

WEB UPDATE: AFNHB MEERUT PROJECT

1. Reference AFNHB Meerut project update uploaded on 10 Dec 21 and subsequent meeting held with Meerut allottees on 14 Dec 21.
2. It is intimated that due to delay caused by the erstwhile contractors in completion of Meerut project, some of the allottees had approached U.P. RERA Authority claiming compensation for delay. The U.P. RERA Authority at Gr. Noida issued orders in favour of some of the allottees directing AFNHB to pay interest on their deposited amount from different dates till offer of possession.
3. Since, AFNHB is a welfare society working on 'No Profit No Loss' basis, it had no separate funds of its own to meet such incidental expenditure in the project. As a last resort, AFNHB would be forced to pay this extra money to be paid to RERA complainants from project cost. Accordingly, AFNHB filed appeals before U.P. RERA Appellate Tribunal, Lucknow by depositing 30% of interest awarded to these RERA complainants.
4. However, the Ld. Appellate Tribunal insisted to deposit 100% of interest awarded to RERA complainants before our appeals could be heard on merits. AFNHB challenged the Appellate Tribunal orders before the Hon'ble High Court at Allahabad. While these appeals were pending for clarification, RERA Authority, Gr. Noida initiated recovery proceedings. Subsequently, in order to recover the interest / compensation awarded to these RERA complainants, the Asst. Collector / SDM, Meerut issued notices dated 27 Sep 21 and 03 Dec 21 wherein entire project land admeasuring 40396.52 sq. mtr. was seized and scheduled for public auction on 24 Dec 21. Subsequent to issuance of above notices, all activities in the project including handing over of possession and registration of individual flats were also suspended.
5. As discussed during the meeting on 14 Dec 21, this issue was immediately taken up before the Hon'ble High Court and the appeals were heard on 22 Dec 21. After considering the objectives of AFNHB and its status, the Hon'ble High Court was pleased to issue directions that till next date of hearing, no coercive measures be adopted against the appellant (AFNHB) pursuant to the orders dated 10 Apr 19, 23 Dec 19, 03 Jan 20, 28 Jan 20, 03 Feb 20, 07 Feb 20, 28 Feb 20, 02 Mar 20, 23 Jun 20, 26 Aug 20, 07 Aug 20 and 21 Aug 20 passed by RERA Authority Gr. Noida. Notices have been issued to RERA complainants and the case has been fixed for hearing on 02 Feb 22. A copy of Hon'ble High Court order in one of the appeals is enclosed for reference.
6. In view of the above, all allottees who were waiting for possession, are hereby advised to take over possession of their allotted flats in the project immediately on 'as is where is' basis and complete the formalities of registration to avoid future inconvenience. In case of any defect noticed during taking over of flat, the same may be reflected in the defect register kept at site. The defects will be rectified as described in Clause 0510 of Master Brochure -2007/2012.
7. This is for information of all concerned.



(DK Rai)
Captain (IN)
General Manager (Admin)
For Director General, AFNHB

Date: 23 Dec 21

Court No. - 64

Case :- RERA APPEAL DEFECTIVE No. - 6 of 2021

Appellant :- Air Force Naval Housing Board Air Force Station

Respondent :- U.P. Real Estate Regulatory Authority And Another

Counsel for Appellant :- Ashish Kumar Singh, Ajay Kumar Singh

Counsel for Respondent :- Wasim Masood

Hon'ble Saumitra Dayal Singh, J.

Heard Sri Ashish Kumar Singh, learned counsel for the appellant and Sri Anil Tiwari learned Senior Counsel assisted by Sri Wasim Masood learned counsel for the Real Estate Regulatory Authority.

In absence of any objection to the correctness of the copy of the order impugned in the appeal, defect is deemed cured. Office to allot regular number to the appeal.

Accordingly the appeal has been taken up for consideration.

Present appeal is directed against the order of the U.P. Real Estate Appellate Tribunal (hereinafter referred to as the 'Tribunal') dated 28.2.2020 passed in Appeal/Misc. Case No. 360 of 2019 and the order dated 10.4.2019 passed by the Real Estate Regulatory Authority.

After the earlier order passed in this appeal was recalled, the matter has been heard today.

Learned counsel for the appellant would submit that the appellant is a zero-profit organization, registered as a society of retired personnel of the Indian Air Force and the Indian Navy. It exists and operates only for the purpose of providing affordable housing to the members of the Indian Air Force and the Indian Navy and the widows of such personnel. It only invites applications for allotment in individual housing schemes that it floats for the benefits of its serving and retired personnel and widows of deceased personnel. The total collections against any project do not exceed the total expenses. Wherever such

excess receipts arise or have arisen in the past, the same have been refunded proportionately to the applicants of that project itself. Correspondingly wherever expenses have exceeded the initial receipt, proportionate further deposits have been invited from the allottees of that project. Referring to its Memorandum of Association of the appellant, it has been further submitted that the Board of Directors is comprised of serving officials of the Indian Air Force and Indian Navy, on ex officio basis. There is neither any profit motive in the running of the organisation nor there is any other source of fund available to the appellant as may allow it to deposit the entire amount of pre deposit being pressed against the appellant in this and the connected appeals. By way of submission it has been further stated, if the appellant had such funds available to it, the project itself would have been completed well within time. Thus, it has been submitted that the Tribunal has erred in rejecting the appellant's appeal for reason of non deposit of the entire amount.

On the other hand Sri Tiwari learned Senior Counsel has drawn the attention of the Court to a recent three Judge Bench decision of the Supreme Court in **M/s Newtech Promoters And Developers Pvt. Ltd. vs. State of U.P. and Others etc. (Civil Appeal Nos. 6745-6749 of 2021)** dated 11.11.2021 (Paragraph-122) to submit that in other than penalty appeals, the entire amount is to be deposited by the promoter to maintain the appeal before the Tribunal.

To that learned counsel for the appellant would submit that if such restricted interpretation is made to the definition of the word 'Promoter' under clause 2(zk) of the Act and it is applied to the provisions of Section 43(5) of the Act, it may lead to undesirable results where the appellant which exists solely for the purpose of benefit of its serving and retired personnel and their widowed spouses, would be non suited as it has no source

of fund available to it to comply with such onerous demand. In short it has been submitted that in the indisputable facts of the present case, the word "Promoter" used in proviso to Section 43(5) of the Act requires an interpretation as may exclude the present appellant by virtue of its special and unique status. Matter requires consideration.

Accordingly, the appeal is admitted on the following question of law;

Whether in the context of the objects clause and the Memorandum of Association of the present appellant and in the context of the activities engaged by it, the appellant is included in the meaning of the word "Promoter" as defined under Section 2(zk) of the U.P. Real Estate (Regulation and Development) Act 2016 as may enforce on the appellant the condition of pre deposit the entire disputed amount for the purpose of maintaining the appeal under Section 43(5) of the Act against the order dated 10.4.2019 passed by the Real Estate Regulatory Authority.

Issue notice to the opposite party No. 2 fixing 02.2.2022.

In view of the urgency involved let Dasti service be also made in addition to the regular mode. Steps be taken by 03.1.2022. Affidavit of service may be filed by 24.1.2022.

In view of the facts noted above resulting in the question of law framed, till the next date of listing no coercive measures be adopted against the appellant pursuant to the order dated 10.4.2019.

List on 02.2.2022 in the additional cause list. Matter may not be treated as part heard or tied up to this Court.

Order Date :- 22.12.2021/Faraz