

Case :- RERA APPEAL No. - 29 of 2022

Appellant :- Raj Kumar Tulsyan

Respondent :- Saviour Builders Pvt. Ltd. Noida Thru. Its Director

Counsel for Appellant :- Amit Yadav, Abhineet Jaiswal

Hon'ble Abdul Moin, J.

Heard Sri Abhineet Jaiswal, learned counsel for the appellant.

Instant second appeal has been filed challenging the judgment and order dated 23.05.2022 passed by the Uttar Pradesh Real Estate Appellate Tribunal, Lucknow (hereinafter referred to as the 'Tribunal'), as well as the order dated 02.09.2019 passed by the Real Estate Regulatory Authority.

The case set forth by the appellant is that he had booked an apartment with respondent promoter on 14.09.2014. As per the agreement entered into between the appellant and respondent, a copy of which has been filed as Annexure-2 to the affidavit filed in support of the appeal (Page 73), the possession of the apartment was to be given by December, 2015. When the respondent failed to deliver the possession, the appellant was constrained to file a complaint before the authority in March, 2018, praying for refund of the amount paid by him. The refund was claimed taking into consideration Section 18 of the Real Estate (Regulation & Development) Act, 2016, which provides for refund of amount and compensation.

The authority vide the impugned order dated 02.09.2019 disposed of the complaint of the appellant by directing the respondent to give the physical possession of the apartment by a particular date and to pay the penalty as per the rules. As the appellant was not interested in delivery of the possession of the apartment, he filed an appeal before the learned Tribunal which has been rejected vide impugned order dated 23.05.2022 by placing reliance on the judgment of the Apex Court in the case of **M/S Newtech Promoters & Developers Pvt. Ltd. vs. State of U.P. and others** in Civil Appeal No.(s) 6745-6749 of 2021 decided on 11.11.2021, to contend that an unregistered builder would not be amenable to the jurisdiction of the Act, 2016.

The contention is that once as per the definition Clause of 'Promoter' given in Section 2(zk) of the Act, 2016 read with Section 18 of the Act, 2016, there is no such bar of a complaint being filed as such learned Tribunal has patently erred in

dismissing the appeal filed by the appellant against the order passed by the authority. It is also contended that the authority has patently erred in law in directing for delivery of possession despite Section 18 of the Act, 2016 itself providing that it is the discretion of the allottee in case he wishes to withdraw from the project without prejudice to any other remedy available to him for filing an application for being granted compensation.

Considering the aforesaid, the appeal is admitted on the following substantial questions of law:-

*"1. Whether the finding of the learned Tribunal on non-maintainability of complaint before RERA authority and appeal before the Appellate Authority against unregistered projects, is based on misinterpretation of judgment rendered by the Hon'ble Supreme Court in a matter reported in 2021 SCC OnLine SC 1044 in re: **M/S Newtech Promoters & Developers Pvt. Ltd. vs. State of U.P. and others** ?*

2. Whether the finding of the learned Tribunal on non-maintainability of complaint before RERA authority and appeal before the Appellate Authority against unregistered projects, is against the provisions contained in the Real Estate (Regulation & Development) Act, 2016 and thus, is perverse and is unsustainable in law?

3. Whether the learned Tribunal erred in giving finding that neither complaint before RERA authority nor appeal before the Appellate Authority would be maintainable against the unregistered projects, as the Real Estate Developers/Promoters would use it as a tool to not get their projects registered with RERA Authority in order to escape from the ambit of the Real Estate (Regulation & Development) Act, 2016?

Issue notice to the respondent. Steps be taken within a week. List on the date to be indicated by the office in the notice.

Till the next date of listing, operation of the impugned orders dated 23.05.2022 passed by the Uttar Pradesh Real Estate Appellate Tribunal, Lucknow as well as the order dated 02.09.2019 passed by the Real Estate Regulatory Authority shall remain stayed.

Order Date :- 5.8.2022

A. Katiyar