

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-158/2019

GIRISH CHANDRA SHARMA

.....Appellant

Versus

LUCKNOW DEVELOPMENT AUTHORITY

.....Respondent

Counsel for Appellant
SUSHIL KUMAR

Counsel for Respondent
HARISH PANDEY

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

Hon'ble Mr. Rajiv Misra, Administrative Member

1. The present appeal has been filed by Shri Giresh Chandra Sharma (hereinafter "the appellant") on 05.08.2019 under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter "the Act") aggrieved by the order dated 07.06.2019 passed by the U.P. Real Estate Regulatory Authority, Lucknow (hereinafter "the Regulatory Authority") in Complaint No. LKO162030817/2019 (Giresh Chandra Sharma Vs. Lucknow Development Authority) (hereinafter "respondent" or "LDA").
2. The facts of the case, in brief, as culled out from the submissions of appellant are that Shri Ram Gopal Sharma was allotted a 3 BHK flat (property no. PJ/1504/A-1) in Parijat Housing Scheme by the LDA vide letter no. 231/VAP/Parijat/2012 dated 14.09.2012. The estimated cost of the flat was Rs. 49,50,000/- and possession was to be given by September 2014.

Based on the succession certificate submitted after the death of Shri Ram Gopal Sharma, the title of the property was transferred to Shri Giresh Chandra Sharma (the appellant), vide LDA's letter no. 1808/US/18 dated 10.04.2018. As the LDA did not fulfill its obligations and could not provide the flat in stipulated time, the appellant filed a complaint bearing no. LKO162030817/2019 before the Regulatory Authority on 24.03.2019. The Regulatory Authority, while dealing with the complaint, has passed the impugned order dated 07.06.2019 with the following directions:-

- (i) MCLR+1% interest will be payable on the amount deposited by the complainant for the delay period from 10.09.2016 to the date of making offer of possession. LDA will issue amended demand letter, after adjusting 5% concession granted earlier, within 15 days from the date of the order. Thereafter, the complainant will ensure execution of the sale deed after depositing the remaining amount, legal fee and stamp fee. The possession of the flat will be given after completing all the works of the flat within one month.
- (ii) If any payment is payable to the buyer towards interest for the delay, the same will be paid at the rate of MCLR+1% according to Section 2(z)(i) of the Act.
- (iii) LDA will receive the amount of GST, with evidence of payment, on the basis of Pro-Rata, and will provide evidence of payment to the complainant.

(iv) Parking fee is the part of original allotment because the LDA does not count the value after profit accounting. Therefore, the cost of parking will be treated as part of the cost of flat.

(v) LDA is directed to receive free hold charges from the complainant in accordance with the rules.

3. A perusal of the impugned order dated 07.06.2019 reveals that while deciding the complaint of the appellant, the Regulatory Authority after exchange of pleadings, clubbed the complaint of the instant appellant together with complaint no. 2201931553 (Manzar H. Zaidi Vs. Vice Chairman, Lucknow Development Authority), wherein prayer for interest for the delay and exemption from parking charges and GST was made. The Regulatory Authority framed seven issues, namely:-

- i. Whether the price of the unit of the allottee has been increased or not?
- ii. Whether allottees are required to pay GST or not?
- iii. Whether allottee is required to pay for parking or not?
- iv. Whether the allottee is required to pay free hold charges or not?
- v. Whether the project is delayed or not, if yes for what period?
- vi. Whether the LDA is entitled for any relief of the said period of delay or not?
- vii. Whether the allottees are entitled for interest for the delayed period or not?

3.1 The Regulatory Authority after examining all the issues independently by means of order dated 07.06.2019 directed for payment of interest @ MCLR+1% on the deposited amount w.e.f. 10.09.2016 till offer of possession and LDA was directed to issue revised demand after adjusting 5% discount granted earlier within 15 days and, thereafter, the allottee was required to deposit remaining amount along with stamp fee and other legal expenses within one month and after execution of the conveyance deed, the possession of the flat was to be given to the allottee after completing interior work. The Regulatory Authority further directed the allottees to make payment of balance amount, if any, along with delayed payment @ MCLR+1%. The LDA is to receive amount towards the payment of GST on pro-rata basis after providing evidence to the allottees. The parking charges will be included in the entire amount of the flat, since the parking is part of original allotment. The LDA was directed to take free hold charges from the allottee in accordance with Rules.

4. In the instant appeal, the appellant has made following prayers:-

- A. Set aside the impugned order dated 07.06.2019.*
- B. 18% interest should be paid by the Respondent on the complainant's capital/deposits since proposed possession date.*
- C. Rent @ Rs. 12,000/- per month should be paid by L.D.A. to the allottee since proposed possession date.*

D. Compensation for harassment and legal expenses.

Whereas, in Appeal No. 159/2019 (Manzar H. Zaidi Vs. Vice Chairman, Lucknow Development Authority), while challenging the same impugned order the appellant had made the following prayers:-

- 1. It is prayed that LDA should hand over the possession of the flat no. PJ/705/B-2 in the Parijat Housing Scheme with final plan of the flat after getting the remaining works completed as per the specifications laid down in the booklet of Parijat as early as possible and issue the completion and occupation certificate as the full and final payment of the flat has been done. The Registry of the flat has also been done.*
- 2. It is prayed that interest of Rs. 2,61,792/- charged by the LDA on the installments should be refunded to the appellant.*
- 3. It is prayed that the LDA should pay the interest @ 15% for delay in handing over the possession to the appellant till the date of possession.*
- 4. It is prayed that the LDA should pay the interest @ 15% from 01.08.2018 to the date of possession on the amount of Rs. 10,10,696/- which has been paid by the appellant on 31.07.2019 as the possession of the flat has not been given till this date.*
- 5. It is prayed that charging the additional cost of Rs. 3,03,300/- is unjustifiable. It should be refunded to the appellant.*
- 6. It is prayed that the increased tax of Rs. 56,811/- due to GST should bear by the LDA, and it should be refunded to the appellant.*

7. *It is prayed that the parking amount of Rs. 1,75,000/- charged by the LDA is against the provisions of RERA Act and Hon'ble Supreme Court judgment, hence it should be refunded to the appellant.*
 8. *It is prayed that the cost of the gas pipe line, telephone charges and electricity charged are exorbitant amount. These should be provided at lesser cost at no loss and no profit basis.*
 9. *It is prayed that maintenance charges and corpus money should be enforced from the date of possession of the flat.*
 10. *It is prayed that 2% discount given by the LDA should not be adjusted in the compensatory interest as it has been granted by the LDA as per Rule on the basis of depositing all the installments well in time.*
5. In order to appreciate the issues raised by appellant and Shri Harish Pandey, learned counsel for the respondent, we frame following issues as done by this Tribunal in Appeal No. 159/2019 (Manzar H. Zaidi Vs. Vice Chairman, Lucknow Development Authority):-
- (1) Whether on account of being prospective Act, the provisions of penalty/compensation introduced for the first time by means of Act of 2016 cannot be imposed in respect of any cause of action, arisen prior to coming into force of Act of 2016, even if the project is not complete and OC/CC has not been issued by the competent authority.
 - (2) Whether the Regulatory Authority ought to have examined the complaint of appellant only on the basis of agreed terms and conditions mentioned in the Brochure read with Rules and Regulations of Lucknow Development Authority?

- (3) Whether instalments and interest on the instalments charged by the Lucknow Development Authority from the appellant from 11.10.2012 to 14.06.2013, without start of the work on the project upto the end of 2013 is justified?
 - (4) Whether the payment of GST, implemented in the year 2017, should be exempted to the allottee on account of delay in handing over the project beyond the promised date i.e. September, 2014?
 - (5) Whether the parking charges should have been exempted?
 - (6) Whether the cost of Rs. 20,000/- for gas pipeline is an arbitrary amount and should be provided on “no profit no loss” basis?
 - (7) Whether charges of Rs. 15,000/- for generator, Rs. 15,000/- for electricity and Rs. 10,000/- for telephone are required to be refunded since actual possession has not been given?
 - (8) Whether the free hold charges should have been exempted?
 - (9) Whether Regulatory Authority erred in granting 2 years exemption in delay in giving possession treating as an unavoidable situation?
 - (10) Whether the Regulatory Authority assessed the interest against the provisions of Section 2(za) of the Act, 2016?
 - (11) Whether the LDA shall bear the increased cost on account of delay in completion of the Project?
6. Since the present appeal has been filed against the same combined impugned order dated 07.06.2019 in compliant no. LKO162030817/2019 (Giresch Chandra Sharma Vs. Lucknow Development Authority) and complaint no. 2201931553 (Manzar H. Zaidi Vs. Vice Chairman, Lucknow Development Authority), and the appeal filed by Shri Manzar H. Zaidi against the

impugned order vide Appeal No. 159/2019 (Manzar H. Zaidi Vs. Vice Chairman, Lucknow Development Authority) has been disposed off by this Tribunal vide judgment/order dated 21.01.2021. We do not find any difference between both the two appeals, accordingly, the present appeal is squarely covered by our judgment dated 21.01.2021 and is disposed off in terms of the said judgment. For the sake of convenience, the operative portion of the judgment passed in Appeal No. 159/2019 (Manzar H. Zaidi Vs. Vice Chairman, Lucknow Development Authority) is being reproduced as under and will govern the present appeal:-

“We have examined the submissions of the appellant as well as Lucknow Development Authority and perused the record thoroughly including the impugned order of the Regulatory Authority dated 07.06.2019. The Regulatory Authority thoroughly examined the issues raised by the allottee by framing 7 issues, while passing the order dated 07.06.2019. In our considered view there is no illegality or perversity in the same except in direction no. 4 of the order, wherein Parking Charges were directed to be charged as part of the cost of building taking into account Parking Charges as a part of original allotment, whereas Regulatory Authority, while deciding issue no. 3, held that as per terms and conditions of Brochure parking/garage charges are payable; and while examining issue of Parking Charges vide issue no. 5 we have also concluded that Parking Charges are payable by the allottee, hence we set aside the direction no. 4 of the

*Regulatory Authority and affirm the rest of the order. Accordingly
Appeal is **dismissed.**”*

7. No order as to costs.

(Rajiv Misra)

(D.K. Arora)

Dated: 17.09.2021
GAURAVSRI