

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-624/2022

U.P. AWAS EVAM VIKAS PARISHAD

.....Appellant

Versus

MOHIT TYAGIMOHIT TYAGI

.....Respondent

Counsel for Appellant
SHIKHAR SRIVASTAVA

Counsel for Respondent
KAVIYA SINGH
RISHINDRA VIKRAM SINGH

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Devindar Singh Chaudhry, Technical Member

1. Heard learned counsels for the parties and perused the record.
2. The cross appeals are being heard together on consent of the parties, arising from a common judgment and order date 02.07.2022 passed by the learned Adjudicating Officer, U.P. Real Estate Regulatory Authority at Gautambudh Nagar (for short 'RERA Authority'), arising from Complaint No. ADJ/NCR169/02/89316/2022, instituted by the respondent/allottee, seeking compensation for delay in handing over possession, and for incorrect and misleading evidence published in the brochure by the appellant/promoter. The complaint of the allottee came to be allowed awarding compensation at Rs. 1 lac.
3. The Appeal No. 648/2022 (Mohit Tyagi Vs. U.P. Awas Evam Vikas Parishad) has been filed by the complainant/appellant seeking enhancement of compensation. For the sake of convenience, facts of Appeal No. 624/2022 (U.P. Awas Evam Vikas Parishad Vs. Mohit Tyagi) is being referred to.

4. The question that arises for consideration is as to whether, the learned Adjudicating Officer was justified in awarding compensation, and/or, in the alternative as to whether the compensation awarded is adequate.
5. The facts, briefly stated, is that the appellant/promoter floated a residential scheme in the name and style 'Jagriti Vihar Extension Scheme, No.-11, Meerut', inviting applications for allotment of residential plots. The respondent/allottee came to be allotted unit No. 3/85, Sector-3, Scheme-11, admeasuring 144 sq. meters, on 01.01.2019. As per terms and conditions, the total consideration of the unit was at Rs. 32,09,742/-. The possession of the unit was to be handed over from the date of booking on or before 25.11.2020. It is not in dispute that entire sale consideration came to be duly honoured by the respondent/allottee. Consequently, offer of the possession of the unit came to be made by the appellant/promoter on 25.11.2020, thereafter, the conveyance deed came to be executed on 28.12.2020. The appellant, however, did not handed over physical possession of the unit as admittedly farmers were agitating seeking enhancement of compensation for their land alongwith 5% of the developed land as promised. In the circumstances, the physical possession never came to be handed over to the respondent/allottee until 05.10.2023.
6. Learned Adjudicating Officer has noted in the impugned order that respondent/allottee on the Government Portal uploaded several complaints, wherein, it was alleged that neither water pipelines, electricity and infrastructure facility of the project has not been developed due to farmers agitation and physical possession of the unit is yet to be handed over. Pursuant to the complaints filed by the respondent/allottee, on 06.10.2021 the authorities of the appellant organization submitted that possession of the plot is under dispute with

the farmers and soon the physical possession of the unit would be handed over. Despite assurance from the authorities, physical possession was not handed over.

7. Aggrieved, respondent/allottee was constrained to file complaint seeking compensation at 16,40,000/- for mental harassment, agony, rent, and litigation expenses. Learned Adjudicating Officer, on returning a finding that the allegations made by the respondent/allottee has merit, as was admitted by the appellant/promoter that due to farmers agitation pertaining to enhancement of compensation and allotment of 5% of developed area in the project, the physical possession was belatedly handed over free from all encumbrances on 05.10.2023. That apart, it is also submitted by the counsel for the respondent that as per the brochure of the project issued by the appellant/promoter on 05.11.2018, it was categorically stated under the heading 'declaration pertaining to the project' that plot over which the project is to be developed is completely free from all disputes. In this backdrop, it is submitted that a false declaration was made in the brochure by the appellant/promoter, consequently, it is urged that since the appellant/promoter has suffered loss, he is entitled to compensation under Section 12, readwith Sub section (3) of Section 18 of the Act. Section 12, Sub section (3) of the Section 18 of the Act are extract :

Section-12 Obligations of promoter regarding veracity of the advertisement or prospectus

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

Section 18(3)

If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

8. In the given facts and circumstances, learned Adjudicating Officer was justified in awarding compensation for incorrect information furnished by the appellant/promoter in the brochure of the project that project was free from all encumbrances. In our opinion, compensation awarded is far on the lower side. The total consideration of the unit at Rs. 32,09,742/- came to be deposited before the offer of possession i.e. 25.11.2020, and thereafter the conveyance deed came to be executed on 28.12.2020. The interest component on the deposit at MCLR+1% would approximately, as per submission of counsel for the respondent/allottee, would roughly be at Rs. 7,30,000/-. Having regard to the price escalation of the unit until handing over of physical possession on 05.10.2023, compensation at Rs. 5 lacs would be appropriate for the loss suffered by the respondent/allottee, as he was unable to utilize the plot for raising

construction of his residence despite the map being sanctioned by the competent authority. The question is answered accordingly.

9. Both the appeals are disposed of by passing the following order :

- (i) Appeal No. 624/2022 (U.P. Awas Evam Vikas Parishad Vs. Mohit Tyagi) being devoid of merits. Accordingly, dismissed.
- (ii) Appeal No. 648/2022 (Mohit Tyagi Vs. U.P. Awas Evam Vikas Parishad) is allowed, the compensation is enhanced to Rs. 5 lacs.
- (iii) Cost of litigation assessed at Rs. 20,000/-.

(Devindar Singh Chaudhry)

(Suneet Kumar)

Dated: 17.01.2025
PRADEEPKUMAR