Bench No. 1
Sr. No. 10

UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL
AT LUCKNOW

APPEAL No. 234 OF 2025

M/S Pinnacle Superstructures Private Limited **..... Appellant**

Versus

Himanshu Gupta **..... Respondent**

****

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

1. Heard Sri Abhishek Khare, learned counsel for appellant-promoter and Sri Mandeep Singh, learned counsel for respondent allottee.

2. The appellant promoter by the instant appeal is raising challenge to the judgment and order dated 10.10.2024, passed by U.P. Real Estate Regulatory Authority, at Gautam Budh Nagar (for short, 'Regulatory Authority'), in Complaint No. NCR144/04/107371/2023 (Himanshu Gupta vs. M/s Pinnacle Superstructures Private Limited), whereby, a direction came to be issued to the appellant to restore the cancelled unit to the respondent allottee after obtaining outstanding dues and pay delay interest.

3. The short question that arises for consideration is as to whether, the impugned order is lawful and just, and/or, passed abiding by principles of natural justice.

4. The facts, *inter se,* parties are not in dispute.

5. The appellant-promoter launched a project in the name and style, 'Sikka Kimaantra Greens', at Sector-79, Noida- Uttar Pradesh. The respondent approached the appellant on 31.05.2015 to book a unit in the project. The respondent allotted a unit, bearing no. 1601, on 16th Floor, admeasuring 1555 sq. ft. The Basic Selling Price (BSP) was at Rs. 3820 per sq.ft. As per terms of agreement dated 24.05.2016, the due date of possession was

17.03.2020. The respondent was required, in terms of agreement, to pay instalments as per construction link plan.

6. It appears that the respondent defaulted, consequently, the unit came to be cancelled by the appellant-promoter on 16.06.2022, which was communicated to the respondent vide e-mail dated 07.02.2023.

7. Learned counsel for the appellant submits that after cancellation of the unit, the money deposited, after deduction of the earnest money, came to be refunded in instalments to the respondent.

8. Aggrieved, by the cancellation of the unit, respondent was constrained to institute a complaint under Section 31 of Real Estate Regulations and Development Act 2016, (for short, Act 2016) on 06.04.2023, inter alia, claiming restoration of the cancelled unit. An interim order, directing status quo, came to be passed on 22.05.2023.

9. The appellant promoter put in appearance and filed objections against the complaint, inter alia, alleging that since the complainant-allottee was a defaulter, accordingly, in terms of the agreement, upon several demand notices, the unit came to be cancelled.

10. Learned counsel for the appellant in the aforenoted background has submitted that the impugned order being a composite order passed in respect of five allottees of the same project, whose units came to be cancelled, has not considered the specific case of the respondent allottee with regard to the legality and validity of the cancellation of the unit in terms of Section 11 (5) of the Act 2016.

11. It is further submitted that learned Regulatory Authority has taken facts of the leading case (Mitra Pal Singh Chauchan, Complaint No. NCR144/05/108702/2023), in respect of unit no. 1203-A. Learned Regulatory Authority, framed sole point for determination whether the complainant is entitled to possession/restoration of the unit and interest for the delayed period. It is urged that facts of the respondent allottee stands on a separate footing. It is submitted that learned Regulatory Authority committed an error, which is evident on face of the impugned order, mechanically directing restoration of the unit without adverting to the merits, in so far it relates to the present unit, in terms of Sections 11

(5) of Act 2016. It is further urged that the date of cancellation in respect of all the complainants is different and for different default. It is therefore, submitted that the impugned order, in so for it relates to the respondent is unsustainable, as it lacks discussion of each of the complaint on merit.

12. We have gone through the impugned order with the assistance of learned counsels for the parties.

13. The impugned order records that the cancellation order of the unit is illegal and invalid, for the reason that the unit, as per the terms of agreement, was to be handed over on or before 28.02.2023, but since, the cancellation order of the unit came to be passed subsequent thereto on 02.09.2023, therefore, the cancellation is not sustainable. In other words, it was held that since the appellant was defaulter in not completing the project by the agreed date, therefore, cancellation was held to be illegal and invalid, without adverting to the fact whether respondent allottee too was a defaulter in paying the instalments thereafter.

14. Learned counsel for the appellant submits that the batch of complaints could not have been decided by a composite order, as facts in respect of each of the complainants are entirely different and the reasons for cancellation rests upon different grounds. It is submitted that the appellant promoter had issued several notices to the respondent dated 04.09.2017, 11.11.2017, 11.12.2017, 20.07.2017 20.01.2018, 17.02.2018, 03.03.2018, 17.03.2018, 19.04.2018, 01.09.2018 and 17.06.2018, respectively, followed by a final reminder dated 29.05.2021.

15. It is urged that since the respondent allottee did not comply and satisfy the demand, consequently, in terms of the agreement, appellant promoter was constrained to cancel the unit.

16. It is further submitted that the impugned order does not reflect or touch upon the legality and validity of the notices and failed to record a finding, that appellant was in default. It is urged that the impugned order is unsustainable as it has been passed only for the reason that since time period of the project was delayed, therefore, it was presumed that appellant was a defaulter and it was not open to the appellant to have

terminated the unit. It is further urged that the finding should have been returned having regard to the ambit and scope of Section 11 (5) of Act 2016. Reliance has been placed on the decision rendered in, ***"M/S Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors decided on 8th September, 2010" [(2010) 9 SCC 496]***

17. In rebuttal, learned counsel for the respondent does not dispute that several complaints came to be decided by a composite order, however, submits that the reasons assigned by the learned Regulatory Authority in the lead case would also touch upon the merits pertaining to legality and validity of the cancellation of the unit, in respect of the respondent allottee, by implication. It is further submitted that the notices referred to by the appellant has been brought on record at the appellant stage, which never came to be served upon the respondent.

18. On specific query, learned counsel does not dispute that the objections being raised by him before this Tribunal, was not considered by the learned Regulatory Authority, while adjudicating upon the batch of complaints. It is settled principle of law that the judgment and order passed by an Authority/Court has to be considered on the reasons assigned in the order under challenge. We are unable to persuade ourselves in accepting the submission of the learned counsel for the respondent that the reasons assigned for upholding the cancellation of the unit, in respect of another unit, be taken as the reason for cancellation of the unit of the respondent. The submission to the learned counsel for the respondent, if accepted, would be in gross violation of the principle of natural justice.

19. The question is, accordingly, answered.

20. Having due regard to the facts and circumstances of the case, and for the reasons assigned hereinabove, **appeal is allowed** by passing the following orders:-

    (i) The impugned order dated 10.10.2024, passed by Regulatory Authority in Complaint No. NCR144/04/107371/2023 (Himanshu Gupta vs. M/s Pinnacle Superstructures Private Limited), is set aside and quashed.

(ii) The matter is remanded to the Regulatory Authority to hear and decide Complaint No. NCR144/04/107371/2023 afresh, after framing specific issue with regard to the legality and validity of the cancellation order dated 16.06.2022, in respect of Flat No. 1601.

(iii) The promoter and complainant to appear before the Regulatory Authority and file supplementary pleadings/evidence, if so advised.

(iv) The Regulatory Authority shall make an endeavour to decide the complaint expeditiously, preferably within six months, provided there is no impediment.

(v) The money deposited by the appellant promoter, in compliance of Section 43 (5) of Act 2016, to be remitted to the appellant as per regulations.

(vi) No order as to costs.

20. Registry to supply copy of this order to UP RERA for compliance.

Dated: 09.10.2026 **(Rameshwar Singh)** **(Suneet Kumar)**
Nikita…/-