THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-227/2025

SUNIL KUMAR .....**Appellant**

Versus

MR PROVIEW REALTECH PRIVATE LIMITED .....**Respondent**

Counsel for Appellant
RASHI JAIN

Counsel for Respondent
ABHISHEK SHUKLA

Hon'ble Mr. Justice Suneet Kumar, Chairman
Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard learned counsel for the parties and perused the record.

2. Appellant/allottee by the instant appeal is assailing the order dated 03.03.2025, passed by the Uttar Pradesh Real Estate Regulatory Authority at Gautam Budh Nagar (for short 'Regulatory Authority') in complaint No. NCR145/11/114934/2023 (Sunil Kumar Vs. MR Proview Realtech Pvt. Ltd.), whereby, complaint of the appellant seeking possession of the unit and interest for the delayed period came to be rejected solely on the ground that third party right and interest was created on the unit by the respondent/promoter after cancellation. In other words, it was held that appellant seized to be an allottee within the definition under Section 2(d) of the RERA Act, 2016.

3. The facts briefly stated is, appellant had booked a commercial unit (shop) bearing No. M-302 in the project launched by the respondent/promoter in the name and style, 'Delhi-99', in 2012. The sale consideration of the unit was at Rs. 25,63,720/-. It is submitted that thereafter Builder Buyer Agreement (BBA) came to be executed on 20.05.2014. In terms of the agreement possession of the unit was to be handed over within 36 months i.e. on or before 2017. It is further submitted that appellant/allottee had

deposited 85 percent of the sale consideration of the unit at Rs. 22,86,432/-. It is further urged that balance amount was payable after receiving offer of possession of the unit. It is not being disputed by the learned counsel for the respondent that till date Occupancy Certificate/Completion Certificate (OC/CC) of the building/project has not been received.

4. Appellant/allottee, being aggrieved by the delay in possession of the unit filed a complaint under Section 31 of RERA Act, 2016 on 19.11.2023, *inter-alia*, seeking possession of the unit and interest for the delayed period, in terms of Section 18(1) of the RERA Act, 2016. The respondent/promoter appeared and filed objections to the complaint. Learned Regulatory Authority on hearing the rival contentions, reserved the order on 18.09.2024. It is relevant to point out that respondent/promoter in their objections had not taken the plea that the unit/agreement came to be cancelled on 01.09.2023, and thereafter, third party right came to be created on the unit on 07.10.2023 by executing a Builder Buyer Agreement. Counsel for the appellant submits that cancellation of the unit/agreement came to be waived as the respondent/promoter on 19.01.2024 had made an offer of possession of the unit and demanded further money of the unit. Further, it is submitted that till date, after cancellation of the unit, the deposited amount alongwith interest thereon has not been refunded by the respondent. It is, therefore, urged that the agreement of the unit survives and the lien on the unit of the appellant has not been terminated.

5. In the circumstances, respondent/promoter had suppressed the relevant facts which was necessary to have been disclosed in its objection to the complaint. In any case, after the order came to be reserved, behind the

back of the appellant/allottee, the respondent/promoter in their written submission disclosed for the first time that the unit came to be cancelled on 01.09.2023. The learned Regulatory Authority, relying upon the assertion made by the respondent/promoter in their written submission, rejected the complaint solely on the ground that since the unit/agreement was cancelled, therefore, appellant/allottee ceases to be an allottee.

6. In the given facts, it was incumbent upon the Regulatory Authority to have complied the principles of natural justice by giving appellant/allottee an opportunity to rebut the factum of cancellation of the unit/agreement. Further, it was required from the Regulatory Authority to have posted the complaint for further hearing and should have framed an issue with regard to the legality and validity of the cancellation letter dated 01.09.2023, in terms of Section-11(5) of the RERA Act, 2016. The onus was upon the respondent to show that the termination of the unit was for sufficient cause.

7. We are constrained to observe that in judgments/orders passed by the Regulatory Authority, there is a tendency amongst the Presiding Officers to take notice of a fact which is placed for the first time in written submission filed by the respondent/promoter and that too after the order being reserved for judgment. The fact which goes to the root of the *lis* is being made part of the impugned order without the fact being confronted to the appellant/allottee. The tendency of the Regulatory Authority tantamounts to judicial im-propriety that orders are being made to rest on facts which is neither pleaded, nor, duly supported by evidence.

8. In the circumstances, at the appellate stage, it would not be proper for this Tribunal to enter into disputed questions of the fact with regard to the validity of the termination of the unit in the first instance. Learned counsel

for the parties submit that interest of justice would be subserved in the event the matter is remanded to the Regulatory Authority to decide the complaint afresh on merits in particular with regard to the legality and validity of the cancellation letter dated 01.09.2023. Further, upon cancellation of the unit/agreement, appellant may not be an allottee, but for maintaining the complaint under Section 31 of Act, 2016, is an 'aggrieved person'.

9. In view thereof, having regard to the facts and circumstances of the case, the appeal is disposed of by passing the following orders:

I. Impugned order dated 03.03.2025 passed by the Regulatory Authority in complaint No. NCR145/11/114934/2023 (Sunil Kumar Vs. MR Proview Realtech Pvt. Ltd.) is set-aside and quashed. Complaint bearing No. NCR145/11/114934/2023 (Sunil Kumar Vs. MR Proview Realtech Pvt. Ltd.) restored to its original file and number;

II. the Regulatory Authority is directed to decide complaint afresh after framing issue with regard to the legality and validity of the cancellation of the unit, expeditiously, preferably within a period of 08 weeks, provided that there is no other impediment;

III. the parties undertake to appear before the Regulatory Authority and file appropriate application, including, amendment application to amend the complaint/objections;

IV. till the disposal of the complaint, the parties shall maintain status-quo in respect of the unit which is subject matter of this appeal and shall abide by the outcome of the complaint;

V. No order as to cost.

10. Registry is directed to forward copy of this order to learned Regulatory Authority for compliance.

(Rameshwar Singh) (Suneet Kumar)

Dated: 08.05.2026
PRADEEPKUMAR