

**Reserved Judgment
Bench No. 1**

**THE UTTAR PRADESH REAL ESTATE APPELLATE
TRIBUNAL
AT
LUCKNOW**

1. Appeal No. 702 of 2022

Sanjay KumarAppellant.

Versus

U.P. Awas Evam Vikas parishadRespondent.

2. Appeal No. 703 of 2022

AnjaniAppellant

Versus

U.P. Awas Evam Vikas parishadRespondent

3. Appeal No. 732 of 2022

Chandra Pratap SinghAppellant

Versus

U.P. Awas Evam Vikas parishadRespondent

4. Appeal No. 735 of 2022

Gurudev Singh Appellant

Versus

U.P. Awas Evam Vikas parishadRespondent

Hon'ble Mr. Justice Suneet Kumar, Chairman.

Hon'ble Mr. Sanjai Khare, Judicial Member.

Hon'ble Mr. Rameshwar Singh, Administrative Member.

1. Heard learned counsel for the parties.
2. The batch of four appeals are similar and raise common questions of law, accordingly, are being decided together on the consent of respective parties. For the sake of convenience, the facts of Appeal No. 702/2022 (Sanjay Kumar Vs. U.P. Awas Evam Vikas Parishad) is being referred to:

3. The appeal is directed against the order dated 03.08.2022 passed by the learned Adjudicating Officer, Gautam Budh Nagar, arising from Complaint No. ADJ/NCR169/05/94035/2022 (Sanjay Kumar Vs. U.P. Awas Evam Vikas Parishad), whereby, the complaint of the appellant-allottee was allowed granting compensation at Rs. 1,00,000/- (one lac), inter alia, towards harassment and mental agony.
4. The appellant came to be allotted unit no. 5/387 in the project- Construction of 96 Nos. 31/63 Type semi finished houses in Sector-5 at Jagriti Vihar Extension Scheme No.-11, Meerut, at Rs.28,93,960/-. The appellant-allottee deposited Rs.30,49,212/-. The appellant-allottee was not handed over possession of the unit, though conveyance deed came to be executed on 24.04.2024, until then the project was incomplete without availability of basic amenities, including, water supply, electricity and infrastructure.
5. Aggrieved, appellant approached the Adjudicating Officer, claiming compensation from 30.04.2021 at Rs.1,50,000/- towards harassment and mental agony. The complaint was contested by the respondent-promoter. It is noted in the impugned order that appellant-allottee could not take actual physical possession of the unit as farmers were agitating for compensation for their land, which was outstanding and not paid to them by the revenue authority/respondent-promoter. After negotiation with the farmers, the compensation was enhanced and it is only thereafter the physical possession of the unit could be handed over to the appellant-allottee.
6. In these circumstances, the findings returned by the learned Adjudicating Officer that the respondent-promoter had misrepresented that project was free from all encumbrances, was incorrect, thereby, misleading the allottees. Accordingly, the allottees suffered injury due to misrepresentation that the project was developed on a parcel of land, which is free from all encumbrances and that the respondent promoter is in possession of the land for development of the real estate project. However, as due compensation was not paid to the farmers of their land by the respondent leading to

unrest and agitation. In the circumstances, the learned Adjudicating Officer duly allowed the relief for compensation to be awarded to the allottees.

7. The appellant herein seeks enhancement of compensation at Rs. 1,50,000/-. The appellant further seeks to provide delay penalty under Section 18(1) of Act 2016 (wrongly mentioned 18(2) of the Act 2016 in the prayer clause of appeal). The relief is extracted :

- (i) *To direct the respondent to provide delay penalty under Section 18(2) of UP Rera Act 2016 along with relief of Rs.16,40,000/- under Section 72 for which includes financial losses due to act of respondent, Mental Harassment and Legal Expenses.*

- (ii) *Any other relief which Honourable Authority deemed to fit.*

8. On specific query, learned counsel for the respondent does not dispute that actual physical possession of the unit, booked and allotted to the appellant, was not handed over due to farmer agitation as compensation was not paid to them. The development work was completed on 23.12.2020 and completion certificate was issued on 02.01.2021 and the physical possession of the unit was handed over to the appellant on 25.05.2021. On specific query, learned counsel for the respondent does not dispute that several allottees could not take possession of the unit for the default of the respondent as is reflected from the communications dated 26.02.2022 & 14.02.2022, issued in respect of other allottees, wherein, it has been noted that the farmers were agitating for due compensation, which subsequently came to be settled and thereafter, the allottees could obtain actual physical possession. In other words, the possession of the unit was not physical possession, rather it was on paper, which would be no possession in the eye of law. The compensation in the circumstances has rightly been given to the appellant.

9. The appellant-allottee has also prayed for delay penalty under Section 18(1) of the Act 2016. In view of the decision rendered by the Hon'ble Supreme Court in *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P and Ors. (2021 SCC Online SC-1044)*,

wherein it has been held that an allottee, who has continued in the delayed project and not desired to withdraw from the project, is entitled to delay interest for which the forum is before the Regulatory Authority and not the Adjudicating Officer. For delay interest in handing over possession of the unit, Adjudicating Officer would lack jurisdiction.

10. In view thereof, the compensation at Rs.1,00,000/- awarded by the impugned order is reasonable as the appellant continued in the project and also would have the benefit of price escalation of the unit allotted to him.
11. The learned counsel for the appellant failed to point out any illegality, infirmity on jurisdictional error in the impugned order.
12. Having regard to the facts and circumstances of the case and for the reasons assigned, hereinabove, all the **appeals are dismissed**.
13. No order as to the costs.
14. The dismissal of the appeal, however, shall not preclude the appellants to file complaint before the competent forum for interest on the delayed project. In the event, the complaint is filed by the appellant within eight weeks from the date of uploading this order on the web-portal of the Tribunal, it is expected that the learned RERA Authority shall decide the same in accordance with law expeditiously, preferably within a period of four months, provided there is no other impediment.

(Rameshwar Singh)

(Sanjai Khare)

(Suneet Kumar)

Dated: 17.01.2025

Tanveer/-