

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-21/2023

AIRFORCENAVALHOUSINGBOARD

.....Appellant

Versus

RISHI RAJ

.....Respondent

Counsel for Appellant

N A

HARSH VARDHAN

Counsel for Respondent

RAKESH KUMAR RANA

RIMJHIM RANA SINGH

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

Hon'ble Mr. Sanjai Khare, Judicial Member

Heard Sri Harsh Vardhan, learned counsel for the applicant, Sri Rakesh Kumar Rana, learned counsel for the respondent in majority of the connected cases and Sri Bharat Singh, respondent in person in Misc. Case No. 239/2020, listed at serial no. 106 of today's cause list on application for condonation of delay.

Learned counsel for the applicant submitted that in this bunch of 48 defective appeals, wherein except Appeal No. D 853/2022 [(Air Force Naval Housing Board Vs. Subhash Nain) (serial no. 79 of cause list)] and Appeal No. 854/2022 [(Air Force Naval Housing Board Vs. Rahul Mishra) (serial no. 80 of cause list)], delay in all the cases is covered by the order of Hon'ble Supreme Court in SUO MOTU WRIT PETITION No. (C) No. 3 of 2020.

Submission of the learned counsel for the applicant is that the applicant had filed appeal against the order of the Regulatory Authority dated 15.04.2019 before the Tribunal, listed as Misc. Case No. 360/2019 (Air Force Naval Housing Board Vs. Prateek Vashishtha), at serial No. 91 of today's cause list, a leading case in 16 connected complaints which were disposed by a single order. The said case was dismissed by this Tribunal vide order dated 28.02.2020 for noncompliance of provisions of Section 43 (5) of the Act 2016. Subsequently, 34 separate appeals were filed by depositing only 30% amount towards compliance in pursuance to the order of the Regulatory Authority, all the 34 cases/defective appeals were dismissed.

The applicant approached Hon'ble High Court by means of an appeal which was dismissed on 24.12.2022. The applicant challenged the order of Hon'ble High Court before Hon'ble Supreme Court, which was dismissed on 30.05.2022 with a liberty to the applicant to make the compliance of Section 43 (5) of the Act 2016.

Applicant, after arranging funds deposited required amount in 34 appeals with an application for recall which also includes leading appeal Misc Case No. 360/2019 (Air Force Naval Housing Board Vs. Prateek Vashishtha) appeal in the 16 complaints of the 34 recall applications were allowed and the appeals were restored to its original numbers.

The applicant further filed 15 appeals after depositing 100% amount in pursuance to the Section 43 (5) of the Act 2016, after arranging funds as the huge liability incurred on applicant on account of impugned order of the Regulatory Authority.

Submission of learned counsel for the applicant is that the delay in filing appeals is only on account of financial and other administrative difficulties and therefore the cases which are not covered by the order of Hon'ble Supreme Court in SUO MOTU WRIT PETITION No. (C) No. 3 of 2020, in the interest of justice, delay be condoned and the matter may be heard taking into consideration that in all cases filed by the applicant, the issue is only with respect to grant of interest for delay in possession and in all the cases of the applicant, the facts and issues are identical.

Sri Rakesh Kumar Rana, learned counsel for the respondent opposed the application for condonation of delay which are not covered by the order of Hon'ble Supreme Court in SUO MOTU WRIT PETITION No. (C) No. 3 of 2020 and submitted that the entire efforts of the applicant are to delay the proceedings and cause prejudice to the respective allottees.

Sri Bharat Singh, respondent in Misc. Case No. 239/2020 submitted that he has to say nothing on application for condonation of delay and the matter may be examined and disposed of expeditiously.

We have examined the submissions of learned counsels for the parties and Sri Bharat Singh, respondent in Misc Case No. 239/2020. Record reveals that delay is as under in the cases which are not covered by the order of Hon'ble Supreme Court in SUO MOTU WRIT PETITION No. (C) No. 3 of 2020:-

CAUSE LIST DATED 15.02.2024

Cause List Serial No.	Appeal/Misc. Case No.	Name of Parties	Delay (in days)
11	D 21/2023	Air Force Naval Housing Board Vs. Rishi Raj	1297
78	D 822/2022	Air Force Naval Housing Board Vs. Rajat Tomar	1280
79	D 853/2022	Air Force Naval Housing Board Vs. Subhash Nain	1280
80	D 854/2022	Air Force Naval Housing Board Vs. Rahul Mishra	1281
81	D 855/2022	Air Force Naval Housing Board Vs. Wg Cdr Hari Datt	1284
82	D 17/2023	Air Force Naval Housing Board Vs. Sushil Kumar Sharma	1285
83	D 22/2023	Air Force Naval Housing Board Vs. Gaurav Singh	1297
84	D 23/2023	Air Force Naval Housing Board Vs. Gp Capt Monish Yadav (Retd)	1299
85	D 368/2023	Air Force Naval Housing Board Vs. Wg Cdr Naveen Talwani	1282
86	D 369/2023	Air Force Naval Housing Board Vs. Wg Cdr Ashwani Jain	1284
87	D 370/2023	Air Force Naval Housing Board Vs. Amit Kumar	1284

Cause List Serial No.	Appeal/Misc. Case No.	Name of Parties	Delay (in days)
88	D 371/2023	Air Force Naval Housing Board Vs. Ajeet Singh	1284
89	D 591/2023	Air Force Naval Housing Board Vs. Pawan Arora	244
90	D 592/2023	Air Force Naval Housing Board Vs. CSA Gupta	242
91	360/2019 (Misc Case)	Air Force Naval Housing Board Vs. Prateek Vashishtha	32

On examination of the cause shown and pleadings on record as well as the controversy and similar issue of delayed interest is under challenge in all the cases, we are of the considered view that not allowing application for condonation of delay in the cases, which are not covered by the order of Hon'ble Supreme Court in SUO MOTU WRIT PETITION No. (C) No. 3 of 2020 despite of having similar issues, where the applicant/promoter is the same, will not be appropriate.

Therefore, in the larger interest we deem it proper, while disposing delay issue with respect to cases listed at serial nos. 11, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, and 91 of today's cause list, which are not covered by the order of Hon'ble Supreme Court in SUO MOTU WRIT PETITION No. (C) No. 3 of 2020, to condone the delay in these cases.

Accordingly delay in all the cases is **condoned**.

Registry is directed to convert the instant defective appeals/misc. cases into regular appeal.

Counsels for the parties are directed to make submission on the appeal.

Sri Harsh Vardhan, learned counsel for the appellant submitted that since issue in all appeals are identical hence Appeal No. 21/2023 (Air Force Naval Housing

Board Vs. Rishi Raj) listed at serial no. 11 of today's cause list be taken as leading appeal. Sri Rakesh Kumar Rana, learned counsel for the respondent has no objection to the request of learned counsel for the appellant hence we take Appeal No. 21/2023 (Air Force Naval Housing Board Vs. Rishi Raj) as leading appeal to examine the issues involved.

Sri Harsh Vardhan, after being repeatedly asked the grounds of challenging the impugned order of the Regulatory Authority and the violation of the provisions of the Act 2016 as well as judgments relied by him in support his submissions, after wasting 20 minutes submitted that vide composite order of the Regulatory Authority dated 10.04.2019, the interest for delay has been granted from 01.07.2012 till receipt of OC/CC or offer of possession @ MCLR+1%, whichever is later and in other bunch of 06 cases, leading case NCR1609/07/57088/2020 (Wg Cdr Sunil Rawat), Regulatory Authority vide order dated 19.02.2021 has granted interest as per agreement from 01.07.2012 to 20.04.2016 and @ MCLR +1% from 01.05.2016 till receipt of OC/CC or receipt of electrical safety certificate, fire safety certificate, structural safety certificate and lift installation certificate or offer of possession, whichever is later.

Similarly in bunch of 04 complaints, leading complaint No. NCR169/08/0096/2019 (Satish Kumar Sharma), Regulatory Authority vide order dated 07.02.2020 directed for payment of interest from 01.07.2012 till 30.04.2016 as per agreement and @ MCLR+1% from 01.05.2016 till receipt of OC/CC or offer of possession, whichever is later. Learned counsel for the appellant submitted that in allotment letter/agreement, there is no provision for interest in case of delay and hence in all the appeals the allottees will not be entitled for any interest from 01.07.2012 to 30.04.2016 and also in those cases where the interest has been granted @ MCLR+1% after 30.04.2016.

Learned counsel for the appellant at this stage was asked under what provisions, he is making such request and what grounds have been taken. Learned counsel for the appellant replied (page 24, Para 8 & 9) and memo of appeal. Learned counsel for the appellant was once again directed to address on the violation of

the provisions of the Act & Rules 2016 and the judgments relied by him. Learned counsel for the appellant did not respond to the query and also did not choose to place any judgment in support of his submissions with respect to challenge of orders passed by Regulatory Authority in various complaints in the connected matters.

Sri Rakesh Kumar Rana, learned counsel for the respondent submitted that appellant is not working at 'no profit, no loss' basis and is a society registered under society registration act. The Appellant are trying to mislead this Hon'ble Court by portraying it as a Registered Society under Society Registration Act 1860 but in fact the Appellants are covered under the definition of a promoter Under Section 2(zk) of RERA Act 2016, and involved in profit making by using the name of Air Force and Naval Housing Board. In this connection the registrar of Firm & Society has issued letter to the board dated 08.02.2022 regarding its non-compliance of Section 4 of Society Registration Act, 1860. The ground taken by the Appellant is an attempt to mislead the court by submitting false and fabricated pleas. Further submission of learned counsel for the respondent is that the appellant takes a share out of every self-financed housing scheme unit allotted to any allottee for the purpose of disbursing salary and various perks to its officers/workers/administrators working for Air Force Naval Housing Board. The Appellant is making profits through sale at different rates to Armed Forces personnel and to general public and also recovering miscellaneous charges such as Transfer charges, administrative charges etc., up to a value of 10 % of the total cost of the project. Apart from that the Appellant has parked the money of the complainant in their bank accounts since 2009 and even invested elsewhere and earned profit (para 18 & 19 of the objections of the respondent) and also placed before us the chart (annexure 1 of the objections of the respondent) indicting the various charges showed by the appellant in open market at higher rates. Learned counsel for the respondent submitted that there is no illegality and perversity in the order of the Regulatory Authority and the appeal deserves to be dismissed.

Sri Bharat Singh, respondent in Misc. Case No 239/2020 appeared in person and made his submissions.

Learned counsel for the appellant in his reply to choose to give any reply to the submissions of the respondent appearing in person as well respondents in other appeals except that the price was tentative and it was subject to revision and was to be determined at the time of final possession.

Sri Rajkumar Mishra, put in appearance on behalf of respondent in Misc. Case No. 229/2020 (Air Force Naval Housing Board Vs. Dharmendra Kumar) and Case No. 240/2020 (Air Force Naval Housing Board Vs. Suneel Tyagi).

Sri Ramakant Gupta, put in appearance on behalf of respondent in Misc. Appeal No. D 868/2021 (Air Force Naval Housing Board Vs. Wg Cdr Suneel Rawat), Appeal No. D 869/2021 (Air Force Naval Housing Board Vs. Cdr Ravi Inder Singh), Appeal No. D 941/2021 (Air Force Naval Housing Board Vs. Vinod Kumar Sharma), Misc Case No. 273/2020 (Air Force Naval Housing Board Vs. Rakesh Chander Saxena), Misc Case No. 235/2020 (Air Force Naval Housing Board Vs. Bijendra Singh), Misc Case No. 236/2020 (Air Force Naval Housing Board Vs. Angela Bhasin), Misc Case No. 237/2020 (Air Force Naval Housing Board Vs. Commodore Chitrapu Uday Bhaskar) and Misc Case No. 225/2020 (Air Force Naval Housing Board Vs. WC Cdr Sirohi).

Heard.

Judgment Reserved.

(Sanjai Khare)

(D.K. Arora)

Dated: 15.02.2024
MANSINGH