

U.P. REAL ESTATE APPELLATE TRIBUNAL
4TH FLOOR, INDIRA BHAWAN, ASHOK MARG, LUCKNOW

Date: 15.05.2024

NOTICE

It is hereby informed to all the concerned that in compliance of Order dated 15.05.2024 passed by Hon'ble Bench No. 1, the Judicial functioning of the tribunal is suspended w.e.f. 15.05.2024.



Enclosure: Order dated 15.05.2024.

Tahreem Khan
15/05/24
(Tahreem Khan)
Registrar
U.P.R.E.A.T.

Hon'ble Dr. Justice D. K. Arora, Chairman
Hon'ble Mr. Sanjai Khare, Judicial Member.

During the course of the proceedings today the Private Secretary of the Chairman U.P. REAT placed before us an envelope marked as 'urgent' addressed to the Chairman. On opening the envelope we found an uncertified copy of the order dated 10.05.2024 passed by the Hon'ble High Court in RERA Appeal Defective No. 9 of 2024. The said order reads as under:--

"Neutral Citation No. - 2024:AHC-LKO:36130

Court No. - 19

Case :- RERA APPEAL DEFECTIVE No. - 9 of 2024

***Appellant :- M/S Antriksh Realtech Pvt. Ltd. Ghaziabad Thru.
Auth. Signatory Mr. Rajesh Kumar***

Respondent :- Amit Saxena

Counsel for Appellant :- Abhishek Khare, Aahuti Agarwal

Hon'ble Subhash Vidyarthi,J.

Order on I.A. No. 1 of 2024

- 1. Heard Sri Abhishek Khare, the learned counsel for the appellant, Sri Amit Saxena, the respondent in person.*
- 2. This is an application seeking condonation of delay of 32 days in filing the appeal.*
- 3. Reasons for the delay have been explained in the affidavit filed in support of the application, which appear to be sufficient. The respondents in person does not oppose the application for condonation of delay.*
- 4. Accordingly, the delay in filing appeal is condoned.*

Order on Memo of Appeal

- 5. Although several grounds have been taken in the appeal and the learned counsel for the appellant has formulated four substantial questions of law, while advancing submissions on the admission of the appeal, he confined his submission to the ground that the impugned order has been passed by a Bench*

of the Real Estate Appellate Tribunal consisting of its Chairman and a Judicial Member.

6. The submission of the learned counsel for the appellant is that Section 43(3) of the Real Estate (Regulation and Development) Act, 2016 provides that 'every Bench of the Appellate Tribunal shall consist of at least one judicial member and one administrative or technical member'. The Bench which has passed the impugned order dated 17.01.2024 did not consist of any Administrative or Technical member.

7. The learned counsel for the appellant further submitted that Regulation 6(5) falling in Chapter 5 of the U.P. Real Estate Appellate Tribunal Regulations, 2019 also provides that an appeal shall be heard by a Bench comprising of one judicial member and one administrative or technical member, as provided under Section 43(3) of the Act.

8. The respondent in person could not dispute this factual and legal position. He however submitted that he is being deprived of the benefits of the award passed by RERA Authority on 26.03.2019 and a considerable delay has been caused in the matter.

*9. Accordingly, this appeal is **allowed** at the admission stage. The impugned order dated 17.01.2024 passed by the Real Estate Appellate Tribunal in I.A. No. 1009/2023 filed in Appeal No. 134/2019 is set aside and the matter is remanded to the Real Estate Appellate Tribunal for passing orders afresh keeping in view the mandate contained in Section 43(3) of the Real Estate Regulation and Development Act, 2016 and Regulation 6(5) falling in Chapter 5 of the U.P. Real Estate Appellate Tribunal Regulations, 2019, within a period of four weeks from the date of production of a certified copy of this order.*

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10. The parties are directed to cooperate in expeditious disposal of the matter without seeking any unnecessary adjournment.

Order Date :- 10.5.2024

Pradeep/-"

2. On perusal of the above order we found that an order of the Tribunal dated 17.01.2024 passed in I.A. No.1009/2023 in Appeal No. 134/2019 has been set aside with a direction to the Tribunal to decide afresh keeping in view the mandate contained in Section 43(3) of the Real Estate (Regulation and Development) Act, 2016 and Regulation 6(5) falling in Chapter 5 of the U.P. Real Estate Appellate Tribunal Regulations, 2019, within a period of four weeks from the date of production of a certified copy of the order.
3. We checked the said order on the website of the Hon'ble High Court.
4. The judicial functioning of the Tribunal had come to stand still with effect from 27.09.2023 due to vacancy/non-availability of Judicial/Administrative/Technical Members. The Bench consisting of Chairman and Judicial Member was constituted after appointment of Judicial Member vide notification dated 28.11.2023 in order to achieve the mandate of Section 44(5) of the Act 2016 read with Regulations 22 and 25, by issuing following Office Order on 02.12.2023:--

OFFICE ORDER

It is hereby informed to all the concerned that the Tribunal was working with single Bench consisting of Hon'ble Chairman and Hon'ble Technical Member after demitting office by the Hon'ble Judicial Member on 31.12.2022. Hon'ble Technical Member also demitted office on 26.09.2023 and Hon'ble Administrative Member being on unauthorized leave from 30.09.2022 (who finally resigned on 29.10.2023) resulting the judicial functioning of the Tribunal to tune to standstill with effect from 27.09.2023.

The State Government vide Notification dated 28.11.2023 has appointed Hon'ble Judicial Member and as such presently, Hon'ble Chairman and Hon'ble Judicial Member having judicial back ground are available.

As per Section 43(3) of the Act 2016 every Bench of the Appellate Tribunal is to consist of at least one Judicial Member and one Administrative or Technical Member. The Appellate Tribunal is required to scrutinize judicially the appeals against the order of Regulatory Authority or Adjudicating Officer. Rule 30 of the Rules 2016 empowers the Appellate Tribunal to 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 Appellate Tribunal in the conduct of any enquiry or proceedings before it.

Section 55 of the Act 2016 protects the acts and proceedings of the Appellate Tribunal from being invalid merely for the reason of any vacancy in, or any defect in the constitution of the Appellate Tribunal or any defect in the appointment of a person acting as a Member of the Appellate Tribunal or any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

Accordingly in the larger interest and expeditious disposal of appeals as per mandate of Section 44(5) of the Act 2016 the Bench for hearing of appeals is constituted with Hon'ble Chairman & Hon'ble Judicial Member for judicial scrutiny of the appeals and in case any expert opinion/assistance is required the same will be taken as per provisions of Rule 30 of the Rules 2016 in appropriate cases or such cases will be deferred till availability of Administrative/Technical Member.

On joining of Hon'ble Judicial Member, the Registry is directed to issue cause list of fresh appeals and re-schedule the cause list of pending appeals from 27.09.2023 and upload the same on the website of the Tribunal and also inform all the parties/legal representatives about the same.

This order is issued with the approval of Hon'ble Chairman.

5. The judicial functioning of the Tribunal resumed with effect from 18.12.2023 after joining of the Judicial Member and the said Bench is still continuing on account of non-appointment of Technical and Administrative Members.

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6. As per the observation/order of the Hon'ble High Court, at present the Tribunal cannot constitute the Bench on account of non-availability of Technical or Administrative Member. Hence, in reverence to the order of the Hon'ble High Court and inability to constitute the Bench, we are left with no option but to suspend the judicial functioning of the Tribunal till the appointment of the Technical/Administrative Member by the State Government.
7. The Registrar is directed to notify this order on the website of the Tribunal and a copy of the same be sent to the Registrar General of Hon'ble Allahabad High Court for information to Hon'ble Chief Justice as all Courts and Tribunals in the State are functioning under the superintendence of the Hon'ble High Court in pursuance to the provisions of Article 227 of the Constitution of India. A copy of this order be also sent to the Senior Registrar of Hon'ble Allahabad High Court, Lucknow Bench for information to the Hon'ble Senior Judge and Additional Chief Secretary to Hon'ble Chief Minister/Housing Department.

Dated: 15.05.2024
Shakir.


(Sanjai Khare)


(D. K. Arora)