

Sl. 23:

Appeal No. 472/2022

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Rameshwar Singh, Administrative Member.

1. Heard Sri Amit Yadav, learned counsel for the appellant and Sri Samrat Vaish, learned counsel for the respondent and perused the record with the assistance of learned counsel for the parties.
2. The appellant allottee by the instant appeal is raising challenge to order dated 30.03.2022, passed by Real Estate Regulatory Authority at Gautam Budh Nagar, (for short, 'Regulatory Authority') in Compliant No. NCR144/04/73855/2021, whereby, inter alia, a direction came to be issued to the respondent to grant possession of the unit to the allottee, along with, delay interest on the deposit.
3. The appellant allottee is aggrieved by the said direction for the reason that the relief claimed in the complaint instituted by the appellant was for refund of his deposit along with interest, thereon, in a delayed project.
4. The short question that arises for consideration is as to whether, the Regulatory Authority committed an error in travelling beyond the pleadings and relief sought by appellant allottee, for refund of his deposit and interest thereon.
5. The facts *inter se* parties are not in dispute.
6. The respondent promoter floated a scheme in the, name and style, 'Gaur City Centre', at Noida, wherein, shop/unit bearing No. LG-114, came to allotted. The sale consideration of the unit was at Rs. 56,47,752/- against which, appellant deposited Rs. 12,95,559/-. As per terms and conditions of the allotment letter dated 25.10.2018, the agreed date for handing over possession was 31.10.2018 (Clause 7.1). It is not in dispute that the respondent on obtaining occupancy/completion certificate (OC/CC) on 29.05.2020 had not

made any offer of possession, rather, on deemed completion, possession of the unit was offered earlier on 14.02.2020.

7. Aggrieved appellant was constrained to institute the complaint under Section 31, of Real Estate Regulatory Authority, (for short, 'Regulatory Authority') Act 2016, seeking refund of deposit and interest thereon on the ground of delay in handing over possession, in terms of Section 18 (1) of RERA Act, 2016.
8. Learned Regulatory Authority framed several issues, issue no. (4) framed was as to whether appellant is entitled to refund of his deposit and interest. The issue came to be decided on whims and conjectures and not per the statutory provision. The learned Regulatory Authority returned a finding that the project is delayed and possession on the basis of deemed OC/CC is not in terms of the RERA Act 2016, however, while deciding issue no. 4, the relief claimed, if granted, in the opinion of the Regulatory Authority, project would fail. In the circumstances, possession of the unit came to be imposed upon the appellant. Which was not prayed for the appellant.
9. The issues of pleadings, prayer and moulding of reliefs have been examined time and again 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 pleadings and prayer.
10. In **Bhagwati Prasad vs. Shri Chandramaul AIR 1966 SC 735**, the Hon'ble Supreme Court was pleased to observed that: - *"The importance of the pleadings cannot, of course, be ignored, because it is the pleadings 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.”

11. *The Hon’ble Supreme Court in **Ram Sarup Gupta (dead) byLRs. V. Bishun Narain Inter College MANU/SC/0043/1987: [1987] 2SCR805**, observed that: - “.....It is well settled that in the absence of pleadings, 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 9 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.....”*
12. *Further, the Hon’ble Supreme Court in **Orissa Cement Ltd. Vs. State of Orissa, 1991 Supp (1) SCC 430 (at page 498)** held that, “it is well settled proposition that it is open to the court to grant, mould or restrict the relief in a manner not appropriate to the situation before it in such a way as to advance the interests of justice.”*
13. *The Hon’ble Supreme Court in the case of **Bachhaj Nahar vs Nilima Mandal & Ors; reported in (2008) 17 SCC 491**, observed that, “a Court cannot make out a case not pleaded. The Court should confine its decision to the question raised in pleaded. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.”*
14. *In **Om Prakesh vs. Ram Kumar (1991) 1 SCC 441**, the Hon’ble Supreme Court observed: - “A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statue.”*

15. The Hon'ble Supreme Court recently in *Akella Lalitha Vs. Konda Hanumantha Rao & Anr. 2022 Online SC 928*, pleased to reiterate that “if a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.”
16. The learned Regulatory Authority committed an error by travelling beyond the pleadings and relief sought by the appellant/allottee. Section 18(1) of RERA Act 2016, confers upon an allottee absolute right to seek refund of his deposit and interest thereon, in the event, the project is delayed. The right of the allottee to withdraw from the delayed project is unqualified, categorical and unconditional.
17. The question is accordingly, answered.
18. Having due regard to the facts and circumstances of the case and the binding precedent, the appeal is **allowed** by passing following orders;
 - (i) The impugned order dated 30.03.2022, passed by Real Estate Regulatory Authority at Gautam Budh Nagar, (for short, Regulatory Authority) in Compliant No. NCR144/04/73855/2021, is set aside and quashed.
 - (ii) The respondent is directed to refund the deposit along with interest thereon to the appellant at MCLR+1 percent till the date of payment of money.
 - (iii) No order as to costs.

Dated: 12.08.2026
Nikita.../-

(Rameshwar Singh)

(Suneet Kumar)