

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairperson

Hon'ble Mr. Rajeev Gupta

-----Member

Miscellaneous Application No.14 of 2021

Air Force Naval Housing Board.

..... Appellant

vs.

Sri Sanjay Negi

.....Respondent

Present: Sri Sudhir Kumar Mittal, Advocate for the applicant/ appellant.

ORDER

DATED: JUNE 28, 2021

Justice U.C.Dhyani (Oral)

An appeal was filed on behalf of the appellant before this Tribunal, being aggrieved against order dated 12.02.2021, passed by the Uttarakhand Real Estate Regulatory Authority (for short, RERA) in Complaint No. 99/2019, on 22.04.2021. When the appeal was filed, the following order was passed:

“Present: Sri S.K.Mittal, Advocate, for the applicant/appellant.

We have perused the impugned order and documents brought on record. Present appeal has been filed by the appellant being aggrieved against the impugned order dated 12.02.2021, passed by the Uttarakhand Real Estate Regulatory Authority (for short, RERA) in Complaint No. 99/2019.

Sub-section (5) of Section 43 of Real Estate (Regulation and Development) Act, 2016, reads as under:

“(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

The appellant is, therefore, required to show its *bona fide* before this appeal is entertained, by depositing 50% of the amount indicated in the operative portion of the impugned order, within four weeks.

List on 21.05.2020.”

2. On the next date of listing, *i.e.*, 21.05.2021, on an application moved by the appellant in this behalf, time to deposit 50% amount was extended up to 28.06.2021.
3. Surprisingly, on 28.06.2021, an application has been filed to permit the appellant to deposit 30% of the amount indicated in the operative portion of the impugned order.
4. It is the submission of Ld. Counsel for the appellant that the appellant is a Welfare Organization, working on ‘no profit no loss basis’, having no funds of its own. All the housing schemes, launched by the appellant are on self finance basis. Ld. Counsel for the appellant further submitted that the appellant should not be treated at *par* with a private builder. It is submitted that in a RERA appeal before Hon’ble High Court of Allahabad, the Hon’ble Court, on 16.03.2021 had directed the UP RERA Appellate Tribunal to hear the appeal on appellant’s depositing 30% of compensation. Ld. Counsel for the appellant also submitted that the appellant is not in a position to deposit 50% of the amount indicated in the impugned order. Such application is supported by an affidavit.
5. It will be useful to reproduce *proviso* to sub- section (5) of Section 43 of Real Estate (Regulation and Development) Act, 2016 (for short, the Act), herein below for convenience:

“(5):

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.”

6. The appellant is definitely a ‘promoter’, who has filed an appeal being aggrieved against the order of RERA. The *proviso* speaks, in no uncertain terms, that the appeal shall not be entertained, without the promoter’s having deposited with the Appellate Tribunal at least 30% of the penalty. It also empowers the Appellate Tribunal to direct the promoter to deposit more than 30% penalty. It may also direct the promoter to deposit the total amount to be paid to the allottee including interest and compensation imposed upon him, if any, or with both, before the appeal is heard.
7. On 22.04.2021 and 21.05.2021, it was never stated on behalf of the appellant/ promoter that it is unable to deposit 50% amount and the deposition should restrict to 30% of the penalty.
8. It may also be worthwhile to mention here that no special status has been conferred upon the appellant Air Force Naval Housing Board, who is a ‘promoter’, as defined under Section 2(zk).
9. It will also be useful to reproduce clause (zk), herein below for convenience:

“(zk) "promoter" means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government,

for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder”

[*Emphasis supplied*]

10 The argument of Ld. Counsel for the appellant that it should not be treated at *par* with a private builder, cannot be accepted. The Act does not make a distinction between a private builder or any other builder.

11. It may be noted here that in at least 5 other appeals, arising out of the order of RERA, the appellant has deposited 50% of the amount indicated in the operative portion of the impugned orders, in the Tribunal.

12. A reference of Section 4(2)(1) (D) of the Act has been given by the appellant in its application. It will also be profitable to quote the said provision as below:

“(1) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating

.....

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose”

13. The said provision is equally applicable to every promoter, be it a private builder or any development authority or any other public body or State Level Cooperative Housing Finance Society, or, for that matter, present appellant, *viz*, Air Force Naval Housing Board.

14. Last but not the least, every case is decided on its own merits. Parallels can be drawn only when two cases are alike. This Tribunal is not aware of the facts of the case before UP RERA. This Tribunal has exercised its judicial discretion on the facts of the instant case. Moreover, any interim order passed by any Hon’ble Court is an order in *personam*, and cannot be a binding precedent in other cases.

15 The application, therefore, fails and is dismissed.

16 Since the appellant has failed to comply with the mandatory requirement, as directed by this Tribunal on 22.04.2021, and extended on 21.05.2021, therefore, this Appellate Tribunal is unable to entertain the appeal. The same is, accordingly, closed.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATED: JUNE 28, 2021
DEHRADUN