

Court No. - 37

Case :- RERA APPEAL No. - 32 of 2022

Appellant :- Pankaj Awasthi

Respondent :- Real Estate Appellate Tribunal U.P. And 2 Others

Counsel for Appellant :- Priyanka Midha, Ram M. Kaushik

Hon'ble Ajay Bhanot,J.

Heard Shri Abhishek Ghosh, learned counsel holding brief of Shri Ram M. Kaushik, learned counsel for the appellant. No one has entered appearance on behalf of the respondents.

The following substantial question of law arises for consideration in the case:-

A. Whether the finding of the learned Tribunal that it was admitted to parties that the project does not come under the definition of 'ongoing project' defined under Rule 2 (h) (4) of the U.P. Real Estate (Regulation and Development) Rules, 2016 was contrary to the material in the record.

The facts as found by the learned Tribunal are depicted herein under:-

The learned Tribunal found that "it is the admitted position that the project in question was completed much prior to the promulgation of the Real Estate (Regulation and Development) Act 2016 and does not come under the definition of ongoing project as per the provisions of Rule 2 (h) (iv) of the U.P. Real Estate (Regulation and

Development) Rules 2016".

The appellant had taken a specific plea before the learned Tribunal that the RERA authority had entertained and allowed the complaints by other complainants/house buyers in regard to the same project executed by the same builder/promoter. The orders of the RERA authority holding that the said project came within the ambit of an ongoing project were also appended and were in the record before the learned Tribunal.

Clearly the aforesaid facts were not referenced to the learned Tribunal and the order has been passed on non consideration of the aforesaid facts.

Once a project has been declared ongoing project by the RERA, the endeavour of the learned Tribunal should always to pass consistent orders in respect of the said project. Inconsistency of the orders in such matters by the RERA will render the said orders vulnerable to the charge of differential treatment against home buyers who are similarly situated. This is a matter of fact which needs due consideration by the learned Appellate Tribunal.

In the wake of preceding discussion, the finding of learned Tribunal that it was admitted by the parties that the project does not come under the definition of ongoing project is vitiated and unsustainable in law.

The substantial question of law is accordingly answered in the affirmative and in favour of the appellant.

The impugned order dated 03.01.2022 passed by the Real Estate Appellate Tribunal, U.P. Lucknow in Appeal No. 91 of 2020 as well as impugned order dated 10.01.2020 passed by the Uttar Pradesh Real Estate Regulatory Authority, Gautambudh Nagar, U.P. in Complaint No. NCR 144/05/0574/2019 are liable to be set aside and are set aside.

The matter is remitted to the learned appellate authority for fresh consideration on merits in accordance with law.

It shall be open to the appellant to implead necessary parties or to file additional pleadings as may be advised before the learned appellate authority.

The appellate authority shall decide the appeal preferably within a period of three months from the date of receipt of a certified copy of this order.

The appeal is allowed.

Order Date :- 4.12.2023
Jaswant