

BENCH NO. 1

**THE U.P. REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW**

1. Appeal No. 487/2021

Rohit AgarwalAppellant

Versus

Tulsiani Construction and Developers Pvt. Ltd.Respondent

WITH

2. Appeal No. 488 of 2021

Sunita Agarwal Appellant

Versus

Tulsiani Construction and Developers Pvt. Ltd.Respondent

3. Appeal No. 489 of 2021

Sunita Agarwal Appellant

Versus

Tulsiani Construction and Developers Pvt. Ltd.Respondent

4. Appeal No. 490 of 2021

Sunita Agarwal Appellant

Versus

Tulsiani Construction and Developers Pvt. Ltd.Respondent

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. Since the facts and issues involved in the above mentioned appeals are identical and the appeals have been filed against the same judgment and order dated 21.05.2019 passed by the Regulatory Authority, therefore, they were heard together and are being disposed of by a common judgment. For the sake of convenience, we take Appeal No. 487 of 2021 as leading case.
2. These appeals have arisen out of the composite order dated 21.05.2019 passed by the Regulatory Authority, whereby the Regulatory Authority while accepting the request of the appellants,

directed to provide possession of the unit by 31.12.2019 along with amenities as per the brochure and the respondent was directed to pay interest @ MCLR+1% from the proposed date of possession till the date of actual possession and in case respondent fails to provide possession by 31.12.2019, then after 31.12.2019, within 45 days the respondent will refund the entire amount to the complainants (Appellants) along with interest @ MCLR+1% from the date of deposit of amount by the complainants till the date of payment of amount.

3. The appellant has challenged the direction no. 3 of the impugned order dated 21.05.2019 passed by the Regulatory Authority and prayed for directing the respondent to deliver the possession of Unit No. 603-B, 3rd Floor, Tower-6th in the respondent's project, namely "Golf View Apartments".
- 3.1 The submission of learned counsel for the appellant is that in the year 2010, the respondent launched a project of integrated development named as 'Golf View Apartment' with wide publicity in the media and through wide network of real estate brokers in the area. Initially Buyer's Agreement was executed on 29.11.2012 between M/s Wealth Mantra Properties Ltd. and the appellants. The appellant was allotted a Unit No. 603-B, 3rd Floor, Tower-6th in the respondent's project, namely "Golf View Apartments". Thereafter, vide endorsement executed on 27.05.2013, the allotted unit was transferred from M/s Wealth Mantra Properties Ltd. to the appellant and the same has been acknowledged to its effect via allotment letter dated 30.05.2013, mentioning basic cost of the unit as Rs. 91,53,750/- .
- 3.2 As per clause 22 of the Buyer's Agreement, it was provided that the developer shall make endeavour to offer possession of apartment to the allottee within 30 months from the date of sanction of building plans by the authorities. It is stated that on the date of execution of the agreement, it was represented and shown by the respondent that it has taken all the approvals and sanctions and the construction work on the site has already commenced. Considering the same, the agreed period of possession was 26.11.2015. The learned counsel for the appellant

further submitted that appellant has paid total amount of Rs. 89,21,146/- as consideration in respect of the allotted apartment which is approximately 97% of the basic sale cost.

- 3.3 The appellant feeling aggrieved by the delay tactics of the respondent in delivering the possession of the allotted unit, preferred Complaint No. 12201825699 (Rohit Agarwal Vs. Tulsiani Construction and Developers Pvt. Ltd.), seeking possession and compensation for delay. The Regulatory Authority after exchange of pleadings, vide impugned order dated 21.05.2019 directed the respondent to handover the possession of the allotted unit in accordance with law by 31.12.2019 along with interest @ MCLR+1% for the delay period, but vide direction no. 3 directed that if respondent fails to provide possession by 31.12.2019, then after 31.12.2019, within 45 days the respondent will refund the entire amount to the complainants along with interest @ MCLR+1% from the date of deposit of amount by the complainants till the date of payment of amount.
- 3.4 The learned counsel for the appellant stated that appellant/complainant has never prayed for refund of amount, therefore, it was not open for the Regulatory Authority to issue direction no. 3 and therefore, the appellant is constrained to challenge direction no. 3 before this Hon'ble Tribunal.
4. Shri Saurabh Misra, learned counsel for the respondent submitted that he has no objection to the challenge of direction no. 3 of the impugned order passed by the Regulatory Authority and respondent will provide possession of the allotted unit to the appellants, but it will take some time on account of various difficulties.
5. We have examined the submission of learned counsels for the parties and gone through the record.
6. Admittedly, the complaint before the Regulatory Authority of the appellant was for seeking direction against the respondent for delivery of property in final shape with adequate compensation and apparently at no point of time, the appellant ever sought refund, therefore, direction no. 3 in the facts and circumstances of the instant case was

not only unwarranted but also against the pleadings and prayer of the appellant and as such direction no. 3 of the impugned order dated 21.05.2019 is not sustainable in the eyes of law.

7. Accordingly, **we allow Appeal No. 487/2021, Appeal No. 488/2021, Appeal No. 489/2021 and Appeal No. 490/2021** and set aside direction no. 3 of impugned order dated 21.05.2019 passed by the Regulatory Authority.
8. No order as to the costs.

Dated: 04.08.2023

Tanveer/-

(K.K. Jain)

(D.K. Arora)