RESERVED JUDGMENT

BENCH-1

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL, AT LUCKNOW.

(1) APPEAL NO. 698/2021

Faisal Anis. …………Appellant.

Versus

M/s La Residentia Developers Pvt. Ltd. ……………Respondent.

With

(2) APPEAL NO. 699/2021

Apurv Sharma. …………Appellant.

Versus

M/s La Residentia Developers Pvt. Ltd. ……………Respondent.

With

(3) APPEAL NO. 700/2021

Neeraj Sharma. …………Appellant.

Versus

M/s La Residentia Developers Pvt. Ltd. ……………Respondent.

With

(4) APPEAL NO. 701/2021

Himanshu Shekhar. …………Appellant.

Versus

M/s La Residentia Developers Pvt. Ltd. ……………Respondent.

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. These four appeals have been preferred by the allottees/complainants (hereinafter referred to as the 'appellants') under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as

the 'Act, 2016') against the common order dated 24.07.2019 passed by the Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as the 'Regulatory Authority') in Complaint Nos.12201827792 (Apurv Sharma), 12201827774 (Neeraj Sharma), 9201819248 (Faisal Anis) and 12201827783 (Himanshu Shekhar) whereby the following directions were given:--

(1) The respondent is directed to ensure delivery of possession till December 2019 along with OC/CC after taking due amount, if any, and get the registry done after taking stamp fee.

(2) The respondent is directed to ensure payment to the complainants at the rate of Rs.5/- per square feet per month from the promised period as per agreement, with grace period till 30.04.2016 and interest at the rate of MCLR+1% from 01.05.2016 till the date of issuance of demand letter along with OC/CC. The amount of interest will be adjusted towards final payment and if the amount of interest exceeds the amount due then the excess amount be returned to the complainant as per rules.

2. Since the facts and the issues involved in all the above mentioned four appeals are the same, therefore, they were heard together and are being disposed of by a composite judgment/order. For the sake of convenience we take Appeal No. 698/2021 as leading case.

3. The facts of the leading case, as culled out from the memo of appeal, are that the respondent is a builder and developer of group housing project in Greater Noida West, formerly known as Noida Extension, and has acquired rights, title and interest in group housing at Plot No. GH-06A, Noida Extension, Tech Zone-4, admeasuring 20 acres, from Greater Noida Industrial Development Authority.

3.1 In the year 2010-11, the respondent came up with a project, namely 'Amrapali La Residentia' on the said plot claiming it to be a project of Amrapali Group. The appellant was lured to purchase a flat, as the appellant was made to believe through the officials and representatives of M/s La Residentia Pvt. Ltd. that the project 'Amrapali La Residentia' belongs to famous and renowned Amrapali Group. Believing the superstations made by the respondent to be true, the appellant booked a 2BHK Flat No. T20-804, super area 880 sq. ft. in 'Amrapali La Residentia' for a total consideration amount of Rs.32,96,840/-.

3.2 The appellant entered into Allotment-cum-Flat Buyer Agreement with the respondent on 09.03.2015 on specified terms and conditions. As per clause 19 of the said agreement the possession of the Flat was to be given within a period of 42 months $\pm$ 6 months from the date of signing of the Agreement.

3.3 The appellant had opted for the Subvention Plan/Scheme for payment of the said flat and made a payment of Rs.3,29,685/- towards initial 10% booking and made further payment of Rs.26,19,872/- by availing a loan from DHFL Bank Ltd. A tripartite agreement was executed amongst the appellant, respondent and DHFL Bank in order to avail the said housing loan.

3.4 Subsequently a Memorandum of Understanding (MOU) was entered between the appellant and the respondent wherein the appellant opted for "a No Pre EMI till 24 months or till the date of offer of possession/fit-out, whichever is earlier". From a reading of Clause 2 of the said MOU, it is clear that the builder will pay EMIs to the bank for first 24 months. Clause 4 further states that in the event of non-delivery of flat, builder will continue to pay the EMIs even after 24 months through the concerned buyer. It is amply clear from the aforesaid clause 4 that liability to pay EMIs even after 24 months lies with the respondent.

3.5 Later on the appellant came to know that the said project is being built by La Residentia Developers Pvt. Ltd. (respondent) and Amrapali was not associated with the respondent-company for developing the said project. The respondent and its directors have misused the name of Amrapali Group to dupe the complainant into such kind of ponzi scheme.

3.6 As per the Allotment-cum-Buyer Agreement the respondent was to handover the possession of the flat within 42 months $\pm$ 6 months from the date of signing of the agreement, but till date the project is still at an abysmal stage. The respondent has also stopped paying the EMIs.

3.7 The appellant is being mentally harassed by officials and representatives of the respondent by giving false assurances on one pretext or the other about the payment of EMIs and the construction of their flat without keeping in mind the problem being faced by the appellant. The appellant visited the respondent's office many times and had several meetings with the officials and representatives of the respondent on these points. The respondent always gave false assurances that it would resolve all these issues and would handover the possession of the flat very soon.

3.8 Being aggrieved by the actions of the respondent, the appellants filed the above mentioned complaints before the Regulatory Authority which were clubbed together and decided by a common order dated 24.07.2019 with the directions as mentioned in para 1 above.

4. Although the appellants have taken various grounds in the memo of appeal to challenge the impugned order dated 24.07.2019, but during the course of arguments, the learned counsel for the appellants confined his challenge only to the grounds D, E, F and G which are reproduced hereinbelow:--

(D) The impugned judgment is liable to be set aside as it completely ignores the MoU dated 13.12.2016 that was signed between the appellant and the respondent, that clearly provides that the EMI will be paid by the respondent to the appellant till the date of possession.

(E) The impugned judgment is liable to be set aside as the same fails to appreciate the terms of the contract between the parties whereby EMI installments had to be paid by the respondent on behalf of the appellant till date of offer of possession.

(F) The impugned judgment is liable to be set aside as it ignores the fact that the fixed period of 24 months was never described in the tripartite agreement, therefore, it is obvious that the pre-EMI had to be paid till the date of offer of possession to the appellant.

(G) The impugned judgment is liable to be set aside as it ignores the submissions of the appellant that the period of 24 months was never intimated to the appellant as to when the Pre-EMI would be paid by the respondent and hence there was no consensus towards the same.

5. The appellants have prayed for the following reliefs:--

(a) To set aside the order dated 24.07.2019 passed by the Regulatory Authority in Complaint Numbers 12201827792 of Mr. Apurv Sharma, 12201827774 of Mr. Neeraj Sharma, 9201819248 of Mr. Faisal Anis and 12201827783 of Mr. Himanshu Shekhar.

(b) Direct the respondent to pay the Pre-EMI installments to DHFL till the date of offer of possession to the appellants.

6. The respondent did not file any objection to the grounds of appeal even after providing opportunities to file the same, therefore, vide order dated 18.04.2022 the opportunity to file objections against the grounds of appeal was closed. However, on the request of Sri Harish Pandey, learned counsel for the respondent, he was permitted to address the Tribunal on legal issues and if required to refer the memo of appeal.

7. Heard Sri Uday Bedi, learned counsel for the appellants and Sri Harish Pandey, learned counsel for the respondent.

8. In order to appreciate the controversy on the grounds, pleadings on record and appreciating the submissions of learned counsel for the appellants and the learned counsel for the respondent, we deem it proper to frame the following issues:--

(i) Whether under the Scheme of Act 2016 there is a provision for examining and deciding the issues relating to the provisions of assured return/committed charges or payment of Pre-EMI by promoter for a fixed period or till possession etc. or commercial effect in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot?

(ii) Whether there is any illegality and perversity in the order of Regulatory Authority?

9. In order to examine **issue no. (i)**, we proceed to examine the aims and objects and the obligations and compliances required to be made by the promoters/developers.

9.1 The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums.

9.2 The Real Estate (Regulation and Development) Act, 2016 aims to create a real estate regulatory authority and an appellate tribunal that will act as a watchdog for the housing sector, primarily towards protecting consumer interests while creating an alternative redress mechanism for an disputes that may arise. This Act also aims to provide a uniform regulatory environment in the real estate sector which is laced with black money, red-tapism, land mafias and corruption. The core objective of this Act is twofold: firstly, to ensure sales of immovable properties in an efficient and transparent manner and secondly, to protect the interest of consumers in the real estate sector.

9.3 The Act is further intended to achieve:-

(a) To ensure accountability towards allottees and protect their interest;

(b) To infuse transparency, ensure fair-lay and deduce frauds & delays;

(c) To introduce professionalism and pan India standardization;

(d) To establish symmetry of information between the promoter and allottee’

(e) To impose certain responsibilities on both promoter and allottees;

(f) To establish regulatory oversight mechanism to enforce contracts;

(g) To establish fast-track dispute resolution mechanism;

(h) To promote good governance in the sector which in turn would create investor confidence;

(i) Regulation of the planned development in the real estate sector;

(j) To ensure sale of immovable properties in an efficient and transparent manner;

(k) To protect the interest of consumers in the real estate sector;

9.4 The promoter/developers are also required to make various compliances:

i. No launch or advertisement before registration with RERA;

ii. Sharing information project plan, layout government approvals, land title status, sub-contractors;

iii. Increased assertion on the timely completion of projects and delivery to the consumer;

iv. An increase in the quality of construction due to a defeat liability period of five years;

v. Informing allottees about any minor addition or alteration;

vi. Consent of 2/3rd allottees about any other addition or alteration;

vii. Consent of 2/3rd allottees for transferring majority rights to 3rd party;

viii. Formation of RWA within specified time or three months after majority of units have been sold.

9.5 The promoter of a real estate development firm has also to maintain a separate account for each of their projects. A minimum 70 per cent of the money from investors and buyers will have to be deposited. This money can only be used for the construction of the project and the cost borne towards the land. The developers will have to keep informed the buyers of their other ongoing projects.

9.6 RERA requires builders to submit the original approved plans for their ongoing projects and the alterations that they made later. Builders also have to furnish details of revenue collected from allottees, how the funds were utilized, timeline for construction, completion, and delivery that will need to be certified by an engineer/architect/practicing chartered accountant.

9.7 It is responsibility of each state regulator to register real estate projects and real estate agents operating in their state under RERA. The details of all registered projects will be put up on a website for public access.

9.8 Further the regulator will have to ensure protection to buyers in this matter for five years from the date of possession. If any issue is highlighted by buyers in front of the regulator in this period including in quality of construction and the provision of services, the developer will have to rectify the same within 30 days.

9.9 Developers can’t invite, advertise, sell, offer, market or book any plot, apartment, house, building, investment in projects, without first registering it with the regulatory authority. Furthermore, after registration, all the advertisement inviting investment will have to bear the unique RERA registration number. The registration number will be provided project-wise. After registering the project, developers will have to furnish details of their financial statements, legal title deed and supporting documents.

9.10 If the promoter defaults on delivery within the agreed deadline, they will be required to return the entire money invested by the buyers along with the pre-agreed interest rate mentioned in the contract based on the model contract agreement given by RERA.

9.11 If the buyer chooses not to take the money back, the builder will have to pay monthly interest on each month delay to the buyer till they get delivery. After developers register with the regulator, a page will be created for the builder on the regulatory authority’s website. The developer will be given login credentials using which it will upload all the information regarding the registered projects on the regulator’s website. The number, type of apartments, plots and projects and their completion status will be updated at a maximum quarterly basis.

9.12 To add further security to buyers, RERA mandates that developers can’t ask more than 10 per cent of the property’s cost as an advanced payment or booking amount before actually signing a registered sale agreement.

9.13 The regulator will have the power to impose penalty and courts can fine and imprison errant builders. The imprisonment can go up to a period of three years in case of certain matter.

9.14 Section 2(c) of the Act 2016 defines "agreement to sale" means an agreement entered into between the promoter and the allottee and Section 13 refrains the promoter from accepting a sum more than 10% of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale specifically providing therein the particulars of the development of project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot, or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

9.15 Section 18 of the Act 2016 gives right to the allottee to seek refund of the amount and compensation if the promoter fails to complete or is unable to give possession of the apartment, plot or building in accordance with the terms of agreement for sale duly completed by the date specified therein.

9.16 Section 19(4) of the Act 2016 provides for entitlement of an allottee to claim refund of amount along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act 2016 from the promoter, if promoter fails to comply or unable to give possession of the apartment, plot or building, as the case may be in accordance with the terms of agreement for sale. Sub Section (6) of Section 19 further provides that every allottee to make necessary payment in the manner within the time as specified in the agreement for sale.

9.17 Section 31 of the Act empowers any aggrieved person to file a complaint with the Authority for the Adjudicating Officer, as the case may be, for violation or contravention of the provisions of the Act 2016 and Rules and Regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

9.18 The State Government in exercise of powers conferred by sub section (1) of Section 84 read with clause (h) of sub section (2) of the said Section and sub-section (2) of Section 13 of the Act 2016 framed The Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018 (hereinafter referred to as 'Rules 2018'). Chapter-II of Rules 2018 provides for 'agreement for sale/lease' to be executed between the promoter and an allottee in the form as per Annexure and under the heading of 'Terms' as per clause 1.5, a promoter has been given sole discretion to give a rebate for early payments of instalments payable by the allottee by discounting such early payments @ …….. % per annum for the period by which the respective installment has been preponed and the provision for allowing rebate and such rate of rebate shall not be subject to revision/withdrawal, once granted to an allottee by the Promoter.

Rules further provide the mode of payment, compliance of law relating to remittance, adjustment or appropriation of payments.

Under the heading 'Time is the Essence' it has been specifically provided that the promoter shall abide by the time schedule for completing the Project as disclosed at the time of registration of the Project with the Authority and towards handing over the (Apartment/Plot) to the Allottee. Similarly, Allottee was also required to make payment of the installment and other dues and to meet the other obligations under the Agreement subject to the simultaneous completion of construction by the Promoter as provided in the payment plan.

Rules also provide for construction of the Project/Apartment, possession of the Apartment/Plot, Representations and Warranties of the promoter, conveyance of the apartment, maintenance of the building/ apartment/project, defect liability, right to enter the apartment for repairs, usage, general compliance with respect to the apartment, compliance of laws, notifications etc by parties, additional constructions, promoter shall not mortgage or create a charge etc.

9.19 Clause 25 of the 'Terms' provides severability to the effect that *"If any provision of this Agreement shall be determined to be void or unenforceable under the Act or the Rules and Regulations made there under or under other Applicable Laws, such provisions of the Agreement* *shall be deemed amended or deleted in so far as reasonably inconsistent with the purpose of this Agreement and to the extent necessary to conform to Act or the Rules and Regulations made there under or the Applicable Laws, as the case may be, and the remaining provisions of this Agreement shall remain valid and enforceable as applicable at the time of execution of this agreement."*

9.20 From the examination of the provisions of entire scheme of Act 2016 and the Rules 2018, it is evident that the agreement for sale is required to be entered into between the promoter and allottee and they are under obligation to perform their duties/obligations as per the provisions of the Act 2016 and Rules 2018. The entire Act does not talk about securing loan by an allottee through any financial institution and/or for facilitating the loan, execution of tripartite agreement by allottee, promoter as well as financial institution and entering into memorandum of understanding with respect to no pre-EMIs till possession etc. or any assured return or committed charges.

9.21 In our considered view, the assured return or committed charges, payment of EMIs by promoter on behalf of buyer etc. are independent commercial arrangements between the parties which sometime a promoter/developer offer, in order to attract buyers/investors or users who may invest either in under construction or pre-launched/new launched projects. Out of these independent commercial arrangements between promoter and buyer, the commercial effect would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, so long as an amount is 'raised' under a real estate agreement, which is done with profit as the main aim, such agreement between the developer and home buyer would have the "commercial effect" as both the parties have "commercial" interest in the same- The real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Whereas the object of promulgation of the Real of Real Estate (Regulation and Development) Act 2016 aims to create and ensure sale of immovable property in efficient and transparent manner and to protect the interest of the consumers in the real estate sector and not to use the forum for profit purposes/unjust enrichment.

9.22 On the basis of the above, we are of the considered view that there is no provision under the Scheme of Act 2016 for examining and deciding the issues relating to the provisions of assured return/committed charges or payment of Pre-EMI by promoter for a fixed period or till possession etc. or commercial effect in an allotment letter/builder buyer agreement for purchase of flat/apartment/plot. The **issue no. (i)** is answered accordingly.

10. The **issue no. (ii)** requires us to examine as to whether there is any illegality and perversity in the impugned order dated 24.07.2019 passed by the Regulatory Authority.

10.1 On examination, we found that the Regulatory Authority, in order to appreciate the controversy, framed the following questions:--

(1) Whether the project was delayed due to force majeure?

(2) Whether payment of EMIs was not made by the respondent in spite of subvention scheme in the tripartite agreement?

(3) Whether the complainants are entitled to possession and interest for delay period?

(4) Whether the Regulatory Authority has jurisdiction to hear this matter?

(5) Whether the rate of interest for delay fixed by the State Government can be imposed in the agreement to sell?

10.2 The Regulatory Authority, on question no. (1) held that the project was not delayed due to force majeure. On question no. (2) the Regulatory Authority held that payment of EMIs was made by the respondent as per agreement. On question no. (3) the Regulatory Authority held that the appellants are entitled to possession and interest for delay period till the date of receipt of OC. On question no. (4) the Regulatory Authority held that under the provisions of the Act 2016 it has jurisdiction to hear and decide this matter. The Regulatory Authority decided question (5) holding that the rate of interest for delay fixed by the State Government is just and proper. The reasoning and findings of the Regulatory Authority on the aforesaid issues are well founded and do not call for any interference.

10.3 In view of the above, we are of the considered view that there is no illegality and perversity in the impugned order dated 24.07.2019 passed by the Regulatory Authority. The **issue no.(ii)** is answered accordingly.

11. On the basis of the aforesaid analysis, while upholding the impugned order dated 24.07.2019 passed by the Regulatory Authority in Complaint Nos. 12201827792 of Mr. Apurv Sharma, 12201827774 of Mr. Neeraj Sharma, 9201819248 of Mr. Faisal Anis and 12201827783 of Mr. Himanshu Shekhar, **we dismiss Appeal Nos. 698/2021, 699/2021, 700/2021 and 701/2021.**

12. No order as to costs.

Dated: 29th May ,2023
Shakir **(K.K. Jain)** **(D. K. Arora)**