

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Member(J)

Hon'ble Mr. Rajeev Gupta

-----Member(A)

APPEAL NO. 04 of 2022

M/S Nishtha Builders, Vishwanath Enclave, behind Indian Oil Petrol Pump,
Sahastradhara IT Park Road, Dehradun- 248013.

..... Appellant

vs.

Mr. Anil Singh, Address: Hospital Campus Combined Hospital Narendra Nagar,
Tehri, Uttarakhand.

.....Respondent.

Present: Mr. Rohit Arora, Advocate for the appellant-promoter.
Mr. Vaibhav Jain, Advocate for respondent-homebuyer.

JUDGMENT

DATED: JUNE 07, 2022

Per: Sri Rajeev Gupta, Member (A)

This appeal has been filed against the order dated 06.04.2022 of
Ld. Authority below (RERA) whereby the complainant before RERA
(respondent herein) has been directed to make payment of the balance
amount of Rs.3,00,000/- to the promoter(appellant herein) and the

promoter has been directed to handover the possession of the flat to the complainant within three days of receiving the amount. The issue of payment of GST has been kept for decision on the date of next hearing.

2. The main contention of the appellant is that in addition to the balance amount of Rs.3,00,000/-, in regard to the said house, as agreed in the Builder-Buyer Agreement, the respondent has also not paid a single rupee in regard to the Goods and Services Tax (GST) on the development service of Rs.38,00,000/- provided to the respondent by the Builder-Buyer Agreement dated 05.11.2019, which comes out to Rs.6,84,000/- and possession of the house can be given to the respondent only after the receipt of the remaining amount in regard to the said Villa. The relevant Clause of the Builder-Buyer Agreement is as follows:

“3.2- In the event the Buyer fails in making payment agreed under Clause 3.1 of this agreement, the Builder shall reserve the right to retain the possession of the Villa unless all the residual amount is paid by the Buyer to the Builder or take any other action against Buyer necessary to secure his right under this agreement.”

[Clause 3.1 of this Agreement mentions a consolidated amount of Rs. Thirty eight lacs only]

3. However, Ld. Authority below erroneously allowed the case of the respondent by stating that the respondent would pay the remaining amount of Rs. 3,00,000/- towards the said house and on receipt of the same, the appellant would hand over the possession of the said house to the respondent and has kept the matter listed for hearing on the issue of unpaid GST. Ld. Authority below has failed to note the written submissions made by the appellant whereby it was explicitly stated that the respondent has filed the said case to deviate from the payment of the GST amounting to Rs.6,84,000/- and further without prejudice, the respondent even after the receipt of the order dated 06.04.2022, which strictly provided three days to the respondent to make the payment of Rs.3,00,000/-, has not made this payment to the appellant and thus, has failed to comply with this order. The appellant has sought quashing of the impugned order dated 06.04.2022 of

the Ld. Authority below and a direction to the respondent to pay the GST amounting to Rs.6,84,000/-.

4. We have heard Ld. Counsel for the parties and perused the Xerox copies of the record received from the Ld. Authority below.

5. Ld. Counsel for the respondent in his arguments has referred to the Builder-Buyer Agreement, which shows that the respondent was having land holding rights over the said plot and entrusted the first party for construction of Villa and offered a consolidated amount of Rs.38,00,000/- to the appellant for undertaking the whole assignment which has been gladly accepted by the first party. Against this consolidated amount of Rs.38,00,000/-, only an amount of Rs.3,00,000/- remains to be paid to the appellant and there was no mention of additional GST to be charged over and above this amount and a consolidated amount of Rs.38,00,000/- meant the same to be inclusive of tax etc. In any case, the issue of GST has been left open by the Ld. Authority below to be decided in further hearing and the same cannot be a ground for withholding the possession of the Villa.

6. Ld. Counsel for the respondent also pointed out that in the written statement before the Ld. Authority below, the appellants have submitted that the possession of the Villa has been given to the complainant inasmuch as the complainant has kept his household items, viz bed, refrigerator, Air Conditioner etc. in the said Villa and he has enclosed photographs of household goods of the complainant kept in the Villa, as Annexure-1 to his written statement filed before the Ld. Authority below.

7. The Tribunal notes that the appellant has mentioned in Para (v) of the appeal that- 'the respondent took the possession of the said house by keeping various household items viz. Refrigerator, bed, Air Conditioner etc. in the said Villa. Photographs of the Villa and the household items kept therein are annexed herewith and marked as Annexure-3'.

8. The appellant has also produced copies of the order of Ld. Authority below passed on 06.05.2022 and 18.05.2022, stating that even after his appeal having been admitted in this Tribunal, the Ld. Authority

below is going ahead with enforcement of its order dated 06.04.2022. It was informed that during the hearing, the respondent has deposited a cheque of Rs.3,00,000/- with the Ld. Authority below and vide order dated 18.05.2022, RERA directed the respondent (appellant herein) to receive this cheque, deposited with the Ld. Authority below and handover the possession to the complainant (respondent herein).

9. The Tribunal observes the following:

(i) The Builder-Buyer Agreement mentioned a consolidated amount of Rs.38,00,000/- only without any mention of GST to be charged separately or being included in this amount and after payment of Rs.3,00,000/- by the complainant-buyer, the entire amount is paid.

(ii) Clause 4.3 of the Builder-Buyer Agreement is as below:

“That after completion of construction of the Villa and the payment of the balance amount the builder shall intimate the owner to take the possession of the said Villa.”

According to the above clause, after payment of the entire said amount, as mentioned in the Builder-Buyer Agreement, the possession of the Villa is to be handed over to the buyer-owner, who is respondent herein.

(iii) The issue of GST, over and above the cost of the construction of the Villa has been mentioned by the builder/ appellant herein, in his written statement before the Ld. Authority below and the Ld. Authority has kept this issue separate to be decided on the next date.

(iv) According to the Builder-Buyer Agreement, the respondent is entitled to get the possession of the Villa after payment of Rs.38,00,000/-, which payment becomes complete with the payment of the balance of Rs.3,00,000/-; even otherwise the goods of the respondent are lying in the said Villa.

10. The Tribunal, therefore, holds that the Ld. Authority below was correct in ordering the handing over of the possession of the Villa to the respondent herein, after payment of the balance amount of Rs.3,00,000/-.

Ld. Authority below has not rejected the demand for GST raised by the appellant herein, which is in the nature of Counter Claim and in right earnest has deferred it to be decided in the next hearing.

11. In view of the above, the appeal has no force and is hereby dismissed.

12. Let a copy of this order be sent to RERA for information and necessary action, in terms of Sub Section (4) of Section 44 of the Act.

(RAJEEV GUPTA)
MEMBER (A)

(RAJENDRA SINGH)
MEMBER (J)

DATE: JUNE 07,, 2022
DEHRADUN

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