????????) ?????????, 2017 ?? ?????
 15 ?? ????? ??? ?????? ?????? ??????? ??? ?? ?? 4130000 ??0 ?? ????? ?? ???????,
 2016 ?? ?????? ?? ?????? ?????? ?? ?????? ?? ?? ?????? ???
 10.75 ????????? ????????? ?????? ?? ?? ?? (?? ?????????? ??0??0??0 ?? Highest Marginal
 cost of Lending rate 8.75% ?? 2 ????????? ????? ??) ????? ?????????? ????? (Delay penal
 ty ?? ????? ?? ??? ???) ??????? ????????? ????? ?? ?? ?????????? ??????? ?? ??-1 ?????? ??
 ? ??????? ?? ?????????? ?? ?????? ?? ??? ?????? ??????, ??? ?? ??? ?????????? ??? ?? ???
 ??? ?????????? ??? ?????? ?? ??0??0??0??0 ?? ??? ?? ?? ?? ????????? ??, ??? ??????? ?????
 ? ????? ?? ?????????????????? ?? ??? ?????? ?? ??????????????? ?? ?????????? ?? ?? ??????? ????? ?
 ??? ?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?? ?????? ???"

2. The brief facts of the case are :-

A. The property allotted to the complainant by the developer/appellant herein is a Studio Apartment No. S1-102, situated on the first floor, having an area of 610 sq. feet in village Baheri, Rajputana, Tehsil Roorkee, District Haridwar.

B. The sale consideration, which was transferred by complainant/respondent was Rs. 41,30,000/-.

C. An agreement for allotment was executed on 5.02.2016, which contained a clause 3.3 for execution of the sale deed and hand over possession within three months from the date of allotment, was subject to its extension on account of force majeure which in the instant case was extended after including the extended period till Oct.2016 that means sale deed was to be executed within the extended time.

D. The possession was to be handed over by Oct 2016, lest failing which an interest was payable to the complainant as per clause 3 of the Agreement to the home buyer, as per the clause 7.1 of the agreement the developer was to obtain completion certificate/occupancy certificate.

E. The developer/appellant had agreed to pay damages @ Rs. 3/- per sq. feet per month, on the area of flat till possession is handed over.

F. The responsibility to get the completion certificate or the occupancy certificate from the Development Authority was vested with the developer and it was thereafter only that the sale deed in relation to the flat or the property agreed to be sold, was to be executed.

G. 26.06.2018 the appellants' case is that by letter No. 374, they have requested the Haridwar Roorkee Development Authority to provide the completion certificate and the occupancy certificate which is the precondition necessary to execute the sale deed.

H. The appellants' case is that the flat was constructed and completed on 30.05.2017, but the possession could not be given or admittedly the deed could not be executed despite of the extension till 04.08.2016 due to non providing of the completion certificate and occupancy certificate by the Development Authority.

I. On a complaint proceeding by way of Case No. 93 of 2018 being culminated by the Regulatory Authority on 30.04.2019 it directed the builder i.t. appellant herein to remit an amount of Rs. 41,30,000/- along with interest @ 10.75 per annum w.e.f. Nov. 2016, as per Section 18 of the Act No. 16 of 2015 to be read with Rule 15 of the Rules of 2017.

J. Site inspection report from SDM Roorkee/cum Joint Secretary, HRDA reported in report that flat was completed before 30.05.2017. But interior work was yet to be done and was not in condition for execution of sale deed.

K. Regulatory Authority held that the Developer wants to take advantage of his own latches and dishonest intention, by delaying execution of sale deed.

L. As per Section 2(3f) of the Act of 2016, Occupancy Certificate and as per Section 2(q) of the Act, the completion certificate was obligatory on developer to obtain prior to execution of deed of conveyance.

M. Under Section 11(4)(a) & (b) of the Act No. 16 of 2016, all responsibilities; obligations and functions under the Act or Rules was to be fulfilled by Developer till deed was executed, including Completion Certificate under Section 11(4)(b).

N. Rule 15 of Rules 2017, to be read with Section 38 provides powers of imposition of penalty or interest in an event of contravention of any obligations casted on promoters under the allotment agreement or Act or Rules framed thereunder.

3. The issue involved in the present second appeal except the facts is covered by the adjudication already made in Second Appeal No.191 of 2019, M/s Eminent Infradevelopers Pvt. Ltd v. Vivek Radhu, except there being certain factual differences.

4. Hence, this Second Appeal is also dismissed on the same grounds, findings and reasoning as recorded in Second Appeal No. 191 of 2019, M/s Eminent Infradevelopers Pvt. Ltd v. Vivek Radhu. The judgement rendered in SA No. 191 of 2019 would constitute to be the part of this judgement.

5. Accordingly, the Second Appeal is concluded by concurrent finding of facts, hence the same lacks merits and is dismissed.