

Dream Town Developers Pvt. Ltd., ... vs Nihal Singh on 28 February, 2025

Author: Manish Mathur

Bench: Manish Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12020

Court No. - 19

Case :- RERA APPEAL No. - 20 of 2025

Appellant :- Dream Town Developers Pvt. Ltd., Hathras Thru. Director Mr. Krishna Kumar D

Respondent :- Nihal Singh

Counsel for Appellant :- Ajai Kumar Singh, Shobhit Singh

Hon'ble Manish Mathur, J.

1. Heard learned counsel for appellant. In view of order being passed, notices to respondent stand dispensed with.
2. Appeal under Section 58 of the Real Estate (Regulation & Development) Act, 2016 has been preferred against order dated 16.12.2024 passed in Appeal No.662 of 2022, Dream Town Developers Pvt. Ltd. v. Nihal Singh by the U.P. Real Estate Appellate Tribunal, Lucknow.
3. Learned counsel for appellant submits that initially in pursuance of complaint made by respondent, order dated 04.12.2020 was passed by the Regulatory Authority allowing the complaint while directing the appellant/defendants to execute conveyance deed on or before 20.01.2021, failing which refund of the amount deposited as indicated in the application form was required to be

made within a period of 45 days thereafter.

4. It is submitted that the appellant made all endeavour for execution of the sale deed prior to the cut off date indicated but since the same could not be done, it was ready and willing to refund the amount deposited by respondent and it was in these circumstances that order dated 04.12.2020 passed by the Regulatory Authority was not challenged whereafter order dated 10.03.2022 was passed by Regulatory Authority in execution proceedings and recovery challan has also been issued on 27.06.2022.

5. It is submitted that appellant did not have any knowledge with regard to execution proceedings and came into knowledge with regard to same only once the recovery challan was issued upon it whereafter the Appeal had been preferred and was rejected.

6. It is submitted that appellate authority has rejected the Appeal primarily on ground that reasons for delay had not been explained satisfactorily as also on ground that since principal order dated 04.12.2020 has not been challenged, the Appeal having been preferred against consequential order without seeking relief against the principal order, was not maintainable.

7. It is submitted that once the first portion of principal order could not be complied with, the appellant being ready and willing to comply with second portion of the order, as well as fact that the appellant did not have any prior knowledge with regard to passing of order in execution proceedings, the appeal was required to be entertained.

8. It is also submitted that specific ground had been taken by appellant that as per order dated 04.12.2020 passed by the Regulatory Authority, the second portion which came into operation once the sale deed was not executed by 20.01.2021, provided that the appellant should refund the amount deposited by the respondent as per the application form. It is submitted that the ground taken was that although Application form indicated an amount of Rs.22,50,000/- excluding Service Tax but in fact only a sum of Rs.7,50,000/- was deposited by the respondent and was an aspect required to be considered by the appellate court.

9. It has been submitted that the substantial question of law therefore arising in the present appeal would be whether the appellate court committed substantial error of law in relying upon fact that principal order dated 04.12.2020 was not challenged and ignoring the fact that the said order in fact was complied with with respondent not being aggrieved thereagainst?

10. The second substantial question of law indicated is whether the proceedings under Section 63 of the RERA Act, 2017 arising out of order dated 04.12.2020, though delayed, was properly explained due to which the Appeal was required to be adjudicated on merits?

11. The third substantial question of law indicated is as to whether the appellate authority has failed to appreciate that Appeal had been preferred only against order dated 10.03.2022 passed in execution proceedings since the appellant was aggrieved only by the said order and not by principal order dated 04.12.2020?

12. Upon consideration of submissions advanced by learned counsel for appellant and perusal of material on record, it is evident from a perusal of impugned order and admitted by learned counsel for appellant that the initial complaint instituted by respondent - allottee was allowed by means of order dated 04.12.2020 with twin directions being issued; firstly, the appellant herein was directed to execute a sale deed in favour of allottee by 20.01.2021 and secondly, that in case the first part was not complied with, the appellant herein was required to refund within a period of forty five days from 20.01.2021, the amount deposited by the respondent/allottee as indicated in the Application Form.

13. So far as the aspect of rejection of Application for condonation of delay is concerned, it is the discretion of the Real Estate Appellate Tribunal with regard to same once it is indicated that the reasons taken by the appellant for filing Appeal with delay is unsatisfactory.

14. However, First Appeal has not been rejected only on the ground of delay but also on the ground that Appeal has been preferred only against consequential order passed in execution proceedings without challenging principal order dated 04.12.2020 and therefore the Appeal was not maintainable.

15. So far as aforesaid aspect is concerned, although learned counsel for appellant has submitted that the appellant was not aggrieved by order dated 04.12.2020 but submits that although the Application form accepted from respondent/allottee indicates an amount deposited to the tune of Rs.22,50,000/- excluding service tax but actually the said allottee had deposited a sum of only Rs.7,50,000/-.

16. Clearly, in view of such submission, the aspect of appellant being aggrieved by the second portion of order dated 04.12.2020 is evident since he particularly disputes the amount deposited by the respondent/allottee.

17. In the considered opinion of this Court, the same would have provided appellant with an ample ground to challenge order dated 04.12.2020, which having not been done, the executing court was bound to comply with order dated 04.12.2020 in its entirety particularly since the executing court cannot go beyond the decree.

18. The impugned order has considered the aforesaid aspect particularly that Appeal had been preferred only against consequential order without seeking relief against the principal order and therefore impliedly Appeal was held not to be maintainable.

19. This Court is in respectful agreement with the finding recorded by the Real Estate Appellate Tribunal by means of order dated 16.12.2024.

20. In view thereof, this Court does not find any substantial question of law arising for adjudication.

21. The appeal therefore being devoid of merits is dismissed at the admission stage itself.

Order Date :- 28.2.2025 kvg/-