

SUPREME COURT OF INDIA

Vinod Goyal

Vs.

Vishranti City Residents Welfare Society

C.A.No.19962 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

29.11.2017

JUDGMENT

R.Banumathi,J.,

SLP(Civil)No.29919 of 2016

1. Leave granted.

2. This appeal arises out of the judgment dated 22.07.2016 passed by the High Court of Punjab and Haryana in and by which the High Court directed auction of the personal properties of the partners/ex-partners of the developer firm and also directing the individual consumer/buyer/allottee to file complaint against the former or present proprietors of the developer firm.

3. The appellants are partners in the developer firm-M/S Sai Apartments and Infrastructure Ltd. which has evolved the plan for setting up residential project and was given licence by the Government of Punjab to develop the said plotted colony. The developer firm was to provide the basic infrastructure in the colony as per the terms of the allotment agreement executed by the developer firm with its allottees. Since basic amenities were not provided, some of the flat owners who had moved into their flats filed writ petition before the High Court. In the said writ petition, vide order dated 15.09.2015, the High Court directed Punjab State Power Corporation Limited (PSPCL) to provide temporary electricity connections to thirty flats and the corporation supplied electricity to thirty houses at the rate of Rs.13/- per unit as per the schedule of tariff notified by PSPCL for temporary domestic connection. The developer applied to PSPCL for getting NOC for permanent electricity connection. The NOC was granted by PSPCL to M/s Sai Apartments and Infrastructure vide its office memo No. 1392 dated 25.03.2014 directing the builder:- (i) to pay an amount of Rs.1,53,89,250/- for developing Local Distribution system; (ii) to deposit cost of Rs. 49,40,149/- which was the cost that would be incurred for erecting separate 5 KM long 11 KV feeder with the requisite cable from the Sub-station Dhakoli feeder.

4. As the conditions for obtaining NOC were not complied with by the developer, the flat owners filed other writ petition before the High Court seeking direction to the authorities including PSPCL to regularize the electricity connections in the said colony. The High Court has inter alia issued various directions - (i) directing the Principal Secretary, Department of Housing and Urban Development, Punjab to constitute a Committee of three officers to identify the immovable properties of all the partners/directors/proprietors (former or present) of M/s Sai Apartments and Infrastructure and get value of those properties evaluated with the assistance of revenue department and to attach the same forthwith; (ii) there shall be first charge on all such assets and there shall be no instrument of transferring interest, title etc. in those properties and any such transfer shall be deemed null and void; (iii) the attached immovable assets to be sold and the sale proceeds to be expropriated against the expenditure to be incurred by the Government Agency on completion of the infrastructure facilities/development works. The High Court also issued the following directions:-

“ (vi) Every complaint by a consumer/buyer/allottee, if it makes out a prima facie case under the Indian Penal Code and/or other penal laws of the land, shall be treated as a separate offence and prompt action shall be taken in accordance with law against the former or present proprietors/directors/proprietors of respondent No. 6.

3. Since the licence of respondent No. 6 has already been cancelled, it is directed that the same shall not be renewed nor any fresh licence shall be granted to its former or present Directors, Financiers, Partners or promoters without prior permission of this Court "

5. Being aggrieved, the appellants who are the partners of the developer firm have filed this appeal contending that the appellants are individual partners of the developer firm and that they were never made a party to the writ petition in their individual capacity nor were they issued any show cause notice for attachment of their personal properties. It is the contention of the appellants that without hearing them, the High Court ought not to have passed the order to sell the individual properties of the partners in auction and directing expropriation of the same for completion of the infrastructure facilities in the Vishranti colony.

6. During the course of hearing of the appeal, this Court vide order dated 11.01.2017 directed the said Punjab State Power Corporation Limited to verify the internal developments already undertaken by the developer and file a report. Accordingly, PSPCL has filed the response stating that the requisite amount for grant of NOC that is Rs.1,53,89,250/- was not deposited with PSPCL for developing Local Distribution system. Moreover, the developer has not deposited the amount of Rs.49,40,149/- for erecting separate 5 KM long 11 KV feeder to provide the electricity connection. The PSPCL averred that in the absence of required LD system, it is impossible for PSPCL to provide domestic connection or any further temporary connection.

7. When the matter came up before this Court, insofar as the amount payable to the Electricity Board, the appellant came forward to sell one property measuring 938.75 sq. yds in Khasra No. 39/16/1 etc. and the same has been sold for Rs. 70 lakhs. By order dated

06.03.2017, this Court permitted the appellants to raise a loan of Rs. 70 lakhs and to pay to PSPCL to enable the Corporation to complete the work. By order dated 13.04.2017, the developer was directed to pay an amount of Rs. 50 lakhs to PSPCL towards external development charges for electricity. By the same order, the developer was also directed to utilize the balance amount for other miscellaneous works for the purpose of facilitating the electricity supply. This Court vide order dated 06.10.2017 directed the Secretary to the Government of Punjab, Housing and Urban Development Department, to facilitate a joint inspection, with notice to the appellants as well as the respondents and submit a report on various aspects viz:- (i) What are the works remaining to be done as far as the external development and internal development is concerned; and (ii) What is the approximate cost required for carrying out such incomplete external and internal development?

8. In compliance with the said order dated 06.10.2017, the Additional Chief Secretary, Government of Punjab, Department of Housing and Urban Development has submitted status report as to the work completed and the external and internal work that are yet to be completed. The abstract of total cost of development works required to be undertaken in Vishranti City, Zirakpur is estimated as under:-

A. Civil Works	Rs. 134.35 lakhs
B. Public Health Services	Rs. 122.50 lakhs
C. Electrical Works	Rs. 76.45 lakhs
Grand Total	Rs. 333.30 lakhs

9. According to the appellants, in terms of the agreement, it is the obligation of the allottees to pay the external development charges including the charges for providing electricity connections and in this regard, our attention was drawn to clause 2(d) of the allotment agreement which reads as under:-

"2. (d) External Development Charges:

The external development charges, for external services to be provided by the Punjab Government as on the date of grant of license, shall be payable by the Purchaser. In case of any further increase in the external development charges prior to the execution of the sale deed, same shall be also payable by the Purchaser to the DEVELOPERS on demand. However, in the event, external development charges, if Increase after execution of the sale deed, the same shall be payable by the Purchaser directly to Government authorities as and when required. However, if such charges are raised on the DEVELOPERS by the Government then such charges shall be payable by the Purchaser to the DEVELOPERS on pro-rata basis."

10. Further contention of the appellants is that the internal development to the extent of almost 70% is complete and 30% only remains to be completed. It is the contention of the appellants that personal electricity connections do not constitute part of internal development work and due to the conduct on the part of the allottees in not depositing charges with the

developer firm, it could not deposit money with PSPCL and in this regard, our attention was drawn to clause 8(c) of the allotment agreement.

11. Per contra, Mr. J.P. Dhanda, learned counsel for the first respondent-Society submitted that the allottees have paid all the charges as per the terms of the agreement and in spite of several orders passed by the High Court, the developer firm has not taken steps to complete the internal development work and make arrangement for the external development work.

12. There is dispute between the parties as to who has to bear the charges of external development and the charges for electricity, water and sewerage and as contended by the first respondent whether the said charges have already been paid by the purchasers.

13. We do not propose to go into the dispute between the parties. We are conscious that in spite of many orders passed by the High Court for one reason or other, efforts were not taken by the developer to complete the remaining external and internal development work or even if efforts taken, they did not fructify. The High Court, therefore, had to come down heavily upon the developer firm. When the matter was pending before this Court, as pointed out earlier, the developer has taken certain steps to ensure supply of electricity by selling one of the properties. In our view, further opportunity has to be afforded to the parties to resolve the dispute between the parties and facilitate completion of the project.

14. Hence, without going into the merits of the dispute between the parties, we set aside the impugned order and remit the matter to the High Court for consideration of the matter afresh after affording sufficient opportunity to both the parties. This appeal is accordingly allowed. We express no opinion on the merits of the matter. No order as to costs.