

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Special Bench Court No. 1

APPEAL No.-219/2025

BHARATI PANDEY & ANOTHER

.....Appellant

Versus

M/S M. R. PROVIEW REALTECH PRIVATE LIMITEDRespondent

Counsel for Appellant

ASIF ANEES

Counsel for Respondent

ABHISHEK SHUKLA

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Justice Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard learned counsel for parties and perused the record.
2. Appellant/allottee(s) by the instant appeal is assailing the order dated 10.02.2025, passed by the Uttar Pradesh Real Estate Regulatory Authority (for short, 'Regulatory Authority') in complaint No. NCR145/09/113321/2023 (Bharati Pandey & Another Vs. M.R. Proview Realtech Pvt. Ltd.), whereby, complaint of the appellants seeking possession of the unit and interest for the delayed period came to be rejected on the ground that the allotment of the appellants stood validly cancelled by the respondent/promoter, consequently, appellants ceased to be an allottee within the definition under Section 2(d) of the RERA Act, 2016.
3. The facts briefly stated is, appellants had entered into an agreement dated 05.12.2011 with the respondent/promoter for allotment of a shop, bearing No. LGF-91 in the project titled 'The Great Northern Bazaar' at Raj Nagar Extension, NH-58, Ghaziabad, U.P. The agreed sale consideration of the unit was fixed at Rs. 11,27,100/-. It is submitted that in pursuance of the said agreement, appellants paid a sum of Rs. 10,04,458/- to the respondent/promoter in six instalments, through various modes, between 05.12.2011 and 30.09.2014, leaving a balance amount of Rs. 1,22,642/- payable towards the total cost of the unit. It is further submitted that as per the agreement, possession of the unit was to be handed over within 30 months with a grace period of 6 months, i.e., on or before 05.12.2014. It is not disputed by learned counsel for the respondent that despite passage of almost

9 years from the said date, possession of the unit was never offered or granted to the appellants.

4. Appellants, being aggrieved by the delay in handing over possession of the unit, filed a complaint before the Regulatory Authority, registered as complaint No. NCR145/09/113321/2023, inter-alia, seeking possession of the unit along with the total purchased area as per plan(agreement). The respondent/promoter appeared and filed its Written Statement dated 02.07.2024, annexing therewith, amongst other documents, a partial completion certificate dated 25.07.2022. Appellants filed a replication specifically denying the averments made by the respondent. Learned Regulatory Authority, after final hearing on 02.09.2024, reserved the matter for judgment. It is relevant to point out that the respondent/promoter, in its Written Statement, had not taken the plea that the allotment of the appellants stood cancelled, nor was any cancellation letter, demand letter, or reminder letter placed on record therewith.
5. Counsel for the appellants submits that after the matter was reserved for judgment, the respondent/promoter, behind the back of the appellants, filed a Written Submission dated 04.10.2024 and, for the first time, placed on record an alleged demand letter dated 13.11.2021, alleged reminder letters stated to have been issued between 31.12.2021 and 31.07.2023, an alleged pre-cancellation letter dated 31.07.2023, and an alleged final cancellation letter dated 01.08.2023, on the strength whereof it was contended that the allotment of the appellants had been cancelled and the unit re-allotted to a third party, namely, M/s Touch Tech Auction Mart. It is submitted that the said documents were unsupported by any affidavit. It is further submitted that the appellants never received any such demand, reminder, pre-cancellation, or cancellation letters at any point in time.
6. In the circumstances, respondent/promoter had suppressed the relevant facts which was necessary to have been disclosed in its Written Statement filed to the complaint. In any case, after the order came to be reserved, behind the back of the appellants, the respondent/promoter in its written submission disclosed for the first time that the unit came to be cancelled on 01.08.2023. The learned Regulatory Authority, relying upon the assertions made by the

respondent/promoter rejected the complaint solely on the ground that since the unit/agreement was cancelled, the appellants ceased to be allottees.

7. In the given facts, it was incumbent upon the Regulatory Authority to have complied with the principles of natural justice by giving the appellants an opportunity to rebut the factum of cancellation of the unit/agreement, more so, when the documents in support thereof were placed on record for the first time after the matter had already been reserved for judgment, and were unaccompanied by any affidavit verifying their contents. Further, it was required from the Regulatory Authority to have posted the complaint for further hearing and to have framed an issue with regard to the legality and validity of the cancellation letter dated 01.08.2023, 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 and that the requisite demand and reminder letters were in fact served upon the appellants.
8. 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 a 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 conduct of the Regulatory Authority tantamounts to judicial impropriety, the orders are being made to rest on facts which are neither pleaded, nor duly supported by evidence.
9. In the circumstances, at the appellate stage, it would not be proper for this Tribunal to enter into disputed questions of 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 01.08.2023. Further, upon cancellation of the unit/agreement, appellants may not be allottees, but for maintaining the complaint under Section 31 of the Act, 2016, are 'aggrieved persons'. The complaint upon cancellation of the agreement would be maintainable.

10. 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 10.02.2025 passed by the Regulatory Authority in complaint No. NCR145/09/113321/2023 (Bharati Pandey & Another Vs. M.R. Proview Realtech Pvt. Ltd.) is set-aside and quashed. Complaint bearing No. NCR145/09/113321/2023 (Bharati Pandey & Another Vs. M.R. Proview Realtech Pvt. Ltd.) restored to its original file and number;
- II. Regulatory Authority is directed to decide the complaint afresh after framing an issue with regard to the legality and validity of the cancellation of the unit, expeditiously, preferably within a period of 08 weeks, provided 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.

11. Registry is directed to forward copy of this order to learned Chairman/Secretary Regulatory Authority for compliance and circulation.

(Rameshwar Singh)

(Sanjai Khare)

(Suneet Kumar)

Dated: 13/07/2026

Rajneesh/Mubashshira