

**THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL  
AT LUCKNOW**

**Appeal No.617 of 2022**

<b>M/s. Park Town Complex Pvt. Ltd., Delhi.</b>	<b>...Appellant.</b>
<b>Versus</b>	
<b>Sanjay Kumar.</b>	<b>...Respondent.</b>

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**Hon'ble Mr. Sanjai Khare, Judicial Member.**

**Hon'ble Mr. Devindar Singh Chaudhry, Technical Member.**

1. The Present Appeal has been filed assailing the order dated 22.07.2022 passed in Complaint No.NCR145/07/77826/ 2021 (Sanjay Kumar Vs. M/s Park Town Complex Private Limited) by which learned Bench - 1, U.P. Real Estate Regulatory Authority, Regional Office, Gautam Buddha Nagar, directed the Appellant to refund the amount deposited by the complainant/allottee along with interest @ MCLR+1% within 45 days from the date of uploading the order on UPRERA Portal to the complainant/allottee.
2. The facts of the present case available on record, are:-
  - 2.1 That the impugned order dated has been passed without considering the factual aspects of the complaint & Written Statement/Reply uploaded by the Appellant and wrongly observing that the Appellant did not file written statement/ reply despite availing the several opportunities. In fact, the Written Statement/Reply uploaded by the Appellant on 10.08.2021 is available on UPRERA portal. Upon reading the order, the appellant, having asserted the fact that the "Written Statement/Reply" of "Appellant/ Respondent" is available on UPRERA Portal, filed a representation dated 01.08.2022, in respect of above issues, before "the Chairman, Uttar Pradesh Real Estate Regulatory Authority, Greater Noida. The Chairman promptly got conducted

Inquiry in this respect. Upon inquiry, it revealed that due to technical error, the written statement/reply of the appellant is available on UPRERA portal but not available on the portal of Bench - I, UPRERA. This is technical issue of the UPRERA portal, the Appellant should not be made victim due to technical issue of UPRERA portal.

2.2 That while allowing the Complaint and directing the Appellant to refund the amount deposited by Respondent/Complainant to Respondent/Complainant along with interest @ MCLR+1% per annum, the Regulatory Authority has illegally and arbitrarily taken into consideration that "the complainant initially prayed for "possession and interest for delayed period" but later, vide detailed application prayed for "refund of the amount deposited along with interest". However, no such application is available on UPRERA Portal except the complaint which contains prayer as "possession and interest for delayed period". It is also relevant to mention here that as the complaint has been filed, hearing held and reserved for order, during the period when COVID19 precaution protocol was being followed, hence hard copy of the complaint, reply, rejoinder, additional application or any documents incidental thereto were being filed online i.e. by uploading on UPRERA portal. Moreover, whatever document is uploaded by complainant or respondent is visible to the complainant and the respondent and an email is also sent to the other party for reply/objection. It is relevant to mention here that no additional application with prayer "for refund of amount deposited along with interest" is available on UPRERA portal and no e-mail in this respect has been received by the Appellant.

2.3 That on the date of argument, the counsel of Appellant argued on behalf of the Appellant. During the argument, it has never been pointed out by the Bench - 1 of U.P. RERA that the Appellant did not file its Written Statement/ Reply or the same is not available on record. However, it has been revealed in the order that the counsel of the Appellant submitted that the completion certificate 29.06.2019 has been granted for the project but the same is not available on record. The Bench - 1, UPRERA observed that only "vakalatnama" has been filed by the Appellant whereas it is submitted that both the "Vakalatnama" and the Written statement/Reply have been filed on 10.08.2021.

2.4 That respondent/complainant had approached the appellant for purchase of a

unit in the commercial project of the Appellant known as "Park Town Commercial Complex Phase - 2 (Block -A)", situated at Plot No. Commercial - 03, Park Town, Village-Shahpur Bamheta, NH- 24, District - Ghaziabad, Uttar Pradesh. Subsequently an Allotment Agreement dated 04.12.2015 was executed for allotment of Unit No. PT/A-215, Park Town Commercial Complex Phase - 2 (Block -A)", situated at Plot No. Commercial - 03, Park Town, Village-Shahpur Bamheta, NH- 24, District Ghaziabad, Uttar Pradesh in favour of the Respondent herein. The sale consideration agreed under the allotment agreement is for Rs.12,62,420/- (Rupees Twelve Lakh Sixty Two Thousand Four Hundred Twenty Only) + Taxes + Other Charges as specified therein. It is relevant to mention here that the Respondent/complainant opted "Special Payment Plan" for payment of sale consideration & other charges. Under this Plan 15% of sale price is to be paid at the time of booking, 35% of sale price is to be paid on commencement of excavation and balance 50% of sale price of sale price is to be paid on offer of possession. As per Clause No. 15(a) of the allotment agreement, the Respondent agreed to offer possession of the Said unit/space within 6 months after expiry of 36 months from the date of sanction/re-sanction of maps/plans of the complex or execution of the allotment agreement, whichever is later subject to force majeure conditions and subject to timely payment by the allottee. Therefore, the last date for offering possession of the aforesaid flat by the Appellant to the Respondent/Complainant was 04.06.2019 subject to force majeure conditions and timely payment by the allottee.

- 2.5 That on 25.03.2019, the complainant vide his e-mail sk5944@gmail.com intimated the respondent to record his new address for future correspondence i.e. "House No. 33, Sector-15A, Faridabad - 121007, Haryana". Accordingly, the Respondent updated the address of the complainant in its record for onward correspondence.
- 2.6 That the Respondent completed the construction and development of the aforesaid commercial project before due date of completion and made an application for Completion Certificate to Ghaziabad Development Authority (GDA) on 15.04.2019 and GDA has granted Completion Certificate vide Patrank No. 50/Pravartan Zone-5/2019 dated 29.06.2019.
- 2.7 That in furtherance of the Completion Certificate dated 29.06.2019, even

though the Respondent/Complainant was in continuous default in making payment of outstanding dues for quite long time, the Appellant had issued letter for offer of possession letter dated 01.07.2019 & request for registration of sale deed cum demand letter dated 20.07.2019 to the Respondent/Complainant and requested the Respondent/Complainant to complete formalities regarding making due payments to the Appellant, arranging and handing over requisite stamp papers for execution & registration of Sale Deed as specified in the letter itself. It is relevant to mention here that letter dated 01.07.2019 & 20.07.2019 has been sent to the address updated by the Respondent/Complainant on 25.03.2019 i.e. "House No. 33, Sector-15A, Faridabad - 121007, Haryana".

- 2.8 That the Appellant in order to follow up, has also sent letter dated 10.09.2020 & 19.06.2021 to the Respondent/complainant at "House No. 33, Sector-15A, Faridabad-121007, Haryana" and requested the respondent/complainant to pay the outstanding dues, get register the sale deed and take over possession of the aforesaid unit but the Respondent/complainant did even reply the letter dated 01.07.2019, 20.07.2019, 10.09.2020 & 19.06.2021 till date.
- 2.9 That the Respondent/complainant on 24.06.2021, visited the office at the office of Appellant and submitted his letter dated 24.06.2021 intimating his new address as "Sanjay Kumar, H. No. 486, First Floor, Sector-15A, Faridabad - 121007". Concerned officials of the Appellant requested him to pay the outstanding dues, arrange requisite stamp paper for registration of sale deed, get registered the same, complete the formalities for taking over possession and take over possession thereof. Respondent/complainant, having denied the receipt of offer of possession, insisted for the waiver of interest on delay payment. However, the concerned officials of the respondent clarified that the respondent shall charge interest as per UPRERA Rules not beyond that. even then the Respondent/complainant is not ready to pay the interest on delay payment and asked for complete waiver thereof.
- 2.10 That it is relevant to submit here that the complainant /allottee has changed his address three times. Under the allotment agreement 04.12.2015 the address as provided by the complainant/allottee is "H. No. 67, Jeevan Nagar Extn., Kheri, Wazirpur Road, Nehar Par, Old Faridabad, Haryana. The complainant vide his e-mail sk5944@gmail.com intimated the respondent to record his

new address for future correspondence i.e. "House No. 33, Sector-15A, Faridabad – 121007, Haryana" and at last vide letter dated 24.06.2021 the complainant further intimated to respondent to update his address as "Sanjay Kumar, H. No. 486, First Floor, Sector-15A, Faridabad-121007". The respondent has been communicating to the Respondent/complainant/allottee addresses what have strictly to the addresses what has been given by the Respondent/complainant/allottee from time to time.

- 2.11 That the complainant, for delaying & avoiding the payment of outstanding dues as well as abusing the process of law for his unlawful gains, filed this complaint before the Authority. The complainant has deliberately concealed the aforesaid material facts which are necessary for proper adjudication of the said complaint, hence said complaint ought to be dismissed on concealment of material facts. Moreover, the complainant deliberately mentioned in his complaint that the aforesaid Unit No. PT/A215, falls in Park Town Commercial Complex Phase -1, whereas in fact this unit falls in "Park Town Commercial Complex Phase -2". The UPRERA Registration no. of "Park Town Commercial Complex Phase -2" is UPRERAPRJ3139 not UPRERAPRJ3055 as observed and mentioned in impugned order dated 22.07.2022.
- 2.12 That the Complainant has neither made due payments even as per Offer of Possession Cum Demand Letter nor purchased requisite stamp papers and complied with requisite legal and procedural formalities. The Complainant is liable to pay an outstanding amount of Rs.8,89,917/- (Rupees Eight Lakh Eighty Nine Thousand Nine Hundred Seventeen only) as per Annexure - R/10 of the Written Statement/Reply filed by the Appellant, the same was calculated on 06.08.2021 as per the terms and conditions of the allotment agreement dated 04.12.2015. This amount shall vary on the date of actual payment. Apart from the above said due amount, the Respondent/Complainant is also liable to pay holding charges to the Appellant as per Clause No. 34 of the Allotment Agreement, substantiated under section 19(6) of the Real Estate (Regulation and Development) Act, 2016 and Clause No. 7.3 of the Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018.
- 2.13 That the Complainant has failed to establish that the Appellant has at any time

did not perform its part as agreed under the aforesaid allotment agreement or refused to provide possession of the said flat to the Complainant. It is the Complainant who did not make payment of instalment as per payment plan opted by him.

2.14 That the Respondent/complainant has made following payment:-

Sl. No.	Date	Amount(Rs.)
1.	09.02.2015	Rs.83,920/-
2.	25.04.2015	Rs.50,000/-
3.	25.04.2015	Rs.1,33,920/-
4.	04.12.2015	Rs.4,25,175/-
<u>Total</u>		<u>Rs.6,93,015/-</u>

It is relevant to mention here that out of the Rs. 6,93,015/- (Rupees Six Lakh Ninety Three Thousand and Fifteen Only), an amount of Rs.30,205/- (Rupees Thirty Thousand Two Hundred and Five only) is service tax and the same has been deposited with concerned Govt. Department. Hence Net amount received by the Appellant is Rs.6,62,810/- (Rupees Six Lakh Sixty Two Thousand Eight Hundred and Ten Only).

It is also relevant to mention here that interest @ MCLR+1% over the net amount received from the Respondent/Complainant from the date of receipt thereof is Rs.4,00,774/- (Rupees Four Lakh Seven Hundred Seventy Four Only), payable to the Respondent/Complainant as per impugned order subject tax deducted at source (TDS). Hence net interest payable to the Respondent/Complainant is Rs.3,60,697/- (Rupees Three Lakh Sixty Thousand Six Hundred Ninety Seven only). Therefore, total amount payable to the Respondent/ Complainant is Rs. 10,23,507/- (Rupees Ten Lakh Twenty Three Thousand Five Hundred and Seven only).

It is relevant to mention here that the complainant did not pay any amount after 04.12.2015 against the sale consideration & other charges as agreed under the allotment agreement dated 04.12.2015. As per allotment agreement, the Respondent/Complainant had to pay 50% of total consideration on offer of possession, it is relevant to mention here that upon receipt of completion certificate dated 29.06.2019 from Ghaziabad Development Authority (GDA), the Appellant has already offered possession vide letter dated 01.07.2019 to the address of the complainant i.e. "House No. 33, Sector-15A, Faridabad - 121007, Haryana" through registered post.

- 2.15 That the Respondent/Complainant, to avoid the payment of outstanding dues, payable to the Appellant against sale consideration of the aforesaid unit/space, on 16.07.2021 filed a Complaint No. NCR145/07/77826/ 2021 before Uttar Pradesh Real Estate Regulatory Authority, Greater Noida, Gautam Buddha Nagar, Uttar Pradesh. The complainant sought the relief for possession and payment of interest for delay.
- 2.16 That pursuant to the issuance of notice, the appellant entered appearance and promptly filed his Written Statement/Reply on 10.08.2021. On 29.10.2021 during the proceeding, the Bench-1 of U.P. RERA, pointed out that written statement/Reply is not available on Bench's portal and directed, orally, to send a copy of written statement/Reply to the Respondent/Complainant. On the same the appellant sent the written statement/Reply to the Respondent/complainant on his email ID [sk5944@gmail.com](mailto:sk5944@gmail.com) as well as his Authorised Representative's ID [VISHALRANA499@gmail.com](mailto:VISHALRANA499@gmail.com).
- 2.17 the proceeding, the Bench-1, pointed out that written statement/Reply is not available on RERA bench portal and directed, orally, to send a copy of written statement/Reply to the Respondent/Complainant. On the same the appellant sent the written statement/Reply to the Respondent/complainant on his email ID [sk5944@gmail.com](mailto:sk5944@gmail.com) as well as his Authorised Representative's ID [VISHALRANA499@gmail.com](mailto:VISHALRANA499@gmail.com). The true copy of Written Statement/reply uploaded by the appellant before the UPRERA, Greater Noida is annexed herewith as Annexure-A/15 and the copy of email dated 29.10.2021 is as annexed Annexure-A/16 with this appeal. That the Appellant has authorised Shri Prahalad Singh to appear and contest the proceedings on behalf of the Appellant.
3. On the basis of the above facts and circumstances of the case, the appellant has taken following grounds:-
- A. Because the UPRERA Bench - 1, UPRERA, Gautam Buddha Nagar, having travelled beyond prayer of the Complaint No. NCR145/07/77826/2021, pleased to direct the Appellant to refund the amount deposited by the complainant/allottee along with interest @ MCLR+1% within 45 days from the date of uploading the order on UPRERA Portal to the complainant/allottee. Whereas the Respondent/Complainant, under his

complaint No. NCR145/07/77826/2021, made prayer as "Possession and payment of interest for delay". It is settled principle of law read as "When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice." The Hon'ble Supreme Court of India reiterated this principle in Civil Appeal Nos.5798-5799 OF 2008 titled "Bachhaj Nahar Vs Nilima Mandal & ANR".

- B. Because the Bench 1, UPRERA, Gautam Buddha Nagar, without considering the factual aspects of the complaint & Written Statement/Reply uploaded by the Appellant on UPRERA portal observed in the impugned order that the Appellant did not file written statement/ reply despite availing the several opportunities. Whereas the Written Statement/Reply uploaded by the Appellant is available on UPRERA portal. Upon reading the order, the appellant, having asserted the fact that the "Written Statement/Reply" of "Appellant/Respondent" is available on UPRERA Portal, filed a representation dated 01.08.2022, in respect of above issues, before "the Chairman, Uttar Pradesh Real Estate Regulatory Authority, Greater Noida Branch, office at H-169, Chitvan State Road, Estate Sector, Gamma - II, Greater Noida, Uttar Pradesh. The Chairman promptly got conducted Inquiry in this respect. Upon inquiry, it revealed that due to technical error, the written statement/reply of the appellant is available on UPRERA portal but not available on the portal of Bench - I, UPRERA. This is technical issue of the UPRERA portal, the Appellant should not be made victim due to technical issue of UPRERA portal.
- C. Because the Respondent/complainant never sent any email/letter with request for cancellation of the allotment of aforesaid unit and refund of amount deposited and placed the same on record before the Bench -1, UPRERA. Hence this complaint is premature in pursuance of the provision of Section-18 of the Real Estate (Regulation and Development) Act, 2016. The Bench-1, UPRERA, without appreciating this fact, passed the impugned order dated 22.07.2022 and directed the Appellant to refund the amount deposited by the complainant along with interest @ MCLR+1% within 45 days from the date when the impugned order has been uploaded on UPRERA portal.

D. Because the UP RERA Authority ignored the object of the Real E. Estate Regulation & Development Act, 2016 as incorporated under the preamble thereof read as:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector...."

Therefore, promotion of the Real Estate sector is one of the objectives where there is no willful default is on the part of the Real Estate Developer, the Appellant herein.

E. Because the UP RERA Authority, while allowing the complaint and directing the Appellant to refund the amount paid along with interest @ MCLR+1% per annum within 45 days from the date when order has been uploaded on UP RERA portal, completely ignored the consideration of the provision of Section 72 of the Act. Section 72 is applicable in case of proceedings before Adjudicating Officer for compensation under the provisions of RERA Act, 2016.

F. Because the Bench - 1, UPRERA, while passing the impugned order, completely ignored the object of Uttar Pradesh Real Estate (Regulation and Development) Act, 2016 as well as "equity and natural justice" as incorporated therein to be followed while passing the order.

G. Because if the order passed by the learned Authority is accepted in toto then the same will have drastic effect upon the Appellant and will inflict irreparable loss and injury.

H. Because in order to grant Interest for delayed possession under section 18 of the Act, 2016, the learned Authority/Adjudicating officer was required to record and the demand evidence in view provision contained in sections 71(3) of the Act 2016, however, neither any direction in this regard was passed nor such power was exercised and the impugned order was passed in an hurried and cryptic manner.

I. Because, the learned UP RERA Authority has passed the impugned order dated 22.07.2022 without application of mind and proper appreciation of facts and circumstances of the case.

4. On the basis of the above facts and grounds, the appellant has prayed for the

following reliefs:-

- (i) To remand back the complaint No. NCR145/07/77826/2021 (Sanjay Kumar Vs. M/s Park Town Complex Private Limited) to the Bench-1, UPRERA, Gautam Budh Nagar, Uttar Pradesh for adjudicating afresh.
  - (ii) Set aside the judgment and order dated 22.07.2022 passed by the Regulatory Authority/ Bench No. I, U.P. RERA Regional Office, Gautam Buddha Nagar, in Complaint No. NCR145/07/77826/2021 (Sanjay Kumar Vs. M/s Park Town Complex Private Limited) and Appeal be allowed in favour of the Appellant, in the interest of justice.  
OR
  - (iii) Grant such other relief which this Hon'ble Appellate Tribunal deems fit and proper in the facts and circumstances of the case.
5. The respondent denied the averments made in the appeal except the matters related to the records and submitted that:-
- 5.1 The respondent has submitted that he filed the written complaint later and prayed for refund and on the same Learned authority adjudged the relief of the complaint and provided the relief of refund with MCLR +1% interest per annum. Learned authority has relied on the facts and documents available with U.P. RERA and made the legitimate order in the interest of justice.
  - 5.2 Respondent submitted that the perusal of portal of UP RERA shows that the reply is being uploaded but no date of upload has been mentioned thus it creates the doubt on date of upload of reply and appellant is put to strict proof regarding the date of upload of the said reply on the portal of UP RERA.
  - 5.3 Respondent submitted that despite several request made by respondent, appellant failed to provide the copy of completion certificate/occupancy certificate and even in none of the letters as Annexure No.8, 9 and 10 to the appeal, the appellant mentioned regarding the receipt of the CC/OC. Moreover, Regn. No. 706 FxD. Date 12-12-2024 respondent opted for the special payment plan and as per the plan 50% of the payment has been duly made and 50% was supposed to be made only after the offer of possession but the appellant failed to adhere the function and duty cast upon them vide section 11 (4) (b) of the RERA Act which says that the promoter shall be responsible to obtain completion certificate and to make it available to the allottees and the CC/OC has never been made available by the appellant to the respondent.

- 5.4 Respondent has further submitted that the Complainant is legally entitled to seek refund of the money deposited by him along with appropriate compensation.
- 5.5 The Appellant - Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent - Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent - Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent- Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the respondent - Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest.
- 5.6 Respondent has further stated that in the allotment agreement no phase number has been mentioned, therefore, there is no material has been concealed.
- 5.7 Respondent has made the payment as per the payment plan and the remaining 50% was to be paid only after the offer of possession but till the date of filing of this appeal copy of CC/OC has not been made available by respondent. Therefore, respondent demanded for the refund amount and was not liable to pay any amount after the due date of possession.
- 5.8 The respondent has submitted that the Learned authority relying on the facts and circumstances of the case passed the order and provided the relief prayed by him and not otherwise. The impugned order does not suffer any illegality or perversity and the appeal is liable to be dismissed.
6. On the other hand, the appellant filing his rejoinder affidavit, has submitted that the impugned order has been passed without considering the pleas raised by him before the RERA Authority hence, the impugned order is liable to be set aside.
- 6.1 The appellant submitted that no such complaint, seeking refund of amount is

available on the portal of UP RERA. The initial complaint of the complainant was with respect of possession of the property in question and interest for delayed payment. The impugned order has been passed without considering the reply of the appellant. The respondent/complainant has not specifically controverted the averment made by the appellant in the appeal with regard to change of address.

- 6.2 The appellant has further submitted in his rejoinder affidavit that the completion certificate was obtained by the appellant on 29.06.2019 and offer of possession was made to him on 01.07.2019. Therefore, to say that he was not aware of the fact that OC/CC has been obtained by the appellant. He further submitted that the instant appeal is liable to be allowed, as the grounds taken thereon are patent, legal and valid.
7. During the course of arguments, some queries were raised by the Tribunal and the appellant was directed by the order dated 16.05.2025 to clarify the queries raised by the Tribunal and in compliance of the appellant has filed clarification application dated 16.07.2025 stating therein that Ghaziabad Development Authority (GDA), Ghaziabad issued OC/CC vide its Letter No.50/Parvartan Zone-5/2019 dated 29.06.2019 after the completion of the project i.e. Park Town Commercial Complex situated at Plot No. Commercial-3, Park Town, Shahpur Bamhetta, Ghaziabad, U.P.
- 7.1 In the application, the appellant has further stated that after obtaining completion certificate he had provided offer of possession to the respondent vide its letter dated 01.07.2019 and subsequently sent demand-cum-reminder letter dated 20.07.2019 to the respondent. There were certain formalities which were supposed to be complied with by the respondent including but not limited to purchase of the requisite stamp papers and payment of outstanding dues to the appellant. After complying the formalities, the respondent was to approach the appellant for execution and registration of sale deed. The respondent had not complied with any of the formalities as mentioned in the letter dated 01.07.2019 and 20.07.2019. The respondent had not purchased the requisite stamp papers for execution of sale deed and had not paid the due amount to the appellant. Therefore, handing over the possession of the unit to the Respondent could not become possible without Registration of Sale Deed.

- 7.2 The appellant has further stated in the application that as per para 7.2 of the Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale) Rules, 2018, OC/CC is to be provided to the Allottee at the time of conveyance of the unit. Para 9 of the office order bearing Letter No.7316/U.P.Rera/Prasha./2024-25 dated 29.05.2024 issued by UP Rera Authority, Lucknow also reiterates the same. He has further stated that Section-11(4) of the Real Estate (Regulation and Development, 2016 is only specifying the responsibility of promoter to obtain OC/CC & provide the same to allottee, however, the abovesaid Rules & Office Order are specifying, when the OC/CC is to be provided to the allottee (Respondent herein).
- 7.3 The appellant in the application has stated that he had never asked for copy of completion certificate before filing Complaint No. NCR145/07/77826/2021 before Uttar Pradesh Regulatory Authority, Greater Noida, Gautam Buddha Nagar, U.P. Thus, the appellant was supposed to provide OC/CC to the respondent at the time of conveyance of the unit which has still not happened in the present matter due to in action and default of the respondent. He further stated that the project had already been duly completed and only thereafter OC/CC was issued by the Competent Authority i.e. Ghaziabad Development Authority (GDA) on 29.06.2019. There was no further requirement of obtaining any other OC/CC from the Authority and such requirement was also not mentioned in the OC/CC dated 29.06.2019 issued by the GDA. The project promoter had obtained water connection by obtaining borewell connection permission from Ground Water Department, Ministry of Jal Shakti, Govt. of U.P. for the period 12.05.2017 to 12.05.2027 and had established its own STP for sewage treatment. The roads and other amenities are already developed in the project.
- 7.4 The appellant has further stated in the application that UP RERA by way of Office Order bearing No.2134/UPRERA/IT/Project Survey Form/2021- 22 dated 10.03.2022 had expected from all promoters to upload their respective completion certificates on UP RERA Web Portal. Accordingly, the promoter uploaded the completion certificate on UP RERA Web Portal on 27.09.2022 after the abovesaid office order came into its knowledge.
8. On 07.08.2025, learned counsel for the respondent allottee submitted before the Tribunal that alleged OC/CC dated 29.06.20219 is a procured document.

As per the Quarterly Progress Report (QPR)/physical target achievement, duly uploaded on U.P. RERA website categorically, indicates that the brick work, plaster, flooring, doors, windows, internal services, grill work, railing, electric works, painting, physical external painting work etc. are incomplete until on 30.06.2021. In this backdrop, it is submitted that the appellant rests their case on the OC/CC alleged to have been obtained way back on 26.06.2019. Therefore, by the order dated 07.08.2025, the appellant was granted time by the Tribunal to seek instructions and file affidavit.

- 8.1 The appellant has filed affidavit dated 21.08.2025 in compliance of the order of the Tribunal dated 07.08.2025 mentioning that the unit of the respondent falls under Block-A (Phase-2) of the project. The Completion Certificate bearing patrank no. R50/Pravartan Zone-5/2019 dated 29.06.2019 was granted by the Ghaziabad Development Authority, Ghaziabad (GDA) for all of the aforesaid Blocks (Phases) of the Park Town Commercial Complex, upon compliance of due procedure. He further submitted that the allegation of the Respondent related to OC/CC dated 29.06.2019 is a procured document, is totally wrong and denied. The Completion Certificate was issued by the Ghaziabad Development Authority (GDA) vide Patrank No. 50/Pravartan Zone-5/2019 dated 29.06.2019 after completion of construction and development of Block-A, B & C of the project, "Park Town Commercial Complex".
- 8.2 The appellant further submitted in the affidavit that the works related to Plaster, Flooring, Doors, Windows, Shutters, Interiors, Grill & Railing Work, Painting etc., were not incomplete at the time of issuing Completion Certificate by the Competent Authority i.e. GDA, contrary to allegation made by the Respondent. However, the final finishing in regard to the above said works were done as per the requirement of the customers at the time of taking over of possession of their respective units. The main Electrical Cable from meter board to individual units were laid at the time of taking over of possession of respective units by the customers. For some works, the payments of contractors were previously held which were released during the Quarters in question as mentioned in QPRs.
9. We have heard Sri Kshemendra Shukla, learned counsel for the appellant and Ms. Suchita Singh, learned counsel for the

respondent.

10. We deem it proper to frame the following issue in order to examine the issue involved in this appeal: -

Whether impugned order dated 22.07.2022 passed by learned Regulatory Authority in complaint no NCR 145/07/77826/2021 suffers from any illegality and perversity?

**Answer to the Issue:**

- 10.1 Respondent allottee Sanjay Kumar booked a Unit PT/A-215, super area 14.68 sq.m (158 sq.ft), covered area 9.48 sq.m (102 sq.ft) for consideration of Rs.12,62,420 plus other charges in project 'Park Town' of respondent promoter. Agreement was executed on 04.12.2015. Completion period has been mentioned in the agreement as 36 months with the further grace period of 6 months from the date of sanctioning of the map by the competent authority or date of execution of agreement which is later, as per para 15(a) of agreement. Map was sanctioned on 19.05.2014 and agreement was executed later on 04.12.2015. Therefore, period of completion shall be computed from the date of agreement dated 04.12.2015. Assured date of possession is on or before 04.06.2019(including 6 months of grace period).
- 10.2 Allottee filed complaint before Regulatory Authority on 16.07.2021 for possession and payment of interest for delay mentioning the fact that project is delayed by 31 months. Promoter has neither obtained required NOC's nor OC/CC and promoter is pressurising to take possession without giving delay penalty. It has been submitted on behalf of allottee that when allottee visited the project and found it so delayed, then he changed his mind and filed detailed written complaint for refund of deposited amount along with interest.
- 10.3 Section 18(1) of the RERA Act, 2016 lays down provision that allottee can withdraw from a delayed project and ask for the refund of deposited amount along with interest including compensation. If

allottee opts to remain in the delayed project, he shall be paid by the promoter delayed interest on the deposited amount at the prescribed rate of interest till the delivery of possession. Project is said to be completed when OC/CC is issued by the competent authority regarding completion of the project. OC/CC can be issued for the completion of the partial project or for whole project. Offer of possession is issued after obtaining OC/CC. A right of withdrawal u/s 18(1) of RERA Act, 2016, from the project is available to the allottee before obtaining of completion certificate by the promoter and giving offer of possession to the allottee. Thus, obtaining of OC/CC is key point to decide whether the project is delayed or not, and whether allottee has right to delay interest till possession if allottee remains in the project or allottee has right to withdraw from the project and claim for refund of deposited amount with interest without any deduction as per section 18(1) of the RERA Act, 2016. It has been submitted by the learned counsel for the appellant that appellant promoter applied for completion certificate to competent authority on 15.04.2019 and completion certificate has been issued by the competent authority on 29.06.2019. Appellant promoter issued offer of possession on 01.07.2019 and request for registration of sale deed-cum-demand letter on 20.07.2019 to allottee followed by reminder letter.

- 10.4 Perusal of summoned file of RERA reveals that in the present matter, promoter appeared before the regulatory authority on date fixed 22.09.2021. Regulatory Authority directed promoter to upload the objection on the portal of RERA within a week and next date was fixed for 29.10.2021. Order dated 29.10.2021 of Regulatory Authority has some printing mistake. On perusal of the order sheet dated 29.10.2021 of RERA file prima facie appears that regulatory authority intended to direct the promoter to provide the copy of objection to allottee/ complainant and next date fixed for 05.01.2022. There is no order sheet for date 05.01.2022. Next date and last order sheet dated 14.03.2022 reveals that counsels of both the parties were present on virtual hearing during Covid period.

Counsel for the allottee submitted before Regulatory Authority on that date, that the project is delayed while promoter's counsel submitted in reply that OC/CC has been obtained regarding the project on 29.06.2019. Further it has been mentioned in the order sheet that arguments of both parties were heard and file was reserved for final order. Final order (impugned order) has been passed on 22.07.2022 by Regulatory Authority allowing refund of deposited amount with interest to allottee.

- 10.5 It has been mentioned by the Regulatory Authority on the page no.2 of the impugned order dated 22.07.2022 that promoter has not uploaded any objection/documentary evidences. It has been further mentioned that it has come to knowledge on inquiry that only vakalatnama has been uploaded by the promoter. Any objection has not been filed. In such condition, there is no option except to pass ex-parte order.
- 10.6 Learned regulatory authority has not ascertained during pendency of proceeding whether any objection has been filed by the promoter or not along with any documentary evidence such as OC/CC dated 29.06.2019 which has been specifically mentioned by the counsel of the promoter/ opposite party on 14.03.2022 during hearing before Regulatory Authority.
- 10.7 Learned Regulatory Authority has not closed the opportunity of promoter to file objection, if any objection, documentary evidence was not filed by the promoter even after giving opportunity on two previous dates. Learned Regulatory Authority ought to have ascertained on 14.03.2022 during hearing whether any objection with documentary evidence has been filed by the opposite party/promoter or not. If Regulatory Authority was of the opinion that opposite party has not filed any objection till date even after giving sufficient opportunities, then Regulatory Authority ought to have first close the opportunity of filing objections by the opposite party and thereafter ought to have proceeded to hear the arguments.

- 10.8 Appellant promoter has submitted that objection along with documentary evidence was uploaded on RERA Portal on 10.08.2021 along with vakalatnama. But objection is not visible due to some technical glitch on RERA Portal. Appellant promoter has filed/uploaded the screenshot of the RERA Portal annexure no.2 (page no.44) which shows in the column of “other facts documents” (promoter), “Reply with all annexures” as uploaded file. In the same screenshot, column of the “promoter supporting documents” “vakalatnama/authorization letter” has been shown uploaded on 10.08.2021. This screenshot ‘Annexure no.2’ also prima facie supports the submission of promoter that reply with all annexures was uploaded, which is not visible on the portal of RERA due to some technical glitch.
- 10.9 The basic principle of Natural Justice is that a lis should be decided on merits after ensuring that sufficient opportunities have been given to parties for filing their pleadings and documents. If opposite party is not filing reply/documents intentionally and deliberately even after sufficient opportunities, opposite parties right to file reply can be closed and thereafter arguments should be heard and final order should be passed.
- 10.10 If any inquiry regarding filing of reply/documentary evidence by opposite party is required, it should be done during hearing so that party could know the result of inquiry and reply accordingly.
- 10.11 Above analysis and description reveals the material irregularities are conspicuous in the procedure of hearing and deciding the complaint. The respondent promoter was not given an opportunity to put up his case before the regulatory authority on merits. This irregularity goes to the roots of the lis being in gross violation of principles of natural justice which has adversely affected the case of respondent promoter before regulatory authority.
- 10.12 Therefore, we are of the considered view that impugned order of the Regulatory Authority suffers from illegality and perversity. In view thereof the complaint requires to be heard and decided afresh

after due opportunities to the respective parties. Issue is decided accordingly.

11. On the basis of above discussion, present appeal is liable to be allowed and impugned order dated 22.07.2022 passed by regulatory authority is liable to be set aside.
12. Present appeal is allowed by passing the following orders:
  - (i) The impugned order dated 22.07.2021 passed by learned regulatory authority in complaint no.NCR145/07/77826/2021 is set aside and quashed.
  - (ii) The complaint no NCR145/07/77826/2021 is restored to its file and number.
  - (iii) Respondent promoter is directed to appear before Regulatory Authority and file objections to the complaint along with supporting documents within three weeks from the date of uploading of this order.
  - (iv) The complainant allottee is directed to file rejoinder/replication, if any to the objections with supporting documents within three weeks thereafter.
  - (v) Ld. Regulatory Authority is directed to decide the complaint afresh on merit expeditiously preferably within 2 months thereafter after giving opportunity of hearing to parties provided that there is no other impediment.
  - (vi) Registry is directed to send back the summoned file of the Regulatory Authority immediately to Regulatory Authority with a copy of this order for compliance.
13. No orders as to costs.

**(Devindar Singh Chaudhry) (Sanjai Khare)**

**Date: 27.02.2026**  
RajneeshPS)