THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-212/2021

ASHOK KUMAR AGRAWAL & DEEPTI AGRAWAL ....**Appellant**

Versus

M/S SVP BUILDERS INDIA LTD. ....**Respondent**

Counsel for Appellant
SWAPNIL YADAV
RAHUL KAPOOR

Counsel for Respondent
AZHAR IKRAM
MANISH SINGH

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman
Hon'ble Mr. Sanjai Khare, Judicial Member

Heard Ms. Aadya Antya, Advocate holding brief of Sri Rahul Kapoor, learned counsel for the appellant and Dr. Azhar Ikram, learned counsel for the respondent.

The submission of learned counsel for the appellant is that on account of delay in completion of the project a request for cancellation of unit was made to the respondent on 26.02.2015 and when respondent did not give any response on the request of appellant then again vide letter dated 01.04.2017 request for cancellation of unit was made. The respondent settled the outstanding bank loan and closed the same. The respondent sold the appellant's flat No. 1503 to a third party without any intimation or seeking no objection from the appellant and did not return the deposited amount. Aggrieved by the act of the respondent the appellant filed a complaint before RERA seeking relief of refund of balance amount with 9% interest. Regulatory Authority clubbed 4 complaints against the respondent vide order dated 19.09.2019. In the impugned order the Regulatory Authority wrongly mentioned that complaint has been filed for seeking possession and execution of conveyance deed and an issue in this regard was also framed by the Regulatory Authority and in the first para while deciding the issue, it has been mentioned that possession was to be given by July, 2015 and as the same has not been given, therefore, request for refund has been made.

Learned counsel for the respondent submitted that facts have been wrongly stated and complaint filed by the complainant before Regulatory Authority was for possession. The unit was cancelled in pursuance to the request of the appellant dated 01.04.2017 and after settlement of the bank loan rest of the amount has been forfeited in pursuance of the clause 5, 6 and 10 of the B.B.A. dated 30.06.2013.

During the course of hearing, we also summoned the record in order to ascertain whether the unit of the appellant was cancelled or not and on examination, we found that no cancellation order was ever communicated to the appellant and in pursuance of the BBA after settlement of the Bank loan the rest amount of Rs.11,91, 832/- was forfeited being earnest money.

Heard.

Judgment reserved.

(Sanjai Khare) (D.K. Arora)

Dated: 18.03.2024
SANTOSHKSHUKLA