

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-207/2023

CAPITAL INFRATECHOMES PRIVATE LIMITED

.....Appellant

Versus

YOGESH BANSAL

.....Respondent

Counsel for Appellant

AJAY KUMAR GUPTA

RISHINDRA VIKRAM SINGH

Counsel for Respondent

HARISH PANDEY

Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman

Hon'ble Mr. K.K. Jain, Technical Member

Sri Harish Pandey, learned counsel for the respondent raised objection with respect to non-compliance of Section 43(5) of the Act 2016 by the promoter/applicant and submitted that appellant has deposited only Rs.7,92,560/- vide D.D. No. 980935 dated 05.12.2022 drawn on HDFC Bank towards only interest part. The perusal of the Chartered Account Certificate indicates that refundable amount to the respondent is Rs. 10,61,810/- whereas in the remark column refundable amount is shown as Rs.14,79,800/- and Rs. 10,61,810/- has been shown after forfeiting an amount of Rs.4,17,990/- Section 43 (5) of the Act 2016 warrants a promoter to deposit total amount to be paid to the allottee including interest and compensation, if any.

In the instant case, the Regulatory Authority by means of order dated 24.06.2022 directed the applicant to provide possession along with OC/CC within 45 days of order and execute conveyance deed. The applicant was also directed to pay interest @ MCLR+1% from 01.07.2022 till receipt of OC/CC/offer of possession whichever is later.

Learned counsel for respondent emphasised that the applicant's prayer in the instant appeal is not only limited to interest part as the applicant also sought review of the direction No 1 whereby the applicant was required to give possession within 45 days of the passing of the impugned order and therefore in case of not offering possession in pursuance to the direction passed vide impugned order of the Regulatory Authority, it amounts to refusal to grant possession and while challenging the said order, amount deposited by the respondent towards booked unit along with delayed interest is required to be deposited completely in compliance to Section 43 (5) of the Act 2016.

Learned counsel for applicant is directed to examine the compliance of to the Section 43 (5) of Act 2016 and make deficiency good within 10 days from today failing which the instant appeal will be dismissed for incomplete compliance of Section 43 (5) of the Act 2016 in pursuance to the impugned order.

List this appeal for hearing on **04.09.2023**.

(K.K. Jain)

(D.K. Arora)

Dated: 22.08.2023
SANTOSHKSHUKLA