BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.168 of 2022
Date of Decision: 22.02.2022

Emaar India Limited (formerly known as Emaar MGF Land Limited).

Registered office at:

306-308, Square One, C2, District Centre, Saket, New Delhi-110017.

Corporate office at:

Emaar MGF Business Park, Floor II, Mehrauli Gurgaon Road, Sikanderpur Chowk, Sector 28, Gurugram-122002.

Appellant

Versus

Chirau Propbuild Private Limited, A-27, MCIE, Mathura Road, New Delhi-110017.

Respondent

CORAM:

Justice Darshan Singh (Retd), Chairman
Shri Inderjeet Mehta, Member (Judicial)
Shri Anil Kumar Gupta, Member (Technical)

Argued by: Shri Randeep Singh Rai, learned Senior Advocate, with Shri Sanjeev Sachdeva, Advocate, Shri Ashish Joshi, Advocate, Ms. Rubina Virmani Advocate, Ms. Khyati Duparr and Ms. Anmol Gupta, Advocate, learned counsel for the appellant.

Shri Akshay Bhan, learned Senior Advocate with Shri Amandeep Singh Talwar, Advocate and Shri Pawandeep Singh Talwar, Advocate, learned counsel for the respondent.

O R D E R:

JUSTICE DARSHAN SINGH (RETD.) CHAIRMAN:

The present appeal has been preferred against the order dated 03.02.2022 passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), vide which the application moved by the appellant-promoter seeking deferment/abeyance of the proceedings till the disposal of Civil Writ Petition No.19958 of 2017 titled "Gurgaon Citizens Council & Anr. Vs. State of Haryana & Ors." and RERA Appeal No.35 of 2021 titled "Emaar India Ltd. vs. Simmi Sikka & Anr." has been dismissed.

2. As per averments in the application, Civil Writ Petition No.19958 is pending adjudication before the Hon'ble Punjab and Haryana High Court, Chandigarh to judge the legality of Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 (for short 'the Rules'). It is further pleaded that on 13.02.2020, the Hon'ble High Court had ordered that the proceedings before the Authority/Appellate Tribunal shall be kept in abeyance. The order dated 13.02.2020 was brought to the attention of this Tribunal and in four appeals, the proceedings were kept in abeyance by

taking cognizance of the Civil Writ Petition No.19958 of 2017 pending adjudication before the Hon'ble High Court.

3. It is further pleaded that the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act') are not applicable to the project in question and the application for issuance of part completion certificate in respect of the plot in question was submitted on 30.01.2014 to the Directorate of Town and Country Planning, Haryana, Chandigarh i.e. before the enforcement of the Rules. That the project in question where the subject matter plot is located, is not an ongoing project under Rule 2(1)(o) of the Rules and this project does not require registration. Consequently the Authority had no jurisdiction to entertain and decide the complaint. Another case bearing RERA Appeal No.35 of 2021 titled "M/s Emaar India Ltd. Vs. Simmi Sikka & Anr" is pending before the Hon'ble High Court wherein the issue of jurisdiction over un-registered projects has been raised. The Hon'ble High Court has stayed the operation of the order dated 03.11.2020 passed by this Tribunal.

4. It is further pleaded that in the light of the aforesaid facts, it will be appropriate and expedient, in the interest of justice and in consonance with judicial propriety to adjourn the present complaint *sine die* till the decision of Civil Writ

Petition No.19958 of 2017 and RERA Appeal No.35 of 2021. Hence, the application.

5. We have heard Shri Randeep Singh Rai, learned Senior Advocate, counsel for the appellant, Shri Akshay Bhan, learned Senior Advocate, counsel for the respondent and have meticulously examined the record of the case.

6. Shri Randeep Singh Rai, learned counsel for the appellant has contended that the present project is not covered within the purview of the 'ongoing project' and is exempted under Rule 2(1)(o) of the Rules. He contended that the application for issuance of part completion certificate with respect to the plot in question was already submitted on 30.01.2014 to the Directorate of Town and Country Planning, Haryana, Chandigarh before enforcement of the Rules. This project does not require registration as per the provision of Rule 2(1)(o) of the Rules.

7. He further contended that the appellant has moved the application before the learned Authority for deferment/to keep in abeyance the proceedings in view of the restraint order passed by the Hon'ble High Court in Civil Writ Petition No.19958 of 2017 and RERA Appeal No.35 of 2021. He contended that taking note of the restraint order passed by the

Hon'ble High Court in Civil Writ Petition No.19958 of 2017, this Tribunal has also adjourned various appeals, but the learned Authority has illegally rejected the application.

8. He further contended that the learned Authority in pursuance to the order passed by the Hon'ble High Court has kept in abeyance the proceedings in Complaint No.4491 of 2021 but in the present case, the appellant has been met out with discrimination.

9. He further contended that in the impugned order, the learned Authority has simply mentioned that there is no evidence to show that the application submitted by the appellant was complete, hence the said application was no application in the eyes of law and the Hon'ble Apex Court in case ***"Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. and others" 2021 SCC OnLine SC 1044*** has laid down that only those projects are exempted from registration for which completion certificate has been obtained. He contended that it was in the knowledge of the Authority that the matter with respect to 'ongoing project' is pending before the Hon'ble High Court and even the SLPs in Haryana matters are pending before the Hon'ble Apex Court.

10. He further contended that in the application moved by the appellant, a specific plea has been raised that the project in question does not fall within the purview of 'ongoing project' and is exempted from registration under Rule 2(1)(o) of the Rules. Thus, he contended that the learned Authority had no jurisdiction to entertain and adjudicate the complaint filed by the respondent-alottee.

11. With these contentions, he pleaded that the impugned order suffers from basic legal infirmities and is liable to be set aside. The application moved by the appellant for deferment/abeyance of the proceedings deserves to be allowed till the decision of Civil Writ Petition No.19958 of 2017 and RERA Appeal No.35 of 2021.

12. On the other hand, Shri Akshay Bhan, learned counsel for the respondent has contended that there is no plea raised by the appellant in the written statement that the project in question does not fall within the purview of 'ongoing project' and is exempted under Rule 2(1)(o) of the Rules. He contended that the plea beyond pleadings cannot be taken into consideration.

13. He further contended that there is no material on record even to show prima facie that the plot in question is the

part of the project for which the application dated 30.01.2014 has been moved. He pointed out that there are contradictions in the facts pleaded in para no.5.9.3 of the grounds of appeal and the documents on record. He pointed out that the application dated 30.01.2014 shows that the project was not complete and execution of services was going on. So, there is no question of issuance of part completion/completion certificate. He further contended that the Director, Town and Country Planning, Haryana, Chandigarh had passed the order dated 31.07.2017, whereby all the sanctions/approvals pertaining to Licence No.113 of 2011 dated 22.12.2011 were annulled *ab initio*. He further contended that Enclosure 'S' dated 26.07.2018 shows that the application for approval of part completion has been submitted on 28.07.2017. He contended that when all the sanctions and approvals for licence no.113 of 2011 were annulled *ab initio* and fresh renewal was required, then how the application for part completion has been moved on 28.07.2017. Moreover, the copies of these applications have not been placed on record. He has further drawn our attention to Enclosure 'T' dated 04.03.2021 which shows that the revised plan has been approved on 14.10.2020. If it was so, then how the applications for part completion certificate could have been

moved on the alleged dates. Thus, he contended that there is no material on file to show that in fact any application was moved by the appellant for the plot in question to issue the part completion certificate. Hence, it cannot claim that case of the appellant falls in the exemption under Rule 2(1)(o) of the Rules and the application moved by the appellant has been rightly dismissed by the learned Authority.

14. We have duly considered the aforesaid contentions.

15. We are conscious of the fact that Civil Writ Petition No.19958 of 2017 is pending adjudication before the Hon'ble High Court. In the said writ petition Gurgaon Citizens Council and another have challenged the vires of Rule 2(o) (wrongly mentioned as 2(n) in the writ petition). In the said writ petition, the Hon'ble High Court vide order dated 13.02.2020 has directed the Authority/Tribunal to keep the proceedings in abeyance. The appellant has also relied upon the order Dated 23.08.2021 passed by the Hon'ble High Court in RERA Appeal No.35 of 2021 wherein the plea was raised that the appellant-promoter had already applied for issuance of 'Occupation Certificate' before the Act came into force. So, the same was exempted from registration and in the said appeal, the Hon'ble High Court was pleased to grant interim order in the same

terms as in RERA Appeal No.23 of 2020 titled as "M/s Omaxe Ltd. Vs. Arun Prabha".

16. The litigation under the provisions of the Act is of civil nature. Even, certain provisions of Code of Civil Procedure are applicable. In day-to-day proceedings while adjudicating the complaints by the Authority and the appeals by this Tribunal, the general principles of the Code of Civil Procedure are being followed. It is settled principle of law that the plea which is beyond pleadings cannot be considered. Learned counsel for the respondent has supplied us the copy of the reply filed by the appellant-promoter to the complaint filed by the respondent before the Authority. The authenticity of the said copy has not been disputed before us by learned counsel for the appellant. We have perused the entire reply with the assistance of learned counsel for the parties, but, in reply no plea, at all, has been raised that the project in question is not an 'ongoing project' and application for issuance of part completion certificate has already been moved and the project in question is exempted under Rule 2(1)(o)(i)(ii) of the Rules. So, the plea being raised before this Tribunal is completely beyond pleadings and cannot be considered. The Hon'ble Apex Court in case ***State of Orissa & Anr. Versus***

Mamata Mohanty, 2011(3) SCC 436 has laid down as under:-

> *"35. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide : Sri Mahant Govind Rao v. Sita Ram Kesho, (1898) 25 Ind. App. 195; M/s. Trojan & Co. v. RM. N.N. Nagappa Chettiar, AIR 1953 Supreme Court 235; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 Supreme Court 3165; and State of Maharashtra v. Hindustan Construction Company Ltd., 2010(2) RCR (Civil) 614: 2010(2)R.A.J. 479: (2010)4 SCC 518."*

17. The same ratio of law has been laid down in the following cases:-

(i) ***Sadhu Singh and others Versus Harminder Kaur and others, 2004(2) R.C.R. (Civil) 545***;

(ii) ***Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 Supreme Court 1103***;

(iii) ***Anil Kumar Marwah Versus Deepak Sunder & Ors. 2007(42) R.C.R. (Civil) 576***;

(iv) ***Reliance General Insurance Company Limited versus Karnail Kaur and others 2018 (4) PLR 177***

(v) ***Ram Prasad Shukla vs. Suraj Lal and Ors. 2017 (122) ALR 144***.

18. No doubt, in the application moved by the appellant before the learned Authority, in para no.6, the appellant-promoter has pleaded that application for issuance of part completion certificate was moved on 30.01.2014 to the Directorate of Town and Country Planning, Haryana, Chandigarh i.e. before the notification of the Rules, and the project in question where the plot subject matter is located, is not an 'ongoing project' under Rule 2(1)(o) of the Rules. The complaint was filed by the respondent on 02.08.2021. The reply was filed by the appellant on 05.10.2021. The application for deferment/abeyance of the proceedings was

moved on 01.02.2022 i.e. much after filing of the reply. As per Order VI Rule 1 of the Code of Civil Procedure, 1908, "Pleading" shall mean plaint or written statement. So, the application cannot be considered to be part of pleadings. Hence, the plea raised in the application without any foundation in the written statement carries no weight. To support this view, reference can be made to case law cited as ***Shipping Corporation of India Ltd. Versus Lee Muirhead Ltd. 2005(29) R.C.R. (Civil) 868*** and ***Prasanta Nayak Versus B.D.O. Jajpur And Ors., 2008(39) R.C.R. (Civil) 556***.

19. In order to claim the bar of jurisdiction, mere raising of plea is not sufficient. There must be some material on record to show at least the prima facie case. We want to make it clear that in view of the orders passed by the Hon'ble High Court, we cannot indulge into the interpretation of Rule 2(1)(o) of the Rules and whether the project in question is covered or not under the purview of the 'ongoing project'. We are deciding this appeal only on the factual issues and the law applicable thereto.

20. In the application moved by the appellant before the learned Authority for deferment of the proceedings, it is not clearly mentioned that the project in question in which the subject matter plot is situated, is part of which licence. It is

also evident from the record that all the sanctions and approvals with respect to licence no.113 of 2011 were annulled *ab initio* by the Director vide order dated 31.07.2017 which required fresh/revised approvals. The letter of the appellant dated 04.03.2021 shows that the revised lay out plan has been approved on 14.10.2020. So, it is not understandable as to how the application for issuance of part completion certificate could have been moved before enforcement of the Rules without the necessary sanctions/approvals.

21. As per Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976, the application for completion certificate/part completion certificate has to be moved to the Director in Form LC-VIII along with requisite fee. Form LC-VIII provides that the application should be accompanied by the 'layout plan' of the colony in triplicate showing the whole/part thereof for which the work has been completed. In the instant case, the lay out pan has been approved on 14.10.2020 as per the letter of the appellant dated 04.03.2021 (Enclosure 'T'). So, on the alleged date of moving the application, the requirements of Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 were not fulfilled.

22. Moreover, the case of the appellant is contrary with respect to the case of moving the application for issuance of part completion certificate. In the application, it is alleged that it was moved on 30.01.2014, whereas, in the Enclosure 'S' dated 26.07.2018, written by the appellant to the Director, Town and Country Planning, Haryana, Chandigarh, it is mentioned that the application for approval of part completion of residential plotted colony for both the licences i.e. licence no.10 of 2009 and licence no.113 of 2011 was submitted on 28.07.2017. So, the case of the appellant that application for issuance of part completion certificate was moved to the competent authority on 30.01.2014 is repelled from its own documents. Even, on 28.07.2017, the plans were not approved which have been approved on 14.10.2020 as per Enclosure 'T'.

23. Though, the learned counsel for the appellant has placed on record the photo copy of the order dated 15.12.2021 passed by the learned Authority in Complaint No.4491 of 2021 whereby the proceedings have been adjourned sine die in view of the order passed by the Hon'ble High Court, but there is no material on record to show that the facts of the said case and the present case were similar. Hence, the appellant cannot

derive any benefit of the order dated 15.12.2021 passed by the learned Authority in Complaint No.4491 of 2021.

24. Thus, keeping in view our aforesaid discussion, the application for deferment/abeyance of the proceedings moved by the appellant was without any merit, though on the ground different that is mentioned in the impugned order.

25. Consequently, the present appeal is also without any merit and the same is hereby dismissed.

26. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority.

27. File be consigned to record.

Announced:
February 22, 2022

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

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

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