

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW
Division Bench Court No. 1

APPEAL-222/2021

SHYAMCHAND DE

.....Appellant

Versus

ANIL JAIN SHOUMYA SHUBHAM INFRASTRUCTURE PVT. LTD.Respondent

Counsel for Appellant
MADHUKAR OJHA

Counsel for Respondent
SWETANK SHARMA

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

Heard Sri Madhukar Ojha, learned counsel for the appellant and Sri Swetank Sharma, learned counsel for the respondent.

The precise prayer of the appellant is that the appellant raised grievance before the Regulatory Authority vide complaint dated 15.11.2017 seeking various reliefs, but in sum and substance it has been elaborated in the column 'Complaint Detail' that since the Builder committed fraud and did not hand over the booked flat, 3 B.R. Deluxe (1755 Sq.ft.) by assured target time (i.e. July 2009) and said that the flat was not constructed, it is requested to direct the Builder (a) either to return all paid amount (Rs.26,06,175/-) with market rate interest w.e.f. June 2008 till date (9 years plus) i.e. Rs.57 lacs approx. or (b) to hand over one available 3 BR Flat (1425 sq.ft.) in the same complex along with balance amount and market rate interest on whole paid amount w.e.f. August 2009 till date i.e. 3 BR Flat (1425 sq.ft.) + Rs. 20 lacs.

Learned counsel for the appellant submitted that prior to the said complaint the appellant has raised grievance before various forums and the issue has been settled between the parties on 22.11.2017 wherein the appellant agreed to take possession of substituted property by 01.12.2017 (Unit No. F-805, 3 BR Flat, area 1425 sq.ft.) and in pursuance to the said settlement a provisional allotment letter was issued by the respondent on 30.11.2017 offering Flat No. F-805 area 1425 sq.ft. for Rs.19,19,000/- mentioning that the amount paid earlier by the appellant against Flat No. B-105 will be adjusted against freshly allotted flat.

Learned counsel for the appellant further submitted that the complaint of the appellant was rejected by the Regulatory Authority on the ground of having the issue been settled between the parties on the basis of compromise, but the Regulatory Authority ignored the fact that the appellant has paid Rs.26,06,175/- and the value of the re-allotted flat is 19,19,000/- and the rest amount of Rs. 6,87,175/- has not been refunded to the allottee/appellant, whereas the Regulatory Authority ought to have examined this issue and direct the respondent for payment of the remaining amount along with admissible interest and, therefore, the appellant has approached this Tribunal for refund of the

amount i.e. Rs.26,06,175 – 19,19,000 = Rs.6,87,175/- along with admissible interest from June 2008.

Learned counsel for the respondent, while opposing the appeal, submitted that there is no illegality or perversity in the order of the Regulatory Authority as the issue has been settled between the parties on the basis of compromise before S.S.P. Noida and the instant appeal deserves to be dismissed.

A specific query was made from learned counsel for the respondent regarding return of the balance amount. The learned counsel for the respondent submitted that the issue was settled on the basis of compromise and, therefore, there is no question of return of the excess amount, though the value of the re-allotted unit is only Rs.19,19,000/-.

Heard learned counsel for the parties. **Judgment reserved.**

(K.K. Jain)

(D.K. Arora)

Dated: 19.11.2022
SHAKIR