

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-738/2021

GREATER Noida Industrial Development Authority

.....Appellant

Versus

Charanjit Kaur Charanjit Kaur

.....Respondent

Counsel for Appellant

Ajay Kumar Gupta

Counsel for Respondent

Siddharth Vikram Asthana

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

Hon'ble Mr. K.K. Jain, Technical Member

Heard the parties on the application for condonation of delay.

The submission of learned counsel for the applicant is that order dated 17.07.2020 passed by the Regulatory Authority was uploaded on the webpage of U.P. RERA and communicated to the parties on 12.08.2020 and the limitation for filing appeal was up to 16.10.2020, whereas the instant appeal has been filed on 26.10.2021. The submission of learned counsel for the applicant is that the issue of condonation of delay is squarely covered by the Judgment of Hon'ble Supreme Court passed in *Suo Motu Writ Petition (Civil) No. 3 of 2020*.

The learned counsel for the respondent fairly admitted that the issue of condonation of delay is squarely covered by the judgment of Hon'ble Supreme Court, therefore, appropriate order be passed on the application for condonation of delay.

We have examined the submission of learned counsels for the parties and perused the application.

Admittedly, the issue of delay in filing the appeal against the impugned order dated 17.07.2020 is squarely covered by the judgment and order passed by the Hon'ble

Supreme Court in Suo Motu Writ Petition (Civil) No. 3 of 2020. Accordingly, **we allow the application for condonation of delay** and the delay in filing the appeal is hereby condoned. The Registry is directed to convert this defective appeal into regular appeal.

With the consent of learned counsels for the parties, we proceed to hear the appeal on merit.

Shri Rishindra Vikram Singh, learned counsel for the appellant submitted that though instant appeal has been filed by the Greater Noida Industrial Development Authority (GNIDA) taking various grounds but he is pressing Ground No. viii, ix and x. The learned counsel for the appellant in order to press ground no. x drawn our attention on chart at page 46 of the Brochure, wherein the cost of built-up house has been mentioned as tentative cost. A query was made from learned counsel for the appellant as to whether there is specific clause in the Brochure for costing of the unit and that will be done at the time of offer of possession. The learned counsel for the appellant fairly submitted that there is no clause in the brochure.

On examining the submission of learned counsel for the appellant, we checked the issues framed by RERA on the complaint of the respondent, wherein issue no. 2 has been framed with respect to enhanced cost of unit to the tune of Rs. 5,18,895/- and the same was answered by the RERA stating therein that from the perusal of Para-A of the Brochure wherein in the chart various details have been mentioned and cost of unit has been shown as tentative, which makes it clear that complainant was required to pay enhanced cost after making the complainant aware about the cause of enhanced cost of the unit with evidences by the promoter.

The learned counsel for the appellant was asked as to whether there is any evidence in his favour with respect to enhanced cost which was required to be given to the allottee/complainant while demanding the same from the allottee and if not, then why this ground (ground no. x) has been taken for challenging the impugned order. The learned counsel for the appellant submitted that the appellant is aggrieved with the direction of providing evidence and the said direction should not have been issued by the Regulatory Authority while deciding issue no. 2. The learned counsel for the appellant submitted that in the Brochure, it has been mentioned that the possession is likely to be offered to the allottees within a period of three years from the date of issue of allotment letter, thus the possession date was not fixed and firm. Therefore, the date of offer of possession cannot be treated as 04.07.2019.

The learned counsel for the appellant further submitted that the RERA has not examined the objection of the appellant/promoter in response to the complaint of the respondent/allottee with respect to ban imposed by the authorities on account of which the project could not be completed in time. The learned counsel for the appellant was asked as to under what provision of the Act and Rules, the Regulatory Authority was required to examine the issue of ban imposed on the promoter while examining the complaint under Section 31 of the Act. The learned counsel for the appellant drawn our attention at para-14 of the objection filed in the cross appeal of the allottee, wherein in paras 6 and 7, it has been mentioned that possession was offered to the allottee on 04.07.2019 with a request to execute the lease deed within six months without payment of any delay penalty.

The learned counsel for the appellant was asked as to when the project in question was to be completed and when the requisite certificates have been applied before submitting an application for issuance of OC/CC by the competent authority of the

appellant itself. The learned counsel for the appellant submitted that there is no correspondence on record, but temporary OC/CC was issued by the competent authority on 08.09.2020, which is on record at page 80 of the appeal. On examination of Temporary OC/CC dated 08.09.2020, a defect with respect to Environment (EIA) NOCs was required to be submitted by the appellant and the temporary OC was for 18 months for the project in question subject to condition the defect/discrepancies mentioned in the same will get corrected and a fresh completion certificate will be submitted to the Chief Executive Officer for further necessary action. The learned counsel for the appellant is not aware of the environment clearance and also not aware about submission of application for issuance of completion certificate. Subsequently, the learned counsel for the appellant submitted that vide written submission dated 21.06.2022, the certificate issued by the competent authorities have already been brought on record.

The learned counsel for the appellant does not want to cite any provisions of Act 2016 and any judgment in support of his claim.

Heard learned counsels for the parties.

Judgment reserved.

(K.K. Jain)

(D.K. Arora)

Dated: 16.05.2023
SYEDTANVEER