

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

1. Appeal No. 571/2022

Pawan Kumar PandeyAppellant.

Versus

Super City Developers Pvt. Ltd.Respondent.

WITH

2. Appeal No. 572/2022

SunilAppellant.

Versus

Super City Developers Pvt. Ltd.Respondent.

3. Appeal No. 573/2022

Urmila SamarthAppellant.

Versus

Super City Developers Pvt. Ltd.Respondent.

4. Appeal No. 574/2022

Renu BaijalAppellant.

Versus

Super City Developers Pvt. Ltd.Respondent.

5. Appeal No. 576/2022

Sudarshan Chakker RawatAppellant.

Versus

Super City Developers Pvt. Ltd.Respondent.

AND

6. Appeal No. 577/2022

Ravi Kumar Choudhary

.....Appellant.

Versus

Super City Developers Pvt. Ltd.

.....Respondent.

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

Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. Heard Shri Saket Jain, learned counsel for the appellants and Shri Amit Yadav, learned counsel for the respondent.
2. This is a bunch of six appeals filed independently against the composite order dated 07.06.2022 passed by the Regulatory Authority in Complaint No. 144/08/79951/2021 (Pawan Kumar Pandey Vs. Super City Developers Pvt. Ltd.), whereby the complaints of the appellants were rejected relying on the judgment of NDRC passed in the case of Rashid Ahmad Usmani & 8 Ors. Vs. DLF Limited. While relying on the said judgment, the Regulatory Authority observed that after execution of tripartite lease deed/Registry and taking possession, the appellants do not fall in the category of allottee. Therefore, appellants' complaints also do not fall under Section 18 of the Act 2016.
3. As the appellants' appeals were disposed of by a composite order dated 07.06.2022, therefore, we treat Appeal No. 571/2022 (Pawan Kumar Pandey Vs. Super City Developers Pvt. Ltd.) as leading appeal.
4. The brief facts of the case are that the respondent/promoter launched its Group Housing Complex known as "Mayfair Residency" situated at Plot No. GH-07, Sector-Techzone IV, Greater Noida, District-Gautam Buddha Nagar, U.P. and invited for sale of Flats in its residential scheme through various mode of advertisement. Initially Flat/Unit No. A 401 was booked by the appellant and the same was confirmed by the respondent. An allotment letter was signed between the appellants and the respondent and thereafter a Builder

Buyer Agreement was also signed between the Appellants and the respondents. The appellants paid the entire amount and there is no dispute about that.

- 4.1 The appellants had taken the possession of their allotted Flat/Unit after the execution of agreement to sub lease deed under duress, although there was a substantial delay on the part of the respondent in handing over the possession of the Flat/Unit. The appellants were under the burden of rent and EMI and having invested their hard earned money in buying the Flat/Unit in this Project were forced to take the possession and before taking the possession, the appellants protested about the basic amenities against the respondent. The respondent given assurance that it was only a temporary state of affairs and everything will be fixed soon. The respondent had assured that it will soon get the Occupancy Certificate from the competent authority but till date no Occupancy Certificate has been issued to the respondent and the respondent's application for issue of OC has been rejected by the competent authority.
- 4.2 After taking possession, the appellants found that the entire project was in dilapidated condition and even basic facilities were not provided by the respondent. The appellants approached the Regulatory Authority by filing complaint and the Regulatory Authority passed the impugned order dated 07.06.2022, whereby the complaints of the appellants were rejected. Feeling aggrieved by the impugned order, the appellants have approached this Tribunal and pray for setting aside the impugned order dated 07.06.2022.
5. The submission of learned counsel for the appellant is that the appellant was allotted a unit in the Project of the respondent vide Allotment Letter dated 04.03.2013 and construction was likely to be completed within 36 months. The respondent offered possession without OC/CC and agreement to sub-lease deed with possession was executed on 07.03.2019, specifically stating in clause 6(g) that the lessee has handed over the vacant physical peaceful possession of the premises in question to sub lessee on the spot.

- 5.1 As in the project there were lot of discrepancies and amenities promised through Brochure were not provided to the allottees, therefore, 11 complaints were filed by the different allottees raising grievance with respect to not providing basic amenities, specially with respect to not having permanent electricity connection, providing single elevator instead to two as promised in each tower, security, CCTV camera, not obtaining OC/CC from the competent authority, demanding maintenance charges, not providing proper arrangement of drinking water, cleanliness, covered parking, sewage treatment plant, fire fighting system, boundary wall, street light, club, common area light and recreational club etc.
- 5.2 For the sake of convenience and in order to demonstrate the discrepancies in the project, which were required to be provided by the respondent, along with complaint a detailed chart with relevant issues was also submitted before the Regulatory Authority, but the Regulatory Authority without examining any of the grievances, rejected the complaint on the ground that after execution of conveyance deed and taking possession, the complainants do not fall in the category of allottee. Therefore, the appellants are constrained to approach this Tribunal assailing the order dated 07.06.2022 of Regulatory Authority.
- 5.3 The learned counsel for the appellant drawn our attention towards highlights and specification mentioned in the Brochure and the amenities and facilities which were required to be provided by the respondent. The learned counsel for the appellants also drawn our attention towards objections of the various authorities like electricity department with respect to continuance of temporary electricity connection, drawing ground water instead of taking water connection and the proceedings are also pending against the respondent before the concerned forums.
- 5.4 As the grievance of the appellants has not been examined, therefore, prayer has been made for setting aside of the order of the Regulatory Authority with further prayers to (i) obtain OC/CC

from the competent authority as per the provisions of Section 17 of the Act 2016 (ii) not to charge any maintenance from the appellants until the Occupancy Certificate is obtained from the competent authority and write off any outstanding and penalties for non-payment of maintenance billed to the appellants as on the date completely (iii) directing the respondent to install a permanent Electricity Grid/Transformer as per the required load of the project sanctioned in the electrical drawing submitted to Greater Noida Industrial Development Authority and upload on the website of Regulatory Authority (iv) to direct the respondent to provide fire safety equipment and take fresh NOC from the Fire Department (v) to direct the respondent to provide two elevators and all other basic facilities i.e. clean water, STP, CCTVs, proper and allocated covered parking, swimming pool, park club, courts etc. as promised in the Brochure and BBA.

6. Shri Amit Yadav, learned counsel for the respondent submitted that appellants were never provided possession, but it was a fit out possession taken by the appellants on their free will.
7. On being shown the agreement to sub-lease deed with possession, the learned counsel for the respondent accepted that the possession has been given to the respective allottees without having OC/CC from the competent authority. The learned counsel for the respondent further submitted that the application of the respondent for OC/CC was rejected by the competent authority on 27.08.2021. On being further asked by the learned counsel for the respondent that how he supports the impugned order of the Regulatory Authority, the learned counsel for the respondent fairly submitted that the complainants fall under the definition of allottee and the Regulatory Authority ought to have examined their grievance instead of rejecting the complaints.
8. We have examined the submissions of learned counsels for the parties and perused the record.
9. The admitted position is that an agreement to sub-lease deed with possession was executed between the parties on 07.03.2019 and

the possession of the unit was also given. It is also evident from the record that the amenities and facilities promised in the Brochure were not provided by the respondent and apparently the project is still not complete. Without making any observation regarding taking possession by executing agreement to sub-lease deed with possession, we are of the considered view that the Regulatory Authority wrongly placed reliance on the judgment of NDRC rendered in the case of Rashid Ahmad Usmani & 8 Ors. Vs. DLF Limited, wherein it has been held that the complainants who have executed the conveyance deeds and thereby terminated the ABA and discharged the opposite parties of their liabilities, are not consumers within the meaning of Consumer Protection Act and therefore, not entitled to any relief.

- 9.1 Under the provisions of Act 2016 the term ‘allottee’ has been defined. The relevant Section 2(d) of the Act 2016 reads as follows:

2(d). “Allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”

- 9.2 The definition of “allottee” clearly provides that allottee with respect to real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter. Therefore, in our considered view even after execution of conveyance deed or agreement to sub-lease deed with possession, as in the instant case, the status of the concerned allottee will remain as of allottee, if there is a violation of the provisions of the Act, Rules or Regulations made thereunder as well as provisions of Allotment, Agreement for Sale or anything promised through advertisement or brochure and said

person/allottee can approach the Regulatory Authority raising his grievance as per the provisions of Act & Rules 2016.

- 9.3 The Regulatory Authority was under obligation to examine the grievance raised in the complaints and decide in accordance with the provisions of Act and Rules 2016.
- 9.4 As far as Judgment relied by the Regulatory Authority in the case of Rashid Ahmad Usmani & 8 Ors. Vs. DLF Limited is concerned, the same is also misconceived as the said judgment was appealed before the Hon'ble Supreme Court in the case of Wg. Cdr. Arifur Rahman Khan & Ors. Vs. DLF Southern Homes Pvt. Ltd. and the Hon'ble Supreme Court pleased to observe that even claim for compensation of an allottee does not wash away after execution of conveyance deed and taking possession. As the Regulatory Authority failed to examine the grievance of the appellants and the order was passed against the provisions of Act and Rules 2016, **we set aside the order of Regulatory Authority dated 07.06.2022 and remand the matter back to the Regulatory Authority** to be decided expeditiously.
10. Accordingly, all the six appeals, as mentioned above, are **allowed**.
11. The Registrar of this Tribunal is directed to send copy of this order to the Secretary of Regulatory Authority to be placed before the concerned Bench of the Regulatory Authority.
12. The parties are directed to appear before the concerned Bench of Regulatory Authority on 15.09.2023.

Dated: 23.08.2023

Tanveer/-

(K.K. Jain)

(D.K. Arora)