

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 617 of 2023

Petitioner :- M/S Antriskh Engineers Pvt. Ltd. New Delhi Thru.
Authorized Representative Rajesh Kumar

Respondent :- U.P. Real Estate Appellate Tribunal, Lko. Thru. Registrar
And Others

Counsel for Petitioner :- Abhishek Khare, Aahuti Agarwal, Sudeep Kumar

Counsel for Respondent :- Shobhit Mohan Shukla, C.S.C., Shobhit Mohan
Shukla

Hon'ble Manish Mathur, J.

Heard Mr. Sudeep Kumar learned counsel along with Mr. Abhishek Khare learned counsel for petitioner, Mr. Shobhit Mohan Shukla learned counsel for respondents 1 to 3, the State Counsel for respondent No.4 while power on behalf of respondent No.5 has been filed by Mr. Shivendra Rao Advocate which is taken on record.

Petition under Article 227 of Constitution of India has been filed seeking a direction to the Real Estate Appellate Tribunal to decide the pending application for interim relief filed along with appeal under Section 43 of Real Estate (Regulation and Development) Act, 2016. Further prayers for early hearing of appeal, not transferring the amount deposited by the petitioner in pursuance of directions of the authority to the private respondent as well as directions of desealing the flat concerned has also been sought.

Learned counsel for petitioner submits that private respondent had sought allotment of two flats in the building in question which was constructed by the petitioner. It is submitted that part payment of the cost of flats was made by the private respondent whereas rest of payment was made to the petitioner by the bank from which the private respondent had taken a loan. It is submitted that aforesaid payments were made in pursuance to a tripartite agreement dated 5th May, 2015 in which the petitioner was also a party. It is submitted that subsequently private respondent withdrew his application for allotment of flats concerned and sought refund of the sale consideration. It is also indicated that for the purposes of refund of money deposited by and on behalf of private respondent, a complaint No. NCR 144/01/0384/2020 was filed which was decided by means of order dated 27th July, 2021 directing petitioner to refund the amount deposited by the private respondent within a period of 45 days along with interest.

Learned counsel submits that as per provisions of the Act of 2016, the aforesaid amount is required to be recovered as

arrears of land revenue and for which purpose notices were issued to the petitioner and in pursuance of which, the petitioner has deposited the entire amount of sale consideration along with interest as directed.

It is submitted that in the meantime, the private respondent had filed writ C No. 148 of 2003 in which initially the petitioner was not a party. The petition was filed seeking a direction to the concerned authorities for taking necessary action on the recovery certificate dated 18th December, 2021 and for execution of the order dated 27th July, 2021 expeditiously. In the aforesaid petition vide order dated 10th January, 2023, the Sub Divisional Magistrate was directed to file an affidavit indicating steps taken for executing the recovery certificate. The aforesaid petition is still pending consideration in which petitioner's application for impleadment is also pending.

Learned counsel for petitioner submits that subsequent thereto, the petitioner had also filed writ C No. 748 of 2023 challenging the order dated 27th July, 2021 as well as recovery certificate issued. The aforesaid petition was filed challenging the standard operating procedure issued by U.P. RERA on 2nd September, 2020 which provides that an amount recovered in pursuance to directions issued by the authority is to be disbursed to the allottee. The aforesaid petition was dismissed vide judgment and order dated 30th January, 2023 leaving it open for the petitioner to approach the U.P. Real Estate Appellant Tribunal for effecting challenge in appropriate case.

Learned counsel submits that as yet standard operating procedure has not been challenged by petitioner but is apprehensive with regard to fact that in case the amount already recovered in pursuance of the recovery certificate is disbursed to the private respondent and the petitioner succeeds in his appeal, there is no provision under the Act of 2016 for refunding of the aforesaid amount to the petitioner by the private respondent. It is submitted that apprehension is also enhanced by the fact that petitioner is a party to the tripartite agreement which clearly stipulates that in case the amount of loan is not paid back by the private respondent, the same shall be recoverable from the petitioner. As such it is submitted that although appeal filed before the Tribunal is time barred but the application for interim relief is required to be decided expeditiously prior to disbursement being made to the private respondent.

Learned counsel appearing on behalf of opposite parties have on the other hand submitted that the petitioner has already filed an application for rectification of the order dated 27th July,

2021 before the authority concerned which is still pending consideration and has simultaneously filed appeal before the appellate tribunal. It is submitted that both proceedings can not be permitted to continue simultaneously. However aforesaid question is not an aspect before this Court and therefore no adjudication thereupon is required to be made.

Learned counsel for parties however admit that there is no specific provision under the Act of 2016 whereby an amount deposited by the builder in pursuance to an order passed by the authority can be reimbursed to the builder by the allottee in case appeal under Section 43 of the Act, 2016 succeeds. Although provisions of Section 53 of the Act, 2016 have been indicated by learned counsel appearing for respondents but the same also does not appear to have any specific power granted to the Tribunal with regard to same.

The aspect as to whether the Tribunal has a power to reimburse the builder from the allottee in case appeal succeeds, is a question to be decided by Tribunal itself looking into its jurisdiction and powers in terms of aforesaid Act. However at this stage, it appears that except for filing suit for recovery, the builder may not have any option to enforce the reimbursement of the amount disbursed to an allottee. As such prima facie the apprehension of petitioner may have some force but the same is required to be adjudicated and looked into by the Tribunal itself.

Mr. Shobit Mohan Shukla learned counsel appearing for Tribunal submits that appeal along with application for condonation of delay and exemption from making a deposit in terms of Section 43(5) of the Act of 2016 is listed before the Tribunal on 13th February, 2023 at Sl. No. 1. As such it is submitted that the Tribunal can very well look into and adjudicate the aforesaid factors particularly the application for exemption in depositing the statutory amount as indicated in the section.

Having regard to submissions advanced by learned counsel for parties and particularly looking into the fact that appeal preferred by petitioner is already listed for orders before the Tribunal concerned on 13th February, 2023 along with applications for condonation of delay and exemption from making statutory deposit, it is provided that Tribunal may consider and adjudicate upon aforesaid two applications prior to hearing the appeal on merits. The application for interim relief may also be considered along with or prior to hearing on the appeal in case delay is condoned. In view of apprehension expressed by learned counsel for petitioner, it is provided that

till application for exemption from making the deposit and the application for interim relief are decided by the Tribunal, the amount of Rs. 1,07,00,000/- deposited by the petitioner before the District Magistrate, Noida in pursuance to the recovery proceedings as per judgment and order dated 27th July, 2021 shall not be disbursed to the allottee.

With the aforesaid directions, the petition stands disposed of.

Order Date :- 10.2.2023

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