

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-282/2024

PANKJ BHARGAVA

.....Appellant

Versus

M/S KRISHNA ESTATE DEVELOPERS PVT LTD

.....Respondent

Counsel for Appellant

KSHEMENDRA SHUKLA

Counsel for Respondent

HARISH PANDEY

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Rameshwar Singh, Administrative Member

Hon'ble Mr. Devindar Singh Chaudhry, Technical Member

Heard Sri Kshemendra Shukla, learned counsel for the appellant and Sri Harish Pandey, learned counsel for the respondent.

The appellant allottee had initially, filed a complaint in 2020 which came to be allowed by the Regulatory Authority vide judgment dated 23.06.2020, directing possession of unit and delayed interest thereon. The order was put to execution and on 14.10.2022, recovery certificate for Rs.11,74,708/- came to be issued to recover the delay interest. The respondent made an offer of possession of the unit on 02.04.2024. During the pendency of execution proceeding a complaint came to be filed by the respondent against the appellant allottee with prayer to deposit the outstanding dues towards sale consideration and other expenses . The complaint came to be disposed of by Regulatory Authority, vide judgment dated 11.03.2024, directing the respondent promoter to handover possession of the unit after receiving the amount along with interest thereon. Aggrieved, appellant allottee has preferred the present appeal.

During the pendency of appeal, the respondent promoter has executed a sale deed of the unit in dispute to a third party on 27.09.2024 in breach of the decree dated 23.06.2020.

Learned counsel for the appellant allottee submits that the appellant had booked a flat on 23.03.2010 in the respondent project. The sale consideration of the unit was at Rs.19,01,750/- against which the appellant deposited Rs.17,16,975/-. The project was to be completed within 36 months, plus minus, six months i.e., by August, 2015. Learned counsel for the appellant submits that respondent promoter committed fraud; the subsequent complaint instituted by the respondent was not maintainable. The rights of the parties stood crystalised and frozen vide judgment and order dated 23.06.2020. The respondent promoter could not have circumvented the decree by cancelling the unit and, thereafter creating third party right on the unit. It is, therefore, submitted that subsequent third party right on the unit, by-passing the decree, is nullity in the eyes of law. The issue, if any, amount was outstanding against the appellant could have been raised by the promoter in execution proceeding and by not filing a subsequent complaint.

The learned counsel for the respondent on being confronted submits that an effort shall be made to settle the issue with the appellant allottee.

On the request of learned counsel for the respondent, list this matter on 15.05.2025.

(Devindar Singh Chaudhry)

(Rameshwar Singh)

(Suneet Kumar)

Dated: 21.04.2025
RAJNEESHPS