

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 2

**IA-4232/2022
IN
Appeal/783/2021**

LUCKNOW DEVELOPMENT AUTHORITY

.....Appellant

Versus

SAMPURNANAND DWIVEDI SAMPURNANAND DWIVEDI

.....Respondent

Counsel for Appellant

Counsel for Respondent

**Hon'ble Mr. T.B. Singh, Judicial Member
Hon'ble Mr. K.K. Jain, Technical Member**

Case called on.

Counsel Sri Anupam Dwivedi on behalf of applicant/respondent, and counsel Sri Amit Yadav on behalf of appellant/opposite party appeared.

Heard on application dated 05.11.2022 wherein it is mentioned that “.....in the instant matter appellant had deposited only Rs. 5,75,621/- through bank draft No. 321779 dated 15.09.2021 against the total amount of Rs. 8,50,266.99. The said amount of Rs. 5,75,621/- has been released to U.P. RERA. In view of the facts and circumstances of the case it is humbly requested that the appellant be directed to deposit Rs. 2,55,080/- which is 30% of the amount awarded by the U.P. RERA either before this Hon'ble Tribunal or to make payment of the said amount directly to the respondent in his bank account.

Counsel for the appellant submitted that in fact in the instant matter the opposite party/appellant in case (Lucknow Development Authority Vs. Sampurnanand Dwivedi), the appellant did not deposit the required amount towards Section 43(5) of the Act, which is condition precedent to entertain any appeal before this Tribunal. He further submitted that the appellant has deposited only 70% towards Section 43(5) of the Act, the rest amount 30% which is about Rs. 2,55,080/- was not deposited by the appellant and the appeal was dismissed as the delay condonation application filed in support of the instant appeal was rejected. Consequently, the amount deposited towards Section 43(5) of the Act was only 70% and the same was released in favour of applicant/respondent and when the appellant was ask for rest 30% of the amount he came to know that the rest 30% amount was not deposited by the Lucknow Development Authority. Now the opposite party/allottee has moved an application dated 05.11.2022 with view to ask the applicant/appellant to deposit rest 30% amount i.e. 2,55,080/- so that the same may be released in favour of the applicant/respondent.

The record speaks that the appellant-Lucknow Development Authority did not deposit the 100% amount towards Section 43(5) of the Act, but the counsel for the appellant submitted that he has deposit the amount more than required as per provisions of Section 43(5) of the Act on the basis

of CA certificate. It is worthnoting here that CA only give calculation chart on the basis of amount deposited and the interest due on that as per RERA order, but CAs normally do not mention the amount to be deposited towards Section 43(5) of the Act. In this case, we also perused the CA certificate dated 18.12.2019 (filed in this case) and amount calculated by CA i.e. Rs. 3,48,083/- is not in accordance with the RERA order, therefore amount mentioned in CA certificate is not correct. Now the instant appeal has been disposed of by this Tribunal, hence it is not desirable at this juncture to pass fresh order. So far as recovery of the rest amount is concerned the matter be referred to the learned Regulatory Authority for recovery of the rest amount in view of order dated 05.04.2022, as early as possible as per provisions of the Act. Accordingly, the application dated 05.11.2022 is disposed of finally.

(K.K. Jain)

(T.B. Singh)

Dated: 18.11.2022
PRADEEPKUMAR