

**IN THE WEST BENGAL REAL ESTATE APPELLATE TRIBUNAL
KOLKATA - 700 075**

- Present: 1. Justice Rabindranath Samanta
Hon'ble Chairperson
2. Shri Gour Sundar Banerjee
Hon'ble Judicial Member
3. Dr. Subrat Mukherjee
Hon'ble Administrative Member

WBREAT/APPEAL NO. – 08/2023

M/s Janapriyo Real Estate Pvt. Ltd. Appellant
151/A, Jodhpur Gardens, Lake Gardens,
Kolkata – 700 045.

Vs.

Shyamali Mitra Respondent
31A/1, Beer Para Lane, Queens Enclave,
Flat No.-2B,
Kolkata – 700 030.

Mr. Pratip Mukherjee, AdvocateFor the Appellant

Mr. Sudip Basu, Advocate

Ms. Dibyanjona Das, Advocate

Ms. Shyamali MitraAppears in person

Heard on : **18.04.2024**

Judgment on : **10.05.2024**

Rabindranath Samanta, J:-

This Appeal arises against two Orders all dated 21.06.2023 passed by West Bengal Real Estate Regulatory Authority (hereinafter referred to as the Regulatory Authority) in Complaint No.COM-000258(erstwhile WBHIRA) and Complaint No.COM-000259(erstwhile WBHIRA).

The Appellant has challenged the aforesaid Orders by preferring two separate Memoranda of Appeal. However, by an Order dated 26.09.2023 passed by this Tribunal the aforesaid two Memoranda have been amalgamated as WBREAT/APPEAL No.08/2023.

By the impugned Orders passed in the complaints the learned Regulatory Authority directed the Appellant M/s Janapriyo Real Estate Pvt. Ltd. to refund the Principal amount to the Respondent Shyamali Mitra along with interest @SBI Prime Lending+2% per annum starting from the respective dates of payments made by the Respondent/Complainant till the date of realisation. The refund shall be made by bank transfer to the bank account of the Respondent within 45days from the date of receipt of the order. The Respondent will be at liberty to file Execution Application on any plain paper annexing a copy of the Order to the Authority. If the Appellant defaulted to comply the order either in full or in part, within the specified time period as mentioned in the Order, in that case the Appellant shall be liable to penalty for everyday during which such default continued which might cumulatively extend upto five percent of the estimated cost of the Real Estate Project namely 'Kalyani City Enclave' to be determined by the Authority as per the Provisions under Section 63 of the Real Estate (Regulation and Development) Act, 2016.

To put precisely, the facts which led to filing the complaints may be portrayed as under:

The Appellant 'M/s Janapriyo Real Estate Pvt. Ltd.' by publishing an advertisement in a bengali daily namely 'Anandabazar Patrika' on 19.10.2013 displayed the development of a Mini Township at Shyamnagar within district North-24-Parganas beside the Kalyani Expressway depicting therein that blacktop roads, drains, water supply, electricity were in progress at the proposed Mini Township and the plots of land of the Township would be sold. Allured by the aforesaid advertisement, the Respondent/Complainant booked a Plot being No.27 measuring 1440sq.ft. equivalent to 2 cottahs more or less in mouza Bidyadharpur for purchase at the consideration of Rs.5,30,000/-(Rupees five lakhs thirty thousand only). In that regard an agreement dated 10th October, 2014 was entered into between the Appellant and the Respondent wherein it was spelt that at the time of booking the plot on 26.08.2014, the Respondent paid a sum of Rs.1,89,916/-(Rupees one lakh eighty nine thousand nine hundred sixteen only) to the Appellant as advance. By the agreement it was agreed between them that the Respondent would pay the balance amount of Rs.3,40,048/-(Rupees three lakhs forty

thousand forty eight only) in equal 48 monthly instalments in terms of the schedule of instalments. The Respondent/Complainant booked another Plot being No.36 also measuring 1440sq.ft. equivalent to 2 cottahs more or less in mouza Rahuta to purchase it at the consideration of Rs.5,77,000/-(Rupees five lakhs seventy seven thousand only). At the time of booking the plot on 03.02.2014, the Respondent paid a sum of Rs.1,73,000/-(Rupees one lakh seventy three thousand only) to the Appellant as advance. In that regard an agreement dated 14.03.2014 was entered into between them. By the agreement it was agreed between them that the Respondent would pay the balance amount of Rs.4,03,900/-(Rupees four lakhs three thousand nine hundred only) in equal 36 monthly instalments in terms of the schedule of instalments.

Although the Respondent paid the entire consideration money for the aforesaid two plots in time, the Appellant failed to execute and register the Sale Deeds. On failure on the part of the Appellant to execute and register the Deeds of Conveyance, the Respondent by several correspondences called upon the Appellant to execute and register the Deeds of Conveyance, but to no effect. Ultimately, she made a complaint with the Officer-in-Charge, Lake Police Station, narrating the aforesaid episode. In consequence thereof the Appellant communicated drafts of two Deeds of Conveyance to the Respondent. The Respondent alleges that while the process of finalisation of terms and conditions of the Deeds of Conveyance was going on, the Appellant most illegally, unilaterally and without giving any notice to her cancelled the aforesaid two agreements and forfeited the entire amount paid by her. Getting no other alternative and for redressal of her grievances she filed the aforesaid two complaints initially with the West Bengal Housing Industry Regulatory Authority(WBHIRA) established under West Bengal Housing Industry Regulation Act, 2017. After the West Bengal Housing Industry Regulation Act was struck down as unconstitutional by the Hon'ble Apex Court, the West Bengal Real Estate Regulatory Authority(WBRERA) established under Real Estate(Regulation and Development) Act, 2016 took up her complaints.

The Respondent/Complainant also complains that the Promoter M/s Janapriyo Real Estate Pvt. Ltd. at its whims and fancy and without obtaining any approval from the Competent Statutory Authorities, prepared maps of plots and sketches. Besides, the

Appellant, arbitrarily and its whims changed plot No.27 as plot No.42 and plot No. 36 as plot No.46 which were allotted to her. Such abrupt change of the plots in the map would cause immense inconvenience to her. Under such circumstances, the Respondent/Complainant prayed before the learned Regulatory Authority for direction upon the Appellant to refund the Principal amount to her with statutory interest thereon.

The Appellant M/s Janapriyo Real Estate Pvt. Ltd. contested all the complaints as above by filing opposition wherein it denied all the allegations made against it in the complaints. The Appellant avers that by filing a separate application it challenged the jurisdiction of the learned Regulatory Authority on the ground that it had no authority to adjudicate the matter since the matter required to be adjudicated by a Competent Civil Court. The Appellant also avers that since there was no existence of any of the agreements which were cancelled, the Respondent cannot seek any relief based on the agreements. As the relief sought for by the Respondent was in the nature of specific performance of contract, only the Civil Court possesses the jurisdiction to adjudicate such issue. The Appellant alleges that the Respondent, taking the advantage of the beneficial legislation i.e. Real Estate (Regulation and Development) Act, 2016 for the buyers, only claims refund of money with interest under Section 18 of the Act and not making any claim for registration of the Deeds of Conveyance under Section 17 of the Act. On such score, the Appellant submitted before the learned Regulatory Authority that the complaints which were filed before it were liable to be dismissed.

As we find, the learned Regulatory Authority in the impugned Orders has recorded after examination of all the notarized affidavits of both the parties, notary attested documents placed on record and after hearing both the parties through virtual mode the Authority was of the view that the Appellant failed miserably in its obligation to hand over possession of the plots after necessary development to the Respondent/Complainant within the scheduled timeline.

Admittedly, the Appellant by an advertisement dated 19.10.2013 published in a bengali daily namely 'Anandabazar Patrika', invited applications from the intending purchasers to purchase plots of the project which was in the nature of a Mini Township

at Shyamnagar, North-24-Parganas beside Kalyani Expressway to be developed by the Appellant.

The agreements entered into between the parties and which are on record, show that the Respondent booked the plots being Nos. 27 and 36 within mouzas Bidyadharpur and Rahuta, subsequently renumbered the plots No. 27 as 42 and No. 36 as 46, on 03.02.2014 and 26.08.2014, by paying the amount as mentioned as above, as advance out of the consideration money. As the terms and conditions of the agreements suggest, on payment of the rest consideration money in instalments as mentioned above, the plots would be transferred to the Respondent/Complainant by registered Sale Deeds and possession of the plots would be delivered to the purchasers. It is recited in the agreements that the project will have the facilities like developed roads with blacktop, drainage system, lake, playground, park, dustbin, space for school, shopping complex, transformer etc.

According to Section 3 of the Real Estate (Regulation and Development) Act, 2016, the Promoter of a Real Estate Project shall register projects with the Regulatory Authority that are going on the date of commencement of the Act and for which the Completion Certificate has not been issued.

Undisputedly, while the Real Estate(Regulation and Development) Act, 2016, came into force on 26.03.2016, the project of the Appellant Company was yet to be completed. Section 3 of the West Bengal Housing Industry Regulation Act, 2017, contains the similar provision as excerpted from Section 3 of the Act, 2016.

The Respondent/Complainant filed the two complaints with the West Bengal Housing Industry Regulatory Authority established under the West Bengal Housing Industry Regulation Act, 2017.

By the Judgment dated 4th May, 2021, pronounced by the Hon'ble Apex Court in Forum for People's Collective Efforts(FPCE)-Vs-State of West Bengal, West Bengal Housing Industry Regulation Act, 2017 was declared ultra vires in view of the provisions of the Central Act, i.e. Real Estate(Regulation and Development) Act, 2016. However, subsequently, by order dated 12.05.2023 passed in the case of Saptaparna Ray -Vs-District Magistrate and Collector, North-24-Parganas and Others, the Hon'ble

Apex Court has held at Para-5 that all complaints which were filed before the learned Authority constituted under WBHIRA shall stand transferred to and disposed of in accordance with the law by the Authority which is constituted under the Central Act. Any person aggrieved by an Order passed under WBHIRA will be at liberty to pursue the corresponding remedy which is available under the RERA.

Therefore, in view of the solemn order of the Hon'ble Apex Court, the learned Regulatory Authority lawfully entertained the complaints of the Complainant and disposed of the same.

Mr. Pratip Mukherjee, learned counsel appearing for the Appellant submits that since the agreements between the parties were cancelled, the complaints made by the Complainant with the Regulatory Authority are not maintainable in law. Learned counsel submits that to attract the provision of the Real Estate (Regulation and Development) Act, 2016, there should have valid contractual relationship between the parties. Learned counsel argues that the legality or validity of cancellation of any agreement for sale can only be adjudicated by the competent Civil Court and the Regulatory Authority does not possess such authority to adjudicate the issue. Learned counsel further argues that since the remedy sought for by the Complainant was available before the competent Civil Court under the relevant provisions of the Specific Relief Act, the Regulatory Authority lacked jurisdiction to entertain the prayers of the Complainant. According to learned counsel the Appellant has a counter claim against the Respondent/Complainant and entertaining such counter claim is beyond the jurisdiction of the learned Regulatory Authority. Learned counsel submits that since the learned Regulatory Authority failed to dispose of his client's application challenging the maintainability of the complaints the impugned Orders passed by the Regulatory Authority sans any reasoning, are vitiated with illegalities. Learned counsel points out that as the facts placed before the learned Regulatory Authority were disputed in nature, the learned Regulatory Authority ought to have adjudicated the matter by taking evidence under Section 35 of the Real Estate (Regulation and Development) Act, 2016. In such context, learned counsel urges that the complaints filed by the Respondent are liable to be dismissed.

On the other hand, the Respondent Ms. Shyamali Mitra vehemently submits that she paid the entire consideration money for two plots as per the agreement, but, the Appellant failed to execute and register the Sale Deeds in her favour and deliver possession of the plots to her within the timeline. Ms. Mitra submits that the Appellant cancelled the agreements illegally, unilaterally and without giving any notice to her. Ms. Mitra further submits that the Appellant failed to complete the project within the agreed time and taking necessary approval or permission from the concerned Statutory Authorities. On such score, she implores that on the failure on the part of the Appellant to deliver possession of the plots and register the Deeds of Conveyance within the agreed time she is entitled to get refund of the Principal amount and the Statutory Interest thereon as prescribed by law.

What we find, in fact, all the documents relied on by the parties are placed on record.

Section 38 of the Real Estate (Regulation and Development) Act, 2016, enjoins that the Regulatory Authority shall be guided by the principles of natural justice and to the other provisions of this Act and the Rules made thereunder. On the other hand, Section 53 of the Act provides that the Appellate Tribunal shall not be bound by the Code of Civil Procedure 1908, but, shall be guided by the principles of natural justice.

Now, the seminal point which begs our consideration is whether the impugned orders passed by the learned Regulatory Authority are sustainable in law.

True, this Appellate Tribunal, shall not be strictly bound by the Code of Civil Procedure. But, broad principles contained therein may be resorted to by the Tribunal to adjudicate any matter or issue laid before it. As Order 41 Rule 33 of the Code of Civil Procedure reads, this Appellate Tribunal on the basis of the evidence on record may pass necessary order or direction to do complete justice between the parties. It is evident from the aforesaid Agreements for Sale that in order to purchase the two plots the Respondent booked each of the plots by paying money as advance on the dates as stated above. The series of correspondences exchanged between the Respondent and the Appellant starting from 5th August, 2017 and the written complaint with the Officer-in-charge of Lake Police Station evince that within the timeline as made in the

agreements the Respondent paid the entire consideration money to purchase the plots. It is not controverted on the part of the Appellant that the Respondent paid the entire consideration money to it within the timeline. As we find, no endeavour was ever undertaken on the part of the Appellant to deliver possession of the plots to the Respondent and register the Sale Deeds in respect of the plots in her favour till the Respondent made written complaint with the Officer-in-charge of Lake Police Station, Kolkata on 10.02.2018. At the intervention of the local police station the Appellant sprang up some endeavour to finalise the drafts of the Deeds of Conveyance. However, as we notice from the documents on record, while the process of finalization of the drafts of the Deeds was going on the Appellant suddenly cancelled all the agreements by a letter dated 25.03.2019 and forfeited the entire amount paid by the Respondent.

The recitals of the agreements show that in case of default of payment of consecutive three months by the purchaser, the agreements shall stand cancelled and in such case the amount deposited by the purchaser shall be refunded after deducting 30% of the deposited amount without any interest. No other recital is noticed in the agreements by which the Promoter was empowered to cancel the agreements.

By virtue of the agreements as above and on payment of the amount towards the consideration money at the time of booking of the plots, the Respondent/Complainant became Allottee in respect of the plots. It goes without any say that subsistence of the allotments or its cancellation/termination are governed by the terms and conditions as embodied in the agreements. That being so, allotments of plots and the agreements to purchase the plots are closely interrelated to each other. In other words, allotment is an integral part of agreement and each of it cannot be severed from the another.

In this regard, it will be pertinent to refer to Section 11 of the Real Estate (Regulation and Development) Act, 2016. Section 11(5) of the Act says that the Promoter may cancel the allotment only in terms of the Agreement for Sale. However, the Allottee may approach the Regulatory Authority for relief if he/she is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the Agreement for Sale, unilateral and without any sufficient cause.

Excepting the recitals in the agreements as above there is no other recital in the agreements by which the Appellant was empowered with authority to cancel the agreements/allotment. Admittedly, the Respondent made no default in payment of instalments.

While the documentary evidence on record is sufficient or adequate to adjudicate the matter or issue either before the Regulatory Authority or this Appellate Tribunal, we feel that there is no need to take any further evidence under Section 35 of the Act to adjudicate the matter. We are of the view that the facts which were/are laid before the Regulatory Authority or this Appellate Tribunal by the respective parties no longer remain disputed.

The acts on the part of the Appellant clearly indicate that the Appellant cancelled the Agreements for Sale/Allotments of the Plots whimsically, unilaterally and without any sufficient cause. Therefore, the Respondent had the legal rights to challenge the legality of the alleged cancellation of the Agreements/Allotments of Plots directly approaching the learned Regulatory Authority and not the Civil Court. It is trite to say that in view of Section 79 of the Real Estate (Regulation and Development) Act, 2016, the matter which is within the jurisdiction of the learned Regulatory Authority no Civil Court shall have jurisdiction to entertain the matter. That being so, no question arises that the matter needs to be adjudicated by a Civil Court under the provisions of the Specific Relief Act, 1963.

As viewed above, the learned Regulatory Authority possessed the Authority/Jurisdiction to entertain the complaints and we, in the given facts, hold that the complaints should not be adjudicated upon by a Civil Court. We feel that the learned Regulatory Authority has disposed of the complaints by arriving at a just conclusion. True, the impugned orders do not speak of extensive reasoning to arrive at the conclusion. However, the observations as recorded by us, justify the final order as passed by the learned Regulatory Authority.

Therefore, the argument as advanced by the learned counsel for the Appellant is not acceptable.

As stated above, the Appellant was to deliver possession of the plots to the Respondent within the time as agreed by the parties in the agreements. But, a letter dated 19th of August, 2017, made by Mr. D. J. Bagchi, the Administrative Officer of the Appellant company 'Janapriyo Real Estate Pvt. Ltd.' to the husband of the Respondent Arindam Mitra reveals that as regards all the queries made by the husband of the Respondent on registration of Deeds of Conveyance, the Administrative Officer intimated him that concrete decision had not yet been taken by the West Bengal Government, regarding registration, mutation, conversion fees after implementation of GST. So, he requested him to wait upto Puja 2017, to get information in detail. This letter patently demonstrates that the project of the Mini Township namely 'Kalyani City Enclave' undertaken by the Appellant, was not complete after taking all legal approval/permission from the concerned Government functionaries even long after the agreed timeline as made in the agreements. From all such acts of the Appellant it is manifest that the Promoter/Appellant miserably failed to complete the project in accordance with law and it was unable to give all the plots to the Respondent in terms of the Agreements for Sale. Therefore, the Respondent/Complainant is entitled to get back the amount she paid to the Appellant, Statutory Interest thereon and Compensation in terms of Section 18 of the Act.

Since the Appellant cancelled the Agreements for Sale whimsically, unilaterally and without any sufficient cause, the cancellation of the agreements is liable to be set aside and accordingly the cancellation of the agreements is set aside.

In view of the above, the point as posed is answered in the affirmative.

We do not find any illegality in the Orders passed by the learned Regulatory Authority.

Accordingly, the Appeal is dismissed on contest with cost of Rs.10,000/-(Rupees ten thousand only) to be paid by the Appellant to the Respondent within 15 days from this date.

The Appellant has deposited an amount of Rs.11,07,000/-(Rupees eleven lakhs seven thousand only) as Principal amount and Rs.1,99,030/-(Rupees one lakh ninety

nine thousand thirty only) as Interest with this Tribunal which the Respondent is entitled to get.

The Secretary of this Tribunal is directed to disburse the amount deposited by the Appellant with accrued interest thereon, if any, to the Respondent/Complainant if no appeal is preferred after the appeal period is over.

However, if any further amount is payable to the Respondent by the Appellant in terms of the Orders of the learned Regulatory Authority, the Respondent/Complainant is at liberty to recover the same by filing Execution Application before the learned Regulatory Authority in accordance with law.

Let a copy of this Judgment be communicated to all Concerned by e-mail, immediately.

Sd/-

Dr. Subrat Mukherjee
Technical/Administrative Member
West Bengal Real Estate
Appellate Tribunal

Sd/-

Shri Gour Sundar Banerjee
Judicial Member
West Bengal Real Estate
Appellate Tribunal

Sd/-

Justice Rabindranath Samanta
Chairperson
West Bengal Real Estate
Appellate Tribunal

By Order of WBREAT

Dated: 10-05-2024



Authorised Signatory

Section Officer
W. B. Real Estate Appellate Tribunal
West Bengal