

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-106/2022

SUMAN YADAV

.....Appellant

Versus

KANPUR DEVELOPMENT AUTHORITY KANPUR DEVELOPMENT
AUTHORITY

.....Respondent

Counsel for Appellant

SAMRAT VAISH
KAVIYA SINGH

Counsel for Respondent

BHUPENDRA SINGH

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman

Hon'ble Mr. K.K. Jain, Technical Member

Shri Samrat Vaish, Advocate is present on behalf of the appellant and Shri Bhupendra Singh, Advocate appeared on behalf of the respondent.

The learned counsel for the appellant submitted that he does not want to file reply to the objections of the respondent and he may be permitted to argue the appeal.

Appreciating the request of learned counsel for the appellant, we permit him to argue the matter.

The appellant is aggrieved by the order of the Regulatory Authority dated 02.06.2021, whereby her complaint for refund of the registration amount, after deducting 20% amount as per clause 6.1 of the Brochure, was rejected. The submission of learned counsel for the appellant is that in pursuance to the advertisement issued by the respondent the appellant applied on 28.08.2017 for allotment of 2BHK unit in 'Signature Building' of the respondent. In pursuance of the same, the respondent issued Allotment Letter dated 27.09.2017 indicating the price of the unit as Rs. 46.65 lacs, which was to be paid in six years in 24 installments with 12% interest. The appellant deposited total amount of Rs. 11,66,250/- against the said unit. As per Clause 7 of the terms and conditions of the

Brochure, the possession was to be given within 24 months from the date of allotment i.e. by 26.09.2019. The construction of the unit was stopped on account of some order passed by the National Green Tribunal, therefore, the appellant stopped payment. The respondent resumed the construction in the month of September, 2018.

The learned counsel for the appellant further submitted that appellant requested the respondent by letter dated 29.09.2018 showing her willingness to pay entire remaining amount of Rs. 34,98,750/- in one go and in pursuance of the same a demand-cum-offer of possession was issued by the respondent on 14.05.2019 informing the appellant to pay Rs. 42,27,818/- by 31.05.2019. The appellant vide letter dated 27.05.2019 followed by letter dated 30.12.2019 asked for the details of payment and also requested for waiving off penalty interest on the delayed payment and when no reply was received, the appellant decided to withdraw from the project on understanding that 20% of the amount will be deducted as per Clause 6. 1 of the Brochure.

The learned counsel for the appellant on being specifically asked submitted that he presses only Ground No. VIII, which is relating to refund of amount after deducting 20% of the booking amount and prayed that respondent be directed to return the amount after deducting 20% of the registration amount as per Clause 6.1 of the Brochure.

The learned counsel for the respondent while opposing the submissions of learned counsel for the appellant submitted that the Board of the respondent examined the issue and revised the Brochure wherein as per Clause 6.1 it is provided that in case of cancellation by the allottee, the entire registration amount is to be forfeited. The learned counsel for the respondent further placed reliance on Clause-3 of the

allotment letter dated 27.09.2017, wherein it has been specifically mentioned that in case of cancellation by the allottee, the entire registration amount will be forfeited and the appellant requested for cancellation on account of her inability to make payment as well as ill health of her husband. The learned counsel for the respondent also drawn our attention towards the new Brochure issued after resolution of Board of the respondent dated 27.04.2017.

Heard learned counsels for the parties.

Judgment reserved.

(K.K. Jain)

(D.K. Arora)

Dated: 28.02.2023
SYEDTANVEER