

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

**RESERVED JUDGMENT
BENCH-1**

Appeal No. 788/2021

Vishali BatraAppellant.

Versus

M/s Divine Infrastructure Pvt. Ltd.Respondent.

(Complaint No. NCR144030615/2019)

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Rajiv Misra, Administrative Member.

1. This appeal was filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 15036 (hereinafter referred to as 'the Act 15036') by Mr. Vishali Batra (hereinafter referred to as the 'appellant/complainant') against a composite order dated 16.08.2019 passed by the U. P. Real Estate Regulatory Authority, Gautam Budh Nagar (hereinafter referred to as 'Regulatory Authority') in six complaints, whereby the following directions were made:-
 - i. The respondent was directed to ensure that all the complainants listed above are made available to the lawfully occupied registry at the earliest.
 - ii. The respondent was directed that if the amount has been paid by the respondent to the Labor Department in relation to the Labor Cess, then by providing evidence of payment of the amount to the complainant, obtain the amount from the complainant.
 - iii. It was also directed to the respondent that the detailed calculation regarding the increased super area should be made available to the complainants, as well as if the approval has been obtained from the concerned authority regarding the super area, in such a case the amount of the increased super area will be charged from the complainants.

- 1.1 The aforesaid order was passed in a bunch of six complaints, out of which one complainant has challenged the same by way of preferring this appeal.
2. The facts of the case, in brief, are that the appellant booked Flat No. 1503, Tulip Tower, in “Divine Meadows”- under construction project of the respondent, located at Plot No. GH-04, Sector 108, Noida, Uttar Pradesh on 24.12.2010 and paid Rs. 3,00,000/- as booking amount against a total sale consideration of Rs. 56,55,820/-, which included BSP, PLC, AC, Lease rent, IFMS, MMC. An Allotment Letter was issued in favour of the appellant on 02.02.2011. As per Clause 13 of the Allotment Letter, the possession was to be handed over within 36 months from the date of allotment i.e. on or before 01.02.2014.
- 2.1 The appellant had paid more than 95% i.e. Rs. 55,89,760/- of the total cost of the unit by 03.04.2013 as per the payment plan. The respondent raised another demand on 19.05.2014 of Rs. 2,61,883/-, which is more than the remaining amount as per the Allotment Letter and which was also to be paid at the time of possession, but the appellant paid the aforesaid amount on the very same day. Thus, a total amount of Rs. 58,51,643/- was paid by the appellant till 19.05.2014.
- 2.2 The respondent issued a defective offer of possession on 08.02.2015 without having OC/CC of the project.
- 2.3 The respondent issued a no dues certificate to the appellant on 08.05.2015, but instead of making more than 100% of the total cost of the unit, the possession has still not been handed over to the appellant and the respondent started demanding additional amount in the name of additional area, labour welfare charges, water connection charges.
- 2.4 The completion certificate for the aforesaid project was issued on 05.07.2018, however, no occupancy certificate has been granted to the respondent yet.
- 2.5 Being aggrieved by the aforesaid act of the respondent, the appellant filed complaint before the Regulatory Authority on 16.03.2019 seeking possession with delay penalty, which was decided in the manner as prescribed in para 1 above.

3. The appellant has challenged the impugned order dated 16.08.2019 passed by the Regulatory Authority on the following grounds:-
 - i. *Because the order dated 16.08.2019 has been passed in an very mechanical manner without considering the actual plight/case of the Appellant.*
 - ii. *Because the order dated 16.08.2019 is non-speaking on the unwarranted charges levied by the Respondent.*
 - iii. *Because not refunding of the money to the Appellant is not applicable in the case of the Appellant.*
 - iv. *Because the Learned Regulatory Authority also failed to consider that the Appellant is entitled for the interest and compensation for delay in possession.*
 - v. *Because the Learned Regulatory Authority also failed to appreciate the Appellant's rights to get refund enshrined under Section 18 of the Act.*
 - vi. *Because the Order dated 16.08.2019 has been passed by the Authority in very cursory manner.*
 - vii. *Because after going through the Order dated 16.08.2019, it came to the knowledge of the Appellant that the Respondent is also raising an unwarranted demand upto 20% of the total cost of the flat under different sub-heads like additional area charges, labor welfare charges, farmer compensation charges and even those charges which have already been by the buyers way back in the initial years. between 2010-2013 and different other charges.*
 - viii. *Because the Authority instead of going through the documents itself on the basis of which the builder has levied such unwarranted charges asked the builder to provide those documents to the Buyer at the time of the final payment and therefore forcing the buyer to go for out of court settlement with the builder and on the other hand the same authority has not said anything regarding interest for the delay by the Respondent which the Appellant is entitled for and held that the project doesn't fall under the purview of the RERA.*
 - ix. *Because the reliance which has been placed by the Regulatory Authority on the Decision of Supertech V/S RajniGoyalis completely misconceived, as the said observation was made by Hon'ble Supreme*

Court regarding the unwarranted charges after going through the relevant documents whereas in this no such documents have been produced by the respondent for the justification of the unwarranted charges.

- x. Because the Authority wrongly relied on the date of the application by the Respondent for the Completion Certificate for holding that the Project doesn't come under the purview of the RERA as the Completion Certificate has been issued on 05.07.2018, moreover the Occupancy Certificate of the project has still been not issued to the Builder.*
- xi. Because the order dated 16.08.2019 has been passed by the Authority in clear abuse of the powers vested with them.*

4. The appellant has prayed for the following reliefs:-

- a) To set aside the order dated 16.08.2019 passed by U.P Real Estate Regulatory Authority Regional Office GautamBuddh Nagar, Bench No.1 as far as it relates to Complaint No. NCR144030615/2019(VishaliBatra v/s. M/s Divine Meadows) filed by the Appellant.*
- b) To allow the complaint No. NCR144030615/20194 filed by the Appellant against the Respondent filed before U.P Real Estate Regulatory Authority Regional Office GautamBuddh Nagar and direct the respondent to handover the possession along with interest @ 24% pa and Compensation.*
- c) Issue any other order or direction in favour of Appellant, which this Hon'ble Court deem just and proper to meet the Ends of Justice.*

5. The respondent filed objections and submitted that the respondent had applied for the occupancy certificate/completion certificate with all formalities and NOC's on 03.10.2013 with the Noida Development Authority, much before the RERA Act come into the force, thus the respondent is not covered under the RERA Act and Rules thereof and thus the present appeal is not maintainable as the respondent does not come within the purview and jurisdiction of Real Estate Regulatory Authority, Uttar Pradesh as per clause (iv) and thus the present appeal is without jurisdiction and further submitted that under Section 15A of the U.P. Urban Planning and Development Act, 1973, if the completion certificate

is not issued within three months, it shall be deemed that a completion certificate has been granted by the Authority.

- 5.1 The respondent submitted that on the basis of deemed sanction of completion certificate the respondent has issued letter of offer of possession to the appellant on 30.04.2014, but she did not come forward and choose to take possession of the flat in question.
- 5.2 The respondent further submitted that even the Completion Certificate is of 05.07.2018, but it is clearly mentioned in same that this completion certificate is being issued on the basis of inspection done by the authority on 23.10.2015, which indicates that the project was completed way back before coming into force the RERA Act. Therefore, the provisions of the Act, 2016 are not applicable on the project of the respondent.
6. The appellant in her reply to the objection of the respondent mostly reiterated the averments made in the memo of appeal and forced the point that the completion certificate was issued to the respondent on 05.07.2018 and no occupancy certificate has been issued yet.
7. Heard Mr. Dhiresh Pandey, learned counsel for the appellant and Shri Azhar Ikram, learned counsel for the respondent.
8. Learned counsel for the respondent raised a preliminary objection regarding the maintainability of the complaint as well as the present appeal. He submitted that the present project of the respondent is not registered, therefore, the provisions of the Act of 2016 are not applicable on the same in view of the judgment of **Hon'ble Supreme Court in Civil Appeal No.(s) 6745-6749 of 2021 (M/S Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others) decided on 11.11.2021.**
9. On examination, we found that the entire Act 2016 has been divided into 10 Chapters. Chapters II, III and IV relate to Registration of Real Estate Project & Registration of Real Estate Agents, Functions & Duties of Promoter, and Rights & Duties of Allottees, respectively. Rest of the chapters are regarding establishment of the Regulatory Authority, Real Estate Appellate Tribunal, Offences, Penalties and Adjudication, Finance, Accounts, Audits and Reports etc. The **Hon'ble Supreme Court in Civil**

Appeal No.(s) 6745-6749 of 2021 (M/S Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others) decided on 11.11.2021 framed a question in order to examine as to whether the Act 2016 is retrospective or retroactive in its operation and what will be its legal consequence if tested on the anvil of the Constitution of India. After thorough scrutiny the Hon'ble Supreme Court was pleased to observe that the intention of the legislature by necessary implication and without ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act. The provisions of the Act 2016 will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016. Relevant paras 52, 53 and 54 of the aforesaid judgment are reproduced as follows:--

“52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term “converting and existing building or a part thereof into apartments” including every kind of developmental activity either existing or upcoming in future under [Section 3\(1\)](#) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-

going projects and future projects registered under [Section 3](#) to prospectively follow the mandate of the Act 2016.”

10. The record reveals that the respondent applied for OC/CC on 03.10.2013. There is nothing on record, which indicates that the Noida Development Authority issued any objection with respect to same or pointed out any shortcoming. Rather the completion certificate dated 05.07.2018 indicates that the concerned competent authority of the Noida inspected the project on 23.10.2015. Therefore, in our considered view the Regulatory Authority rightly held that the project of the respondent does not require registration under Section 3 of the Act, 2016.
11. As the project of the respondent is not registered with UPRERA, therefore, in view of the observations of the Hon'ble Supreme Court in **Civil Appeal No.(s) 6745-6749 of 2021 (M/S Newtech Promoters & Developers Pvt. Ltd. Vs. State of U.P. & others) decided on 11.11.2021 (supra)**, neither the complaint before the Regulatory Authority nor the appeal before the Tribunal is maintainable. Accordingly, the appeal is **dismissed**.
11. No order as to costs.

Dated:08.08.2023

GauravSri/-

(K.K. Jain)

(D.K. Arora)