

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 2374 of 2018**

1. M. Ahuja (I) (P) Limited Through-Director Mahendra Ahuja S/o Late Prahlad Rai Ahuja, 34 Years, R/o Sai Kunj, Near Kali Mata Temple, Civil Lines, Raipur, District- Raipur, Chhattisgarh.

---- **Petitioner****Versus**

1. Shaktipunj Engineers Private Limited. Through The Director, Shri R.P. Sinha, 17-Golden Homes, Near VIP Club, Khamardih, Raipur, District- Raipur, Chhattisgarh.

---- **Respondent**

For Petitioner

Shri Prafull N. Bharat, Advocate

**Order On Board****By****Prashant Kumar Mishra, J.****27/08/2018**

1. Heard learned counsel for the petitioner.
2. Challenge in this petition is to the order passed by the Chhattisgarh Real Estate Regulatory Authority (henceforth 'the RERA') constituted under the provisions of the Real Estate (Regulation and Development) Act, 2016 (henceforth 'the RERA Act') on 17-7-2018 directing the petitioner to remove the defects in the workmanship & quality and provide all facilities to the flat purchasers, as projected in the brochure issued at the time of making offer to purchase and thereafter, obtain work completion certificate. The RERA has also directed the petitioner to pay a sum of Rs.31.00 lacs to the Greenglory Residents Welfare

Society (henceforth 'the RWS') for construction of swimming pool. It has also directed the Municipal Corporation, Raipur, to issue work completion certificate only after the facilities are provided and defects are removed by the petitioner, in terms of RERA's order.

3. The petitioner is a 'Builder' at Raipur, which launched the residential project in the name of Greenglory at Shankar Nagar, Khamhardih, Raipur. The completion period of which was 30 months starting from January, 2010 to June, 2012. The project comprise of construction of 120 flats within compound wall with all facilities, as described in the marketing brochure.

4. According to the respondent/complainant, the project was inordinately delayed and forced its consumers for taking possession of incomplete flats. The complainant obtained possession of one flat, however, the project being incomplete the residents faced many difficulties. The complainant visited the office of the Municipal Corporation, Raipur, where from it came to his knowledge that work completion/occupancy certificate has not been issued for the project and that the petitioner's colonizer license has already expired on 21-7-2014 without there being any application for renewal.

5. After hearing both the parties, the RERA has found deficiencies in workmanship and quality. RERA also noticed that the swimming pool, as promised in the brochure, has not been constructed.

6. In the complaint Annexure – P/1, the complainant has highlighted many defects like failure of plantation of trees after every 100 sq.mtr.; violation of parking norms; non-installation of lightning arrestor & rain water harvesting system; failure to provide connection of waste water drains to exit drains; failure to provide safety norms by installation of electrical panels below staircase and in front of elevators; non-payment of dues to Municipal Corporation, Raipur; non-obtaining of completion/occupancy certificate and non-completion of amenities, as promised in the marking brochure & agreement.

7. It is argued that there was no promise for construction of swimming pool and for seeking compensation under Sections 12, 14, 18 & 19 the process of adjudication is provided under Section 71 of the RERA Act, however, the adjudicatory authority having not been appointed by the RERA in consultation with the appropriate Government, the RERA could not have directed for payment of Rs.31.00 lacs to the RWS.

8. Before proceeding to consider the submissions, it would be necessary to refer to the objects and reasons with which the RERA Act has been enacted.

9. The 'Preamble' of the RERA Act shows that the same has been enacted to establish the 'Real Estate Regulatory Authority' for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project in an efficient and transparent manner and

to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy redressal and also to establish the Real Estate Appellate Tribunal to hear Appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and Adjudicating Officer and for the matters connected therewith or incidental thereto.

10. The 'Statement of Objects and Reasons' of the Act shows that, the necessity of enacting such Act was realized by the Legislature after perceiving that the real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse thereto is only curative and is not adequate to address all the concerns of buyers and promoters in that sector.

11. The RERA is, therefore, enacted to provide for establishment of the 'Real Estate Regulation and Development Authority' for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner. The object of the RERA is stated to be to protect the interests of consumers in the real estate sector, like the Respondents herein.

12. Thus, the RERA is brought on Statute Book to ensure greater accountability towards the consumers and significantly reduce frauds and delays, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters, by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions and set minimum standards of accountability and a fast track dispute resolution mechanism. The RERA, as stated in its 'Objects and Reasons', was enacted for inducting professionalism and standardization in the sector, thus, paving the way for accelerated growth and investments in the long run.

13. The RERA, therefore, imposes an obligation upon the promoter not to book, sell or offer for sale or invite persons to purchase any plot, apartment or building, as the case may be, in any real estate project, without registering the real estate project with the Authority. It makes the registration of real estate project compulsory, in case where the area of land proposed to be developed exceed 500 sq.mtrs. or number of apartments proposed to be developed exceed 8, inclusive of all phases. It imposes an obligation upon the Real Estate Agent also not to facilitate sale or purchase of any plot, apartment or building, as the case may be, without registering himself with the Authority. The RERA Act imposes liability upon the Promoter to pay such compensation to the Allottees in the manner, as provided under

RERA, in case if he fails to discharge any obligations imposed on him under the RERA.

14. It appears, payment of Rs.31.00 lacs to the RWS is construed by the petitioner as if the same is a compensation allowed to the RWS whereas, in fact, the said payment is for construction of swimming pool, which was promised in the brochure. It is not by way of compensation for the damages sustained by the flat purchasers on account of petitioner's failure to provide amenities. Therefore, Section 71 of the RERA Act has no application, as there is no adjudication of compensation by way of damages.

15. It is vehemently argued that there was no promise for construction of swimming pool in the brochure, however, a bare perusal of the broacher at page 32 of the writ petition would demonstrate that it contains photograph of a swimming pool in the middle of the open space facing towers of the flats. If a particular amenity like swimming pool is shown in the photograph of the brochure it will definitely allure and attract the prospective buyers to purchase the flat in the project in which there is a swimming pool. Thus, there was a promise by the petitioner in its brochure for construction of swimming pool for which the RERA has rightly directed the petitioner to pay an amount of Rs.31.00 lacs to the RWS of Greenglory for construction of swimming pool.

16. As has been discussed in the preceding paragraphs about the object and reasons for enactment of the RERA Act, it is for sure that one of the basic feature of the RERA Act is to protect the consumer i.e. the flat/home buyers.
17. I have dealt with the submission raised by the learned counsel appearing for the petitioner keeping in view the law laid down by the Supreme Court in **Tata Engineering & Locomotive Co. Ltd. v State of Bihar and Another**<sup>1</sup> which says that statutes are required to be considered in their practical application as to how they will achieve the object of the Act. The following has been

held in para 15 :

"15. 'Statutes', it is often said, should be construed not as theorems of Euclid, but with some imagination of the purposes, which lie behind them, and to be too literal in the meaning of words is to see the skin and miss the soul. The method suggested for adoption, in cases of doubt as to the meaning of the words used is to explore the intention of the Legislature through the words, the context which gives the colour, the context, the subject-matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their literal sense, are interpreted from the context and scheme underlying in the text of the Act. The decision in Utkal Contractors & Joinery (P) Ltd. case also emphasizes the need to construe the words in a provision in the context of the scheme underlying the other provisions of the Act as well, which ultimately was considered to be in tune with the object set out in the 'Statement of the Objects and Reasons' and in the 'Preamble'. Apart from the fact that the observations contained in the decision have to be understood in the light of the issue raised and exercise undertaken by the Court therein, the fallacy in the submission on

<sup>1</sup> (2000) 5 SCC 346

behalf of the Appellant lies, though not in the principles of construction to be adopted, but in the assumption of the counsel to confine or restrict and construe the law in question to be one made to regulate the trade of sawing, contrary to the very 'Preamble', which reads,

"to make provisions for regulating in the public interest the establishment and operation of saw-mills and saw-pits and trade of sawing for the protection and conservation of forest and the environment".

(emphasis supplied)

18. Thus, having considered the entire gamut of the matter with its practicality *via-a-vis* the objects and reasons of enactment of the RERA Act, I am convinced that the promise held out by the petitioner in its broacher either in express terms or by showing the picture of the project as it would appear after completion, there was a definite promise for construction of swimming pool. Hence, the order passed by the RERA is within its jurisdiction, which need not be interfered in extraordinary writ jurisdiction, as there does not appear violation of any statutory provision while passing the order impugned.

19. As an upshot, the writ petition, *sans substratum*, is liable to be and is hereby dismissed at the motion stage itself.

Sd/-

Judge  
Prashant Kumar Mishra

Gowri