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HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 42 of 2023**

Rajesh Sarkar (M/s. Sarkar Construction) S/o Late Niranjana Sarkar Aged About 59 Years R/o Durga Bhawan, Tikrapara, Bilaspur, District Bilaspur (C.G.)
---- **Appellant**

Versus

Smt. Bela Rani Bose, W/o Shri S.C. Basu, R/o Som Gali, Behind Central School, Kasimpara, District Bilaspur (C.G.)
---- **Respondent**

For appellant – Shri C. Jayant K. Rao, Advocate.
For respondent – Shri Shubhank Tiwari, Advocate.

**Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Sanjay Kumar Jaiswal**

Order on Board

Per Goutam Bhaduri, J.

15/06/2023

Heard.

1. Present appeal is against the order passed by the Chhattisgarh Real Estate Appellate Tribunal, Raipur in Appeal No.09/2022 preferred by the respondent herein. By such order, the learned Appellate Tribunal has directed for return of the sale consideration and the other amount which was paid to the appellant herein by the respondent for purchase of a flat.
2. The brief facts of this case are that, an agreement was executed on 23rd October, 2018 between the appellant and the respondent. According to such agreement, the respondent agreed to purchase flat no.105, 3 BHK at first floor and paid an amount of Rs.65,16,000/-. As per the agreement, possession of the flat was to be handed over to the respondent on 20/02/2022. On the same date, another Memorandum of Understanding (MoU) was executed whereby the appellant/builder committed to deliver the



flat in complete position on or before December 2019. The appellant failed to deliver the possession of the flat in December, 2019. Subsequently, the appellant relied on the letter dated 3/06/2022 to get the registration of flat No.105. It further followed by a subsequent letter dated 23/06/2022 wherein according to the appellant, the respondent refused to take the possession of the flat No.105 and expressed to purchase the flat No.501. Consequently, even for flat No.501 the appellant informed the respondent to come and get the sale deed registered and sale deed format was also sent to the respondent. However, the respondent did not adhere to such arrangement and filed a case before the Real Estate Regulatory Authority (RERA).

3. The case of the respondent was that the respondent being a senior citizen as of now aged about 84 years invested her entire amount of life savings to purchase a flat bearing No.105. Therefore, at the time of the agreement of sale, the sale consideration in its entirety was paid alongwith the amount required for furnishing to make the flat habitable. The respondent contended that thereafter, as per the promise, the flat was not handed over to the respondent and on inspection it was found that it is not ready. Therefore, request was made to the appellant to complete the flat within time but eventually all requests failed and the appellant showed his inability to complete the flat for want of funds. This led to a dispute in between the parties and in the meanwhile though the offer for another flat bearing no. 501 was made which was not acceded to by the respondent but the appellant insisted upon to get the said flat registered which was a mortgaged one. Under those circumstances, it led to filing of an application before the Real Estate Regulatory Authority (RERA) Raipur.

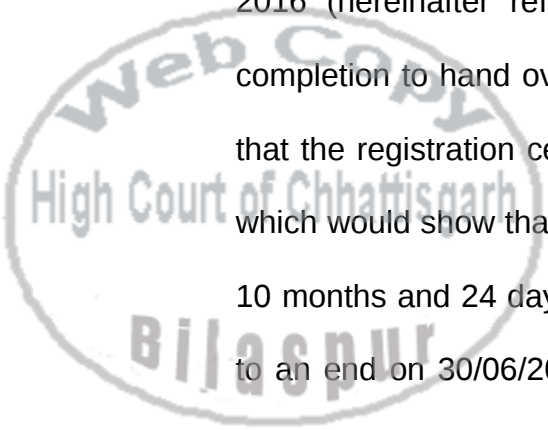
4. Real Estate Regulatory Authority (RERA) Raipur by its order dated 16/09/2022 observed that both the parties were at fault as no evidence was led by the respondent to show that efforts were made to get the flat



registered, therefore optional order was passed that either to get the sale deed registered of flat no. 105 or 501. Being aggrieved by such order, the respondent filed an appeal before the Real Estate Appellate Tribunal. The Appellate Tribunal by its impugned order dated 31/01/2023 had directed to return the entire amount of Rs.65,16,000/- alongwith interest at the rate of 10.50 % per annum from 22/10/2018 within a period of 45 days and apart from that cost of petition was also allowed.

The appellant being aggrieved by such order has preferred this petition.

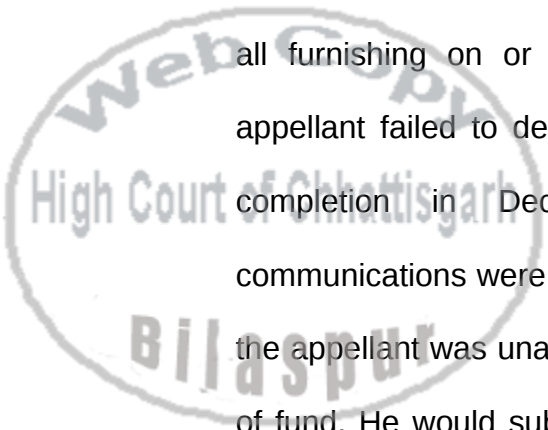
5. Learned counsel for the appellant would submit that the agreement of sale was in accordance with the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act of 2016') wherein the date of completion to hand over the flat was of 20/02/2022. He would further submit that the registration certificate of the project was issued on 2nd August, 2018 which would show that the validity period to complete the project was 3 years 10 months and 24 days commencing from 2nd August, 2018 and would come to an end on 30/06/2022. He would submit that in the meanwhile a circular was issued by the RERA in view of the COVID lock down on 14/05/2020 wherein further extension of period of six months was granted. Consequently, the breather period for the project was up till 30/06/2022. He would submit that in the meanwhile the respondent though was offered to get the sale deed executed of flat No.105 but they refused to get it on the ground that proper sun light was not reaching to the flat. Under these circumstances, flat no. 501 was offered to the respondent and it was promised that the flat no. 501 which was a mortgaged one with the Municipal Corporation would be cleared within a short span of time and sale deed would be registered but despite that the respondent did not show any effort to get the sale deed registered in her favour. Consequently, when the application was filed before the RERA, it had ordered for alternate purchase of flat No. 105 or 501 and in case of refusal,





the amount of Rs.65,16,000/- was directed to be returned. He would submit that today as of now the appellant is ready and willing to execute the sale deed of flat No. 105, 3 BHK first floor, therefore the order of the Appellate Tribunal is required to be interfered by this Court.

6. Per contra, learned counsel for the respondent would submit that initially at the time of execution of MoU on 23/10/2018, the respondent who is a senior citizen, now aged about 84 years invested the entire amount to get a shelter and therefore the entire sale consideration including the registration and other charges was paid on the first date of such execution of the agreement dated 23/10/2018. It is stated since the entire amount was paid, a MoU was executed on the same date whereby the flat was agreed to be delivered with all furnishing on or before December, 2019. He would submit that the appellant failed to deliver the possession of the flat with all amenities and completion in December, 2019. Thereafter, the messages and communications were exchanged between the parties which would show that the appellant was unable to get the flat restored to make it habitable for want of fund. He would submit that thereafter COVID lock down came into being and after the situation eased out, the appellant failed to deliver the possession of the flat instead when frequent requests were made another flat No. 501 was offered. He would submit that the conversation which had taken place in between the parties have been considered by the RERA Appellate Tribunal and the order of the RERA was entirely based on the issue that the respondent has not served any notice for sale which is completely faulty and has been rightly set aside by the RERA Appellate Tribunal. It is stated 'Act of 2016' or agreement do not contemplate so of exchange of correspondence and notice as RERA gave it by finding. He would submit that thereafter a letter was served by the appellant on 3/03/2022 to get a sale deed in respect of flat No. 501. Alongwith that a format of sale deed was sent wherein the





sale consideration was shown as 25,79,000/- though the respondent has paid an amount of Rs.65,16,000/-. He would further submit that it further followed by a letter dated 3/06/2022 wherein again the offer was made to get sale deed of flat no. 105. This would show the conduct of the appellant and the email exchange were also made. Under these circumstances, the respondent refused to get the sale deed registered and the order of the learned Appellate Tribunal of RERA is well merited by appreciation of evidence which do not call for any interference by this court.

7. We have heard learned counsel for the parties and perused the documents.
8. Perusal of the record would show that the agreement styled as 'Agreement of Sale' was executed on 23/10/2018 for purchase of flat No.105 in between the appellant and the respondent wherein terms of 'payment' was reduced in writing. The relevant part of terms of payment is reproduced hereunder:-

Terms:

- (i) Subject to the terms and conditions as detailed in this Agreement, the Promoter agrees to sell to the Allottee and the Allottee hereby agrees to purchase, the Plot as specified in Para G;

The Total Price for the Flat is Rs.40,00000.00 (Rupee Fourty Lakhs Only) Finishing work will be done by customer's choice like painting, electrification, tiles etc. amount is paid in advance 15,00000.00 (Rupee Fifteen Lakhs Only)

1. Block/Building/Tower no. Vaishali Valencia Flat No.-105 Type-3BHK Floor-1st	Rate of Apartment (Carpet Area) per square feet Rs.(1094.07x3656.07) =40,00000.00
2. Stamp Duty & Registration Fees	2,35000.00
3.Electrical Transformers Charges	80,000.00
4.Society Charges	1,00000.00
5. Finishing work	15,00000.00
6.GST	6,01000.00
Total Price (in rupee)	65,16000.00



9. The agreement further purports that the possession of the apartment would be handed over with an end date of 20/02/2022. The relevant part of such agreement to hand over the possession is reproduced hereunder:-

“Possession of the Apartment/Shops

Schedule for possession of the said [Apartment/Shops]: The Promoter agrees and understands that timely delivery of possession of the [Apartment/Shops] is the essence of the Agreement. The Promoter, based on the approved plan specifications, assures, to hand over possession of the [Apartment/Shops] on 20/02/2022 unless there is delay or failure due to war, flood, drought, fire cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project (“Force Majeure”). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the [Apartment/Shops], provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allotment within 45 days from that date. After refund of the money paid by the Allottee, Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement.”

10. On the same date a MoU was executed in between the parties wherein the delivery of the flat was preponed to December, 2019 and the receipt attached



with the same would show that the entire sale consideration of Rs.65,16,000/- was paid by the respondent. For the sake of brevity MoU is reproduced hereunder:-

“Memorandum of Understanding

The Memorandum of Understanding being executed on this day of 23/10/2018 between M/s. Sarkar Construction and Mrs. Bela Rani Bose at Bilaspur.

The Builder M/s. Sarkar Construction hereby commits to deliver the flat in complete position in all respect like Flooring, Painting, Water supply, and electrification everything on or before December 2019.

In case of natural calamities like Riots, Flood, etc. which is not is control of builder completion can be delayed. However the date of completion in the original agreement as per RERA format is mention 20/02/2022.

Further builder commits that in case of delay to give the possession of the flat from above mention date, Builder will pay 10% interest P.A. from the date of payment to delayed period. This is for our mature understanding.”

11. Perusal of both the documents would show that in the event of the payment of the entire sale consideration and other expenses delivery of flat No.105 was agreed to be handed over in December, 2019. Thereby the facts would show for the event of receipt of entire sale consideration alongwith other registration and ancillary expenses the appellant builder promised to hand over the possession of flat No.105 by end date of December 2019. Therefore by act of parties, they altered their position and builder promised to hand over possession of flat by a target date.

12. The Supreme Court in the matter of **M/s. Motilal Padampat Sugar Mills Co.**



Ltd. Vs. State of Uttar Pradesh & ors. reported in **(1979) 2 SCC 409** has held promissory estoppel or equitable estoppel would not be restricted to parties already contractually bound to one another or having a pre-existing legal relationship and the appellant herein having received the entire sale consideration and other amount for furnishing of the flat having received the amount by his conduct and subsequent execution of MoU whereby the date of the delivery of the flat was preponed to December, 2019, by conduct with intention and with knowledge would be estopped to canvas the fact that since the RERA has allowed the project to be lasted up till June 2022 and with extension of six months, project completion date would be December, 2022 there would be an automatic extension of time to hand over the possession of flat. Acceptance of proposition of appellant would be against the principles of promissory estoppel and **waiver**. By the act of the parties the appellant and the respondent by the execution of the MoU created a legal relationship and obligation whereby the appellant agreed to hand over the possession of the flat. It is quite obvious and natural that when in entirety the amount is paid by a senior citizen it would be with an intent to secure peace and a smooth transaction without any barrier or hindrance to achieve ultimate object to get her own house/shelter. The intentions and the state of right of the parties were not ambiguous or make it a porus to evaluate the intentions. Therefore, the appellant having made a promise by accepting the entire sum of sale consideration and the promisee acting in reliance on it both the parties altered their position, the appellant was liable to hand over the possession of the flat No.105 before December, 2019.

13. Further the learned Appellate Tribunal has observed that the finding of the RERA that the respondent as a purchaser has not made any effort to serve a notice to the appellant is faulty as the agreement do not contemplate the same. We are in agreement with such finding inasmuch as the agreement or



the 'Act of 2016' do not contemplate such happening. Such finding of the RERA if are upheld, the authorities would be deemed to step into the shoes of the parties to create an agreement which was never existing in between the parties apart from the fact that it would be *de hors* the 'Act of 2016'. The finding arrived at by the learned Appellate Tribunal whereby certain correspondence were taken note of it i.e. the conversation made in between the parties are a finding of fact and on perusal of the documents and the record on which it has been arrived, we do not find any perversity in it. The correspondence which was made by the appellant by its letter dated 3/03/2022 would show that an offer was made to sell the flat No.501 and by subsequent communication dated 23/06/2022 again the flat No.105 was offered. Therefore, a contradictory stand was taken by the appellant which allows us to bring back the lens to the conduct of appellant to corroborate it with the correspondence. Therefore the finding of Appellate Tribunal to hold the sway in favour of respondent cannot be held perverse. The finding of the RERA to offer alternate flat either 105 or 501 is completely perverse and would lead to force a party against his will which they never intended. The conduct of appellant is contrary to even general expectation and is a turbulence alert as the format of sale-deed for flat No.501 shows that sale consideration is of 25,79,000/- when the entire sale consideration of Rs.65,16,000/- was paid by respondent.

14. The overall assessment of the entire facts and the record therefore would show that the finding of fact is arrived at by the learned Appellate Tribunal on correct assessment of evidence on record. Therefore, we in exercise of power under Section 58 of the 'Act of 2016' do not find any substantial question of law which may arise in the facts of this case for consideration.
15. Accordingly, the appeal sans merit and is hereby dismissed. Considering the age of the respondent, it appears that the respondent has attained the age of



84 years it is observed that if the execution proceedings are filed, it would come to a logical conclusion within a period of two months from the date of receipt of this order.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge

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