

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

Appeal No. 469/2022

Ms Babli

...Appellant.

Vs.

M/s Ganpati Infrastructure Developers Company. Ltd

...Respondent

Hon'ble Mr. Sanjai Khare, Judicial Member.

Hon'ble Mr. Rameshwar Singh, Administrative Member.

1. Heard Sri Shailesh Kumar Srivastava, learned counsel for the appellant and Sri Saurabh Mishra, learned counsel for the respondent.
2. This appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act, 2016') by Babli (hereinafter referred to 'as the appellant') against the order dated 22.11.2021 passed by the U.P. Real Estate Regulatory Authority Lucknow (hereinafter referred to as 'the Regulatory Authority') in complaint No. **LKO118/02/70621/2021 (Babli Vs. M/s Ganpati Infrastructure Developers Company. Ltd)**, wherein the Ld. Regulatory Authority has disposed of the complaint filed by the appellant only on the basis of the principle of Res Judicata.
 - 2.1 Appellants have booked a row house, Unit No. 114 admeasuring area 100 Sq. yards, Super Built-up area 900 Sq.ft situated at Ganpati Wonder City Dayalbagh, District Agra, U.P which is construction linked plan and being developed by the respondent herein. A row house allottee's agreement was executed between the appellant and the respondent on 15.11.2013. As per agreement dated 15.11.2013 the total cost of the flat was Rs.27,30,000, in which basic sale price was Rs.25,80,000 and

Rs.1,50,000(EDC/IBC) and Rs.1,50,000 (PLC), thereafter discount of Rs.1,50,000 was given by the builder.

- 2.2 Learned counsel for the Appellant further submits that the appellant has paid Rs.21,54,932/- against the total agreed sale consideration. The last instalment of the payment which was about Rs.5,75,068/- was required to be paid at the time of legal possession (only after OC & CC).
- 2.3 In the event of delay in payment / project both parties (Builder & Buyer) are liable for delay penalty / interest which was @ 18% per annum in case of Builder.
- 2.4 That the Respondent deliberately and intentionally failed to deliver possession of the flat to the Appellants till date (7 yrs. time from the date of booking elapsed) reasons best known to the Respondent.
- 2.5 Learned Counsel for the appellant submits that project in question has been stayed by the NGT in the year 2015 and operated till 2019 and after vacation of the stay order of the NGT respondent has sent a Supplement to Builder Buyer agreement to the appellant on 17.12.2019 in which respondent has decided himself to extend the period of completion by 12 Months (+/- 6th months) from the date of signing the Supplementary Agreement which is dated 30.01.2020 to which appellant disagreed and filed a complaint vide complaint no. LKO118/09/0451/2019 on 05.09.2019 for refund of money along with interest @18%.
- 2.6 Learned Counsel for the appellant submits that Ld. Regulatory Authority has concluded that project is not registered in the RERA, therefore Authority has no right to order upon unregistered project and further directed the secretary of the RERA to take action against Ganpati infrastructure Dev. Ltd U/s 3, 4 & 15 of the RERA Act and has given opportunity to the complainant herein Appellant, for filing further complaint against the Developers after the registration of the project in RERA vide order dated 18.12.2020.
- 2.7 Counsel for the appellant further submits that project got registered vide registration no. UPRERAPRJ7700.

- 2.8 Ld. Counsel of the submits that earlier order dated 18.12.2020 in which Ld. Authority has granted permission to the appellant for making complaint before the RERA Authority after the registration of the project and therefore appellant filed another complaint before the RERA Authority for refund of the money deposited by him for delay in granting possession on 20.02.2021.
- 2.9 Ld. Authority has dismissed the complaint filed by the appellant on the ground that complaint is barred by Res Judicata, while in the order dated 18.12.2020 Ld. Authority has himself granted permission to file another complaint after registration of the project.
3. The appellant has challenged the impugned order dated 22.11.2021, passed by the learned Regulatory Authority on the following grounds: -
- A. Because, the doctrine of Res Judicata does not apply as the order dated 18.12.2020 had granted the permission to the appellant to file a fresh complaint after the registration of the project with RERA.
 - B. Because, 7 years have been lapsed but the appellant has not been given the legal possession of the house.
 - C. Because, unofficially builder has offered after deduction of the deposited money to the appellant which is not acceptable by the appellant/allottee.
4. On the basis of the above grounds the appellant has sought following reliefs:
- (i) Set aside the impugned final order dated 22.11.2021 uploaded on RERA portal 20.12.2021, passed by the Ld. U.P. RERA, Lucknow, Bench-II in complaint no. LKO118/02/70621/2021.
 - (ii) Direct the respondent to refund the money deposited by the appellant with the 18% interest.
 - (iii) Grant compensation on account of mental/physical and financial agony faced by Appellant since last 7 years.
 - (iv) Pass any such orders as this Hon'ble Tribunal may deem fit and proper under the facts and in the circumstances of the present case.

5. Respondent has filed objections to the appeal which are as under and denied the averments made by the Appellant: -

5.1 The Appellant erroneously annexed an incomplete portion of the Application form dated 15.11.2013 as the Allotment Letter in Annexure A-3. Whereas in reality, the appellant was issued with a provisional allotment letter on 25.01.2014 based on the Application form dated 15.11.2013.

5.2 It is pertinent to mention that the possession was scheduled to be delivered within 24-36 months from the date of agreement as per clause 22 of the terms and conditions appended to the application form and therefore the date of completion being orally assured to be on 15.01.2015 is denied.

6. The appellant filed rejoinder denying the averments made by the respondent and reiterated the averments made by the appellant in the appeal.

7. To analyse the facts and law involved in the case, we deem it proper to frame the following questions: -

(i) Whether complaint no. LKO118/02/70621/2021 dated 20.07.2021 is barred by the principle of Res Judicata?

(ii) Whether impugned order dated 22.11.2021 of the Regulatory Authority suffers from any illegality and perversity?

Answer to Question No. (i)

8. **Question No.1: -**

Question No.1 involves the analysis of fact whether the second complaint no. LKO118/02/70621/2021 dated 20.07.2021 is barred by the principle of Res Judicata.

8.1 1st Complaint No. LKO/118/09/0451/2019 was filed by the allottee Babli against Ganpati Developers Infrastructure Pvt Ltd regarding unit No.114 in project Wonder City Dayalbag, Agra, U.P of respondent promoter for the refund of deposited amount along with 18% interest

but 1st complaint was dismissed by the Regulatory Authority vide order dated 18.12.2020 on the ground of project being unregistered with U.P Real Estate Regulatory Authority under the provision of the Act 2016. It was also ordered in the judgement of the regulatory authority that allottee can again file the complaint for the same cause of action after the registration of the project with the RERA. It is admitted fact that project got registered with U.P RERA vide registration no UPRERAPRJ7700. After the registration of the project with the UP RERA, allottee filed the present complaint vide complaint no. **LKO118/02/70621/2021** before regulatory authority for refund of deposited amount with interest. Ld. Regulatory Authority has dismissed the second complaint on the ground that second complaint is barred by principle of Res Judicata.

- 8.2 **Sheodan Singh Vs. Daryao Kunwar, (1966) 3 SCR 300** is leading judgement of Hon'ble Supreme Court in which Hon'ble Supreme has propounded the basic ingredients for the applicability of principle of Res Judicata.

According to this judgement of Hon'ble Supreme Court, the following conditions must be satisfied, for the applicability of the principal of Res Judicata: -

- (i) *The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;*
- (ii) *The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;*
- (iii) *The parties must have litigated under the same title in the former suit;*
- (iv) *The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and*
- (v) *The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit.*

- 8.3 It is necessary for the application of principal of Res Judicata that 1st complaint should have been decided on the merit i.e. on the issue

whether allottee is entitled for refund of deposited amount along with interest. Perusal of the 1st order dated 18.12.2020 reveals that 1st complaint was dismissed on the purely technical/legal ground of lack of jurisdiction due to non-registration of the project of promoter with U.P RERA. Ld. Regulatory Authority has neither framed any issue regarding the entitlement of allottee for refund of deposited amount along with interest, nor discussed/analysed/decided on merits, the fact and the law regarding the entitlement of allottee for refund of deposited amount along with interest. Therefore, this core issue was neither directly nor indirectly decided by Ld. Regulatory Authority in the 1st order dated 18.12.2020.

- 8.4 On the basis of analysis of facts and circumstances, we are of the considered view that matter in issue in the subsequent complaint was not heard and finally decided by Ld. Regulatory Authority vide the judgement dated 18.12.2020 passed in 1st complaint. It is admitted fact that matter in issue of refund with interest was same in both the complaints, parties are same in the complaints and parties litigated under the same title.
- 8.5 Therefore, on the basis of analysis of facts and circumstances, we are of the considered view that second complaint no. **LKO118/02/70621/2021** of the appellant/allottee is not barred by principle of Res-Judicata.

Question No.1 is answered accordingly.

9. Question No.2 involves the analysis whether the impugned order dated 22.11.2021 of the Regulatory Authority suffers from any illegality or perversity?
- 9.1 Analysis of fact and law in answer to the Question No.1 clarifies that second complaint is not barred by the principal of Res Judicata. Ld. Regulatory Authority dismissed the second complaint on ground of being barred by Res Judicata. Ld. Regulatory Authority failed to appreciate the point in issue that 1st complaint was dismissed purely on technical/legal ground for lack of jurisdiction due to non-registration of the project and main issue of entitlement of allottee for refund of

deposited amount along with interest was neither discussed/analysed nor decided on merits.

9.2 Therefore, we are of the considered view that impugned order dated 22.11.2021 of Ld. Regulatory Authority suffers from illegality and perversity.

Question No.2 is answered accordingly.

10. On the basis of answer to the Question No.1 & 2, we are of the considered view that appeal is liable to be allowed and impugned order dated 22.11.2021 passed in complaint no. LKO118/02/70621/2021 is liable to be set aside.
11. Consequently, present appeal is allowed and impugned order dated 22.11.2021 passed by the Ld. Regulatory Authority in complaint no. LKO118/02/70621/2021 is set aside. Complaint no. LKO118/02/70621/2021 is restored to its original number.
12. The matter is remanded to Ld. Regulatory Authority with a direction to hear and decide the complaint afresh on merits after giving opportunity to both the parties expeditiously preferably within 3 months.
13. Registry is directed to send a copy of the same to the UP RERA, Lucknow for compliance.

Dated: 14.08.2025
Bhavesh/M. Singh

(Rameshwar Singh)

(Sanjai Khare)