AFR
RESERVED JUDGEMENT
BENCH NO. 1

THE U.P. REAL ESTATE APPELLATE TRIBUNAL
AT
LUCKNOW

1. Appeal No. 501 OF 2022

PANKAJ KUMAR

Versus

GAURSONS HI TECH INFRASTRUCTURE PVT LTD

2. Appeal No. 502 OF 2022

PANKAJ KUMAR

Versus

M/s GAURSONS HI-TECH INFRASTRUCTURE PVT LTD

3. Appeal No. 503 of 2022

RAJINDER KAMBOJ

Versus

GAURSONS HI TECH INFRASTRUCTURE PVT LTD

4. Appeal No. 504 OF 2022

RAJINDER KAMBOJ

Versus

GAURSONS HI-TECH INFRASTRUCTURE PVT LTD

5. Appeal No. 505 OF 2022

HITESH JADON

Versus

GAURSONS HI TECH INFRASTRUCTURE PVT LTD.

6. Appeal No. 507 OF 2022

NEELAM KUMARI

Versus

GAURSONS HI TECH INFRASTRUCTURE PVT LTD

7. Appeal No. 509 OF 2022

VEDANSH VENTURES LLP

Versus

GAURSONS HI TECH INFRASTRUCTURE PVT LTD

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

1. Heard Shri Harish Pandey along with Ms. Aahuti Agarwal, learned counsel appearing for the appellant allottee and Shri Samrat Vaish, learned counsel for the respondent promoter and perused the records.

2. On the consent of parties, the batch of appeals (seven in number) are being heard together, all the appeals are similar on facts and law.

3. The facts of Appeal No. 501/2022 (**Pankaj Kumar Vs. Gaursons Hi Tech Infrastructure Pvt Ltd**.) is being referred to as lead case for the sake of convenience.

4. The appellant allotee by the instant appeal, preferred under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short, 'Act, 2016'). is raising challenge to the judgement and order dated 31.01.2022, passed by Uttar Pradesh Real Estate Regulatory Authority (for short, 'Regulatory Authority'), at Gautam Budh Nagar, in Complaint No. NCR144/06/76568/2021, whereby, Regulatory Authority rejected the prayer for refund of deposited amount and directed the respondent to hand over possession of the unit by 31.03.2022, in case the allottee desires, further, directed payment of delay interest on the deposited amount by the allottee at MCLR plus one percent from 30.11.2018, till the date of receipt of Occupancy Certificate (OC) (07.09.2020) or the date of offer of possession, whichever is later, excluding, force majeure period (25.03.2020 to 25.09.2020).

5. The appellant allottee in the instant appeal seeks refund of his deposited amount with interest thereon, at eighteen percent per annum, alleging breach of conditions of allotment letter by the respondent promoter.

6. The questions that arise for consideration are:

   i. whether offer of possession of the unit made by the respondent promoter on deemed occupancy certificate is legal and valid;

   ii. whether the appellant allottee is entitled to full refund of his deposited amount, along with interest, at what rate, thereon;

   iii. whether the Regulatory Authority passed the impugned order beyond pleadings of the complainant/allottee, and/or, whether impugned order rejecting the complaint for refund is lawful and just.

Question no. (i)

7. Facts *inter se* parties are not in dispute.

8. The appellant allottee booked a lockable office space bearing no. 9117, located on ninth floor in the commercial project, named, 'Gaur City Mall', situated in the township, Gaur City, GH-01, Sector-4, Greater Noida, vide allotment letter dated 08.05.2015, for a total consideration at Rupees fifteen lakh forty-five thousand three hundred and thirty, plus other applicable charges, against which Rupees fourteen lakh eighty thousand eight hundred and thirty seven, came to be paid by the allotee. The construction of the project was to be completed by 30.08.2018, plus three months fit-out period i.e., 30.11.2018.

9. Learned counsel for appellant submits that respondent promoter has failed to complete the construction of the project within the timeline and possession of the unit was offered belatedly on 18.08.2020. The appellant contends that the offer of possession is defective, as the building remains in an under-construction state, the assertion is also supported by the official record available on the website of Regulatory Authority, which indicates that construction of the project is likely to be completed by 2024. Further, the partial OC dated 07.09.2020, does not declare the floors for which the respondent has obtained partial OC.

10. Learned counsel for appellant further submits that respondent had assured, at the time of booking, that the lockable office space, shall be provided along with centralised air conditioning. The lockable office space was to be constructed with glass enclosure having mall atrium view without windows and cost for centralised air-conditioning was included in the total cost of the

unit. However, at the time, possession of the unit was offered, respondent retracted from its obligation, offering an alternative cooling system, subject to additional payment.

11. Further, appellant challenges the demand of respondent for extra payment based on an unexplained increase in super area, while the carpet area, of the unit was reduced by approximately 10 percent. The increase in super area from 266 sq. ft. to 348 sq. ft. is substantial and material alteration which directly affects the size of the unit, commercial value, utility and viability of the office space. Further, only 11 lifts, were installed, out of the 21 lifts specified in the layout building plan, with only two lifts assigned to the office section of the building.

12. Learned counsel for appellant further submits that respondent unilaterally increased the number of office floors from two to nine, leading to higher project density, and prioritized the completion of commercial shop areas for rental income, while leaving the office space allotted to the appellant incomplete, thus, makes respondent liable under clause 12 of allotment agreement, read with, Section 12 of Act, 2016.

13. The appellant initially approached the Adjudicating Officer (Complaint No. ADJ/NCR144/01/67807/2021), seeking compensation for delay in the completion of the project and layout violations. Following pleadings, the learned Adjudicating Officer (AO), directed a technical team from Regulatory Authority, to conduct an on-site inspection of the mall. Pursuant to the order dated 02.07.2021, a technical member inspected the premises and submitted inspection report on 27.07.2021, which details the physical status of the project. The said complaint was disposed off vide order dated 16.09.2021, wherein, Adjudicating Officer (AO), inter alia, awarded compensation of rupees fifty thousand for providing less number of lifts and rupees twenty-five thousand for unilateral increase in super area.

14. During the proceedings, appellant on legal advice, that the proceedings before AO lacks jurisdiction for claiming refund of deposit, chose to withdraw the claim for refund, from the forum of Adjudicating Officer. The learned Adjudicating Officer granted liberty to the appellant to approach the Regulatory Authority for the said relief.

15. The appellant, thereafter, filed Complaint, bearing No. NCR144/06/76568/2021, before the learned Regulatory Authority, seeking full refund of the deposited amount along with interest in terms of Section 18 (1) of Real Estate (Regulation and Development) Act, 2016, (for short, 'Act, 2016').

16. Learned counsel for respondent, in rebuttal submits that timely payment of instalments under the construction linked payment plan was the essence of the allotment terms and conditions, yet appellant failed to honour the demand notices and specifically defaulted on the final instalment due at the time of the offer of possession. Since handing over of the unit was strictly conditional upon complying the agreed payment schedule. It is urged that, due to financial defaults of appellant, the construction timeline was disrupted and that caused delay in completing the allotted unit.

17. Learned counsel for respondent further submits that the construction timeline of the project was hindered by multiple external factors beyond its control, primarily, due to its location in the National Capital Region (NCR). Between May 2015 and 2018, work was repeatedly obstructed by various injunction orders and environmental restrictions imposed by the Environment Pollution (Prevention & Control) Authority, the NGT, and Hon'ble Supreme Court. It is urged that these factors constitute "force majeure" events under the terms of the allotment. Furthermore, from March 2020 onwards, progress of the construction was crippled due to COVID-19 pandemic, which caused unprecedented disruptions in labour availability, material movement, and overall site operations.

18. Learned counsel for respondent, further, argued that they had applied for partial occupancy/completion certificate (OC/CC) on 01.06.2020. Relying on the notification dated 16.09.2019, issued by the Regulatory Authority, respondent claims to have obtained deemed OC/CC on 11.06.2020, thereafter, issued offer for possession of the unit, to the appellant on 18.08.2020, with a request to clear all outstanding dues. Although the partial OC was granted, by the competent authority on 07.09.2020. The respondent submits that the project was ready for possession, as per the statutory fiction of deemed approval, hence, respondent is not entitled to refund the entire deposit made by the appellant.

19. The issue involved in the facts of the case is with regard to the validity of offer of possession dated 18.08.2020, issued by the respondent promoter, including, the consequential demand to deposit remaining amount.

20. It is admitted fact that agreed date of assured possession/completion was 30.11.2018. Admittedly, lockable office space no, 9117, was booked/allotted to the allottee by allotment letter dated 08.05.2015. The respondent has submitted that they had applied for partial OC on 01.06.2020 to the competent authority i.e., GNIDA, with all mandatory No Objection Certificates (NOCs). Since respondent promoter, neither, received any order of rejection, nor, any objection within seven days, promoter thereafter, on the strength of deemed OC, due on 11.06.2020, issued offer of possession to the allottee on 18.08.2020, in terms of UP RERA Notification No. 8208/U.P. RERA/20 Meeting/K.A./2019-20 dated 16.09.2019.

21. The respondent/promoter has submitted that offer of possession dated 18.08.2020 is valid offer of possession, while allottee has submitted that offer of possession dated 18.08.2020 is not a valid offer of possession without having obtained OC. It is the responsibility of promoter under Section 11 (4) (b) of Act 2016, to obtain OC/CC as per local laws and other laws from the relevant competent authority and make it available to the allottee. The Regulatory Authority is not the competent authority/local authority to issue OC/CC or deemed OC/CC. The UP RERA notification of 16.09.2019 is void ab-initio, having no force of law.

22. Section 11 (4) (b) of Act, 2016 is extracted:

11. "***Functions and duties of promoter:*** *(4) The promoter shall—*

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

23. The competent authority in the present case is GNIDA to grant OC and not the Regulatory Authority. GNIDA is a statutory body constituted under Section 3, of the Uttar Pradesh Industrial Area Development Act, 1976 (for short 'Act, 1976'). Upon comprehensive review of the provisions of Act,

1976, it is clear that Act, 1976 is a self-contained statute. GNIDA having exclusive jurisdiction and authority to sanction layout/building map and grant occupancy certificate (OC) on completion of the project.

24. Regulation 20.0 and 20.1.1 of the Greater Noida Industrial Development Area Building Regulations, 2010, (for short, 'GNIDA Regulations, 2010') framed by GNIDA, in exercise of power under section 9 of Act, 1976, is extracted below: -

"20.0 Notice for issue of occupancy–

Every owner shall have to submit a notice of completion of the building to the Authority regarding completion of work described in the building permit as per Appendix-9 accompanied by the documents as per checklist annexed with Appendix 9."

20.1.1.1 "Occupancy certificate necessary for occupation –

No building erected, re-erected, shall be occupied in whole or part until the issue of occupancy certificate by the Chief Executive Officer in the Form given in Appendix -11. ***Provided that if the Chief Executive Officer fails to issue the occupancy certificate or send any intimation showing his inability to issue such certificate within 90 days of the date of receipt of application for occupancy certificate an intimation to this effect shall have to be sent to the Authority by the owner for occupying the building. . ."***

25. Perusal of the above regulations clarifies that possession of the unit shall not be delivered before obtaining OC by the promoter. As per Regulation 20.0, promoter is required to submit a notice of completion of building works to the Authority i.e., GNIDA. Notice must be in the prescribed format (Appendix-9), accompanied by the documents as per checklist provided therein, whereas, Regulation 20.1 provides that in the event Chief Executive Officer (CEO) fails to issue OC or send any intimation showing his inability to issue such certificate within 90 days of the date of receipt of application, the building may be occupied without waiting for such certificate. Intimation to this effect shall have to be sent to the Authority by the owner before occupying the same.

26. Therefore, intimation of offer of possession/delivery of possession of the unit, on the basis of deemed OC, is permissible only when concerned Authority has

not raised any objection on the application of promoter filed to obtain OC within ninety days. It is necessary to inform the Authority prior to sending offer of possession or the delivery of possession on the basis of deemed OC.

27. The submission of the Learned counsel for the respondent that the application filed for OC with GNIDA came to be granted after seven days, in view of UP RERA notification dated 16.09.2019. The notification mandates that in event the competent authority fails to pass any order on the application for OC/CC, it shall be deemed to have been granted after seven days. In other words, promoter can grant possession of the unit to the allottee.

28. The submission lacks merit. The notification dated 16.09.2019 is *void ab initio* having no force of law. The Authority competent to grant OC/CC, as noted earlier, is the competent authority as defined under Section 2(p) i.e. local authority or any authority created or established under any law and has power to give permission for development of such immovable property/project.

29. Such an Authority alone has the jurisdiction and Authority to grant completion certificate (CC) (Section 2(q)) or occupancy certificate (OC) (Section 2(zf)), as the case may be, upon inspection and certifying that the real estate project has been developed according to the sanctioned plan and specifications, as approved by the competent authority under the local law.

30. In the circumstances, the respondent promoter cannot claim deemed completion of the project within seven days of the date of submission of the application form for OC. The application would qualify for deemed completion only after ninety days as per GNIDA Regulation, 2010, which being the competent authority under the local law. The promoter cannot plead ignorance of the building Regulations, by taking aid of UP RERA notification. The appellant is not bound to act on an illegal offer of possession of the unit.

31. Further, inspection report dated 27.07.2021, conducted by technical team member of the Regulatory Authority detailed the physical status of the project. The report clearly reveals that the project was incomplete and several essential works and amenities were yet to be completed. Possession in the circumstances could not have been offered of an incomplete project. The respondent has not assailed/challenged the inspection report. In other words, without OC having been obtained express/deemed by the promoter, as per

GNIDA Regulations, 2010, permission for occupancy of the unit was not as per law.

32. It is pertinent to note that respondent promoter has not placed on record, the application purportedly submitted before the competent authority seeking issuance of occupancy certificate (O.C.) in the prescribed format under GNIDA, Regulations, 2010. The respondent has merely asserted that an application was made on 01.06.2020, however, no documentary evidence has been filed to substantiate that such an application was duly submitted in the prescribed form (Appendix-9), of GNIDA Regulations, 2010. In absence of the said application and supporting material on record, it cannot be conclusively held that the respondent had in fact applied for grant of O.C. in the manner prescribed by law.

33. The above discussion and analysis clarifies the position that Regulation 20.0 and 20.1.1 of the GNIDA Regulations, 2010, is effective and in operation, therefore, any other, notification cannot override/supersede provisions of the GNIDA Regulations, 2010, that governs the project falling under the jurisdiction of GNIDA. It is admitted fact that offer of possession has been issued by the promoter, in the present case, to the allottee of the allotted commercial unit/shop before the lapse of *ninety days,* from the date of filing application for OC, therefore, offer of possession dated 18.08.2020, shall not be an 'express' or 'deemed' OC to bind the appellant allottee. It is settled principle of law that where a statute requires a person to do an act/omission in a particular manner, then, the said act/omission is required to be done in the manner prescribed by law.

34. We are, therefore, of the considered view that offer of possession dated 18.08.2020 is not a valid offer of possession. It is not the case of the respondent promoter that after obtaining part OC on 07.09.2020, from GNIDA, thereafter, a fresh offer of possession was issued. Further, the site inspection of the project, conducted by the Regulatory Authority, found the project incomplete.

Question no. (i) is, accordingly, answered.

Question no. (ii)

35. Having regard to the facts and law discussed while answering question no. (i), it is clear that offer of possession dated 18.08.2020, is not a valid offer of possession. Neither OC was issued by the prescribed/competent Authority, nor promoter fulfils the criteria of having obtained deemed OC as per GNIDA Regulations, 2010. It is also admitted fact that respondent promoter had not obtained OC before assured date of possession in terms of the agreement. In the circumstances promoter has not issued a valid offer of possession on or before date of completion and even after obtaining partial OC on 07.09.2020, respondent failed to issue a fresh offer of possession.

36. The complaint came to be filed by the allottee for refund of deposit and delay interest, confirms that allottee was withdrawing from the project and does not desire to remain in a delayed project, therefore, allottee is entitled for refund of deposit and interest, thereon, in a delayed project on being unable to give possession of the unit in a completed project.

37. Section 18 of Act, 2016 is attracted in the given facts:

"18. **Return of amount and compensation**.—*(1)* ***If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or,*** *as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,* ***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act."***

38. Section 18(1) of Act, 2016, clearly mandates, that where the promoter fails to complete the project or is unable to give possession of the apartment/plot in accordance with the terms of the agreement for sale, the allottee is entitled to seek refund of the deposit, along with, interest at the prescribed rate and compensation. In the present case, the delay in completion of the project by the respondent is admitted and undisputed. The date for handing over

possession of the unit, as per terms of the agreement, was 30.11.2018. The application for OC was filed by the promoter on 01.06.2020.

39. As per GNIDA Regulations, 2010, the deemed completion date would be 01.09.2020. The offer of possession issued on 18.08.2020, being prior to the date of deemed OC, would be an illegal and invalid offer, not being in terms of the Regulations and Act, 2016. Further, it is claimed by the respondent that part OC of the project came to issued by GNIDA on 07.09.2020. In other words, respondent was competent to issue offer of possession of the unit thereafter. It is admitted by the respondent that offer of possession never came to be issued to the appellant after receiving part OC of the project. On query, the learned counsel for the respondent submits that respondent relies upon the offer of possession dated 18.08.2020, on the strength of deemed OC. In the circumstances, admittedly, respondent on part completion of the project failed to hand over/give possession of the unit in terms of the agreement and Act, 2016.

40. The allottee acquires an absolute and indefeasible right to seek refund under Section 18(1) of Act, 2016. The promoter shall be liable to refund the entire deposit and pay interest at the prescribed rate thereon, to the allottee.

Question no. (ii) is, accordingly, answered.

<u>Question no. (iii)</u>

41. The issue involves whether the Regulatory Authority passed the impugned order beyond pleadings and relief of the complaint, and/or, whether impugned order rejecting the complaint for refund is lawful and just.

42. The issues of pleading, prayer and moulding of reliefs has been examined by Hon'ble Supreme Court, as well as, by the Judicial Forums holding that the rights of the parties stand crystallized on the date of institution of the proceeding and no party should be permitted to travel beyond the pleadings and prayer.

43. In **Bhagwati Prasad vs. Shri Chandramaul AIR 1966 SC 735**; Hon'ble Supreme Court was pleased to observe that: -

"*The importance of the pleadings cannot, of course, be ignored, because it is the pleading that lead to the framing of issues and a trial in every civil case* *has inevitably to be confirmed to the issues framed in the suit. The whole object of framing the issues would be defeated if parties allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues.”*

44. The Hon’ble Supreme Court in **Ram Sarup Gupta (dead) by LRs. v. Bishun Narain Inter College MANU/SC/0043/1987: [1987] 2SCR805;** was pleased to observe: -

“……It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise……”

45. The object of pleadings is to clearly define the dispute so that parties do not change their stance or expand their claims during the trial, pleadings ensure that both sides know exactly what questions will be decided, allowing them a fair opportunity to present relevant evidence before the Court. Since issues are framed strictly on the basis of pleadings, if the essential facts required to support a specific claim or relief are missing from the plaint, the court cannot frame an issue or grant that relief. It is a fundamental rule of civil law that no party can be allowed to argue beyond what they have formally pleaded, and Courts must strictly avoid making out a new case that was never raised by the parties themselves.

46. Similarly, when there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus, it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

47. It is our considered view that the Regulatory Authority had passed the impugned order directing the promoter to give possession of the unit to the allottee without appreciating the pleading and relief of the allottee for refund

of deposited amount. In other words, the impugned directions for giving possession to the allottee is beyond the pleadings and relief sought by the allottee. The Regulatory Authority in the name of moulding relief passed orders against and contrary to the prayer of the allottee/appellant, which is against the object and spirit of the provisions of Section 18, as well as, other provisions of the Act, 2016.

48. Answer to Issue No. (i) clarifies that offer of possession dated 18.08.2020 is not a valid offer of possession. Answer to Issue No.(ii) clarifies that the appellant allottee is entitled to refund of entire deposited amount at MCLR plus one percent.

49. Learned Regulatory Authority directed the respondent by the impugned order dated 31.01.2022, to hand over possession of the unit in case the allottee desires by 31.03.2022 and also for payment of delay interest on the amount deposited by the allottee at MCLR plus one percent from 30.11.2018, to date of receipt of OC (07.09.2020) or the date of offer of possession, whichever is later excluding the force majeure period (25.03.2020 to 25.09.2020). Therefore, the impugned order dated 31.01.2022, passed by the learned Regulatory Authority, suffers from illegality, perversity and is not lawful and just, being against the relief claimed by the appellant.

Question no. (iii) is, accordingly, answered.

50. Having due regard to the facts and circumstances of the case and for the reasons assigned herein above, the **appeals are allowed**, by passing the following orders:

(i) The impugned order dated 31.01.2022, passed in Complaint No. NCR144/06/76568/2021,NCR144/06/76571/2021,NCR144/06/76562/2021,NCR144/06/76554/2021,NCR144/06/76063/2021,NCR144/06/76579/2021, NCR144/06/76549/2021 by the Regulatory Authority is set aside and quashed.

(ii) The appellant/complainants shall be entitled to refund of Rs. 14,80,837/-;Rs.15,41,288 /-; Rs.13,91,522 /-; Rs. 19,99,464/-; Rs. 28,61,600/-; Rs.17,96,893/- and Rs.13,36,426/-; respectively, along with interest at MCLR+1 percent, till the date of payment to be paid by the respondent, within 45 days the order is uploaded.

(iii) Registry to communicate the order to the learned Regulatory Authority for compliance.

(iv) No order as to cost.

(Rameshwar Singh) **(Suneet Kumar)**

Dated: 29.05.2026
Tanveer/Mubashshira/-