

## THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-103/2021

VIKRAM KAPOOR

.....Appellant

Versus

CAPITAL INFRA PROJECTS PVT. LTD.

.....Respondent

**Counsel for Appellant****Counsel for Respondent**

ABHISHEK KHARE

AAHUTI AGARWAL

**Hon'ble Mr. Justice (Dr.) D.K. Arora, Chairman****Hon'ble Mr. T.B. Singh, Judicial Member****Hon'ble Mr. K.K. Jain, Technical Member**

Sri Abhishek Khare learned counsel for the applicant is present.

Submission of the learned counsel for the applicant is that Registry has pointed out defect no.(i) regarding certified copy of the impugned order of the RERA and (ii) regarding submission of application for condonation of delay.

Further submission of the learned counsel for the applicant is that there is no delay in filing the present appeal as the impugned order dated 18.01.2021 of the RERA has been uploaded on the e-portal of the RERA and communicated to the applicant on 25.11.2020. The present appeal has been filed on e-portal of the Tribunal on.22.01.2021 and the physical copy of the same was filed on 25.01.2021 within the time prescribed by the Tribunal, i.e. within three days, therefore, there is no delay in filing the present appeal and Registry has wrongly recorded this objection.

We have examined the submission of the learned counsel for the applicant and perused the record.

The present appeal has been uploaded on e-portal of the Tribunal on 22.01.2021. The report of the Registry indicates the date as 22.01.2020 accordingly the same is a mistake. The Registry is directed to correct the year as '2021'.

The objection of the Registry is over-ruled.

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The applicant has also filed an application for exemption from filing certified copy of the order.

Submission of the learned counsel for the applicant is that the certified copy of the order could not be received by the applicant and since the limitation was expiring, therefore, in order to file the present appeal within time, this application has been moved.

On due consideration the application is allowed. Learned counsel for the applicant is directed to file certified copy of the impugned order dated 18.01.2021 within 15 days.

The application is **disposed of**.

Since, now, there is no defect in the present case, therefore, the present defective appeal be converted into **Regular appeal**.

**Interim relief**

Submission of the learned counsel for the appellant is that earlier the appellant has approached the Regulatory Authority by means of complaint no. 201810676 (Vikram Kapoor vs. Capital Infra Projects Pvt. Ltd.) feeling aggrieved against the delay in project for refund of amount and RERA vide order dated 31.12.2018 directed the respondent to ensure possession of the unit as respondent had already obtained occupation certificate and also for award of interest @ MCLR + 1% for the delay in favour of the appellant(allottee). The respondent in pursuance to the order of the RERA dated 31.12.2018 issued a letter dated 15.02.2019 giving details of the penalty charged by the respondent as well as interest receivable by the appellant.

The appellant(allottee) again approached RERA by means of Complaint No. NCR 144/04447/2019 (Vikram Kapoor vs. Capital Infra Projects Pvt. Ltd.). Against the said complaint order was passed on 31.10.2019 directing the respondent(builder) to provide the possession of the unit after obtaining occupation certificate by the end of February, 2020, failing which the respondent will give entire money to the appellant with interest @ MCLR + 1% to the appellant.

The respondent did not offer the possession to the appellant in pursuance to the order passed by RERA on 31.10.2019 by the end of February 2020 and as per appellant the right of the appellant for refund has become perfect.

The respondent (promoter) also filed a Complaint No. NCR/144080005/2020 on 05.12.2020, wherein the RERA ignoring its earlier orders dated 31.12.2018 and 31.10.2019 passed the impugned order dated 18.11.2020 directing the appellant(allottee) to take possession after paying the remaining amount and if the appellant failed to make the payment of amount demanded by the respondent then the promoter will be having a right to cancel the unit as per provisions of the agreement.

The respondent in pursuance to the order of the RERA dated 18.11.2020, demanded money and issued cancellation notice with forfeiture of entire amount of Rs.10,000,00/- (Rs. Ten lacs). Further submission of the learned counsel for the appellant is that in the interest of justice, the respondent be restrained to take any action in pursuance to the letter dated 04.01.2021.

We have examined the submission of the learned counsel for the appellant and perused the record.

Apparently, the order dated 18.11.2020 has been passed without taking into consideration the earlier two orders passed by the RERA between the same parties.

In the interest of justice, we restrain the respondent from creating any third party interest in the property in dispute.

Issue notice to the respondent(promoter).

Learned counsel for the appellant will take steps within a week.

Registry on receipt of the process will issue notice to the respondent returnable on 22.02.2021.

As per e-filing system of the Tribunal the link is generated and sent to the respondent on the e-mail address mentioned by the appellant. The respondent can always download the entire appeal along with its annexures but in the interest of justice, we direct

the learned counsel for the appellant to send a copy of the grounds of appeal along with its annexures to the respondent on its e-mail address within a week.

It is open to the respondent to send objections to the grounds of appeal to the appellant and his counsel within ten days through e-mail.

Reply, if any, will be sent by the appellant to the respondent within a week thereafter.

Legal representative/parties are directed to upload their objections/replies on the e-portal of the Tribunal and file the originals of the same in the Registry, at least three days before the next date of listing.

List this appeal on **22.02.2021**.

(K.K. Jain)

(T.B. Singh)

(D.K. Arora)

**Dated: 01.02.2021**

VIJAYKUMAR

