

**IN THE WEST BENGAL REAL ESTATE APPELLATE TRIBUNAL,  
KOLKATA**

**DATED THIS THE 12<sup>th</sup> DAY OF JULY 2023**

**PRESENT**

**HON'BLE SRI GOUR SUNDAR BANERJEE, JUDICIAL MEMBER**

**AND**

**HON'BLE SRI SUBRAT MUKHERJEE, ADMINISTRATIVE MEMBER**

**APPEAL NO. REAT/APPEAL No. – 02/2023**

**BETWEEN**

**HEMONT KUMAR SIKARIA**

**Mounthill Essence at Kalaberia, Kamarbari,**

**Po. Rajarhat, Bishnupur, Kol – 700 135**

**Appellant**

**AND**

**SATAPARNA RAY**

**51A, Palm Avenue, 2<sup>nd</sup> floor**

**Kolkata – 700 019.**

**Respondent**

**ORDER**

The record is taken up for order which arose out of hearing (in presence of both sides) for admission of instant Appeal and petition U/S 5 Limitation Act filed by Hemont Kumar Sikaria challenging the order dated 18/12/2019 passed by the then West Bengal Housing Industry Regulatory Authority in complaint No. COM-000128 of 2019.

Before proceeding further it may be mentioned that for the sake of convenience and avoiding repetition Appellant **Hemont Kumar Sikaria** hearinafter referred in short as Appellant and **Sataparna Ray** hearinafter referred in short as respondent and Real Estate (Regulation and Development) Act 2016 is referred in short as RERA Act and West Bengal Real Estate Regulatory Authority is referred in short as RERA Authority.

As both parties filed relevant documents, there is no need to call for the original record from Ld. RERA Authority and as such original record is not called for.

## **Facts**

The background of Appeal (for admission) as it appears from Memorandum of Appeal and documents in the record is that Respondent filed complaint being No. COM-000128 of 2019 before Ld. WBHIRA Authority, Kolkata against Appellant **Hemont Kumar Sikaria** stating that she booked a flat in 2013 from the Appellant Company who promised to deliver the said flat by June 2016 and her House Building Loan (HBL) EMI continues but she (respondent) did not get delivery of possession of the flat in stipulated time in January 2017 and Respondent sought for return of entire consideration money paid to the Appellant but received no response in this regard and accordingly filed the complaint before the WBHIRA praying for return of the entire consideration money and interest / compensation amounting to Rs. 75,00,000/- (Rupees Seventy five Lac) only approx from appellant.

The present appellant duly contested that complaint before WBHIRA by filing W/O and relevant documents and WBHIRA Authority hearing both sides, passed the impugned judgement vide order No. 4 dated 18/12/2019 directing this appellant to refund the entire consideration money, interest etc. to this respondent within 45 days with liberty to the respondent to file execution case, if appellant fails to comply the said order.

It further reveals from the copy of orders viz. Order No. 5 dated 14/08/2020 in complaint case No. COM-000128 of 2019 that as appellant did not comply the order dated 18/12/2019 respondent **Sataparna Ray** filed execution case. The Appellant appeared before WBHIRA Authority on 23/09/2020 and after hearing both sides on 23/09/2020, 15/10/2020, 11/01/2021, 29/01/2021 and finally vide order No. 10 / 16-03-2021 WBHIRA Authority passed order for recovery of dues (from the appellant) as passed in order dated 18/12/2019 and 11/01/2021 as arrear of land revenue provided in **Public Demand Recovery Act** through District Collector North 24 Pgs.

It may be mentioned further, as it reveals from the documents filed in record, that respondent filed WPA No. 19940/2021 before the Hon'ble High Court which was disposed of on 28/02/2022 and SLP (Civil No.) 16908 of 2022 before the Hon'ble Supreme Court which was disposed of on 12/05/2023.

### **Points for decision**

In view of above discussion, this Bench is to consider only whether the appellant had sufficient cause (as envisaged in Section 5 Limitation Act) for not filing the Appeal (against impugned order dated 18/12/2019 passed by WBHIRA in complaint No. COM-000128 of 2019) within Limitation period or whether the instant Appeal can be admitted?

### **Arguments by Ld. Lawyer for Appellant**

Ld. Advocate for appellant has argued that his client could not file appeal against impugned order as respondent took the matter to the Hon'ble High Court and Hon'ble Supreme Court and prayed for admission of appeal by condoning the delay in view of his petition U/s 5 Limitation Act and in support of his argument he referred ruling cited in 2017 Supreme Court Case (SCC) on line CAL 3163, (1987) 2 SCC 107.

### **Arguments by the Ld. Lawyer for the respondent**

The Ld. Lawyer for the respondent argued that appellant had no sufficient cause for not filing appeal within time challenging the impugned order and he intentionally avoided to comply with the order dated 18/12/2019 and other orders of Ld. WBRERA Authority and claimed that the Section 5 Limitation Act petition is liable to be rejected and instant appeal should not be admitted.

### **Decision with reasons**

Section 43 of RERA Act empowers this Bench (having two Members) to hear any matter under RERA Act.

Hon'ble Supreme Court has been pleased to observe in the petition (s) for special leave to appeal (c) Nos. 16908 of 2022 that "All complaints which were filed before erstwhile Authority constituted under WBHIRA shall stand transferred to and be disposed of in accordance with Law by the Authority which is constituted under the Central Act. Any Person aggrieved by an order passed under WBHIRA will be at liberty to Pursue corresponding remedy which is available under the RERA".

So in view of above Judgement admissibility point of this appeal challenging impugned order dated 18/12/2019 passed by WBHIRA Authority, this Bench constituted under RERA Act has Jurisdiction to dispose of the matter.

Now let us see the definition of Section 5 Limitation Act which states that any appeal or any application other than an application under order XXI of CPC, may be admitted after the prescribed period, if the Appellant or Applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Section 44(2) RERA Act 2016 provides that every appeal shall be preferred within the period of 60 days from the date on which copy of order or decision made by Authority is received by aggrieved person, the Appellate Tribunal may entertain any appeal after the expiry of 60 days if it is satisfied that there was sufficient cause for not filing it within that period.

Same provision of 60 days was provided regarding Limitation period for filing appeal U/s 44(2) of WBHIRA Act, 2017.

From the Memorandum of appeal and documents filed by appellant it reveals that there is no dispute that no appeal was preferred by Appellant against the impugned order dated 18/12/2019 within the prescribed 60 days period.

It is the case of the Appellant that as the matter in dispute was pending before the Hon'ble High Court and Hon'ble Supreme Court, appeal could not be filed by the Appellant in time but the same is filed after the disposal of the dispute by the Hon'ble Supreme Court within its 60 days and prayed for condonation of delay by allowing his petition U/s 5 Limitation Act.

On the other hand Ld. Advocate for the respondent has argued that Appellant had sufficient time to file the appeal till disposal of execution case as well as till the date of declaration of WBHIRA Act, unconstitutional on 04/05/2021 but Appellant did not do so intentionally and claimed that section 5 Limitation Act, petition of the Appellant should be rejected.

On careful scrutiny of documents (without going into the merits of the case) filed by the parties in the record it reveals that the impugned judgement was passed on 18/12/2019 by WBHIRA Authority which passed the order No. 5 dated 14/08/2020 that complainant / respondent filed execution case as the Appellant did not comply the order dated 18/12/2019 and representative of Appellant was present and prayed before the WBHIRA for time for filing affidavit for stating when refund will be made and considering the submission of both sides Ld. WBHIRA Authority rejected the time prayer and show cause was issued to Appellant. It further reveals from order No. 6 dated 23/09/2020 of Ld. WBHIRA Authority that the Appellant prayed for time for filing affidavit regarding refund in connection with order dated 18/12/2019 and that prayer was allowed as last chance fixing 15/10/2020 for further hearing and order in execution case.

It further reveals from order No. 7 dated 15/10/2020 of WBHIRA Authority that complainant / respondent received no refund of money from Appellant in view of impugned order and Ld. Advocate for Appellant submitted that they are preferring appeal against order dated 18/12/2019 but the prayer was rejected.

It reveals from order No. 9 dated 29/01/2021 that no payment was made by Appellant to Respondent regarding order dated 18/12/2019 and Ld. Advocate for Appellant submitted that they will make refund but received no instruction (from his client) when refund will be made and in view of submission of both side the Ld. WBHIRA Authority observed that Appellant (Hemont Kumar Sikaria) intentionally violating the order of Ld. Authority and appointing new advocates in every alternative day without giving instruction and also opined that stringent action should be taken against the Appellant.

From order No. 10 dated 16/03/2021 of WBHIRA Authority it reveals that till passing order No. 10 dated 16/03/2021 Appellant neither complied with the order dated 18/12/2019 nor filed any appeal challenging the order of 18/12/2019 within this period of 15 months after passing the impugned order dated 18/12/2019.

It further reveals from the documents on record that respondent **Sataparna Ray** filed writ petition before Hon'ble High Court after the date of 04/05/2021 (when the WBHIRA Act was declared unconstitutional) and thereafter SLP petition before the Hon'ble Supreme Court.

It further reveals from documents on record that WBHIRA Act was declared unconstitutional on 04/05/2021 by Hon'ble Supreme Court but during this period of 18/12/2019, 12/02/2021 and 03/05/2021 Appellant did not file appeal challenging the impugned order dated 18/12/2019.

So the Appellant's claim that he could not file appeal as respondent took the matter before Hon'ble Court, cannot be accepted.

At last but not the least, in SLP petition for special leave petition to appeal (c) number (s) 16908/2022 vide order dated 12/05/2023 Hon'ble Supreme Court observed **“that Authority shall proceed to execute the order which has been passed in favour of the petitioner (Sataparna Ray respondent of this appeal) expeditiously within a month from the date of receipt of certified copy of this order by the executing forum”**.

The ruling referred by Ld. Advocate for the appellant cited in (1987)2 SCC 107, 2017 SCC on line CAL 3163 are not applicable in this case as facts of those cases are different from this case.

Thus taking into consideration of all aspects and discussion made above, it can safely be said that the Appellant had enough time to prefer appeal challenging the impugned order dated 18/12/2019 but without doing so he intentionally dragged the matter by violating the order of Ld. WBHIRA Authority and as such it is held that Appellant has failed to prove

that he had sufficient cause for not filing appeal within Limitation period and thus his petition U/s 5 Limitation Act praying for condonation of delay is rejected and Appellant is also not entitled to get benefit of the proviso of Section 44(2) of RERA Act.

Hence it is,

**ORDERED**

That the instant Appeal being No. (**REAT/APPEAL No. – 02/2023**) is not admitted as it is hopelessly barred by Law of Limitation. Let the authenticated copy of this order be handed over at once to the Appellant and Respondent (on proper receipt) as well as the copy of this order be sent to the Appellant, Respondent, West Bengal Real Estate Regulatory Authority, Secretary in-charge, West Bengal Real Estate Appellate Tribunal and Secretary of West Bengal Housing Department by e-mail for information. Thus the matter is disposed of accordingly in presence of both sides.

**Dictated**

Shri Gour Sundar Banerjee  
Judicial Member  
West Bengal Real Estate  
Appellate Tribunal

Shri Subrat Mukherjee  
Technical/Administrative Member  
West Bengal Real Estate Appellate  
Tribunal