THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-491/2020

ARUN KUMAR **.............Appellant**

Versus

OASIS BUILDMART INDIA PVT. LTD. **.............Respondent**

Counsel for Appellant **Counsel for Respondent**
APPLICANT/APPELLANT IN-PERSON

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

Applicant is present in person and Shri Sarvesh Tewari, Advocate on behalf of respondent.

The record reveals that during the course of proceedings on 04.01.2023, it was observed that while allowing the appeal the respondent was directed to refund an amount of Rs. 5,76,114/- alongwith interest at the rate of MCLR+1% from the date of deposit till the refund of the amount, whereas the applicant /review petitioner paid an amount of Rs. 5,76,114/- through 02 cheques (Rs. 2,88,000/- and Rs. 2,88,114/-) and subsequently an amount of Rs. 21,16,300/- through India Bulls Housing Finance Ltd. (IHFL) has been paid to the respondent after executing tripartite agreement and therefore respondent is required to refund Rs. 26,92,114/- instead of Rs. 5,76,114/- alongwith interest indicated vide order dated 21.03.2022.

Appreciating the submission of Sri Sarvesh Tewari, learned counsel for the respondent and its objections that the applicant/review petitioner has taken a loan financed by the India Bulls Housing Finance Ltd. after mortgaging the unit allotted in favour of the applicant/review petitioner and on account of non-payment of instalment the India Bulls Housing Finance Ltd. has proceeded for recovery against the review petitioner and vide notice dated 25.04.2016 an amount of Rs. 23,91,198/-till 20.04.2016 was outstanding against the applicant/ review petitioner. The booked unit has been taken over by the India Bulls Housing Finance Ltd. and, therefore, if the amount is paid by the respondent to the applicant/review petitioner and respondent fails to clear dues of the India Bulls Housing Finance Ltd. then the unit of the respondent will not be released, therefore either the respondent be permitted to deposit amount directly to the India Bulls Housing Finance Ltd. and take no dues or applicant/review petitioner submit undertaking to clear of the dues of the India Bulls Housing Finance Ltd. and provide NOC to the respondent.

The applicant/review petitioner was directed to file an undertaking regarding his intention to clear of the dues either himself or authorising the respondent to clear dues of the India Bulls Housing Finance Ltd., take no dues certificate and get the unit released. The applicant/ review petitioner was further asked to take statement of up to date outstanding dues from the India Bulls Housing Finance Ltd. and the same will be placed on record.

It has also been stated by the applicant that he will settle his loan amount of India Bulls Housing Finance Ltd. paid to him. The summery of the loan amount indicating details has been placed on record on 24.04.2023.

We have examined the review application and undertaking given by the review petitioner. Applicant in the garb of application tried to seek further relief, which is not permissible. The Tribunal is to examine apparent error on the face of record.

On due examination we found that there is error in direction No.1 & 2, wherein respondent was directed to refund Rs. 5,76,114/-, whereas we have mentioned in our order regarding payment of Rs. 5,76,114/- through 02 cheques (Rs. 2,88,000/- and Rs. 2,88,114/-) and an amount of Rs. 21,16,300/- subsequently paid by the appellant to the respondent through India Bulls Housing Finance Ltd. (IHFL) after executing tripartite agreement and thus respondent has received Rs. 26,92,114/- instead of Rs. 5,76,114/- and pay interest on the amount of Rs. 5,76,114/-.

Hence we partly allow the review application and correct the direction No. 1 & 2 as under:

(i) " The respondent is directed to refund an amount of Rs. 5,76,114/- along with an amount of Rs. 21,16,300/- to the applicant received through IHFL i.e. total amount of Rs. 26,92,414/-.
(ii) The respondent is further directed to pay interest to the complainant/appellant on the amount of Rs. 5,76,114/- from the date of deposit till the refund of the amount at the rate of MCLR+1% per annum."
(iii)

The prayer for 24% interest is rejected.

(Sanjai Khare) (D.K. Arora)

Dated: 30.01.2024
SANTOSHKSHUKLA