

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-266/2024

VIJENDRA SINGH RAGHAV

.....Appellant

Versus

STRATEGIC DEVELOPERS PRIVATE LIMITED

.....Respondent

Counsel for Appellant
AMIT YADAV

Counsel for Respondent
ROHIT JAISWAL
JAYANT GUPTA

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Rameshwar Singh, Administrative Member

1. Heard Sri S.K. Sharma, learned counsel for the appellant, and Sri Rohit Jaiswal, learned counsel for the respondent.
2. The appellant/allottee by the instant appeal is raising challenge to the order dated 28.01.2020 passed by the U.P. Real Estate Regulatory Authority at Gautam Buddha Nagar (for short 'Regulatory Authority') in complaint No. NCR144/08/0145/2019, whereby, Regulatory Authority directed for possession of the unit, though, the appellant had prayed for refund of his deposited amount in a delayed project.
3. The questions that arises for consideration are:
 - (i) as to whether Regulatory Authority committed an error in travelling beyond the pleadings and relief claimed by the appellant;
 - (ii) whether respondent/promoter can offer possession of the unit on the strength of temporary occupation certificate.
4. The points being mixed questions of fact and law are being decided together.

5. The respondent/promoter floated a residential project, in the name and style, 'Royal Court' at GH, Sector-16, Greater Noida (West), District-Gautam Buddha Nagar. Unit No. C-805, 8th floor, Tower-C, admeasuring 1560 Sq. ft. came to be allotted to the appellant on 13.09.2019. The sale consideration of the unit was at Rs. 55,82,000/-, against which appellant deposited Rs. 20,96,239/-. As per Clause 25 of the allotment letter, possession of the unit was to be handed over within 36 months, plus/ minus, 06 months grace period from the date of allotment i.e. on or before 13.03.2017. Admittedly, the project got delayed. Aggrieved, appellant instituted a compliant on 03.08.2019, seeking refund of his deposit alongwith interest thereon.
6. The respondent/promoter appeared and contested the complaint submitting that permission for temporary occupancy of the building came to be obtained from the competent authority on 07.03.2019, thereafter, offer of possession of the unit came to be made to the appellant on 28.03.2019. It was further stated that Occupancy Certificate (OC) came to be obtained thereafter on 26.11.2019. The learned Regulatory Authority having regard to the fact that temporary occupation permission of the building came to be obtained before institution of the compliant, directed that appellant should take possession of the unit. Hence, the appeal.
7. Learned counsel for the respondent raised preliminary objection that appeal would not be maintainable against the impugned order. It is urged that appellant had filed an execution application before the Regulatory Authority seeking possession of the unit pursuant to the impugned order/decreed. In the proceedings a conciliation report was prepared addressing the queries raised by the appellant, *inter-alia*, with regard to the area of the flat. In the meantime, appellant filed a second complaint bearing No. SCNCA/NCR/144/08/0145/2019 before the Regulatory Authority again seeking refund of his deposit. The subsequent complaint came to be dismissed on 09.04.2024, being barred by the principle of

res-judicate. It appears, thereafter, appellant on 13.02.2024 withdrew the execution application and instituted the present appeal, *inter-alia*, seeking refund. The delay in instituting the appeal came to be condoned. It is further submitted that during the pending proceedings, respondent/promoter terminated the agreement/allotment of the unit on 20.05.2024.

8. In this backdrop, learned counsel for the respondent submits that by instituting execution proceedings for possession of the unit, appellant waived his claim for refund of deposit. Further, dismissal of the subsequent complaint for the same relief would bar the appellant to claim refund of his deposit in the present appeal. Finally, it is submitted that since the agreement/unit came to be terminated for default of the appellant, he would not be entitled to any relief of possession of the unit without challenging the cancellation/termination order. It is therefore, submitted that appeal be dismissed.
9. The submission advanced by the counsel for the respondent on careful consideration lacks merit. The appellant had filed the complaint seeking refund of his deposit in an incomplete project. The Regulatory Authority granted relief of possession of the unit instead of refund. Appellant appears to have gone in for execution of the decree for possession, however, appellant having regard to the conduct of the respondent/promoter, decided to claim refund of his deposit instead of possession. Appellant, as per advice, filed a second complaint seeking relief of refund, however, on dismissal of the complaint being barred, appellant withdrew the execution petition and challenged the impugned judgment and decree in the present appeal. It is always open to an aggrieved person to challenge the judgment and order in exercise of statutory right of appeal before the competent appellate forum. The statutory right of appeal cannot be waived either by conduct or subsequent proceedings initiated by the appellant, as is being argued by the counsel for the respondent. Appellant, being aggrieved by the

decree, though belatedly, decided to assail the decree and claimed refund of deposit in the appeal, the statutory appeal would be maintainable. The decree can either be set-aside or modified in statutory appeal, and not in execution proceedings or by filing subsequent petition/complaint for the same cause of action. The objection of the learned counsel for the respondent pertaining to maintainability of the appeal is, accordingly, rejected.

10. We proceed to decide the points in issue in the present appeal i.e. whether Regulatory Authority can travel beyond the pleadings and relief claimed by the appellant. It is settled principle of law that the Court/Forum cannot travel beyond pleadings and grant relief which was not claimed by the party in the petition, such an order would be a nullity and would not bind the party.

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

12. 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.”

13. In the case of ***Krishna Priya Ganguly and Anr. vs. University of Lucknow and Ors.*** reported in 1984 SCC 307, while dealing with a matter arising out of a writ petition where the writ-petitioners prayed for merely consideration of his case for

admission, Hon'ble Supreme Court was pleased to observe that the court cannot go a step further and grant the relief which the petitioner did not ask for, and held:-

“Finally, in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightaway issued a writ of mandamus directing the college to admit him to the M.S. course and thus granted a relief to the respondent which she herself never prayed for and could not have prayed for.”

14. Hon'ble Supreme Court in ***Bachhaj Nahar vs Nilima Mandal & Ors; reported in (2008) 17 SCC 491***, was pleased to observe that a court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. 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.

15. In ***Om Prakash vs. Ram Kumar (1991) 1 SCC 441***, 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 statute.”

16. In ***Shiv Kumar Sharma Vs. Santosh Kumari (2007) 8 SCC 600***, the Supreme Court observed that the appellate court had no power to grant relief not prayed for in the suit.

17. The issue was again examined by the Hon'ble Supreme Court in the case of ***Bharat Amratlal Kothari and Anr. Vs. Dosukhan Samadkhan Sindhi and Ors., (2010) 1 SCC 234***, the Court in paras 29 and 30 of the judgment was pleased to examine and observe that “normally the Court will grant only those reliefs specifically prayed for by the petitioner”. The relevant paras 29 and 30 are quoted as under:

“29. The approach of the High Court in granting relief not prayed for cannot be approved by this court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.”

18. In **Messrs. Trojan & Co. Vs. RM.N.N. NagappaChettiar, AIR 1953 SC 235**, Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.”

19. In **Fertilizer Corporation of India Ltd. and anor Vs. Sarat Chandra Rath and others, AIR 1996 SC 2744**, Hon’ble Supreme Court held that High Court ought not to have granted reliefs to the respondents which they had not even prayed for.

20. Having due regard to the proposition of law, the issue can be summarized that Court/Tribunal cannot grant a relief which was not specifically prayed by the party.

21. In the aforementioned legal position, it is evident that learned Regulatory Authority granted relief which was neither pleaded, nor, sought by the appellant. The order is unsustainable in law.
22. On perusal of the complaint, it is evident that appellant had approached Regulatory Authority seeking refund of his deposit in a delayed project. The Regulatory Authority on a statement made by the respondent/promoter that temporary permission for Occupation has been received, possession of the unit was granted.
23. Section 18 of RERA Act, 2016 provides for return of amount and compensation. If a promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale, duly completed by the dates specified therein, the promoter 'shall be liable on demand' to return the amount to the allottee who wishes to withdraw from the project with prescribed interest. In other words, allottee has an absolute right to withdraw from a delayed project and claim refund of his deposit and interest thereon including compensation. However, in the event, the project is complete, at that stage if the allottee desires to withdraw from the project, appellant in that event seeks termination of the agreement/unit. In the circumstances, appellant shall be entitled to refund of his deposit subject to deductions towards earnest money as per terms of the agreement.
24. It is clarified that in case the appellant desires to withdraw from a project may make demand to that effect, either by communicating his intention to the promoter or by filing a complaint with the Regulatory Authority. The notice to the promoter of the complaint conveys the demand/intention of the allottee to the promoter that the allottee desires to withdraw from the delayed project. The demand has to be made necessarily prior to the institution of the complaint as is

being suggested by the learned counsel for the respondent, is not requirement under the law. The right to withdraw from a delayed project is unconditional and unqualified right conferred upon the allottee.

25. The next question that arises for consideration is as to whether the project was complete and possession of the unit was duly offered to the appellant on the date of filing of the complaint.

26. As per the case set-up by the respondent that since temporary occupation of the building came to be obtained by the respondent/promoter from the competent authority on 07.03.2019, thereafter, offer of possession of the unit came to be made on 28.03.2019. The permanent OC of the project came to be obtained by the respondent thereafter on 26.11.2019 i.e. after a lapse of 08 months. The complaint came to be filed by the appellant for refund on 03.08.2019 i.e. before OC but after temporary occupation certificate.

27. In this backdrop, the question that arises for consideration is as to whether temporary occupation of the building obtained by the promoter would be sufficient to make offer of possession of the unit to the appellant/allottee in terms of Act 2016, read with, the Building Regulations.

28. At this stage, it would be apposite to refer to the provisions of Real Estate (Regulation and Development) Act, 2016 (for short, 'Act,2016'), and Greater Noida Industrial Development Area Building Regulations, 2010 (for short, 'Building Regulations').

29. Section 2(q) of Act, 2016 defines 'completion certificate' which means the completion certificate certifying that the real estate project has been developed according to the sanctioned plan as approved by the competent authority. Section 2 (q) is reproduced herein below :-

“

.....
(q) “*completion certificate*” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws”;

.....
.....”

30. Section 2(zf) defines ‘occupancy certificate’, means the certificate issued by the competent authority permitting occupation of any building which has civic infrastructure such as water sanitation. Section 11(4)(b) mandates that the promoter shall be responsible to obtain the Completion Certificate or Occupancy Certificate or both and make it available to the allottee individually or to the association of the allottees. Section 11(4)(f) provides that the promoter shall execute a registered conveyance deed of the unit as provided under Section 17 within 03 months from the date of issue of Occupancy Certificate. Section 19 provides for rights and duties of allottees, sub-Section 10 provides that every allottee shall take physical possession of the unit within a period of 02 months of the Occupancy Certificate issued for the said unit.

31. Regulation 20.1.1 of Building Regulations, provides for ‘Occupancy Certificate necessary for occupation’, to be provided by the Chief Executive Officer in form Appendix-11. Regulation-20.0 mandates that every owner/developer shall have to submit a notice of completion of the building to the authority in Appendix-9. Regulations 2.0 and 20.1.1 are reproduced 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 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. In case objections are intimated by the Chief Executive Officer or by an authorized officer showing inability to issue occupancy certificate the owner shall take necessary action to remove the objections. If the objections remain un-removed for a period of 6 months the application for issue of occupancy certificate shall stand automatically rejected. Thereafter the Chief Executive Officer shall take suitable action for removal of unauthorized construction with fee. Thereafter, the applicant has to apply afresh with fee for occupancy certificate, and in such case time extension shall not be required.
.....”

32.Regulation 20.4 provides for ‘Temporary Occupation’, issued by the Chief Executive Officer for occupation of a building or portion thereof before its completion. Regulation 20.4 is reproduced below:-

“
20.4 ‘Temporary occupation’ — *Where the Chief Executive Officer on the certificate of the technical personnel is satisfied that the temporary occupation of a building or any portion thereof before its completion does not adversely affect public welfare may permit temporary occupation in the Form given in Appendix-11A of such building or portion thereof as the case may be, for such period as he deems fit.*
.....”

33.We have carefully perused the temporary occupation certificate dated 07.03.2019, wherein, competent authority noted the objections and temporary occupation of the building was granted to the respondent with a condition that the objections be removed within 02 months. Further, on perusal of definition of the ‘temporary occupation’ it clearly provides that ‘temporary occupation’ of a building or any portion thereof ‘before its completion’ is given in Appendix 11A,

‘for such period’. The definition clearly states that temporary occupation is being granted before completion of the project/building for a temporary period, but, is not Occupancy Certificate necessary for occupation of the building as defined under Regulation 20.1.1. Occupancy Certificate is granted by the competent authority in form Appendix 11. It further provides that no building shall be occupied in whole or part until the issue of occupancy certificate by the Chief Executive Officer.

34. On specific query, learned counsel for the respondent submits that Occupancy Certificate of the project came to be obtained on 26.11.2019, thereafter, offer of possession was not made or given to the appellant. In the circumstances, since temporary occupation is not the completion certificate, further, offer of possession of the unit based thereon was not lawful and valid as contemplated under the Act, 2016, issued prior to obtaining OC.

35. In *Venkataraman Krishnamurthy and Ors. Vs. Lodha Crown Buildmart Pvt. Ltd. 2024(4) SCC 230*, wherein, the Court while considering the Development Control Regulations, 1991, applicable in the State of Maharashtra, was of the opinion having regard to the definition of Occupancy Certificate (OC) that OC denotes completion of the project in all respects. This is fortified by the format of OC in Appendix-XXII of the Regulations.

36. In the given facts, temporary occupation of the building cannot be equated with Occupancy Certificate under the Building Regulations framed by GNIDA. As per the definition of Occupancy Certificate under Section 2(zf) of Act, 2016, includes any certificate, by whatever name called, issued by the competent authority permitting occupation of a building or the part thereof, as per local laws. This definition is broad and inclusive, and includes part occupancy certificate of a building in a project, however, would not cover and include temporary occupation of a building or part thereof.

37. In the circumstances, appellant was justified in instituting a complaint raising demand to withdraw from the project. The offer of possession on the strength of temporary occupation is invalid, not being in terms of Act, 2016 and Building Regulations. In the given facts, the offer of possession of the unit came to be made by the respondent to the appellant on 27.02.2020 i.e. after passing of the impugned order i.e. on 28.01.2020. In this backdrop, it is evident that the Regulatory Authority committed an error and serious illegality in granting relief of possession on the strength of invalid temporary occupation certificate of an incomplete building issued for a temporary period. The appellant, therefore, would be entitled to refund of his deposit alongwith interest thereon at MCLR+1% till the date of payment. Questions are answered accordingly.

38. Having due regard to the facts and circumstances of the case and for the reasons assigned hereinabove, the impugned order is unsustainable being beyond pleadings and relief claimed by the appellant in the complaint. **The appeal succeeds, accordingly, is allowed** by passing following orders:-

- (i) Impugned order dated 28.01.2020 passed by the Regulatory Authority in complaint No. NCR144/08/0145/2019 is set-aside and quashed;
- (ii) Respondent/promoter to refund the amount at Rs. 20,96,239/- alongwith interest thereon at MCLR+1% till the date of payment. The amount shall be paid within 45 days from the date the order is uploaded on the e-portal;
- (iii) No order as to cost.

(Rameshwar Singh)

(Suneet Kumar)

Dated: 24.11.2025
PRADEEPKUMAR