

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 1869 of 2020
(Arising out of SLP(C) No 11290 of 2019)

M/s Skyline Constructions and Housing Pvt Ltd

.... Appellant(s)

Versus

Kare Electronics and Development Pvt Ltd & Ors

....Respondent(s)

WITH

Civil Appeal Nos 1870-1871 of 2020
(Arising out of SLP(C) Nos 5443-5444 of 2020
(Arising out of SLP(C) Diary No 2071 of 2019)

Civil Appeal No 1872 of 2020
(Arising out of SLP(C) No 11851 of 2019)

Civil Appeal Nos 1873-1878 of 2020
(Arising out of SLP(C) No 11928-11933 of 2019)

Civil Appeal No 1879 of 2020
(Arising out of SLP(C) No 14224 of 2019)

ORDER

- 1 Delay condoned.
- 2 Leave granted.
- 3 The dispute in the present batch of cases relates to flat purchase agreements which were entered into between the home buyers and the appellant as the developer.

4 The National Consumer Disputes Redressal Commission¹, by its order dated 25 March 2019, issued the following directions:

(i) The appellant as well as the developer shall execute the requisite Conveyance Deed/Sale Deed of the allotted apartments in favour of the concerned allottees, within six weeks from today.

(ii) If the appellant and the builder fail to execute and register the Sale Deeds/Conveyance Deeds in terms of this order within six weeks from today, such Sale Deeds/Conveyance Deeds shall be executed and got registered by the Registrar of the State Commission.

(iii) The requisite stamp duty for execution of the Sale Deed/Conveyance Deed shall be paid by the concerned allottees. The format of the Sale Deed/Conveyance Deed will be approved by the concerned State Commission after hearing the learned counsel for the parties.

(iv) The developer shall complete the entire project including the amenities in terms of the Tripartite Agreement within nine months from today and obtain all the requisite statutory permissions such as Occupancy Certificate and Completion Certificate within next three months.

(v) The developer shall pay the compensation awarded by the State Commission to the complainants. The compensation payable till the date of the impugned order shall be paid by the developer within three months from today.

The compensation for the subsequent period shall be paid at the time of delivery of possession in terms of this order.

(vi) Such of the complainants who do not want to wait for completion of the construction and delivery of the possession in terms of this order, shall be entitled to refund of the entire amount paid by them to the developer alongwith compensation in the form of simple interest @ 10% per annum from the date of each payment till the date of refund. They shall be entitled to the said payment only from the developer, the payment having been made only to the developer. The option in terms of this liberty shall be exercised by the concerned complainants/allottees within six weeks from today. The option to take refund, if exercised, shall be conveyed to both, the developer as well as the owner within six weeks from today."

1 "NCDRC"

5 The appeals before the NCDRC arose from the orders of the State Consumer Disputes Redressal Commission² at Karnataka dated 26 September 2016 and 6 January 2017.

6 When the proceedings came up before this Court on 8 May 2019, this Court recorded the statements which were made on behalf of the developer and by the learned counsel appearing on behalf of twenty flat purchasers in the following terms:

“Mr. Devadatt Kamat, learned senior counsel appearing on behalf of the petitioner(s) states that within a period of two months from today, the developer will be able to secure the occupancy certificate for the flats which are under agreements of sale to the flat purchasers.

Mr. Sahil Sethi, learned counsel appearing on behalf of twenty flat purchasers states that immediately on the receipt of the occupation certificate and the completion of the apartments in terms of the individual flat purchasers' agreements the flat purchasers shall join with the developer in executing the requisite deeds of conveyance or, as the case may be, sale deeds in respect of the allotted apartments in terms of the order passed by the NCDRC.”

In the backdrop of these statements, the Court issued the following directions:

“The flat purchasers at the time of the execution of the conveyance deeds shall simultaneously pay over to the developer the balance of the sale consideration that is due to the developer under the respective flat agreements. However, the compensation which has to be paid by the developer to the flat purchasers in terms of the order passed by the SCDRC as upheld by the NCDRC shall be set off against the balance of the sale consideration.”

7 Mr Sahil Sethi, learned counsel, had appeared before this Court on 8 May 2019, at the stage when notice was issued on behalf of twenty flat purchasers. He has since entered appearance on behalf of thirty three respondents, whose agreements are the subject matter of these proceedings.

8 On 26 July 2019, this Court was informed that an application for an occupation certificate had been submitted by the developer to the Bruhat Bangalore Mahanagara Palike³ and all compliances had been effected. However, a formal occupation certificate was still to be received.

9 On 18 November 2019, the following order was passed:

“Learned counsel appearing on behalf of the petitioner states that on 10 October 2019 Bruhat Bangalore Mahanagara Palike has granted approval for the issuance of a possession certificate subject to certain conditions including the payment of fees and charges quantified at Rs.61.24 lakhs.

Learned counsel appearing on behalf of the petitioner states that the aforesaid amount shall be disbursed to BBMP within a period of two weeks from today.

As regards the requirement of furnishing a receipt for the payment of tax for 2019-2020 and obtaining the clearance from the Fire Brigade Department it has been submitted that this would be duly complied with in the meantime. In order to facilitate compliance with the conditions which are stipulated in the letter dated 10 October 2019 of BBMP, we direct that the matter be listed after six weeks. The petitioner shall peremptorily ensure compliance so that the occupation certificate is issued. “

10 After the above directions were issued, when the proceedings were listed before this Court on 6 January 2020, the Court was apprised of the fact that proceedings had been initiated against the appellant – developer

³“BBMP”

under the Insolvency and Bankruptcy Code⁴ before the National Company Law Tribunal⁵ and that arising therefrom, an order was passed on 19 December 2019 by the National Company Law Appellate Tribunal⁶ in Company Appeal (AT) (Insolvency) No 1501 of 2019. In order to enable this Court to be apprised of those proceedings, the hearing was adjourned.

11 On 31 January 2020, liberty was granted to implead the Interim Resolution Professional⁷ and notice was issued to him.

12 The proceedings before the NCLAT have concluded by an order dated 7 February 2020. NCLAT has set aside the order of the NCLT dated 27 November 2019 admitting the application submitted under Section 9 of the IBC. The appellant has, in consequence, been released from the Corporate Insolvency Resolution Process. The IRP has been directed to hand over the records and assets of the corporate debtor, namely, the appellant, to the promoters.

13 Since the proceedings before the NCLAT have been concluded, we have proceeded to hear the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondents so as to facilitate the final disposal of these proceedings.

14 As noted above, the developer was required to deposit an amount of Rs 61.24 lakhs with the BBMP for the grant of a possession certificate. This amount, which was directed to be deposited within two weeks of the

4 “IBC”

5 “NCLT”

6 “NCLAT”

7 “IRP”

order dated 18 November 2019, has not been deposited. Mr Ratan K Singh, learned counsel appearing on behalf of the appellant, states that the delay occurred because of the pendency of the proceedings under the IBC. He states that the entire payment will be made to BBMP on or before 31 March 2020. We accept the statement and direct the appellant to make the payment to BBMP on or before 31 March 2020 and ensure that all other requisitions are complied with to facilitate the grant of an occupation/possession certificate. The appellant shall also follow up with BBMP in order to ensure that the occupation certificate is issued with utmost expedition.

15 By the order of this Court dated 8 May 2019, the flat purchasers were to pay over to the developer the balance of the sale consideration due under the respective agreements, subject to the adjustment of the compensation payable by the developer to them in terms of the order passed by the SCDRC, as upheld by the NCDRC. The amount payable by the developer was to be set off against the balance of the sale consideration due and payable by the flat purchasers.

16 During the course of the hearing, Mr Sahil Sethi, learned counsel appearing on behalf of the flat purchasers, has adverted to certain orders which were passed by the SCDRC in the course of Execution Petition 5 of 2017 on 13 March 2017 and 5 September 2017. Learned counsel urged that in the course of the execution proceedings, the SCDRC had accepted the memo of calculation submitted by the decree holders, namely, the flat purchasers, noting that the developer had not produced any supporting

documents in regard to the computation of the outstandings. Mr Sethi urged that the developer had instituted a writ petition⁸ before the Karnataka High Court, which was also withdrawn.

17 We find from the order passed in the execution proceedings by the SCDRC on 5 September 2017 that while, on the one hand, the memo of calculation submitted by the decree holders was accepted, it was clarified that the developer would be at liberty to pursue any other claim against the flat purchasers, on merits, in independent proceedings.

18 In our view, the interests of justice require that the dispute between the flat purchasers and the developer over the balance consideration is sorted out once and for all instead of leaving the matter in a state of uncertainty. Having regard to the need to bring finality to the dispute, we had suggested to counsel appearing on behalf of the appellant and for the flat purchasers that the computation may be verified by a Commissioner to be appointed by this Court, whose determination shall be final and binding on the parties. Both Mr Ratan K Singh and Mr Sahil Sethi, learned counsel, have fairly agreed to this suggestion. We accordingly request Mr R V Easwar, former Judge of the High Court of Delhi and learned senior counsel to render his assistance in the matter by ascertaining the exact amount which is due and payable by the individual flat purchasers to the developer. In arriving at this determination, Mr R V Easwar is requested to have regard to the following:

8 Writ Petition Nos 13230-13250 of 2017

- (i) The balance of the purchase price payable by each of the flat purchasers to the developer, after giving due credit for the amounts which have been paid;
- (ii) The amount of compensation payable under the order of the SCDRC, as affirmed by the NCDRC, which is to be paid by the developer to the flat purchasers;
- (iii) The compensation payable by the developer under (ii) above shall be set off against the balance of the purchase price payable by the flat purchasers to the developer;
- (iv) The flat purchasers shall bear all statutory levies, as applicable;
- (v) No interest will be paid by the flat purchasers to the developer on any account.

19 We request Mr R V Easwar to expedite the determination and endeavour to do so preferably within a period of one month from today.

20 The appellant and the respondents are directed to appear before Mr R V Easwar on 4 March 2020 at such time and place as may be fixed by the learned senior counsel. The fees and expenses that are payable to Mr R V Easwar for carrying out the above determination shall be shared equally between the appellant and the flat purchasers. The determination, which is made shall be final and binding on all the parties and shall not be called into question. Parties shall render full cooperation by producing all necessary documents, receipts and statements of account as required.

21 Upon the making of the above determination, we direct that the appellant shall duly register the agreements with the respective flat purchasers within a period of one month. The balance payment, if any, that is required to be made by the respective flat purchasers shall be paid over to the developer at the time of the execution and registration of the sale agreements. If as a result of the determination which is made, a net surplus is held to be payable to the flat purchasers, that shall be paid over by the developer to the respondent – flat purchasers within a period of one month from the date of the determination. The monthly compensation payable shall be paid up to the date of the registration of the agreements.

22 The above directions will apply to all the respondent-flat purchasers, save and except for the following persons, namely:

- (i) Tridiv Ojha
- (ii) Shreya Ojha
- (iii) P Karunkar
- (iv) Uday Kumar
- (v) Tejashree U Kulkarni

The above persons do not desire to have possession of the flats and would be granted a refund of the amount payable, together with interest at the rate of 10% per annum from the date of each payment until payment. The refund shall be made within a period of two months from today. They shall simultaneously execute documents of discharge as required.

23 The appeals are accordingly disposed of by consent in the above terms. There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Sanjiv Khanna]

New Delhi;
February 28, 2020

ITEM NO.52

COURT NO.8

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).11290/2019

(Arising out of impugned final judgment and order dated 25-03-2019 in FA No. 423/2017 passed by the National Consumer Disputes Redressal Commission, New Delhi)

M/S SKYLINE CONSTRUCTIONS AND HOUSING PVT. LTD. Petitioner(s)

VERSUS

KARE ELECTRONICS AND DEVELOPMENT PVT. LTD. & ORS. Respondent(s)

(WITH IA No. 73309/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 77259/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

Diary No(s). 2071/2019 (XVII-A)

(WITH IA No. 81497/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 11851/2019 (XVII-A)

(WITH IA No. 76656/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 11928-11933/2019 (XVII-A)

(WITH IA No. 77181/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 14224/2019 (XVII-A)

(WITH IA No. 93100/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 28-02-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Ratan K. Singh, Adv.
 Mr. Rajeev Gurung, Adv.
 Mr. Rajiv Shankar Dvivedi, AOR

For Respondent(s) Mr. Sahil Sethi, Adv.
 Ms. Nikita Sharma, Adv.
 Ms. Anukriti Pareek, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are disposed of in terms of the signed
order. There shall be no order as to costs.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)