(2023) 12 KL CK 0069

In the High Court Of Kerala

Case No : Miscellaneous Second Appeal Nos. 2 & 3 Of 2023

M/s Jewel Homes Pvt. Ltd. APPELLANT

Vs

Johny George RESPONDENT

Date of Decision : 07-12-2023

Acts Referred:

Real Estate (Regulation and Development) Act, 2016 — Section 12, 13, 14, 18, 31, 58, 71, 71(1), 79, 88

Citation : (2023) 12 KL CK 0069

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : Manoj Ramaswamy, Sidharth A.Menon, V.Ajakumar, Muhammed Aljuq A., Harsha, K Denny Devassy

Final Decision : Dismissed

Judgement

A. Badharudeen, J.

1. These miscellaneous second appeals have been filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the RERA Act, 2016', for convenience).

2. M.S.A. No.2 of 2023 arises out of common order in REFA No.20/2021 dated 28.10.2022 on the files of the Kerala Real Estate Appellate Tribunal, Ernakulam and the order in C.C.P.No.01/2020 dated 01.02.2021 on the files of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram. The appellants are the respondents in REFA No.20/2021 and the respondents are the original complainant in CCP No.01/2020.

3. M.S.A. No.3 of 2023 arises out of order in REFA No.44/2021 dated 28.10.2022 on the files of the Kerala Real Estate Appellate Tribunal, Ernakulam and the order in CCP No.01/2020 dated 01.02.2021 on the files of the Kerala Real Estate Regulatory Authority, Thiruvananthapuram. The appellants are the appellants in REFA No44/2021 and the respondents are the original complainant in CCP

No.1/2020.

4. The first appellant herein is M/s.Jewel Homes Pvt.Ltd. and the second appellant herein is the Managing Director, who are the respondents in the proceedings before the Kerala Real Estate Regulatory Authority, Thiruvananthapuram.

5. Heard the learned counsel for the appellants as well as the learned counsel appearing for the respondents in detail.

6. At the time of admission of these matters, my learned predecessor, as per order dated 30.01.2023, admitted these appeals on raising the following substantial questions of law.

"(A) Whether the appellate Tribunal is entitled to look into various orders passed in judicial proceedings by administrative and quasi-judicial authorities in preventing the appellant from proceeding with the construction so as to justify the delay occurred beyond the reach of the appellants?

(B) While considering Section 18 of the Act, whether the Authorities below can consider the circumstances pleaded and proved by the promoter, if it is beyond the control of the promoter to complete the construction in specified time?"

7. In these matters, the respondents filed application before the Adjudicating Officer, attached to the Kerala Real Estate Regulatory Authority, Thiruvananthapuram, for grant of compensation under Section 31 read with Section 71 of the RERA Act, 2016. The appellants herein objected the said claim. The Adjudicating Authority adjudicated the matter in controversy and allowed the claim of the respondents by granting Rs.25,00,000/- (Rupees twenty five lakh only) along with simple interest at the rate of 14.05% per annum from 01.12.2013, till the date of actual payment or realization, along with compensation and cost.

8. The respondents herein filed appeal before the Appellate Authority, vide REFA No.20/2021, seeking enhancement of compensation. The appellants herein also filed REFA No. 44/2021, challenging the order of the Authority. The Appellate Authority allowed REFA No.44/2021 in part and also allowed REFA No.20/2021 and thereby the Appellate Authority confirmed the order granting Rs.25,00,000/- (Rupees twenty five lakh only) with interest. While considering grant of compensation as sought for in REFA No.20/2021, the Appellate Authority remanded the matter to the Regulatory Authority for reconsideration. The relevant portion of the common order in REFA No.20/2021 and 44/2021 is extracted as follows:

"13. In the result, REFA No.20/2021 is allowed, and REFA No.44/2021 is allowed in part. Accordingly, the order dated ½/2021 of the learned Adjudicating Officer attached to the K-RERA in CCP No.1/2020 is set aside without disturbing the order for refund of advance amount, and the matter is remanded for fresh consideration, examination and decision as indicated above. The parties shall be given opportunity to adduce oral or other evidence on the claim for compensation. Notice for appearance after remand shall be given to the parties by the learned Adjudicating Officer. The parties will bear their respective cost. Transmit this order immediately to the learned Adjudicating Officer."

Challenging the above common verdict, these appeals have been preferred under Section 58 of the RERA Act, 2016.

9. At the time of hearing, the learned counsel for the appellant stressed grounds (b), (d), (f) and (g) specifically raised in the appeal memorandum, which led to formulation of substantial questions of law herein above referred. According to the learned counsel for the appellants, the building construction in the instant case could not be completed, not because of the willful laches on the part of the appellants but because of the intervening circumstances, particularly, the interference of the Municipal Corporation, pertaining to a dispute regarding the width of the way provided to the building. Therefore, the appellants are not at fault in the matter of completion of the building in time so as to grant compensation.

10. Per contra, it is submitted by the learned counsel for the respondents that Section 18 of the RERA Act, 2016 specifically provides return of amount and compensation and Section 18 in no way imposes any restrictions in the matter of grant of return of advance amount as well as compensation, when there is failure on the part of the promoter to complete and give possession of an apartment/ plot/building, in accordance with the terms of the agreement for sale. It is submitted by the learned counsel for the respondents further that in the decision reported in (2021) 9 SCR 909 : MANU/SC/1056/2021 [Newtech Promoters and Developers Pvt.Ltd Vs. State of U.P.and Ors], in paragraph No.25, the Apex Court observed the objects and reasons and stated that:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

11. The learned counsel also submitted that in paragraph No.78 of the judgment, the Apex Court referred the decision in Imperia Structures Ltd. v. Anil Patni and Anr. reported in 2020 (10) SCC 783, and held that the right given to the allottee

to get return of advance money and compensation is an unqualified right. In paragraph No.78 of the judgment, it has been provided as under:

“In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either Under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.”

12. It is submitted by the learned counsel further that 'unqualified right' means a right which is not restricted. He has placed the definition of the term 'unqualified' provided in the online law dictionary, where the term is defined as not modified or restored by observations. The learned counsel also placed the definition given for the term 'unqualified' in the Webstores Encyclopaedia, where the definition given is 'not limited in any way; to the latest degree possible.' Accordingly, it is argued that the inconveniences or intervening circumstances, if any, faced by the builder are not grounds to deny the statutory right provided under Section 18 of the RERA Act, 2016.

13. Repelling this contention, the learned counsel for the appellants submitted that in these matters, as far as return of advance amount is concerned, the appellants are not aggrieved. But as per the order of remand passed by the Appellate Authority in REFA No.20/2021, while determining the entitlement of the compensation and quantum thereof by the Authority, the liberty of the appellants may be kept intact to raise the inconvenience and the intervening circumstances, which led to delay in making the building construction, not as a fault of the builder before the Authority to resist the claim for compensation.

14. To be on the crux of the matter, that too, with reference to the substantial questions of law, as of now, the order under challenge is the order passed by the Appellate Authority in the matter of remand made for the purpose of considering the claim for compensation on the basis of evidence to be adduced by both sides. In Imperia Structures’ case (supra), the Apex Court considered the entitlement of the relief under Sections 18, 71(1), 79 and 88 of the RERA 2016, Act within the ambit of Sections 100 and 107 of the Consumer Protection Act, 2019, wherein in paragraph No.25, the Apex Court held as extracted herein above. In paragraph No. 23, the Apex Court held as under:

“23 In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either Under Section 18(1) or under proviso to Section 18(1).

15. In paragraph No.23, the Apex Court held further that a right given under Section 18 of the RERA Act, 2016 to get back the amount paid by the allottee to the promoter in respect of an apartment is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed.

16. Section 18 of the RERA Act, 2016 reads as under:

“18. Return of amount and compensation:--(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such

compensation to the allottees, in the manner as provided under this Act.

17. To be more explicit, as per Section 18(1), allottee is entitled to get back the amount received by the promoter in respect of an apartment, plot or building with interest including compensation in the manner provided under the Act. Sub section 2 of Section 18 deals with any loss caused to the allottee due to defective title of the land by the promoter.

18. That apart, Sections 12, 13 and 14 of the RERA Act, 2016 deal with grant of compensation in relation to the contingencies dealt therein.

19. Section 19(4) of the Act, 2016 provides that the allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation or his registration under the provisions of this Act or the rules or regulations made thereunder. So the power to grant compensation for the contingencies dealt in Sections 12, 13, 14 and 18 of the RERA Act, 2016 is vested with Regulatory Authority in tune with Section 31 r/w 71 of the RERA Act, 2016 [see Newtech Promoters and Developers Pvt. Ltd. v. State of U.P & Ors.(supra)] .

20. Nowhere in Sections 12, 13, 14, 18 or 19 of the Act, 2016 it has been stated that the grant of compensation is subject to restrictions excluding intervening circumstances beyond the reach of the promoter. It is the well settled principle of interpretation of law that the court should read the section in literal sense and cannot rewrite it to suit its conveniences; nor does any cannon of construction permit the court to read the section in such a manner as to render it to some extent otiose. In this context, the objects and reasons for which the Act has been framed requires reference. The RERA Act, 2016 brought into force with the following objectives:

a) ensure accountability towards allottees and protect their interest;

b) infuse transparency, ensure fair-play and reduce frauds & delays;

c) introduce professionalism and pan India standardization;

d) establish symmetry of information between the promoter and allottee;

e) imposing certain responsibilities on both promoter and allottees;

f) establish regulatory oversight mechanism to enforce contracts;

g) establish fast-track dispute resolution mechanism;

h) promote good governance in the sector which in turn would create investor confidence.

Therefore, reading the purport and intent behind the statute, Court cannot supplement something which was not intended by the legislative in the form of intervening circumstances to negate the objects and reasons of the RERA Act, 2016.

21. So, going by the statutory wordings, intervening circumstances, viz. beyond the reach of the promoter, is not a ground to deny compensation, if any loss and damages caused to the allottees due to defective title of the land as dealt in Section 18 and for other instances dealt in Sections 12, 13 and 14 of the RERA Act, 2016.

22. Since the matter in controversy has been remanded by the appellate tribunal for fresh consideration, while considering the right of compensation, the Regulatory Authority shall consider the mandate under Sections 18 and 19(4) of the RERA Act, 2016. Holding so, this Appeal stands dismissed.

23. All interlocutory orders stand vacated and all interlocutory applications pending in this Regular Second Appeal stand dismissed.

Registry shall inform this matter to the trial court as well as the appellate court forthwith.

