Omaxe India Pvt. Ltd.
Vs.
Sandeep Goyal
Appeal No. 111 of 2021

Present: Sh. Munish Gupta, Advocate, Ld. counsel for the appellant.

{The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court}

1. Office report perused.

2. The appeal be registered.

3. The present appeal has been preferred against the order dated 21.01.2021 passed by the Ld. Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called "Ld. Authority") in Complaint No. 903 of 2019.

4. Ld. Authority had dealt with the following issues in this order.

(i) whether the statement of account accompanying offer of possession was correct and fair?

(ii) Whether the apartment was ready for habitation when the offer of possession was made in February, 2018?

(iii) On account of above factors, whether the offer of possession made in February, 2018 can be called a legally vaild offer?"

5. Under issue no. 1, ld. Authority has held certain demands raised by the appellant to be unjustified but there is no final adjudication with respect to the amount due against the complainant or payable to the complainant by way of interest for delay in delivery of possession. In para no. 10 of the impugned order the complainant has been asked to submit the calculations of the interest amount. The copy of the said calculations is to be sent to the appellant, so, the final amount is yet to be determined by the ld. Authority.

6. Ld. Authority has also dealt with as to whether the unit was habitable in February 2018 when the offer of possession was made by the appellant to the respondent/allottee. Ld. Authority has also dealt with the legality of the said offer of possession.

7. ld. Counsel for the appellant has contended that while disposing of the earlier appeal filed by the appellant bearing Appeal No. 438 of 2020, the liberty was given to the appellant to move the objections against the report of the Local Commissioner before the ld. Authority. The appellant has filed the objections but those objections have not been considered at all by the ld. Authority and the offer of possession made in February 2018 has been wrongly discarded.

8. We have duly considered the contentions raised by the ld. counsel for the appellant. This is the second appeal filed by the appellant almost on the similar grounds. First appeal filed by the appellant bearing Appeal No. 438 of 2020 was disposed of by this Tribunal vide order dated 15.01.2021. The said order reads as under:

"Omaxe India Pvt. Ltd.
Vs.
Sandeep Goyal & Anr.
Appeal No.438 of 2020

Present: Shri Munish Gupta, Advocate, Ld. counsel for the appellant.

{The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court}

Office report perused.
Appeal be registered.
At the very outset, Ld. counsel for the appellant contended that in addition to other issues, the appellant is substantially aggrieved on two accounts. Firstly, that the Ld. Authority has wrongly ordered the appellant to pay interest to the respondents-allottees for the period w.e.f. 17th May, 2007 to 24th September, 2012 and 24th September, 2015 to 13th February, 2018, secondly, the Ld. Authority has appointed the Local Commissioner to inspect the penthouse allotted to the respondents-allottees at the very short notice. He contended that some finishing touches were yet to be given which are generally given at the time of handing over the actual possession to the allottee. He contended that the fresh Local Commissioner should be appointed to inspect the spot after giving reasonable time to the appellant.

We have duly considered the aforesaid contentions raised by the Ld. counsel for the appellant. The matter regarding payment of interest is yet under consideration of the Authority as the parties have been directed to file the calculation of the amount. So, the Ld. Authority is yet in the process of determining the actual amount to be paid by the appellant-promoter to the respondents-allottees on account of delay in delivery of possession. Thus, in our opinion, the appeal on this account is premature. The appellant will be at liberty to file the appeal after the issue regarding payment of interest is finally determined by the Ld. Authority.

As far as the grievance regarding appointment of the Local Commissioner is concerned, it has been informed that the Local Commissioner has already inspected the spot and has submitted his report. If the appellant is having any grievance against the said report, the appellant can very-well file objections to the said report before the Ld. Authority and can also make request to the Ld. Authority for re-visit of the Local Commissioner.

We hope that if these pleas are raised by the appellant before the Ld. Authority, those will be considered by the Ld. Authority in a judicious manner and will be disposed of by passing the speaking order.

The appellant-promoter shall also be at liberty to raise all the pleas available to it before the Ld. Authority at the appropriate stage.

The present appeal stands disposed of accordingly.

Copy of this order be communicated to Ld. counsel for the appellant and the Haryana Real Estate Regulatory Authority, Panchkula for information and compliance.

File be consigned to the record.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

15.01.2021"
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9. In order dated 15.01.2021 passed by this Tribunal, the appellant was given liberty to file the objections against the report of the Local Commissioner. Ld. counsel for the appellant has stated that the said objections were duly filed but those have not been dealt with at all in the impugned order. From the perusal of the impugned order there can be no dispute with this plea raised by the ld. counsel for the appellant. Once the objections were filed, it was incumbent upon the ld. Authority to deal with the objections in a judicious manner as

directed by this Tribunal before relying upon the said report. But if the ld. Authority has chosen to ignore the observations of this Tribunal contained in the order dated 15.01.2021, certainly, this issue can be raised by the appellant in the appeal to be filed against the final order.

10. In the order dated 15.01.2021 in Appeal No. 438 of 2020, the appellant was granted opportunity to file the appeal after the issue regarding payment of interest is finally determined by the ld. Authority. But it is a fact that the said amount has not been so far finally determined by the ld. Authority. Only the calculations have been invited and the amount is yet to be ascertained.

11. The main dispute between the parties is that as to whether the offer of possession made in February 2018 was legal and valid or not and what amount is payable either by the respondent/allottee to the appellant/promoter or by the appellant/promoter to the respondent/allottee by way of interest for delayed possession. As already mentioned in the impugned order, the said amount has not been determined/ascertained so far and only the calculations have been invited from the respondent/allottee with the copy to the appellant/promoter for final determination of the said amount.

12. The impugned order is only an interim order. The case was adjourned to 30.03.2021 for final arguments and it is stated to be still pending at the same stage for 27.04.2021. Ld. counsel for the appellant had also sought time from the ld. Authority for seeking some instructions from the appellant regarding the component of interest included in the demands accompanying the offer of possession issued in February, 2018. So, the matter is pending before the ld. Authority for final decision and determination of amount.

13. Filing of the appeal against the interim order in such cases seems to be a device by the promoter to avoid the compliance of the mandatory provisions of proviso to Section 43 (5) of the Real Estate

(Regulation and Development) Act, 2016 (hereinafter called the "Act"). Because, if the amount is finally determined and then the appeal is filed, the promoter has to deposit the requisite amount of pre-deposit to comply with the mandatory provisions of Act. It appears, that is why the appellant is rushing to this Tribunal when the matter is still half baked and the ld. Authority is seized of the matter with respect to the final determination of the amount.

14. Vide our order dated 15.01.2021, in appeal no. 438 of 2020, the liberty to file the appeal was given to the appellant only after the issue regarding payment of interest is finally determined by the ld. Authority but the said amount is yet to be ascertained. Consequently, the present appeal is pre-mature and not maintainable.

15. Before parting with this order, it is pertinent to mention that it has come to the notice of this Tribunal that the ld. Authority is generally passing various substantive interim orders separately dealing with the one or two issues in the phased manner in majority of the complaints being decided by the ld. Authority. All the issues are not being dealt with together as required under law. In this case the respondent/allotte has raised following issues in the complaint.

> *1. "Whether there was a deliberate or otherwise, misrepresentation on the part of the developer/promoter regarding the project/unit at the time of launch?*
> *2. Whether the facilities and amenities as agreed upon/approved in the sanctioned layout plan have not been provided?*
> *3. Whether the respondents have violated the provisons of the RERA Act, 2016?*
> *4. Whether the respodnents have contravened the provisions of RERA and HAOA?*
> *5. Whether the complaints are entitled to compensation as claimed?"*

16. He has sought the following reliefs:

> *a) 'To return the amounts paid by the complainants along with interest at the rate 11% per annum from the date of payment.*
>
> *b) To return the amounts paid by the complainants to the bank along with interest at the rate 11% per annum from the date of payment.*
>
> *c) To pay compensation for the delay at the rate Rs. 5 per square foot, per month as per the agreement executed between the parties. The total amount payable till October, 2018 i.e. Rs. 34,60,000/-. It is further submitted that the respondents are liable to pay interest at the rate 11% per annum on this amount is well.*
>
> *d) To compensate the complainants @ Rs. 50,00,000/- for making false and misleading representations and claims at the time of launch of the project and failing to deliver the apartment as promised in the brochure.*
>
> *e) To compensate the complainants @ Rs. 40,00,000/- (Rupees forty lakhs only) each for the mental harassment, and agony caused to them by the Respondents since the last several years and blockage of their money resulting in loss of returns."*

17. Ld. Authority has taken up one issue or the other and had passed the separate substantive interim orders dealing with that issue. It is not the correct legal procedure to decide the case in a judicious manner. This practice gives rise to the multiplicity of the litigation, as the aggrieved parties rush to the Appellate Tribunal by filing the appeal against the interim orders. The promoters also take the undue benefit of this practice in order to defeat or evade the compliance of mandatory provisions of the proviso to Section 43 (5) of the Act. The correct procedure is to decide the complaint by deciding all the issues together by way of the final judgment.

18. Though the strict provisions of the Code of Civil Procedure 1908 (for short CPC) are not strictly applicable to the proceedings

under the Act, but the provisions of the CPC are the basic guidelines for the procedure to be adopted while disposing of the case of civil nature.

19. The provisions of Order 14 Rule 2 CPC reads as under:

> ***2."Court to pronounce judgment on all issues****- (1) notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*
>
> *(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to----*
>
> *(a) the jurisdiction of the court, or*
>
> *(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."*

20. While dealing with the aforesaid provisions of CPC, the full bench of the Hon'ble Himachal Pradesh High Court in case **Prithvi Raj Jhingta & another Vs. Gopal Singh and another 2007 (3) RCR (Civil) 407** laid down as under:

> *"9. Based upon the aforesaid reasons therefor, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a court because sub-rule (1) does not permit the*

court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law, sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the court covering all the issues framed in the suit."

21. The Hon'ble Apex Court in a case **Foreshore Co-operative Housing Society Limited Versus Praveen D. Desai (Dead) thr. Lrs. And others, AIR 2015 S.C. 2006** while dealing with the provisions of Order 14 Rule 2 CPC has laid down as under:

"31. For better appreciation of the object and interpretation of Section 9A, it would be proper to have a comparison with the provision contained in Order XIV Rule 2 of the Code of Civil Procedure. Rule 2 of Order XIV reads as under:-

*"**2. Court to pronounce judgment on all issues**.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

32. Order XIV Rule 2 of the Code of Civil Procedure, confers power upon the Court to pronounce judgment on all the issues. But there is an exception to that general Rule i.e., where issues both of law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issue of law, it may try that issue first if that issue

relates to the jurisdiction of the Court or a bar to the suit created by any law.

33. Order XIV Rule 2 of the Code of Civil Procedure as it existed earlier reads as under:-

> *"Issues of law and of fact:*
>
> *Whether issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be "disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined".*

34. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the un-amended Code, the categorization was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring discretion upon the Court that if the Court is of opinion that the case or any part thereof may be disposed of "on an issue of law only", it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force."

22. The same legal position has been reiterated by **Hon'ble Himachal Pradesh High Court in case of Himachali Devi vs. Raman Kumar and Others 2017 Latest HLJ (H.P) 1277.**

23. Thus in view of the rule of law consistently laid down in the cases mentioned above, it is mandatory for a judicial Authority to pronounce the judgment on all the issues together unless the entire case or part thereof can be disposed of on an issue of law only. It is

not permissible to separately take up one issue at one time and to decide the same by passing the substantive of interim order and defer the decision of remaining issues on the subsequent dates.

24. In view of the aforesaid legal position, the complaints filed before the ld. Authority are required to be disposed of by deciding all the issues together and not in parts. This mandate of law is binding on the ld. Authority.

25. In view of our aforesaid discussion, the appeal filed by the appellant stands dismissed being pre-mature and not in accordance with liberty granted in order dated 15.01.2021 while disposing of Appeal no. 438 of 2020. It is made clear that we have not decided anything on merits, so, the appellant shall be at liberty to raise all the grounds available to it, if the appellant feels necessity and is so advised to file the appeal against the final judgment to be passed by the ld. Authority.

26. Copy of this order be communicated to ld. counsel for the appellant/appellant and the Ld. Haryana Real Estate Regulatory Authority, Panchkula and Gurugram for information and compliance.

27. File be consigned to the records.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

13.04.2021
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