

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairperson

Hon'ble Mr. Rajeev Gupta

-----Member

APPEAL NO. 15 OF 2021

Smt. Durga Rani Arora, w/o Shri Ved Kumar Arora, r/o House No. 1157, Sector-28
Faridabad, Haryana.

..... Appellant

vs.

Sikka Infra Planet Private Limited, (RERA No.UKREP11170000117)(a) Sikka Kingston
Greens Having its office at Lane-5, Hathibarkala, Salawala, Dehradun, 248001
(Uttarakhand) (b) C-60 Preet Vihar, Vikas Marg, East Delhi-110092.

.....Respondent

Present: Sri Kanwaljeet Singh, Sri Avnit Rastogi and
Sri Abhishek Grover, Advocates,
for the appellant.
Sri Vikrant Gambhir and Sri Manmohan Singh, Advocates,
for the Respondent.

JUDGMENT

DATED: OCTOBER 21, 2021

Per: Justice U.C.Dhyani, Chairperson

The complainant (appellant herein) filed a complaint against the respondent-promoter, before Real Estate Regulatory Authority (RERA), for the following reliefs:

"a. The registration of the Respondent under RERA (being RERA No. UKREP11170000117) be cancelled and revoked and the Respondent, its directors, employees, agents, brokers, servants, attorney, transferee, assignee and any of other person(s) etc. be restrained from advertising and/or offering to sell, transfer, convey and/or from selling, transferring, conveying the above said property Khewat No. 7, Khasra No. 67 to 71, Village Karanpur Khas Pargana, District Dehradun, owned by the Complainant, by falsely inducing and misrepresenting the intended purchasers and general public at large that it has the right and title to sell and transfer the same or any part thereof.

b. The legal expenses for the present complaint be paid to the complainant(s).

c. Any other order in the best interest of justice and equity be passed."

[Emphasis supplied]

2. The grievance of the complainant, as projected through her complaint, is as follows:

It has come to the knowledge of the complainant that Smt. Punita Nagalia and the respondent herein entered into an agreement to develop a property and sell the same and for this purpose, the respondent herein got itself registered with Real Estate Regulatory Authority which has been registered as RERA No. UKREP11170000117 wrongly and falsely claiming the titles on the basis of perpetual lease deed, whereas neither Smt. Punita Nagalia nor the respondent has the title of said property/land. Further, no NOC from DM/ADM/Revenue authorities has been taken and no demarcation from DM/SDM office has been obtained per law. No mutation (deeds verification) as per Sale Deeds of 1985 read with rectification deed of 1990 duly registered with the Sub Registrar, Dehradun, was got done and filed. Smt. Punita Nagalia also concealed and suppressed the WILL dated 22.02.1992 of Sh. Mahesh Chand Nagalia, one of the five purchasers under the above said sale deeds of 1985 read with correction deed of 1990, the reference of which is in Perpetual Lease Deed referred to and relied upon by her.

While getting itself registered with this Authority, the Respondent herein, in active collusion and connivance with Smt. Punita Nagalia, managed, manipulated, manoeuvred and obtained by concealment and suppression, certificate dated 15.09.2017 and Legal Scrutiny Report dated 15.09.2017 from Advocate (for submitting with RERA) who gave the opinion that the property is free from recorded lien or encumbrance and the title of the title holder is clear and marketable, when in fact, it is not. The alleged certificate dated 15.09.2017 and Legal Scrutiny Report dated 15.09.2017 from Advocate are no documents of title and the certification therein is also wrong and false.

Appellant filed an application under RTI Act with MDDA in order to know the status of plan with respect to land/property bearing *Khasra* No. 67-71, Village Karanpur Khas, Dehradun with a request to provide copy of the

plan, if any, passed or sanctioned. In reply to the said RTI application, MDDA, Dehradun, *vide* letter no. 1709/*Lok Soochana*/218 dated 26.10.2018 informed that it has not passed or sanctioned any plan in the name of Smt. Punita Nagalia, in respect of the land/property bearing *Khasra* No. 67-71, Village Karanpur Khas, Dehradun.

Title is significant in the real estate. Admittedly, the respondent herein does not have any title to the property, as required. The Respondent, under law, is required to declare on affidavit that it has title to the land on which the development is proposed along with legally valid documents with authenticity and authentication of title.

When the respondent has no title, it cannot execute registered sale/conveyance/transfer deed in respect of the plot/ flat/apartment in question.

3. RERA issued notice to the respondent-promoter, who filed its Written Statement/objections; denying the facts stated and allegations levelled in the complaint. Complaint and objections were further supplemented by filing additional pleadings by the parties before Ld. Authority below.

4. RERA, *vide* impugned order dated 08.04.2021, observed that the subject in hand (subject matter of dispute) is beyond its jurisdiction. RERA advised the complainant to get its title, over the land in question, adjudicated by the Civil Court or Revenue Court. Complaint was accordingly closed. RERA's order dated 08.04.2021 is under challenge before this Tribunal in the present appeal. Apart from advancing their oral submissions, learned Counsel for the parties filed their written arguments.

5. Principal relief of the complainant, before RERA, was to cancel and revoke the registration of the respondent under RERA. Other reliefs were also sought, which have been mentioned above by us in the body of the judgment.

6. Let us see what are the provisions in this regard in the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act of 2016') and whether RERA has deliberated upon those factual and legal issues or not?

7. Section 4(1) of the Act provides that every promoter shall make an application to the Authority for registration of the real estate project. Section 4(2)(I) provides that a declaration, supported by an affidavit, shall be signed by the promoter or any person authorized by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C)

(D)

8. Section 7 of the Act of 2016 is important in the context of the complaint of the appellant herein. Section 7 is, therefore reproduced herein below for convenience:

"7. Revocation of registration- (1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4).....”

[Emphasis supplied]

9. Section 31 of the Act provides for filing of complaints with the Authority, as follows:

“31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.”

[Emphasis supplied]

10. Appellant herein is an aggrieved person. The expression ‘person aggrieved’ means, a person who has suffered a legal grievance *i.e.*, a person against whom a decision has been pronounced, which has lawfully deprived him of something or wrongfully refused him something or wrongfully affected his title to do something. The person who makes an application

should be the one having a seemingly enforceable right. The meaning of the words 'person aggrieved' may vary according to the context of the statute and that even a stranger may be found to have *locus standi* although he may not have any personal interest of his own, provided he is not a busybody or meddlesome interloper.

11. The averments contained in the complaint show that the complainant (appellant herein) is the aggrieved person and she was entitled to file a complaint before RERA.

12. RERA, in the impugned order, has mentioned the case of the disputants. In the next paragraph, it has given a reference of a decision of Hon'ble High Court of Uttarakhand. RERA has also mentioned that the Respondent has entered into a Joint Development Agreement with one Smt. Punita Nagalia, and has got the project sanctioned. RERA has also referred to a report of Ms. Jharana Kamthan, the then Additional District Magistrate (F&R). The report dated 27.09.2013 of Ms. Jharana Kamthan, the then ADM (F&R) has been brought on record, which shall be discussed by us in the succeeding paragraphs.

13. According to report, as quoted by RERA, Smt. Sushma Bansal (who is reported to have sold the land in question to the appellant herein) is not in possession of the land, on which the project has been proposed. The complainant has staked her ownership over such land. RERA has also quoted in the impugned judgment that the area of *Khewat no. 7*, is very wide. Although the name of Smt. Sushma Bansal has been recorded in 5.16 bigha land but the measurement of such land is very difficult. RERA has also mentioned in the impugned order that at the time of registration of the project, the respondent-promoter obtained 'no encumbrance certificate' from a lawyer. It is customary to obtain sale deed and lease deed of land (on which project is proposed). RERA has further observed that the land in question is not in the possession of the complainant, therefore, the subject in hand does not fall within the jurisdiction of RERA. The complainant was therefore, advised to go to the appropriate Court for adjudicating her title.

14. Nowhere in the impugned order, the essentials of Section 7 of the Act (*supra*) have been dealt with. The order impugned also suffers from not deliberating upon the essentials of Section 4(2)(I)(A) and (B) of the Act.

15. It was desirable for RERA, while adjudicating the complaint, to find out whether the promoter filed a declaration, supported by an affidavit that he (it) has a legal title to the land, on which the development is proposed alongwith legally valid documents with authentication of such title, if such land is owned by another person and further, that the land is free from all encumbrances or as the case may be, details of the encumbrances on such land including any right, interest or name of any party in or over such land along with details. We are unable to gather, on a perusal of the order impugned, whether such declaration was filed by the promoter along with the documents, as were desired in Section 4(2)(I)(A) and (B) of the Act. When the complaint on specific facts was filed, which, in law, could be filed, RERA was required to go into the fact, whether the promoter has indulged in any fraudulent practice or the promoter has indulged in any kind of illegal practice or has made a false and misleading representation etc. When complaint was filed on specific issues, it was incumbent upon the learned Authority below to deal with the same, instead of throwing the complaint outright, on the ground that the same is beyond the jurisdiction of RERA. Filing of 'non-encumbrance certificate' by a lawyer having 10 years experience alone was not enough. Learned Authority below was desired to satisfy itself, on the basis of documents, whether the land is, in fact, free from all encumbrances, in view of Section 4(2)(I)(B) of the Act. The same has not been done.

16. It appears that the complaint has been closed with abrupt finding by learned Authority below that the subject in hand is not within its jurisdiction. Learned Authority below has not gone into the question of title. It has only said about the possession only, on the basis of report of a lawyer. 'Non-encumbrance certificate' is the opinion of a lawyer. It needs to be adjudicated. There is no whisper of ingredients of Sections 4, Section 7 and

Section 31 of the Act in the impugned order. Learned Authority below, instead of saying that it has no jurisdiction on the subject matter of the complaint, ought to have gone into the details of the complaint, asked the promoter to file documents and should have deliberated upon the facts in the light of Sections 4 and 7 of the Act and then, given a decision. If after applying law, on the facts on record, learned Authority below would have found that there was no substance in the complaint, only then the complaint should have been dismissed, not otherwise.

17. Last but not the least, report dated 26.09.2013 given by ADM (F&R), Dehradun, assumes great significance in the backdrop of the case, when she says that ownership of the property vests with none of them. Ownership of the claimants (Smt. Punita Nagalia, on the one hand and Smt. Sushma Bansal, on the other hand) has not been proved. Smt. Punita Nagalia is said to have entered into a Joint Development Agreement with the respondent-promoter and Smt. Sushma Bansal is stated to have sold the land in question to the complainant. One of the signatory (Smt. Punita Nagalia) to the Joint Development Agreement has projected herself to be the owner of the land, on which the promoter proposes to construct the project. There has been long drawn litigation between the parties and this Appellate Tribunal has been informed that some litigation is also pending before the Govt.

18. ADM (F&R)'s report dated 26.09.2013 is based on a physical spot inspection by her. In the penultimate paragraph of her report, ADM (F&R) has observed about the actual possession on the spot. In the last paragraph, she has summed up the report by stating that no party has been able to prove its ownership over the disputed land. The learned Authority below has treated this report of ADM (F&R) in a casual manner. It is a very serious matter, if the ownership of the land in question does not vest in Smt. Punita Nagalia with whom the respondent-promoter has entered into Joint Development Agreement, as the same amounts to jeopardising the interests of prospective buyers of the plots/flats/apartments etc. of the project. There

is material contradiction between this report of ADM (F&R) and non-encumbrance certificate issued by the lawyer. Even otherwise, it is incumbent on the learned Authority below to properly verify title and possession before registering a project to safeguard the interests of prospective buyers.

19. In the backdrop of the facts and circumstances, which have been narrated by us in the aforesaid discussion, was it not necessary for the learned Authority below to have further probed into the matter, rather than abruptly closing the complaint? The obvious reply is that RERA ought to have probed into the matter in the light of legal provisions made in this behalf and then should have proceeded to decide the complaint, rather than abruptly closing the complaint without cogent reasons, saying that it lacks jurisdiction to look into the matter. This Tribunal therefore, is of the view that the order impugned cannot sustain and is liable to be set aside.

20. The appeal arising out of the complaint No. 164 of 2020 (online) is allowed. Order impugned is, accordingly, set aside with a direction to learned Authority below to probe further into the matter, as discussed above, and bring the complaint to its logical conclusion, as per law. No order as to costs.

21. It is made clear that although we have considered submissions of the parties in depth but have touched upon only those factual & legal aspects, which are necessary for the purposes of our adjudication, for the sake of brevity.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATED: OCTOBER 21, 2021
DEHRADUN.
KNP