

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-98/2023

U.P. AWAS EVAM VIKAS PARISHAD

.....Appellant

Versus

SHAILEE SINHASHAILEE SINHA

.....Respondent

Counsel for Appellant

N N PANDEY

Counsel for Respondent

AMIT YADAV

PROMOD KUMAR SINHA

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

Hon'ble Mr. Sanjai Khare, Judicial Member

Heard Shri N.N. Pandey, learned counsel for the applicant/appellant and Shri Amit Yadav, Advocate along with Shri Promod Kumar Sinha, Advocate for the respondent.

The learned counsel for the appellant submitted that the respondent filed a complaint before the Adjudicating Officer, seeking compensation on the ground of delay in possession and wrong information that the complainant/allottee detained Government accommodation and paid penalty rent. The submission of learned counsel for the appellant is that as per proviso to Section 18(1) of the Act 2016 if an allottee chooses to remain with the project and seek possession or take possession, then he is entitled for interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. Admittedly, the respondent after taking possession on 19.10.2020 filed complaint on 17.05.2022 seeking compensation.

The learned counsel for the appellant further submitted that an allottee can file claim for compensation on violation of the provisions of Sections 12, 14, 18 and 19 of the Act 2016 and in case the allottee chooses to take possession, then his/her claim for compensation is covered under the proviso to Section 18(3) of the Act 2016, which provides that if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations, made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under the Act.

The learned counsel for the appellant submitted that no violation of any rules and regulations have been made, as mentioned by the respondent, except delay in possession and the issue of penalty rent is neither covered under the Act nor as per the terms and conditions of Agreement. Hence, the impugned order is not sustainable in the eyes of law. The learned counsel for the appellant placed reliance

at para 86 of the judgment rendered by Hon'ble Supreme Court in M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. & Ors. [Civil Appeal No (s). 6745-6749 of 2021].

Shri Amit Yadav, learned counsel for the respondent submitted that the instant case is squarely covered by the Judgment of this Tribunal and submitted that it will be in the interest of justice that while setting aside the impugned order, liberty may be given to the respondent to approach the Regulatory Authority for seeking interest for delay.

Heard.

Judgement reserved.

(Sanjai Khare)

(D.K. Arora)

Dated: 21.05.2024
SYEDTANVEER