

**THE U.P. REAL ESTATE APPELLATE TRIBUNAL,
LUCKNOW**

DIVISION BENCH COURT NO. 1

APPEAL-550/2021

SANJEEV KUMAR PANDEY DIRECTOR
AIRSHIP FORWARDING INDIA PVT. LTD.

.....Appellant

Versus

GAURSONS HI-TECH INFRASTRUCTURE
PRIVATE LIMITED

.....Respondent

Counsel for Appellant
ADV. MANDEEP SINGH

Counsel for Respondent
SAMRAT VAISH
MOHIT YADAV
C P SINGH YADAV

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri Mandeep Singh, learned counsel for the appellant and Sri Samrat Vaish, learned counsel for the respondent.
2. The appellant allottee by the instant appeal raising challenge to the order dated 25.05.2021, passed by learned Regulatory Authority, Gautam Buddha Nagar, in complaint No. NCR144/10/62798/2020 whereby the possession of the unit along with delay interest was granted against pleadings and relief claimed by the appellant for refund of the deposited amount along interest thereon.
3. The short question that arise for consideration is as to whether the appellant is entitled for refund of the amount along with prescribed interest rate in a delayed project.
 - 3.1. The facts in brief stated are that the appellant booked a shop bearing No. FF-39, Area 303 Sq.ft. in the project 'Gaur City Centre'. The sale consideration was at Rs. 35,06,318/- against which the allottee paid an amount at Rs. 19,02,148/-. The agreement to sale came be executed on 24.10.2017 wherein it was stated that project would be completed on, or, before 30.04.2018. The project got delayed. Aggrieved, appellant was constrained to file a complaint on 07.10.2020, inter-alia, seeking relief of refund along with interest thereon.

- 3.2. Learned Regulatory Authority instead of granting relief of refund of deposit of delayed project, had directed the respondent promoter to handover possession of the unit along with interest for delay.
- 3.3. It is submitted by the learned counsel for respondent that offer of possession came to be issued on 14.02.2020 on the strength of partial OC/CC dated 29.05.2020, received in pursuance to application for OC/CC, filed by the promoter on 28.01.2020. In this backdrop, it is submitted that since the project came to be completed on 29.05.2020, in that event the appellant could not have prayed for refund of the entire deposited amount along with interest.
- 3.4. Learned counsel for the appellant submits that OC/CC dated 29.05.2020 as claimed was a partial certificate in respect of three floors of the tower of twenty one floors. It is noted in the impugned order that the learned Regulatory Authority got the site inspection done on 12.12.2021 and it was reported that the project which is a single tower is incomplete and partial OC/CC could not have been issued in respect of an incomplete project.
4. On specific query, learned counsel for the respondent submits that finally they had obtained OC/CC of the tower from the Competent Authority in February 2022. In this backdrop, it is evident that offer of possession, issued prior to the completion of the project i.e. without having valid and legal OC/CC from Competent Authority, was invalid. In the circumstances, it cannot be accepted, as is being submitted by the learned counsel for the respondent that the project came to be completed before instituting the complaint. In the facts and circumstances, the appellant allottee is entitled to refund of entire amount in terms of Section 18 (1) of Real Estate (Regulation & Development) Act, 2016 (Act 2016) along with interest and compensation thereon.
5. The question is accordingly answered.

6. Having due regard to the facts and circumstances, the appeal is allowed by passing following orders:

- (i) Impugned order dated 25.05.2021, passed in complaint No. NCR144/10/62798/2020 is **set aside** and **quashed**.
- (ii) Respondent promoter shall refund the deposited amount at Rs 19,02,148/- along with interest thereon @ MCLR+1% from the promised date of possession till the date of payment.
- (iii) The payment shall be made within 45 days from the date of uploading this order on the web portal of this Tribunal.
- (iv) No order as to costs.

Dated: 07.02.2025

M. Singh/-

(Rameshwar Singh) (Sanjai Khare) (Suneet Kumar)