

Bench No. 1
Sr. No. 18

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

Appeal No. 310/2022

Lucknow Development Authority

Vs.

Shilpi Srivastava

Hon'ble Mr. Justice, Suneet Kumar, Chairman.
Hon'ble Mr. Devindar Singh Chaudhry, Technical Member.

1. Heard Shri Abhishek Khare, learned counsel for the appellant-promoter and Shri Vaibhav Srivastava, learned counsel for the respondent.
2. The appellant-promoter by the instant appeal is raising challenge to the judgment and order dated 08.07.2019, passed by the learned Regulatory Authority at Lucknow, in Complaint No. 2201930835, directing handing over possession of the unit, as per original booking, in the project 'Smriti Apartment' or in the alternate project 'Sargam Apartment' within 60 days from the order.
3. On specific query, learned counsel for the appellant submits that the impugned order has not been complied, neither any offer of possession was made to the respondent in the project 'Sargam Apartment.'
4. The sole question that arises for consideration is as to whether the learned Regulatory Authority was justified in passing the order directing the appellant-promoter to allot alternate unit to the respondent in the project 'Sargam Apartment.'
5. The facts, inter se, parties are not in dispute. The appellant promoter floated a multi-storied residential apartment scheme at Sector-J, Extension, Jankipuram Kursi Road, Lucknow, in 2009-10. The possession of the flat, bearing no.

C/103/A-2, was to be provided to the allottee within 24 months i.e. from the date of allotment of the unit i.e. 19.05.2011 (Smriti Apartment). The project got inordinately delayed and subsequently came to be abandoned by the appellant in 2018 due to several factors and primarily, non-availability of land. The appellant thereafter, issued letter dated 25.05.2018, requesting the respondent to exercise her option as to whether she is desirous of having an alternate Flat in the project 'Sargam Apartment.' The respondent-allottee was, however, required to pay the additional amount towards enhanced super area and other charges.

6. The respondent filed a complaint before the Regulatory Authority in 2019, seeking allotment of the flat in the project 'Smriti Apartment.' It appears that the case of the appellant before the Regulatory Authority was that since the project 'Smriti Apartment' has been abandoned, therefore, an alternative flat may be made available by the respondent in the project 'Sargam Apartment'. Learned Regulatory Authority accordingly, passed a conditional order on 08.07.2019, directing the appellant to provide the booked unit or an alternate unit in 'Sargam Apartment'. The learned counsel for the appellant further submits that the Occupancy certificate/Completion certificate (OC/CC) of the project 'Sargam Apartment' came to be received on 25.04.2019. He further admits that pursuant to the order passed by the Regulatory Authority no offer of possession/demand notice was issued to the respondent in terms of Section 17 read with Section 19 of the Act, 2016 for the unit. It is also not the case of the appellant that the earlier booking came to be cancelled and the amount deposited by the respondent returned.
7. Learned counsel for the respondent submits that respondent was willing to accept the alternative apartment in project 'Sargam Apartment' as is evident from the complaint, wherein, cost of the unit has been referred at Rs. 29,60,160/- along with delay interest as against the lower cost of the booked flat.
8. Learned counsel for the appellant on specific query submits that the appellant is prepared to handover possession of the unit subject to the respondent depositing the amount towards enhanced super area of the flat in 'Sargam Apartment' and other charges due and admissible till 25.05.2018.

9. In the given facts of the case, it is admitted by the appellant-promoter that the project 'Smirti Apartment', never came to be launched and was subsequently abandoned. The appellant, consequently, made an alternate offer to the respondent in 'Sargam Apartment'. It is not the case of the appellant that they had refunded the deposit to the respondent, rather, continued to withhold it, neither, did the respondent desire to withdraw from the alternate offer made to her in 2018. In the circumstances, the learned Regulatory Authority was justified in passing the impugned order. The appellant is in default and not the respondent, accordingly, it is not open to the appellant to impose interest for the alleged delayed period for the alternate unit. The respondent is entitled to deposit the amount of the cost of the alternate unit at the enhanced rate of the super area. The respondent would, however, be entitled to interest on the deposit made by her earlier.
10. Learned counsel for the appellant failed to point out any illegality and infirmity in the impugned order dated 08.07.2018. Question is accordingly answered.
11. Having due regard to the facts and circumstances of the case and reasons assigned hereinabove, the **appeal is dismissed.**
12. The amount deposited by the appellant-promoter in compliance of Section 43(5) of the Act to be released in favour of the respondent-allottee after obtaining report from the U.P. RERA. In the event, execution proceeding is pending, the amount would be remitted to U.P. RERA for disbursement in accordance with law.

Dated: 27.05.2025
Tanveer/-

(Devindar Singh Chaudhry)

(Suneet Kumar)