THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 2

IA-2397/2022
IN
Misc. Case/471/2019

GREATER NOIDA INDUSTRIAL DEVELOPMENT AUTHORITY ....**Appellant**

Versus

ANAMIKA GUPTA ....**Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Mr. T.B. Singh, Judicial Member
Hon'ble Mr. K.K. Jain, Technical Member

Case called on.
Counsel Sri Kushagra Dixit appeared on behalf of applicant/respondent. Respondent/appellant is absent.
Counsel for the applicant has moved an application dated 20.03.2022 stating the facts that Hon'ble Tribunal has dismissed the appeal vide order dated 24.12.2021, hence it is prayed to release the amount deposited towards Section 43(5) of the Act in favour of the applicant/respondent.
Now the issue to be decided is as to what should be done of the pre-deposit made by the appellant/promoter in compliance of the provisions of Section 43(5) of the Act in case of dismissed appeal.
The intent of the legislature in laying down the provision of pre-deposit of the amount of penalty or any other amount payable to the allottee by the promoter before the appeal can be heard in the Appellate Tribunal, has been elucidated by the Hon'ble Apex Court in paragraph 127 of the judgment in the Civil Appeal Numbers 6745-6749 of 2021 M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. and others, the same reads as under:-

> *"127. It may further be noticed that under the present real estate sector which is now being regulated under the provisions of the Act 2016, the complaint for refund of the amount of payment which the allottee/consumer has deposited with the promoter and at a later stage, when the promoter is unable to hand over possession in breach of the conditions of the agreement between the parties, are being instituted at the instance of the consumer/allottee demanding for refund of the amount deposited by them and after the scrutiny of facts being made based on the contemporaneous documentary evidence on record made available by the respective parties, the legislature in its wisdom has intended to ensure that the money which has been computed by the*

authority at least must be safeguarded if the promoter intends to prefer an appeal before the tribunal and in case, the appeal fails at a later stage, it becomes difficult for the consumer/allottee to get the amount recovered which has been determined by the authority and to avoid the consumer/allottee to go from pillar to post for recovery of the amount that has been determined by the authority in fact, belongs to the allottee at a later stage could be saved from all the miseries which come forward against him."

The Hon'ble Supreme Court has held that even the principal amount invested by the allottee can be recovered as arrears of land revenue under Section 40(1) of the Act. It is further clarified by Hon'ble Supreme Court that the intention of the legislature is to provide a mechanism for early recovery of the amount invested by the allottee along with the interest incurred thereon.

Although Section 40(1) of the Act of 2016 gives powers to the Appellate Tribunal to enforce its decisions, but the Tribunal does not have adequate infrastructure and the required sufficient human resource to determine and certify the amount due from the appellant/promoter to be paid to the respondent/allottee.

The calculation of the exact amount due to be paid to the respondent/allottee normally is to be determined upto the date of actual payment. As the facts and figures are available with the Regulatory Authority, which is executing its or A.O.'s original order, therefore, due diligence is required while calculating the amount payable, interest thereon, as well as verification of the payments made by the allottee from time to time, etc.

Registry is directed to scrutinize the details of the amount deposited by the promoter under the provisions of Section 43(5) of the Act and inform the Accounts Department. The Accounts Department, after verifying the same either from the record or from the bank, will transfer the amount to the concerned account of the U.P. Real Estate Regulatory Authority (U.P. RERA). Further, we direct the Regulatory Authority (U.P. RERA) to dispose of this amount during the execution proceedings in accordance with its order dated 24.12.2021 passed in complaint Case no.8201816352 (Greater Noida Industrial Development Authority vs. Anamika Gupta).

The application dated 20.03.2022 is disposed of accordingly.

Let record be consigned to record room.

(K.K. Jain) (T.B. Singh)

Dated: 01.12.2022
PRADEEPKUMAR