

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

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

----- Chairperson

Hon'ble Mr. Rajeev Gupta

----- Member

Misc. Application No. 40 of 2021

Sri Raveesh Jain, s/o Raj Bahadur Jain, r/o House No. 288, Patti Chauhan, Paschim Ward 6 Part, P.O. Jaspur, District Udham Singh Nagar, Uttarakhand

.....Appellant

versus

1. Uttarakhand Real Estate Regulatory Authority (UKRERA), 5th Floor, Rajiv Gandhi Multipurpose Complex, Dispensary Road, Dehradun-248001, Uttarakhand
2. Smt. Vandana Jain, w/o Hukum Chand Jain, r/o Thana Road, Jaspur, District Udham Singh Nagar, Uttarakhand, presently residing at B-21, Hyderabad Estate, Napayan C Road, Priyadarshini Park Samor, Malabar Hill, Mumbai, Cumballa Hill, Maharashtra-400026

.....Respondents

3-15, Proforma Respondents

Present: Sri Vidhur Nautiyal, Advocate, for the Appellant
Sri Hukum Chand Jain, Attorney, for Respondent No. 2 (online)

JUDGEMENT

Dated: 12th January, 2022

Mr. Rajeev Gupta (Oral)

This appeal has been filed against order dated 24.08.2021 of the learned Authority below, vide which the complaint of the appellant has been dismissed in default. According to the impugned order dated 24.08.2021, the complainant was regularly absent in the proceedings of the learned Authority below on four dates.

Learned Counsel for the appellant submits that the appellant got the certified copy of the impugned order on 20.09.2021 and has filed the appeal on 11.11.2021 within the prescribed period of filing the appeal. Even otherwise the delay upto 02.10.2021 in filing any appeal or petition is condonable in view of the decision rendered by Hon'ble Supreme Court in *suo motu* Writ Petition (Civil) No. 03/2020.

Heard learned Counsel for the appellant and learned Attorney for the respondent no. 2.

Learned Counsel for the appellant submits that his client could not get the information of the dates fixed by the learned Authority below and therefore he could not appear on the dates so fixed. He further argues that his client is only a whistleblower (informer), and not a complainant by way of being home buyer etc., who has given information of the illegal plotting to the learned Authority below for taking *suo motu* action and conducting proceedings, for which his presence for hearing was not required.

Learned Attorney for the respondent no. 2 states that the appellant is a relative of respondent no. 2 and bears animosity against her. He wanted to have some share in the land which was gifted to respondent no. 2 by her mother and he has filed this complaint before Real Estate Regulation Authority (RERA) only to harass the respondent no. 2, who is selling off her agricultural land. Respondent no. 2 has also made counter-complaint against the appellant before the learned Authority below. He has also argued that the appellant has no *locus standi* in the case and had the proceedings been under Section 35 of the Real Estate (Regulation and Development) Act, 2016, the secretary of the RERA would have been the complainant therein. Respondent no. 2 has been put to harassment and forced to make huge expenditure in this litigation which has unnecessarily spread over various dates and restoring the case would again mean continuation of such harassment of respondent no.2. He also cited certain rulings whereby the *locus standi* of the

appellant must be decided in the first instance. He has also prayed for heavy cost to be imposed on the appellant and prayed that if the case is restored then the present complaint along with the complaint against the appellant be heard simultaneously and expeditiously.

We observe that the simple question before this Tribunal is whether or not to restore the case to its original number before the learned Authority below on the request of the appellant without any prejudice to the merits of the case or giving any finding about *locus* of the appellant in the matter, which are issues to be adjudicated by the learned Authority below.

Looking to the facts and circumstances of the case and in the interest of justice, we restore the complaint to its original number before the learned Authority below with Rs. 5,000/- as cost to be paid by the appellant to respondent no. 2.

The appeal is, accordingly, disposed of at the admission stage itself.

Both the parties are directed to appear before learned Authority below on 28.02.2022, either in person or through their Counsel or through virtual hearing, as the case may be.

Respondent No. 2 may press her request for deciding the *locus* of the complainant (appellant herein) in the first instance before the learned Authority below.

Let a copy of this order be sent to RERA for information.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATE: 12th January, 2022
DEHRADUN
RS