

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-904/2021

BALBIR SAHAI SAXENA

.....Appellant

Versus

JUGUL KISHORE COLONISERS PRIVATE LTD.

.....Respondent

Counsel for Appellant

RAJESH CHADHA

R U VERMA

Counsel for Respondent

RAKESH PANDEY

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

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

The appellant has challenged the order of the Regulatory Authority dated 10.12.2020 feeling aggrieved on account of non-grant of interest for the delay.

The learned counsel for the appellant drawn our attention towards para-3 of the conveyance deed dated 07.11.2014 whereby the respondent/promoter was to handover the vacant possession of the property to the purchaser with all its rights and privileges so far held and enjoyed by the Seller forever free from all encumbrances and interference whatsoever within three months from the date of the execution of the deed and in case the seller fails to handover the possession within the stipulated time, the seller shall compensate to the purchaser till handing over of vacant possession with necessary amenities.

The record reveals that the appellant approached the Regulatory Authority by means of complaint, seeking legal possession along with super area of 2465 sq. ft. with two separate independent parking and also other facilities described in the agreement booking form and delay penalty.

The Regulatory Authority framed three issues, namely, (i) Whether the project of the opposite party is complete or not? (ii) Whether it is proper to provide parking

to the complainant or not? (iii) Whether the constitution of RWA by the opposite party is necessary or not?

On issue no.(i) the Regulatory Authority after examining the submission of respondent/promoter to the effect that work of the project has been completed in the year 2014 but the Completion Certificate has not been issued by the LDA, held that the respondent as per sanctioned map and brochure has not completed the work of lounge, club and jogging track. On issue no. (ii), the Regulatory Authority held that as per Clause 12 of the Registry (conveyance deed), the complainant has been allotted two parking and while examining issue no. (iii) regarding constitution of RWA and taking into consideration Clause 24 and 25 of the Conveyance Deed, wherein the respondent/promoter undertook to maintain the project for 12 years and the complainant has already made payment of the necessary fee of the same, directed the respondent to provide the possession within 90 days as per the sanctioned map and brochure along with completing the lounge, club and jogging track with two car parking and no order has been passed with respect to interest for delay.

Now in this background we have to examine that after execution of conveyance deed on 07.08.2011, whether the respondent has provided legal possession to the appellant or not. The Managing Director of the respondent is present in the Court and on the query he informed that the keys of the flat in question were given to the appellant at the time of execution of the conveyance deed and the appellant has also made certain correction/modification in the same. The necessary requirement for legal possession is to sign the possession memo by both the parties.

The respondent is directed to produce before this Tribunal, the possession memo along with inventories of the flat in question by tomorrow.

Put up this matter **tomorrow i.e. on 02.03.2023** for further orders/hearing.

The Managing Director of the respondent will remain present in the Court on 02.03.2023.

(K.K. Jain)

(D.K. Arora)

Dated: 01.03.2023
SYEDTANVEER