

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

**(Through audio conferencing).**

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

----- Chairperson

Hon'ble Mr. Rajeev Gupta

-----Member(A)

**APPEAL NO. 30 of 2019**

Sri C.P.Sharma, Managing Director, Veer Constructions Technocrats Pvt.Ltd., H-62 Sarita Vihar, New Delhi 110076.

..... Appellant

**vs.**

Sri Virendra Singh Rawat, s/o Dayal Singh Rawat, r/o Village Shiboonagar, Near Mission Hospital, Post Kotdwar, Pauri Garhwal

.....Respondent.

Present: Sri M.M.Lamba & Sri Ankit Lamba, Advocates for the appellant.  
Sri Anusuya Prasad Chamoli, Advocate for respondent.

**JUDGMENT**

**DATED: JULY 22, 2021**

**Per: Sri Rajeev Gupta, Member (A)**

Sri Chandra Prakash Sharma, Managing Director, Veer Construction Technocrats Pvt. Ltd has filed this appeal against the impugned order dated 21.08.2019 of the Uttarakhand Real Estate Regulatory Authority (for short, RERA) in complaint No. 22/2017, filed by respondent before Ld. Authority below.

2. The memo of appeal states that the respondent/ complainant booked a Flat No. A-03 (hereinafter referred to as the said flat) in the housing

project proposed by the appellant for a total consideration of Rs.29,92,000/- and on 08.12.2012 paid Rs.2,00,000/- via two account payee cheques and Rs.6,180/- in cash towards the service tax, which was acknowledged by the appellant vide receipt No.409. The complainant/ respondent further paid Rs.6,00,000/- on 12.04.2013 through two cheques and Rs.18,540/- towards service tax in cash. Unfortunately the said housing scheme had to be put on hold by the appellant for various reasons which were out of the control of the appellant, due to which the appellant offered all the allottees to come forward and take their money back. The complainant approached the appellant for refund of the money, to which the appellant agreed and in furtherance of which the appellant returned Rs.5,00,000/- to him vide cheque no. 026715 dated 30.03.2016, drawn on UBI Kotdwar and an amount of Rs.3,00,000/- became due to the appellant which he was and is ready to pay ever since. The respondent/ complainant has refused to accept the above mentioned Rs. 3,00,000/-, instead the respondent filed a frivolous case before the Ld. Authority below at Dehradun bearing complaint no.22 of 2017-18 Virendra Singh Rawat vs. Chandra Prakash Sharma in the month of November, 2017 seeking the relief of refund of Rs.19,40,760/- along with interest at the rate of 12.5% per annum. The respondent has never produced any cogent evidence with regard to the amount paid by him to the appellant. A fictitious figure of 19,40,760/- has been quoted in the complaint to which the appellant objected against but the Ld. Authority below did not apply its mind and overlooked the same.

Ld. Authority below issued notice to the appellant and a detailed reply before the Ld. Authority below was filed by the appellant, disclosing the true facts, i.e., that the complainant had only paid Rs.8,00,000/- in all and not Rs.24,40,760/-. The appellant moved an application under Order-7 Rule 11 of the Civil Procedure Code 1908, challenging the jurisdiction of the Ld. Authority below to adjudicate the matter, taking the plea that the dispute involved between the parties cannot be adjudicated by the Ld. Authority below since the factum of giving/ accepting money can only be ascertained by a Court having proper jurisdiction and machinery to investigate. Ld. Authority below has always adopted the mode of adjudicating the complaints in a

summary way due to which Ld. Authority below could not have passed the impugned judgment without proper procedure being followed. The appellant also moved an application before the Ld. Authority below under Section 340 of Cr.P.C., against the respondent to get the respondent punished for deposing false statements before the Ld. Authority, but the Ld. Authority below has not disposed off the same, instead it has not discussed anything regarding the above application in the impugned judgment.

Ld. Authority below summoned one Sri Ashok Khantwal and took his statement regarding the dispute and directed the Police Officials and D.M., Kotdwar to call upon all the people involved in the dispute and investigate the same at their own level. The S.S.P., Pauri Garhwal along with his team prepared report dated 04.07.2017, which was duly sent to the Ld. Authority below. In this report of S.S.P., Pauri Garhwal, there is nothing which can prove that the appellant has received Rs.24,40,760/- from the respondent. Moreover, even the factum of Sri Ashok Khantwal being the Manager for the appellant, could not be established. Ld. Authority below has not accepted the investigation report of the S.S.P, Pauri Garhwal inspite of the fact that it itself directed the S.S.P., Pauri Garhwal to investigate in the matter and send a report. Ld. Authority below has passed the impugned judgment on 21.08.2019 in favour of the respondent/ complainant against which present appeal has been filed.

3. The complaint filed before Ld. Authority below was briefly, as follows:

The complainant booked a (to be constructed) flat, with no. A-03 II floor (area 1496 square feet) in this scheme with the booking amount of Rs.2,00,000/- and service tax Rs.6,180/-, total Rs.2,06,180/-. The respondent had made an offer that if the buyer pays 95% of total construction cost of the flat, the buyer shall be entitled to have 15% discount on the total cost of the flat. So to avail the 15% discount, offered by the respondent, complainant paid Rs.24,16,040/- as the 95% cost of the flat and Rs.24,720/- as the service tax, totaling Rs.24,40,760/- by 12<sup>th</sup> April, 2013, in installments. In the year 2013, after some initial foundation laying construction work at the project site in village

Simbhalchaud near District Court Kotdwar, Uttarakhand, respondent stopped all the construction work. As the construction had been abandoned, complainant requested for the refund of whole amount. After repeated requests for the refund of the deposited amount, i.e., Rs.24,40,760/-, respondent made refund by the cheque valued Rs.5,00,000/- and the rest of the amount Rs.19,40,760/- has not been refunded.

4. The complainant filed the following receipts/ proofs of having deposited Rs.24,40,760/-, before Ld. Authority below:

i) On the printed pad of Veer Construction Technocrats Pvt. Ltd., receipt for Rs.2,06,180/-, bearing the signature of Sri Ashok Khantwal and on which the company's phone number has been recorded as, 9837138366.

ii) Receipt on the company's printed pad of having received Rs.6,18,540/-, bearing signatures of company's Cashier/ Accountant.

iii) The Demand Note signed and issued by Sri Ashok Khantwal, the authorized signatory of the company, on 12.04.2013, in which only an amount of Rs1,27,160/- has been stated to be balance amount due and accepting the receipt of Rs.8,24,720/- from the complainant.

iv) On the pad of Veer Construction Technocrats Pvt. Ltd., money amount certificate (*Dhanrashi Pramaan Patra*) issued by Sri Ashok Khantwal, Manager, Kay Pride Mall, stating that cost of the said flat, after 15% discount is Rs.25,43,200/- and for the same Rs.24,00,000/- towards cost and Rs.24,720/- towards service tax, thereby total amount of Rs.24,24,720/- has been received and balance 5% amount of Rs.1,27,160/- is to be received from Sri Virendra Singh Rawat (the complainant) , at the time of handing over of the possession of the Flat.

5. Respondent (appellant herein) gave a letter in August, 2018 to the Ld. Authority below, in which they have stated that the above certificate dated 12.04.2013 is forged and have stated that this certificate has not been signed and given by their authorized agent and have requested for

legal action against the complainant for filing a false certificate of this nature.

6. Ld. Authority below summoned Sri Ashok Khantwal, the said Manager of the respondent/ Veer Construction Technocrats Pvt. Ltd., for evidence, as he had received Rs.16,00,000/- in cash from the complainant. Sri Khantwal deposed before Ld. Authority below on 14.02.2019 and in his statement he has denied that he had worked as Manager of the Project (Kay Pride Mall) of the respondent in the year 2012-13 and has also denied his signatures on the receipts and certificates as stated above. Respondent gave an application to Ld. Authority below on 21.01.2019 for dismissing the complaint case on the ground that the complainant has prepared the forged certificate and receipt dated 12.04.2013, so that the respondent can be blackmailed. In this application, it has also been denied that, Sri Khantwal is their worker or agent. In the project Kay Pride Mall, there was no post of Manager and still there is no such post and Sri Khantwal was not the Manager of Kay Pride Mall. According to respondent, Ld. Authority below could not decide this fact whether the documents are real or forged and, therefore, it did not have the authority to hear and decide this complaint case.
7. The complainant filed an application on 14.02.2019 before Ld. Authority below, enclosing two photographs of Sri Ashok Khantwal, taken on 03.07.2018/ 27.08.2018 in the office premises of Kay Pride Mall Project, showing Sri Khantwal to be sitting on the executive chair of the office of this project. Another picture has been enclosed, showing Sri Chandra Prasad Sharma (appellant herein) and Sri Khantwal with the Actors of *Uri* Film, shown in the Cinema Hall of the Kay Pride Mall. In this application, the complainant has clarified that Sri Khantwal has been associated with the respondent right from the start and his full complicity has been there in the sale purchase of the flats of this project.
8. The complainant gave another application on 28.03.2019 before the Ld. Authority below, enclosing photocopy of the notary affidavit of Sri Dhanveer Singh Rawat of March, 2019, in which he has written that his son's marriage ceremony was organized between 18-20 February in

the Banquet Hall of Kay Pride Mall, which is the property of Sri C.P.Sharma and that the charges for the same were received by Sri Khantwal, who conducts and receives the charges of such functions in the Kay Pride Mall with other works. Sri Dhanveer Singh Rawat has also enclosed photocopy of his son's marriage card with his affidavit. Thus, the complainant has tried to prove that Sri Khantwal is actually the Manager of Kay Pride Mall Project.

9. Respondent gave an application on 15.04.2019 to the Ld. Authority below stating the complainant to be of dubious character and himself to be a reputed person.
10. The complainant has also filed photocopy of another certificate, issued by Sri Khantwal as Manager, Kay Pride Mall in March, 2016, in which he has written that the entire amount of the said Flat shall be returned by November, 2016 and the first installment (Rs. 5 lacs) shall be given before 31.03.2016 and has directed that all the papers of the said Flat may be deposited in the office of Kay Pride Mall so that allotment of the said Flat may be cancelled.
11. The complainant gave another application on 03.05.2019 to the Ld. Authority below, stating that the photographs of Sri Khantwal sent with his earlier application, have been taken from the Face-Book account of Sri Khantwal and that the project photograph of June, 2018 makes it clear that the construction work has been done only till the digging of the foundation, the construction work is stopped and the site appears to be in ruins (*khandahar*). The reason given by Sri Ashok Khantwal for his non-appearance before the Ld. Authority below in January, 2019 for evidence was that he was ill and the photocopy of the medical certificate of Dr. M.P. Singh, Medical Officer, Chandra Mohan Singh Negi Government Base Hospital, Kotdwar has been filed, in which he has been advised rest from 16.12.2018 to 12.02.2019. This medical certificate bears the signature of Sri Khantwal, which according to the complainant matches with the signature on the receipt and certificate given to him on 12.04.2013. In the application dated 03.05.2019, the complainant has also written that in the evidence given by Sri Khantwal before Ld. Authority below on 14.02.2019, he has put his signature in

the wrong manner. Ld. Authority below has observed that this statement of the complainant appears to be true, after the perusal of the signature of Sri Khantwal on his statement. Sri Khantwal has deliberately put his wrong signatures on the above statement so that they may not be matched with the signatures on certificate and receipt dated 12.04.2013 and certificate of March, 2016.

12. Ld. Authority below asked for report from Collector, Pauri Garhwal and S.P., Pauri Garhwal on the point whether Sri Khantwal is the Manager of the respondent's project or not and whether he has received cash amount of Rs.16 lacs in April, 2013 from the complainant or not?.

13. Sri Dilip Singh Kunwar, S.S.P., Pauri Garhwal has sent his report dated 04.07.2019, enclosing the inquiry report of Sri J.R.Joshi, Dy. S.P., Kotdwar. The S.S.P., Pauri Garhwal has stated in his report that no evidence was found about Sri Khantwal to be the Manager/ Worker of the Company namely, Veer Construction Technocrats Pvt. Ltd or Kay Pride Mall. However, Sri Chandrashekhar Sati, present Manager and Sri Durga Prasad Dhasmana, Accountant of this Mall have stated that Sri Ashok Khantwal's brother Sri Vimal Khantwal has a shop in Kay Pride Mall, in which Sri Ashok Khantwal keeps coming and going and because of this, they recognize him. These two persons have further told the Police in their statements that as Sri Ashok Khantwal sits in the above shop, people get information from him about the Kay Pride Mall Project. These two persons are working in the Kay Pride Mall only for the last 2-3 years but they do not know as to who was the Manager of this project in 2013. In his statement to the Police, Sri Khantwal has also not told as to who was the Manager of the project when the respondent had issued the scheme of 15% discount in the flats of Kay Pride Mall. Sri C.P.Sharma also, in his statement given to the Dy. S.P., Kotdwar, has not told as to who was the Manager of Kay Pride Mall earlier. Ld. Authority below has held that this clearly proves that the Police or the witnesses of the respondent have not given any opinion on the point as to who was the Manager of Kay Pride Mall when the complainant had deposited money with the respondent for the Flat in 2012-13. The

complainant had also given the brochure of the project of the year 2012 with his complaint, on the last page of which, below the name and address of the company, five mobile numbers are recorded, one of which is '9837138366'. The Demand Note given to the complainant on 12.04.2013 has the signatures of Sri Ashok Khantwal, as the authorized signatory of the company and Mobile No. 9837138366 is recorded on it. The money amount certificate dated 12.04.2013, in which the fact of an amount of Rs.24,24,720/- having been given by the complainant as 95% value of the said flat, has been accepted, has been given by Sri Ashok Khantwal, as Manager, Kay Pride Mall and only an amount of Rs.1,27,160/- is said to be pending. The complainant in his statement to the Police has said that the cash amount of Rs.16 lacs was given to Sri Ashok Khantwal in the present of Sri Ramesh Dobariyal, Accountant. When the Police asked the complainant as to why he did not get receipt of cash payment of Rs.16 lacs from Sri Ashok Khantwal, he said that after 15% discount, the initial value of Rs.29.92 lacs of the Flat had reduced to Rs.25.43 lacs, out of which, after payment of Rs.24,24,720/- the Demand Note of balance Rs.1,27,160/- was given to him on 12.04.2013 and, therefore, he did not pay attention to get the receipt of the above amount. Actually, the amount recorded in the Demand Note was equal to Rs.25.43 lacs value of the Flat. The complainant also told the Police that after his retirement from Health Department, he had got Rs.25 lacs and in 40 years of service had made some savings also, out of which he had made cash payment of Rs.16 lacs for the said flat to the respondent. Sri Ramesh Dobariyal, Accountant was contacted on his mobile no. 9756903770 . He told that earlier he was serving with the respondent but afterwards he had left the job and he does not have definite information about this amount having been given by the complainant to Sri Ashok Khantwal. The S.P., Pauri Garhwal in his report has stated that there is no requirement of any police action on the application of the complainant. Ld. Authority below has observed that on the basis of letters and photographs of Sri C.P.Sharma, it is clear that he is an influential man. The complainant has alleged that the respondent has also wrongly influenced the Police inquiry in the matter and Police has not inquired and questioned Sri C.P.Sharma and Sri Ashok Khantwal



in proper way and impartial manner. Ld. Authority below has also observed that it had sought a joint inquiry report of Collector, Pauri Garhwal and S.P., Pauri Garhwal, but the report has been sent by the S.P., Pauri Garhwal alone and, therefore, it is not acceptable.

14. After perusal of the record and hearing the arguments of both the parties, Ld. Authority below has held that Sri Ashok Khantwal, the then Manager of Kay Pride Mall, as Manager of the respondent/ Veer Construction Technocrat Pvt. Ltd., had got total Rs.24,24,760/- from the complainant as 95% value of the said flat, out of which they have returned Rs.5 lacs in March, 2016. They have not returned the balance amount to the complainant so far. Therefore, Ld. Authority below has ordered the respondent (appellant herein) to return the balance amount of Rs.19,24,720/- with interest at the rate of SBI Highest Marginal Cost of Lending Rate + 2% .
15. The appellant has challenged the impugned order of Ld. Authority below stating *inter alia* that the findings of Ld. Authority below are based on conjunctures and surmises; Ld. Authority below has exceeded the jurisdiction vested in it by law; Ld. Authority below has exercised its jurisdiction with illegality and material irregularity; Ld. Authority below has completely overlooked the defence taken by the appellant; the case setup by the complainant was false, vexatious and a complete bundle of lies; Ld. Authority below has erred in opining that the appellant has received the alleged Rs.24,40,760/- without any evidence on record; Ld. Authority below has not considered the objections raised by the appellant with regard to the disclosure of the mode adopted by the respondent to pay the alleged money to the appellant; Ld. Authority below has erred in coming to the conclusion that the alleged demand note dated 12.04.2013 has been issued by the appellant or any of his authorized representative without any evidence on record; the alleged demand note neither indicates that an amount of Rs.16,16,040/- has been paid to the appellant nor does it indicate the name of person who executed it; Respondent has paid only Rs. 8 lacs out of which the appellant has returned Rs.5 lacs and the remaining Rs.3 lacs are ready ever since with the appellant but the respondent has turned dishonest and

is not till date accepting his remaining money; Ld. Authority below has erred in not deciding the application dated 31.10.2018, which was filed by the appellant before the Ld. Authority below seeking relief of disposing off the complaint of the complainant as dismissed for want of jurisdiction; Ld. Authority below did not pass any judgment on the said application; Ld. Authority below has erred in not holding a trial as per procedure laid down by law, instead a vague procedure was adopted by the Ld. Authority below which is illegal and therefore, the trial conducted is vitiated; Ld. Authority below has erred in not taking into consideration the objection raised by the appellant that the alleged demand note was filed by the respondent/ complainant before the Ld. Authority below after the reply of the appellant/ respondent was filed and therefore the filing of the forged document by the respondent/ complainant was a planned afterthought; the respondent (complainant) along with Sri Ashok Khantwal are in connivance against the appellant; whatever alleged amount if the respondent has paid, the same has not reached appellant and it seems that Sh. Ashok Khantwal may have misappropriated the respondent's money; Ld. Authority below has erred in arriving at the conclusion that Sri Khantwal was the Manager of the appellant during the relevant time without any evidence on record; Ld. Authority below has completely relied upon the respondent's version in toto; Ld. Authority below has erred in not accepting the investigation report of S.S.P., Kotdwar inspite of the fact that it had itself ordered for investigation; Ld. Authority below has vaguely come to a conclusion that the respondent/ complainant had handed over Rs.16 lacs to Sri Khantwal on appellant's behalf; there is no receipt or any similar evidence in existence with regard to the payment of Rs.16 lacs by the respondent/ complainant; Ld. Authority below has wrongly taken into consideration the receipts which the respondent/ complainant has filed in the lower Court record and the Ld. Authority below also erred in not realizing that if the respondent had paid the alleged amount, he would have filed the receipts of the same; Ld. Authority below has wrongly interpreted the involvement of Sri Khantwal with the appellant inspite of the fact that it was contended before the Ld. Authority below that the alleged demand note and receipt has not been issued on the company

letter pad or by any authorized signatory of the company and the same was forged; Ld. Authority below has not taken into consideration the complaint dated 03.08.2018 filed by the appellant before the SHO, Kotdwar; Ld. Authority below has not considered the application under Section 340 of Cr.P.C. filed by the appellant which is against the law; etc.

(It is relevant to mention here that Section 340 Cr.P.C. is applicable only when the document is in *custodia legis* . In the instant case, no such allegations have been levelled.)

16. We have heard Ld. Counsel for both the sides, who have also filed written arguments and perused Xerox copy of the corresponding RERA file in which the impugned order has been passed.

17. Ld. Counsel for the respondent first filed his written arguments. His arguments are briefly as follows:

Ld. Authority below has got full jurisdiction to decide such cases as per the letter and spirit of the Act and in this case no ultra vires and beyond the jurisdiction decision has been taken by the Ld. Authority. The order of RERA is in order and no violation of any rule and regulations of C.P.C. have been made (under Section 35(2) of RERA Act). Moreover the C.P.C. 1908 and Evidence Act do not have any binding on the RERA Procedure. The ground of jurisdiction taken by the appellant in their application of Order 7 Rule 11 of C.P.C. does not apply as the RERA is the only Authority to decide such matter and it is not only a matter of giving and accepting money whereas in real sense it is the matter of selling and buying the flats and property which come under the purview of RERA Act, 2016. It is also not mandatory for RERA to adopt the C.P.C. and Cr.P.C. procedure fully or partially. The developer should have executed the sale agreement with the buyer and should have issued the allotment letter under the provisions of the then rules and should not have received any amount more than 10% of consideration cost without executing the sale agreement. Whereas, in this case the developer has launched the special scheme under which 15% discount of total consideration cost was made available to the buyer

so that they may attract the buyer and receive the money in advance in one go and deceive the buyer at later stage. The developer had appointed Sri Ashok Khantwal as Manager who was looking after the total business and he was the only person who has signed the demand note and receipt no. 409 and issued the receipt on company pad dated 12.04.2013 for receiving the entire amount except 5% balance to be paid by the buyer to the developer at the time of possession. This indicates that he has collected money on behalf of the company and was fully permitted by the company for transaction of its business. The respondent has submitted an affidavit of Sri Dhanveer Singh Rawat in evidence to prove that Sri Khantwal was the Manager of the Kay Pride Mall who had received the entire booking and other user charges from the customers. The developer could not reply to the Police query as to who was the Manager of Kay Pride Mall during the period of the years 2011, 2012 and 2013 and was hiding the true fact to expose the name of Sri Khantwal as the Manager. The reasons/ grounds for not accepting the report of SSP, Kotdwar have already been mentioned by RERA in impugned order itself. The developer has failed to prove to RERA in their defence evidence that they have not received the entire amount of 95% of consideration cost and have also failed to prove that Sri Ashok Khantwal was not the Manager of their company. As per the principle of Law of Torts, master is held liable for the wrong act committed by the servant during the course of employment and during the years 2011,2012 and 2013 Sri Khantwal was de-facto Manager of the said company.

18. Ld. Counsel for the appellant in his arguments has stated the following:

During the course of arguments before this Ld. Appellate Tribunal, the respondent has presented his written arguments which cannot be sustained and are against the facts of the instant dispute. Despite opposing the written arguments of the respondents in *toto*, the appellant is again contradicting the stand taken by the respondent in the following manner:

- a) Ld. Authority below did not have jurisdiction as well as machinery to ascertain as to whether the respondent has given any money in cash to the appellant.
- b) Even after filing an application under O-7 R-11 of the C.P.C. by the appellant/ opposite party, the Hon'ble Chairman RERA did not consider it necessary to invite any objections on it by the complainant/ respondent, leave alone affording an opportunity to be heard on the said application.
- c) The complainant/ respondent misguided the Ld. Authority below by presenting vague facts without any evidence.
- d) It has never been proved by the respondent till date that he has given the alleged amount to the appellant by any means.
- e) The respondent relies upon a document dated 12.04.2013 which is only a Photostat copy. During the course of arguments, the counsel for the respondent as well as the respondent himself in person appeared before this Ld. Appellate Tribunal and miserably failed to show or produce the original letter dated 12.04.2013 i.e. '*Dhan Prapti Pramanpatra*'. Therefore, in the absence of any evidence it cannot be conclusively proved that the appellant has taken any money in cash from the respondent.
- f) During the course of arguments the Hon'ble Appellate Tribunal also directed the parties to file evidence with regard to the cash flow/ payments made by the parties. The appellant was directed to show the cash receipts of the moneys advanced by the appellant to his staff for the relevant period as salaries whereas the respondent was directed to produce evidence with regard to the alleged cash advanced to the appellant. The appellant produced the relevant documents, but on the other hand the respondent was unable to produce any document or any bank statement from where the veracity of possessing the money in question is concerned. In simple words the respondent failed to show as to, from where he got the alleged amount of cash which he claims to have forwarded to the appellant. The respondent has also failed to show anything from his past ITRs to support his claim. The Respondent/ complainant had filed an affidavit of one Sri

Dhanveer Singh Rawat (stamp paper dated 15.03.2019, handwritten in Hindi) before the Ld. Authority below to which the appellant objected. A look with bare eyes will make it clear that the handwriting upon that affidavit is of the respondent himself. The respondent has never produced Sri Dhanveer Singh Rawat in person to clear the doubt.

19. The preliminary objection of the appellant raised in the matter before Ld. Authority below was that it does not have the jurisdiction to go into the issue whether the money in cash was given by the respondent to the appellant, more so when there is no proof of the same and the Ld. Authority below also does not have the necessary machinery to look into this matter. We observe that this handing over of cash money was not by way of any loan or other financial transaction between the two parties but was related to the sale and purchase of the said Flat and any consideration paid for the same in any form comes under the purview of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to, the Act) and consequently Ld. Authority below has jurisdiction to adjudicate on this issue. Law enjoins upon the Ld. Authority below under Section 35 of the Act to call for information and conduct investigation and exercise its additional powers as spelt out in Rule 22 of Uttarakhand Real Estate (Regulation and Development) (General) Rules, 2017 (for short, the Rules). The said provisions are being quoted herein below for convenience:

**“Section 35. Powers of Authority to call for information, conduct investigations:**

(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.

**Rule 22. Additional powers of the authority:**

(1) In addition to the powers specified in Clause (iv) of subsection (2) of section 35, the Authority shall exercise the following additional powers:

- (a) require the promoter, allottee or real estate agent to furnish in writing such information or explanation or produce such documents within such reasonable time, as it may deem necessary;
- (b) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office.

(2) The Authority may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture or engineering or from any other discipline as it deems necessary, to assist the Authority in the conduct of any inquiry or proceedings before it.

(3) The authority may in the interest of the allottees, inquire into the payment of amounts imposed as penalty, interest or compensation, paid or payable by the promoter, in order to ensure that the promoter has not:

- (a) withdrawn the said amounts from the account maintained as provided under sub clause (d) of clause (1) of sub-section (2) of section 4; or
- (b) used any amounts paid to such promoter by the allottees for the that real estate project for which the penalty, interest or compensation is payable, or any other real estate project; or
- (c) recovered the amounts paid as penalty, fine or compensation from the allottees of the relevant real estate project or any other real estate project.”

20. From the perusal of the record of the Ld. Authority below, we find that Sri Ashok Khantwal appeared before it only after many notices, threats of attachment of property, letters to the Police to produce him in Police custody, etc. were issued. We also find a medical certificate for his non-appearance before Ld. Authority below and when he has got his statement recorded, he has denied himself to be the Manager of Kay Pride Mall as well as his signatures on the receipts or certificates. He has

tried to sign in a different manner on his recorded statement as compared to his signatures on the medical certificate but still there is some resemblance between them and a fair amount of resemblance with the signatures alleged to be done by him on the receipts/ certificates.

21. Order sheet dated 08.03.2019, in the record of Ld. Authority below, states that the first party (complainant) requested for the verification of the signatures of Sri Khantwal on various documents from recognized handwriting expert or FSL. No further action by the Ld. Authority below has been taken in this regard. In the next date of hearing, i.e., 28.03.2019, the complainant has produced the affidavit of Sri Dhanveer Singh Rawat, indicating nexus of Sri Ashok Khantwal and Kay Pride Mall. Ld. Counsel for the appellant has argued that this affidavit has been written in the handwriting of the complainant. Even if this be so, Sri Dhanveer Singh Rawat's signing the same upholds the contents of the affidavit. However, Ld. Authority below could have summoned Sri Dhanveer Singh Rawat and made further queries from him. Subsequently, Ld. Authority below has asked report from Collector, Pauri Garhwal and S.S.P., Pauri Garhwal, which has only been sent by S.S.P., Pauri Garhwal and Ld. Authority below has not agreed to the findings of the same for the reasons mentioned in the impugned order.
22. Xerox copy of the record of the Ld. Authority below reveals that the complainant has given an application to RERA on 20.08.2019, *inter alia* stating:
  - i) If the receipts and demand note have not been signed by Sri Ashok Khantwal, then why the respondent (appellant herein) has not disclosed the name of the employee who has signed them? If these receipts are fake, then why carbon copies of actual receipts have not been made available?
  - ii) Who were the Accountant and Cashier of the respondent in the year 2013?
  - iii) In his earlier statements, Sri C.P.Sharma had clearly refused to have any acquaintance with Sri Ashok Khantwal, but in the latest



inquiry report, their good acquaintance and mutual terms have been stated.

iv) Respondent is saying that he has returned everybody's money. Has he returned Rs.15 lacs of Smt. Pushpa Devrani, mother of Col. Aditya Devrani?

v) Why in the Police inquiry, statements of only employees of Kay Pride Mall were recorded about Sri Khantwal? Why statements of nearby shopkeepers and other persons were not taken?

vi) When the respondent has termed all documents, produced by the complainant, as fake; the respondent should have produced the actual documents.

He has also given another letter on 20.08.2019, enclosing two photographs- first one showing Sri Ashok Khantwal in the office of Kay Pride Mall, pointing to the demo photo of the housing project, and the second photograph is of the proposed housing project, showing its promoter as 'Veer Construction Technocrats Pvt. Ltd.' and out of whose list of contact telephone numbers, number is also in the stamp put on the demand note, which was issued to him. He has stated that these facts and other facts mentioned earlier prove that the respondent has made false statements, without submitting any proof and when a person speaks lies, it is clear that he is at fault.

Cognizance of these letters does not seem to have been taken by the Ld. Authority below while pronouncing its judgment on 21.08.2019.

23. Section 53 of the Act states that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice. During course of the arguments before us, we asked the appellant about the person who has signed the receipt no. 409, issued to acknowledge the initial payment of Rs.2 lacs given by two cheques and if these signatures are not of Sri Ashok Khantwal then who has signed this receipt. It was verbally replied by the appellant that the receipt book used to be available in their office, out of which one receipt might have been

signed by somebody and given to the respondent. The fact, that these cheques reached the appellant and were encashed by him in his bank account and along with them, the amount of Rs.6,180/- in cash for service tax has also reached the appellant, shows some nexus of the person signing the receipt and the appellant. We also offered to the appellant to produce the carbon copy or counter foil of the actual receipt which might have been given to the respondent, if the copy of this receipt no. 409 , as provided by the complainant (respondent herein) is fake. The appellant replied that he did not keep carbon copies or counter foils. We also asked the appellant, as to why the demand note dated 12.04.2013 was showing the amount balance as Rs.1,27,160/-, and if this document is forged, what was/were the actual demand note/ notes sent to the respondent for balance amount. We also asked the appellant to show copies of the correspondence done with the respondent about return of his money when Rs.5 lacs were returned and further correspondence for return of balance money. The appellant told us that his discussion with the respondent was verbal only and no formal correspondence took place.

24. We have observed from the Police report that the employees of the appellant were given salary in cash. We asked the appellant as to who were his employees in 2012-13. The appellant has produced a list of seven employees (not including Sri Ashok Khantwal). The appellant has also produced photocopies of individual receipts signed by these 7 employees with revenue stamps, all dated 07.09.2012 of having received monthly salary. In the statement given by the appellant to the Dy.S.P., it has been stated that company's work was done by directly keeping labourers and in the office staff, five persons' names have been mentioned including Sri Ramesh Dobariyal, Accountant with mobile number 9756903770. Names of three persons out of these five persons appear to be different from the list of seven employees produced before us by the appellant, except the name of Sri Ramesh Dobariyal and Sri Ajay Kumar. The appellant has also produced before us copy of the salary sheet for the month of January 2014, which is in one page and shows eight employees, all of which are different from the employees recorded in the list of 2012-13. Copy of the salary

sheet for the month of April, 2014 shows names of seven persons, last two of which do not figure in January, 2014 list. On being asked, why in 2012-13 individual receipts were taken from the employees with revenue stamps and in January and April 2014, on a single sheet various employees have signed without revenue stamps, no satisfactory answer was given by the appellant except that the records were kept in this manner only .

25. If it is assumed that staff of five employees, whose names have been given by the appellant in his statement to the Dy.S.P., was the working staff in the year 2012-13, then not only their number is just five instead of seven, but some names are also different. So, we assume that five persons' staff, as stated by the appellant before Dy.S.P., is the staff working in 2019 when the Police inquiry was made, meaning thereby that, Sri Ramesh Dobariyal, Accountant with mobile no. 9756903770, was working with the appellant in 2019. Name of Sri Ramesh Dobariyal is also in the list of seven employees during the period 2012-13, presented before us. The complainant in his statement to the Police has said that he had given cash amount of Rs.16 lacs to Sri Ashok Khantwal in the presence of Sri Ramesh Dobariyal, Accountant. In the impugned order, Ld. Authority below has stated that on talking to Sri Dobariyal on his mobile number, he told that he used to work with respondent (appellant herein) earlier, but afterwards he had left the job and he does not have definite knowledge of this amount being given by the complainant to Sri Khantwal. Thus, Sri Ramesh Dobariyal denies working with the appellant in 2019 and gives an evasive reply about the amount having been given by the complainant to Sri Khantwal. Sri Durga Prasad Dhasmana, in his statement to the Dy.S.P. says that he is working as Accountant in Kay Pride Mall for two years and Sri Ashok Khantwal does not work in Kay Pride Mall/ Veer Construction since then and he does not know, if Sri Khantwal had been working earlier. Sri Chandrashekhar Sati, who says that he is looking after the work of management of Kay Pride Mall for about three years, states before the Dy.S.P. that he does not know who was the manager in Kay Pride Mall before him. On being specifically asked whether Sri Ashok Khantwal was doing job in Kay Pride Mall/ Veer Construction or not, he replies

that according to his information, Sri Khantwal was not doing service (*Naukari*).

26. The above shows that the appellant is not giving correct picture of his employees and the employees' statements are evasive. We have also observed from the Xerox copy of the record of Ld. Authority below that the letter dated 12.08.2018, which was sent by the Ld. Authority below to Sri Khantwal for his appearance on 27.09.2018, has the following report of service of P.S. Kotdwar by Constable Ravindra Tomar, stating that Sri Khantwal, Manager, Kay Pride Mall was not found present and the Mall employees reported him to have gone out for some work; One copy of the notice was given to the Mall employee Sri Rajeev Kharkwal and obtained his signatures and along with him another employee Sri Sunil Kumar was also got to sign as witness of the service. This shows that Sri Khantwal was recognized as some office bearer of the appellant and the Mall employees received the notice on his behalf. When Sri Khantwal did not appear on 27.09.2018, the Ld. Authority below sent a letter dated 28.09.2018 to the District Collector for service on Sri Khantwal for appearance on 15.10.2018. Copy of this letter has been returned with the report of personal service having been made on Sri Ashok Khantwal, Manager, Kay Pride Mall.

27. The appellant verbally denied before us any sort of financial transaction either through bank account or through cash with Sri Ashok Khantwal. However, all the circumstances, as detailed above, give rise to strong suspicion of Sri Khantwal having a nexus with the appellant. As stated in Para 23 above, the appellant is denying that receipt no.409 issued to acknowledge the initial payment of Rs.2 lacs given by two cheques, bears the signatures of Sri Ashok Khantwal but he is not telling as to who has signed that receipt and if this receipt is fake, then why carbon copy or counter foil of the correct receipt has not been produced. This amount of Rs. 2 lacs, given by cheques and Rs.6,180/- in cash for service tax, has reached the appellant. In the interest of justice, it is necessary to examine Sri C.P.Sharma, the appellant, on oath, as to how and through whom these two cheques and cash money have reached him, how the other amount of Rs. 6 lacs also given through cheques and

Rs.18,540/- in cash have reached the appellant and for the same who has signed the other receipt, in which books the cash amounts received from respondent and other homebuyers have been recorded, who all were in the staff of the appellant at that time, how the cash moneys received from homebuyers and other sources were spent, how demand notes, receipts and certificates were issued and correspondence made with home-buyers; so that a clear picture of the staff, records and the money receipts and expenditures of the appellant can be obtained. The respondent should be given full opportunity to cross-examine him. The thorough examination, on oath, of Sri Ashok Khantwal and other concerned staff of the appellant be also made and full opportunity should be given to the respondent as well as the appellant to cross-examine them. The appellant and respondent both be given opportunities to produce any other evidence also. A thorough examination of all the transactions of various bank accounts and cash books of the appellant is also necessary to identify the money trails which can throw light upon Rs.16 lacs having been received from the respondent in cash by Sri Ashok Khantwal and further transactions from this amount, and financial dealings between Sri Ashok Khantwal and the appellant. If required, assistance of recognized handwriting experts may also be taken to verify various signatures.

Ld. Authority below has the above powers under Section 35 of the Act and Rule 22 of the Rules, which have already been reproduced in Para 19 of this judgment.

28. Detailed investigation, as above, is required on the part of the Ld. Authority below to arrive at the truth of the matter and to get sufficient proof for the same and decide the matter afresh in accordance with law. Till such decision is taken, order impugned shall remain in abeyance.

The appellant has already deposited Rs.16,16,000/- before this Tribunal in compliance of its order dated 21.10.2019, out of which a sum of Rs.3 lacs, which is admittedly due to be returned to the respondent by the appellant, can forthwith be returned to the respondent with interest thereon as specified in the impugned order of the Ld. Authority below and the remaining amount can be retained till fresh decision is taken, so

that it can be used as part of the further amount due to be returned to the respondent, and if no further amount is found due to be returned to the respondent, the same can be returned to the appellant.

Regarding the amount of Rs.24,720/- paid towards service tax, the appellant be called upon to produce the documents vide which, the service taxes of the respondent and other homebuyers have been deposited, and explain the amounts and the rates at which the service tax has been deposited in various cases. This can also throw light on the cash transactions in various cases. As no service has been provided in the instant case, *prima facie* it appears that the amount collected towards service tax should also be returned to the respondent along with interest. Ld. Authority below can hear the parties on this aspect also and take suitable decision.

29. With the above directions, the appeal is disposed of and the matter is remitted to the Ld. Authority below for taking fresh decision in accordance with law, as above, in the interest of justice. Till then, the order impugned shall remain in abeyance. The amount of Rs.16,16,000/-, deposited by the appellant before this Tribunal be remitted to Ld. Authority below for action, as stated above.
30. Let a copy of this order be sent to RERA for information and necessary action, in terms of Sub Section (4) of Section 44 of the Act.

**(RAJEEV GUPTA)**  
MEMBER (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRPERSON

*DATE: JULY 22, 2021*

*DEHRADUN*

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