

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-35/2024

BELGRAVIA PROJECTS PRIVATE LIMITED

.....Appellant

Versus

SUNIL KUMAR PANDEY SUNIL KUMAR PANDEY

.....Respondent

Counsel for Appellant

Counsel for Respondent

APPLICANT/APPELLANT IN-PERSON

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

Hon'ble Mr. Sanjai Khare, Judicial Member

Sri Laxmi Narayan Mishra, learned counsel for the applicant submitted that in the order dated 19.02.2024 in para 3, wrong directions have been quoted, which in fact were with respect to another allottee/complainant whose complaint was decided by means of a composite order vide which possession was to be given along with OC/CC by June 2023 and interest from the date of proposed possession till receipt of OC/CC or offer of possession whichever is later @ MCLR +1%, whereas respondent in the instant case is Sunil Pandey whose allotted unit was to be restored and possession was to be given by March 2023 along with OC/CC and as per other direction the rate of interest was to be calculated as per agreement.

The appellant has challenged the directions only with respect to the Sunil Kumar Pandey in the instant case with the prayer for setting aside of the order passed in complaint No. NCR 144/04/93742/2022 and as per impugned order in compliance of Section 43 (5) of the Act 2016, no amount is to be deposited

This Tribunal taking into consideration the certificate of chartered accountant wherein the deduction of Rs 2,94,837/- was shown from the amount, deposited by the respondent, directed for making deficiency good in compliance of Section 43 (5) of the Act 2016 and, therefore, this order is required to be corrected and as

no amount is to be paid by the applicant, the defective appeal be directed to be registered as regular appeal.

We have examined the submissions of the learned counsel for the applicant and direction which is under challenge with respect of restoration of the allotted unit and giving possession of the same by March 2023 along with OC/CC and the interest for delay till receipt of OC/CC or offer of possession as per agreement except for the period from 25.03.2020 to 25.09.2020 due to *force majeure* of Covid-19.

IA No. 568/2024 was filed by the applicant wherein in para 2, it has been stated that in compliance of Section 43 (5) of the Act, Rs 3,70,953/- have to be deposited before the Tribunal and the appellant company has submitted CA certificate dated 28.07.2023 regarding calculation of amount of Rs 3,70,953/- hence appeal be listed.

On examination of the CA certificate, we have already observed in our order dated 19.02.2024 that deduction of earnest money of Rs 6,65,790/- of allottee/respondent was against the order of the Regulatory Authority as the Regulatory Authority has not directed for refund of the amount after deduction of the earnest money but the direction in the case of the respondent was for providing possession by March 20023 after restoring the original unit.

The applicant has challenged the direction of restoring the allotment of the respondent and providing possession by March 2023, hence in our considered view, the amount deposited by the applicant after deducting the amount of earnest money as per CA certificate is an incomplete compliance of Section 43 (5) of the Act 2016. If applicant challenges the direction of restoration and providing possession of the unit to allottee then the cost of the unit, and in any case not less than the amount deposited by the allottee is required to be deposited towards compliance of Section 43 (5) of the Act and not the amount after making

deduction of the earnest money, deposited by the allottee. Hence we, reiterate the directions passed vide order dated 19.02.2024 whereby it was directed to make compliance of the Section 43 (5) of the Act in word and spirit within a week, failing which further orders will be passed on account of noncompliance of Section 43(5) of the Act.

List this defective appeal for consideration of application for condonation of delay and hearing on **02.04.2023**.

(Sanjai Khare)

(D.K. Arora)

Dated: 28.02.2024
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