THE REAL ESTATE APPELLATE TRIBUNAL, NCT OF DELHI
APPEAL NO.128/REAT/2023

Reserved on : 11.12.2024
Pronounced on : 24.01.2025

IN THE MATTER OF :

Vijay Goel ..... Appellant
S/o Shri Dhan Prakash Goel
R/o G-02, Tower D7, Tulip Petals, Sector-89,
Gurgaon-122505.

Through : Mr. Siddharth Karnawat Advocate

V/s

M/s Antriksh Infratech Private Limited …………Respondent
Registered Office at
302, Agarwal Mall, Sector-5, Dwarka,
South West, New Delhi-110075.

Through : Ms. Kajal Dewan, Advocate

CORAM :
Justice Chander Shekhar, Chairperson
Lorren Bamniyal, Member (Judicial)

ORDER :

1. The appellant has impugned the order dated 17.07.2023 passed by the Real Estate Regulatory Authority for NCT of Delhi (hereinafter referred to as the 'Authority'), holding the complainant appellant to be an 'investor' and not an 'allottee' and the payments made by him to the respondent as speculative investment and, thus, not entitled to relief under the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the 'Act').

2. Brief facts of the case are that the appellant complainant booked a three bedroom flat with the respondent, having built up area of 1900 sq. ft. in the proposed project of the respondent titled 'Antriksh Urban Greek' project in 'L' Zone, Dwarka, Delhi, with promised yields of high profits. The booking made by the appellant was under a buy-back scheme under which, after payment of 20% of the total sale consideration for the unit, the respondent would buy back the unit from the appellant complainant by giving 25% return per annum on the total amount paid either at the end of 24 months or at the issuance of Land Transfer Certificate.

3. It is an admitted position of the parties that the appellant complainant paid a sum of Rs.19,00,000/- to the respondent by way of three installments, viz. Rs.1,50,000/- Rs.50,000/- and Rs.17,00,000/-. However, the respondent's project did not take off and with the appellant complainant seeking refund of money with promised returns, and the appellant putting forth his defence of the DDA policy itself not materializing, a 'Memorandum of Understanding' (MOU) came to be signed between the parties on 24.09.2017 wherein it was admitted that the respondent could not execute the 'Buy-back Scheme' and that respondent is liable to pay an amount of Rs.28,50,000/-, of which Rs.19,00,000/- was towards refund of the principal sum paid and the balance of Rs.9,50,000/- towards interest @25% per annum. It is further admitted by the parties that in terms of

MOU dated 24.09.2017, a sum of Rs.15,00,000/- has already been received by the appellant by way of four equal instalments of Rs.3,75,000/- each.

4. It is also an admitted position of the parties and also known in public domain that the projects in the 'L' Zone, including the project of the respondent, could not commence owing to indecisive government policy. The respondent submits that for the said reasons of the government policy not taking any shape at all, they gave an option to all their investors who had booked a flat to either stay invested or await clearance from the government for issuance of Land Transfer Certificate or in the alternative to opt for refund. It is submitted that pursuant to the said offer, MOU dated 24.09.2017 was executed between the parties.

5. The complaint made by the appellant for relief under the provisions of the Act was rejected by the Authority on the ground that the complainant was not an 'allottee' within the meaning of Section 2(d) of the Act and, therefore, complainant, being an 'investor', is not entitled to the relief available under the Act.

6. It is the submission of the Ld. Counsel for the appellant that the findings rendered by the Authority are not based on correct and proper appreciation of law and, hence, are not sustainable.

7. Appellant claims to have been approached by M/s Square Yards Consulting Private Limited, a real estate agent, with a representation that the Project "Antriksh Urban Greek", being developed by M/s Antriksh Engicon Private Limited in 'L' Zone of Dwarka, Delhi, is a promising project and would yield huge profits to the complainant.

8. Based on the representation made by the said real estate agent, appellant applied for **membership of the Society** and booked a three bedroom flat on the 8th floor of the project, under the buy-back scheme of the respondent, under which on payment of 20% of the total sale consideration of Rs.95,00,000/- for the unit, the respondent would buy back the unit by giving 25% returns per annum on the total amount paid either at the end of 24 months or at the issuance of Land Transfer Certificate.

9. The appellant has placed on record as Annexure A-2 (pages 19 to 50) a detailed brochure issued by the company, highlighting the salient features of the project, claiming the investment by the buyers would be rewarding. Annexure A-3 with the appeal at page 51 of the paper book is the Letter / Expression of Interest by the appellant and relevant paragraphs of the said document read as under :-

> "I/We have examined the plan of the project named **ANTRIKSH URBAN GREEK** to be developed / constructed under lawful

arrangements by **ANTRIKSH GROUP** (hereinafter referred to as the company) on a piece of land situated in "L" Zone Delhi, hereby applying for provisional allotment of residential apartment.

I/We further agree to pay the instalments and additional charges / cost as per the Payment Plan (opted by me/us), given by the company as shown in the EOI as and when demanded by the Company, failing which the EOI / allotment will be cancelled and the booking / earnest money along with interest, if any, shall be forfeited by the Company. My/our particulars are given below."

10. The application form on page 52 of the paper book shows the Payment Plant option by the appellant as 'Buy Back'. Annexure A-4 at page 55 is the Welcome Letter dated 09.07.2015 issued by the respondent informing the appellant of his provisional booking of a 1900 sq. ft. 3 BHK+SQ flat on 8th floor, with a request to deposit the balance 10% amount within 45 days. On page 56 of the paper book is the letter dated 09.07.2015 issued by the respondent, confirming the discussion at the time of booking. The points discussed are confirmed and noted as under in the said letter dated 09.07.2015 :-

"As per the discussion at the time of booking, we confirm you the following points :

1. There will be no price escalation towards the unit booked by you.
2. We are confirming you allotment on 8th floor, @5000-p.s.f., BUY BACK Plan, Size 1900 sq. ft.
3. There will be no additional charges for club membership, IFMS & Power Backup up to 3 KVA.
4. The preference location of the apartment is part facing. The same would be charged after allotment of LTC from DDA.
5. One covered car parking is chargeable @2.5 lac.
6. One open car parking is chargeable @1 lac.
7. First Transfer Free"

The copies of the payment receipts are also placed on records which are admitted by the respondent.

11. What is noticeable in the documents noted above, is that these are not one off documents created for some individual transaction but are general documents under a well-thought out scheme to raise funds on an immediate basis by offering alluring returns, to attract the buyers. It is quite possible that the investment may be speculative but that is so in terms of the scheme offered by the respondent and does not take away the right of the appellant being an 'allottee'.

An allottee, as defined in Section 2(d) of the Act, in relation to a real estate project, means a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. The definition reads as under :-

> "2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"

12. It would be useful to also notice some of the covenants of the Agreement dated 24.09.2017 between the parties, which reinforce the claim of the appellant

being an 'allottee' and not a mere investor. Clauses (2) & (3) of the said Agreement read as under :-

2. **Transcation** :

(a) The Applicant had agreed to invest a sum of Rs.19,00,000/- (Rupees Nineteen Lacs only including Service Tax) – Rs.1,50,000/- vide cheque No.291929 drawn on ICICI Bank dated 29.06.2015 and Rs.50,000/- vide cheque No.291931 drawn on ICICI Bank dated 26.08.2015 and Rs.17,00,000/- (Rupees Seventeen Lacs only) on cash in the Project for a period of 24 months or at the issuance of Final LTC by the competent Authority (whichever is earlier) **("investment')** and has paid the said amount vide…..

(b) The Company had agreed to give return of 25% per annum at the end of 24 months or at the issuance of Final LTC by the competent authority (whichever is earlier) from the date of receipt of (10% Booking Amount and Second Demand of 10%) investment from the Applicant.

3. Now, as 2 years are past and LTC is not issued due to some reasons, both parties agree to go ahead as following :

- The total amount invested by the client is Rs.19,00,000/- payment in unit size 1900 sq. ft. @Rs.5,000 per sq. ft.
- The total interest on amount invested (Rs.19,00,000/-) is Rs.9,50,000/-.
- Total amount payable as of now is Rs.28,50,000/-.
- Out of the above outstanding amount, Rs.15,00,000/- will be paid in 4 installment of Rs,3,75,000/- each on 23rd September, 2017, 28th September, 2017, 5th October, 2017 and 12th October, 2017. All amount have been received by Mr. Vijay Goel Ji, i.e. Rs.15 lacs.
- Price of the unit has been reduced to Rs.4280 per sq. ft.
- If second party continue with the unit, first party will not raise any demand for 6 months from the date of LTC.

- At the time of LTC, if second party continues with the unit, price of the unit will be Rs.4280/- per sq. ft. and first transfer will be free.
- If second party doesn't wish to continue with the unit, first party will buy back the unit with Rs.250 per sq. ft. appreciation (on 1900 sq. ft.) along with balance Rs.13,50,000/-.

13. The Agreement gives a very categorical right to the appellant to continue with the unit and it is only in the event of the second party not wishing to continue with the unit that the respondent would buy back the unit with Rs.250 per sq. ft. appreciation. Merely because one of the clauses provides for return of 25% per annum at the end of 24 months or issuance of final Land Transfer Certificate (whichever is earlier) is neither good enough nor sufficient ground to take out the appellant from the ambit of the definition of allottee as provided for under Section 2(d) of the Act.

14. The nomenclature and documentation adopted by the respondent in this case are misleading and intended to show the payment received against bookings as 'deposits' instead of 'investments'. The modus operandi is used to raise funds from the general public rather than from financial institutions, which, even if they get sanctioned, come at a higher cost. One of the objects of the Act is to ensure transparency, fair practices and reduce frauds and delays and also ensure accountability towards allottees, who invest in their projects. The

nomenclatures, terminology and modus-operandi used by the real estate players deserves a deeper examination before denying the complainant allottee his right to seek remedies under the Real Estate (Regulation & Development) Act, 2016.

15. The appellant has made payment following due process laid down by the company for allotment of a unit / apartment on the 8th floor of the Project 'Antriksh Urban Greek' in L-Zone, Dwarka, Delhi and had paid a sum of Rs.19,00,000/- towards the cost of the unit, which is admitted by the respondent.

16. Accordingly, in view of the aforesaid discussion, the appeal is allowed. Complainant is held to be an 'allottee' in the project of the respondent and accordingly the Real Estate Regulatory Authority, Delhi is directed to examine the complaint filed by the appellant in Form 'M' on 28.02.2022 on merits and dispose of the same preferably within three months from the date of this order.

17. Appeal stands disposed of.

18. File be consigned to the record room.

(LORREN BAMNIYAL)
MEMBER (J)

(JUSTICE CHANDER SHEKHAR)
CHAIRPERSON

24th January, 2025.