

BENCH NO. 1
SR. NO. 5

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

Appeal No. 936/2021

Jai Prakash Singh

..... Appellant

Versus

Lucknow Development Authority

..... Respondent

Hon'ble Mr. Justice Suneet Kumar, Chairman.

Hon'ble Mr. Devindar Singh Chaudhry, Technical Member.

1. Heard Shri Siddhartha Singh, learned counsel for appellant and Shri Abhishek Khare, learned counsel for the respondent.
2. The appellant-allottee, by the instant appeal, is raising challenge to the order dated 31.03.2021 passed by the U.P. Real Estate Regulatory Authority (for short, 'Regulatory Authority') in Complaint No. LKO162/11/0210/2019, whereby, complaint of the appellant, seeking possession of the plot, came to be rejected, inter alia, on the ground that the project is not an ongoing project.
3. The sole question that arises for consideration is as to whether the complaint of the appellant-allottee for possession of the unit was maintainable under Section 31 of Real Estate (Regulation and Development) Act, 2016 (for short, 'Act 2016').
4. The facts, inter se, parties are not in dispute.
5. The appellant-allottee, along with six others, had booked a plot, bearing no. CP-06 in 'Sinder's Dump Scheme', Alambagh, Lucknow. The plot came to be allotted on 31.12.1998. The appellant-allottee deposited Rs. 7,02,000/-. As per terms and conditions of allotment, 25 per cent of the cost price of the plot (unit) was to be deposited in the ratio 10 per cent and 15 per cent respectively, and remaining 75 per cent in eight installments. The total sale consideration of the plot was at Rs.28,08,000/-. It appears that the appellant defaulted, accordingly, the unit came to be cancelled vide communication dated 21.09.2002. The learned counsel for the appellant submits that appellant had not defaulted.

6. Aggrieved by the cancellation of the unit/agreement, appellant approached the Court of Civil Judge (S.D.) Malihabad, Lucknow, instituting Regular Suit No. 258/2002, inter alia, challenging the cancellation of the unit. The respondent-promoter appeared before the court and contested the suit by filing written statement. The suit came to be decreed vide judgment and order dated 09.03.2007. The appellant, thereafter, did not approach the competent civil court to get the decree executed, rather, sat over the matter.
7. It appears that in 2019, appellant filed a complaint under Section 31 of the Act 2016, seeking possession of the unit. The learned Regulatory Authority, on considering the rival contentions, was of the opinion that the project is not an ongoing project, therefore, the complaint would not be maintainable. In the impugned order, it has been noted that U.P. RERA had directed spot inspection of the project on 12.12.2019. In the report, it has been noted that the project came to be completed 20 years earlier. It was further noted that promoter, thereafter, handed over/transferred the project to Nagar Nigam, Lucknow and Jal Sansthan, Lucknow, on 28.04.2008 for maintenance and upkeep of the project.
8. In this backdrop, the complaint under Section 31 would not be maintainable being barred in view of Section 3(proviso) of the Act, not being an ongoing project. The appellant, admittedly, for the same cause of action had approached the civil court and obtained a decree i.e. cancellation of the unit being set aside by the civil court. The appellant thereafter did nothing in the matter.
9. Learned counsel for the appellant, after arguing at length, submits that the appellant had approached the civil court only challenging the cancellation order, however, had not prayed for possession as a consequential relief, hence, the complaint for possession of the unit was maintainable.
10. Shri Abhishek Khare, learned counsel for the respondent has drawn our attention to Order II Rule 2 of C.P.C., wherein, the relief not claimed in the suit or in alternative abandoned, cannot be pressed in subsequent suit, being barred due to omission to sue the relief arising from the same cause of action. The Civil Procedure Code (CPC), though not applicable to proceedings before the Regulatory Authority, however, the principle enshrined in Order II Rule 2, being a principle of natural justice would be applicable. The suit should include the whole claim. In the event plaintiff omits to sue or intentionally relinquishes,

any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

11. On specific query, learned counsel for the appellant fairly admits that the decree dated 09.03.2007 was not put to execution until filing the complaint in 2019 after lapse of more than twelve years.
12. In view thereof, in our opinion, the complaint suffers from gross delay which renders it not maintainable in the eyes of law. The complainant approached the Regulatory Authority after an inordinate lapse of time, without furnishing any sufficient or cogent explanation for such delay. Furthermore, the project in question does not fall within the purview of an 'ongoing project' as contemplated under Section 3 of Act 2016. The construction and completion of the project was duly concluded prior to the enforcement of the Act, therefore, the requirement of registration under Section 3 does not arise. Consequently, the complaint was not maintainable, both on the ground of delay and on account of the project being outside the scope and ambit of the Act. The question is accordingly answered.
13. Accordingly, the **appeal is dismissed**. The dismissal of appeal, however, shall not preclude the appellant-allottee from taking recourse before appropriate forum/court for execution of the decree dated 09.03.2007, if permissible in law.
14. It is clarified that no other point or ground was pressed.
15. No order as to cost.

Dated: 29.10.2025
Tanveer/-

(Devindar Singh Chaudhry)

(Suneet Kumar)