

**THE U.P. REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW**

Appeal No : 732/2021

Natwar Agarwal.....Appellant

Versus

Golfgreen Infra Pvt. Ltd. (Mahagun Group).....Respondent.

Complaint No: NCR144/09/0458/2019

**Impugned Order Dated : 24-02-2021, passed under Section 63 of the Act, 2016
&**

Recovery Citation Dated : 06-08-2021, issued under Section 40 of the Act, 2016

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri Saurabh Mishra, learned counsel for the appellant.
2. No one has put in appearance on behalf of respondent.
3. This Tribunal vide order dated 30-09-2024 had clarified that on the next date, no further adjournment will be granted.
4. The appellant allottee by this instant appeal has assailed the order dated 06-08-2021, passed by the learned Regulatory Authority at Gautam Budh Nagar, in execution proceedings arising from complaint No. NCR144/09/0458/2019.
5. Facts as culled out from the memo of appeal in this case are that the respondent had launched a Group Housing Residential Complex named as 'Mahagun Mirabella' in 2013. The appellant on his application dated 03-07-2014 was allotted Flat on 19-08-2014 being Apartment No. 2217 on 22nd Floor in LATINA Tower. The cost of the apartment was at Rs. 71,82,702/- including taxes. Appellant deposited 97% of the total cost i.e. Rs 69,34,928/- with the respondent. The project was delayed. Aggrieved, appellant preferred a

complaint being **Natwar Agarwal Vs. Golfgreen Infra Pvt. Ltd. (Mahagun Group) (NCR144/09/0458/2019)** before the Regulatory Authority on 05-09-2019 seeking refund along with the interest thereon. The complaint came to be disposed of vide order dated 27-11-2019 directing the respondent to handover possession of the allotted apartment by 31-12-2019 upon obtaining Occupancy Certificate (OC)/Completion Certificate (CC) from the relevant Competent Authority and thereafter get the conveyance deed executed. The Regulatory Authority further directed payment of interest @ MCLR+1% to the allottee to be calculated from 01-04-2018 till the date of receipt of OC/CC or the date of offer of possession, whichever is later. The Regulatory Authority further provided that if the respondent fails to deliver the possession of the apartment by 31-12-2019, then in that event the entire amount, deposited by the appellant, along with the prescribed rate of interest, thereon, will have to be refunded to the appellant.

6. The respondent failed to deliver the possession as directed by the Regulatory Authority and also failed to refund the deposited amount along with interest thereon. Aggrieved, appellant approached the Regulatory Authority by filing an application for execution of order dated 27-11-2019. The respondent, pursuant to the notice, issued under Section 63 of Real Estate (Regulation & Development) Act, 2016 (Act 2016) filed objections, inter alia, stating that the offer of possession dated 31-01-2020, was sent to the appellant which was received by the appellant on 07-02-2020. Having regard to the objections of the respondent, the Regulatory Authority vide impugned order dated 24-02-2021, was of the opinion that since the project of the respondent falls in the category of “deemed completion”, therefore, in such a situation, it will be appropriate that the complainant/appellant takes possession of his allotted unit and gets the conveyance deed executed. Further, directions were issued to recover the delayed interest at Rs. 10,64,180.19/- from the respondent promoter. In compliance of the impugned order dated 24-02-2021, recovery citation dated 06.08.2021 was issued under Section 40 of the Act 2016 by the Secretary RERA.
7. The following questions arise for adjudication:

- (1) As to whether the Executing Authority can travel beyond the order/decreed, put to execution that came to be passed by the Regulatory Authority in the complaint;
- (2) Whether deemed OC/CC, without obtaining required NOCs, mandated in the Building Bye-laws/Regulations of the relevant Competent Authority would be valid and legal to bind the allottee.

Question No. (1)

8. We are required to examine as to whether the Executing Authority can travel beyond the order/decreed, put to execution of the order, passed by the Regulatory Authority.
 - 8.1. Learned counsel for the respondent submits that the Regulatory Authority in execution proceedings has proceeded and travelled beyond the ambit and scope of judgement/order dated 27-11-2019, wherein, the Regulatory Authority had categorically provided that in the event, the promoter fails to deliver possession by 31-12-2019 after obtaining OC/CC, the entire amount, paid by the appellant shall be refunded along with the interest thereon at the rate prescribed. The OC/CC admittedly was received after the date aforementioned.
 - 8.2. Learned counsel for the appellant submits that appellant is no longer interested in the delayed project, therefore, as per the order and decree of the Regulatory Authority, was seeking compliance of the direction of 'refund along with interest'. It has been submitted that the Regulatory Authority in execution proceedings has erred in law by modifying the order/decreed in execution proceedings. The execution of order should have been complied fully as admittedly the respondent promoter failed to honour the commitment of possession of the apartment by the stipulated date. The appellant in that event had a choice to withdraw from the project.
 - 8.3. Facts and circumstances of the case is not in dispute *inter se* parties. Appellant had obtained a decree from the Regulatory Authority directing the respondent to handover possession till 31-12-2019 and in the event, possession of the apartment is not handed over till then, appellant shall be entitled to refund of the deposited amount and interest

thereon. It is not disputed that the apartment was not handed over by the respondent till 31-12-2019, therefore, the Regulatory Authority in execution proceedings exceeded its jurisdiction going beyond the order/decreed and directing handing over for possession of the apartment to the allottee, without carefully perusing the record that the requisite NOCs were received by the respondent subsequent to the date the respondent filed an application before the Competent Authority for issuance of OC/CC.

8.4. The issue of pleadings, prayer & moulding of reliefs have been examined time & again by Hon'ble Supreme Court as well as by the Judicial Forums holding therein that the rights of the parties stand crystallized on the date of institution of the proceeding and no party should be permitted to travel beyond the pleadings & prayer.

8.5. **In Bhagwati Prasad vs. Shri Chandramaul AIR 1966 SC 735**, the Hon'ble Supreme Court was pleased to observe that:-

“The importance of the pleadings cannot, of course, be ignored, because it is the pleading that lead to the framing of issues and a trial in every civil case has inevitably to be confined to the issues framed in the suit. The whole object of framing the issues would be defeated if parties allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues.”

8.6. In the case of **Krishna Priya Ganguly and Anr. vs. University of Lucknow and Ors. reported in 1984 SCC 307**, while dealing with a matter arising out of a writ petition where the writ-petitioners prayed for merely consideration of his case for admission, pleased to observe that a court cannot go a step further and grant the relief which the petitioner did not ask for. The relevant portion of the report is extracted:

“Finally, in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightaway issued a writ of mandamus directing the college to admit him to the M.S. course and thus granted a relief to

the respondent which she herself never prayed for and could not have prayed for.”

8.7. The Hon’ble Supreme Court in the case of **Bachhaj Nahar Vs Nilima Mandal & Ors; reported in (2008) 17 SCC 491**, was pleased to observe that a Court cannot make out a case not pleaded. The Court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

8.8. **In Om Prakash Vs. Ram Kumar (1991) 1 SCC 441**, the Hon’ble Supreme Court observed that:-

“A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute.”

8.9. Refer : **Shiv Kumar Sharma Vs. Santosh Kumari (2007) 8 SCC 600**.

8.10. The issue was again examined by the Hon’ble Supreme Court in **‘Bharat Amratlal Kothari and Anr. Vs. Dosukhan Samadkhan Sindhi and Ors.; (2010) 1 SCC 234’** wherein it was held that:

“Though the Court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

8.11. In Messrs. **Trojan & Co. Vs. R.M.N.N. Nagappa Chettiar AIR 1953 SC 235**, Hon’ble Supreme Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

8.12. In **Fertilizer Corporation of India Ltd. & Anr. Vs. Sarat Chandra Rath & Ors., AIR 1996 SC 2744**, Hon'ble Supreme Court held that the High Court ought not to have granted reliefs to the respondents which they had not even prayed for.

8.13. In view of the above, law on the issue can be summarised that the Court cannot grant a relief which has not been specifically prayed by the parties.”

8.14. The instant issue/question is required to be examined in the light of the aforementioned legal propositions.

We examined the complaint dated 05.09.2019 of the appellant filed before the Regulatory Authority (Annexure No. 9 of the Appeal). Perusal of the same reveals that the appellant had sought relief for refund of his money with interest of a delayed project, whereas, the Regulatory Authority directed the Promoter/respondent to handover the possession of the plot in question to the complainant/appellant/allottee failing which the appellant would be entitled to refund and interest thereon.

8.15. It is evident from the admitted facts, narrated herein above, the Executing Authority had modified the judgement/order dated 27-11-2019, passed by learned Regulatory Authority and granted relief that was neither prayed for, nor, pressed by the appellant allottee before learned Regulatory Authority. It is not the case of the Executing Authority, on perusal of the impugned order, that the order/decreed, passed by learned Regulatory Authority cannot be executed. In the circumstances the Executing Authority should have executed the order of the complaint to its logical end i.e. refund of the amount along with interest. **Question No. (1)** is accordingly answered.

Question No. (2).

9. We are required to examine as to whether ‘deemed’ OC/CC, without obtaining required NOCs, mandated in the Building Byelaws/Regulations would be valid and legal to bind the allottee/Regulatory Authority.

9.1. It has been submitted that the respondent promoter filed an application before the Competent Authority on 22-06-2019 for OC/CC without

obtaining No Objection Certificates (NOCs) from the various authorities/agencies, viz 'Structural Engineering Certificate', 'Fire and Life Safety Certificate', 'Electricity Safety Certificate' & 'Lift Installation Certificate'. It is further submitted by the learned counsel for the appellant that 'Structural Engineering Certificate' was obtained by the respondent promoter on 10-07-2019, 'Fire and Life Safety Certificate' on 24-07-2019, and 'Electricity Safety Certificate' on 02-08-2019 i.e. after the date of application. The learned counsel for the appellant has further submitted that without obtaining the above noted certificates, application for obtaining CC for the project could not have been filed before the Competent Authority, thus, respondent misrepresented before the Competent Authority and fraudulently obtained deemed CC.

9.2. In given facts and circumstances, it has been submitted that the claim of the respondent of obtaining deemed OC/CC of the project is merely an eyewash to cause injury to the appellant. The respondent had submitted an application for OC/CC before the Competent Authority, which was in fact without submitted being in receipt of requisite NOCs from the concerned authorities. The required NOCs were obtained subsequent to the making of the application on 22-06-2019, for OC/CC. In this background, learned counsel for the appellant submits that the appellant is entitled to receive his deposited amount and delayed interest thereon, at prescribed rate in terms of Section 18 (1) of the Act 2016. In support of his submissions, learned counsel for the appellant placed reliance on the decision of this Tribunal rendered in the case of **Gaurav Upadhyay Vs Golfgreen Infra Pvt. Ltd (Appeal No. 116/2021)**, decided on 29-05-2023, to contend that the facts with regard to the OC/CC and requisite NOCs having not been obtained by the same respondent, have been taken notice of by this Tribunal in paragraphs 15.2 to 15.7 of the report. In paragraph 15.7, this Tribunal recorded a finding that the order of the Regulatory Authority in such circumstances is not only illegal/perverse but also against the record.

9.3. In other words the application for obtaining OC/CC could not have been filed by the respondent before the Competent Authority without being supported, inter alia, by the following certificates issued by the

Competent Authority after inspection of the site/project; (i) Structural Engineering Certificate, (ii) Fire and Life Safety Certificate, (iii) Electricity Safety Certificate and, (iv) Lift Installation Certificate which is duly mandated under the Regulations framed by the relevant Development Authorities.

9.4. In this regard the provisions of the following relevant Acts/Rules/Regulations with regard to OC/CC are extracted:-

9.4.1. Section 4 (5) of the U.P. Apartment (Promotion... Maintenance) Act, 2010. *An apartment may be transferred, by the promoter, to any person, only after obtaining the Completion Certificate from the Prescribed Sanctioning Authority concerned, as per building Bye-Laws. The completion certificate shall be obtained by the promoter from the prescribed authority within the period specified for completion of the project in the development permit, or the building permit, as the case may be;*

Provided that, if the construction work is not completed, within the stipulated period, with the permission of the Prescribed Authority;

Provided further that, if the Completion Certificate is not issued by the Prescribed Sanctioning Authority, within three months of submission of the applications, by the promoter, complete with all certificates and other documents required, the same shall be deemed to have been issued, after the expiry of three months.

Explanation: *For the purpose of this sub-section “completion” means the completion of the construction works of a building, as a whole, or the completion of an independent block of such building, as the case may be.*

9.4.2. Chapter V Section 15-A of U.P. Urban Planning and Development Act, 1973:

[15-A. Completion Certificate-(1) *Every person or body having been granted permission under Sub-section (3) of Section 15,*

shall complete the developments according to the approved plan and sent a notice in writing of such completion to the Authority, and obtain a completion certificate from the Authority in the manner prescribed or provided in the by-laws of the Authority:

Provided that if completion certificate is not granted and refusal to grant if is not intimated within three months after receipt of the notice of completion, it shall be deemed that the completion certificate has been granted by the Authority.

(2) No person shall occupy or permit to be occupied any commercial building or use of permit to be used such building or part thereof affected by any work until:-

- (a) completion certificate has been issued by the Authority, or*
- (b) Authority has failed for three months after the receipt of the notice of completion to intimate its refusal of grant of the said certificate.*

Explanation – *for the purposes of this section, the expression ‘commercial building’ shall have the meaning assigned to it in the Uttar Pradesh Municipal Corporations Act, 1959.]*

9.4.3. Chapter II, of Greater Noida Industrial Development Area Building Regulations, 1992 extracted:

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- 22. Notice of completion.-** *Every owner shall have to submit a notice of completion of the building to the Authority regarding completion of work described in the building permit in the proforma given in Appendix of accompanied by three copies of the completion plan.*
- 23. Occupancy certificate necessary for occupation.-** *No building erected, re-erected or altered, shall be occupied in whole or part until the issue of occupancy certificates by the Chief Executive Officer in the form given in the*

Appendix 6. Provided that if the Chief Executive Officer fails to issue the occupancy certificate or send any intimation showing his inability to issue such certificate within 30 days of the date of receipt of completion certificate, the building may be occupied without waiting for such certificate. Intimation to this effects shall have to be sent to the Authority by the owner before occupying the same.

24. *In case of buildings identified in Clause 6 (2) (ii) of the work shall also be subjected to the inspection of the Chief Fire Officer, U.P. Fire Services and the occupancy certificate shall be issued by the Authority only after the clearance from the Chief Fire Officer regarding the completion of work from the fire protection point of view.”*

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- 9.5. Similar provision has been mandated in ‘Greater Noida Industrial Development Area Building Regulations, 1992’ (refer Regulation 23), framed under ‘U.P. Industrial Area Development Act, 1976’ (U.P. Area Development Act, 1976).
- 9.6. ‘Greater Noida Industrial Development Area Building Regulations, 2002, wherein, it mandates that ‘Occupancy Certificate’ is necessary for occupation. Similar provisions are contained in Regulations framed by the different Development Authorities, namely, Regulation 18 of the Ghaziabad Development Area Building Regulations 2002; Regulation 20.1.1 of ‘New Okhla Development Area Building Regulation 2010’.
- 9.7. Act 2016, mandates and casts on obligations on the promoter to obtain OC/CC from the relevant Competent Authority.

9.7.1. Chapter III, Section 11(4) (b) of Real Estate (Regulation & Development) Act, 2016. *The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or*

both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be.

9.7.2. Chapter IV, Rule 14 of the The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016.

(d) The promoter shall upload the following updates on the webpage for the project, within seven days from expiry of each quarter:

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(iv) Status of approvals:

(A) Approval received;

(B) Approvals applied and expected date of receipt.

(C) Approvals to be applied and date planned for application;

(D) Modifications, amendment or revisions, if any, issued by the competent authority with regard to any licence, permit or approval for the project.

(e) Downloads:

(v) Approvals:

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(G) Authenticated copy of occupancy certificate/completion certificate including its application.

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- 9.8. The Regulations and Building Bylaws as enacted by various Competent Authorities mandates that promoter is required to make an application in the prescribed form for obtaining OC/CC duly supported by the mandated NOCs which include, 'Structural Engineering Certificate', 'Fire and Life Safety Certificate', 'Electricity Safety Certificate' & 'Lift Installation Certificate'. In other words, any application filed by the promoter before the Competent Authority for obtaining OC/CC without having obtained mandatory clearance/NOCs, as prescribed under the Building Bylaws/Regulations is a fraud, committed by the promoter, not only with the relevant Competent Authority but also with the allottee. In such circumstances, learned Regulatory Authority has to exercise utmost caution where the promoter approaches stating that it has obtained deemed OC/CC. In that event, learned Regulatory Authority should enquire as to whether the deemed OC/CC has been obtained after having the clearance of the requisite NOCs.
10. Having regard to the facts and circumstances, we are of the opinion that the deemed OC/CC obtained by the respondent without having the necessary 'No Objections Certificates' (NOCs) would neither bind the Regulatory Authority nor the allottee. Such OC/CC is a nullity in the eye of law and cannot be acted upon. The question is accordingly answered.
11. The appeal succeeds, accordingly is **allowed** by passing the following orders:
- (i) Impugned order dated 24-02-2021 passed by the Regulatory Authority under Section 63 in execution proceedings and Recovery Citation dated 06-08-2021, issued pursuant thereof under Section 40 of the Act 2016 are **set aside and quashed**;
 - (ii) Regulatory Authority is directed to execute the order dated 27-11-2019, by issuing recovery certificate to recover the principal amount along with prescribed interest thereon till the date of payment by the respondent to the appellant allottee;

- (iii) Regulatory Authority is directed to proceed against the respondent promoter for imposition of penalty under Chapter VIII of Act 2016 for having fraudulently obtaining OC/CC;
- (iv) Cost of litigation assessed at Rs. 50,000/- (Rupees fifty thousand only) to be paid by the respondent to the appellant within 30 days from the date of uploading of this order on the web portal of this Tribunal failing which same shall also be recovered in the execution proceedings.

Dated: 25.10.2024 (Rameshwar Singh) (Sanjai Khare) (Suneet Kumar)
M. Singh