

## Abhishek Anuj Sukhadia and Ors. vs. M/s. Pragatej Builders & Developers Pvt. Ltd

This article attempts to discuss the issues regarding the liability of promoter to make the payment for delay in possession as per agreement to sale.

### Issues:

- a. Whether, the promoter is liable to pay the interest from the agreed date of possession or the date of possession revised as per the order of RERA Authority.?
- b. In case the date of possession expired before the Covid-19 then Whether the promoter is absolved of liability in making payment of interest of the period from 25.3.2020 to 31.7.2027 on account of lockdown imposed by the Government due to surge of pandemic Covid 19?

### Provisions:

#### Section 18 Return of amount and compensation

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Analysis: provision of Section 18(1) says that if there is delay in possession of an apartment by the promoter as agreed in agreement to sale then promoter is liable to refund the amount along with interest or interest for delay possession. in another word we can say that allottee will have two options

- To withdraw from project and take the refund along with the interest and compensation.
- To continue with the project and claim the interest for every month of delay till the possession is given.

### Fact of the Case:

The allottee in the present case purchased the flat in the rehabilitation project called "Vishnuchandra Sky", situated at Wadala, Mumbai for a total consideration of Rs.2,02,40,000/- and paid a sum of Rs.1,59,40,000/- to promoter. The agreement to sale was executed on 22.03.2014 wherein it was agreed to give the possession by December 2015 with the grace period of 6 Months.

The allottee filed the complaint before MahaRERA Authority seeking possession of flat along with the interest for delay in possession as the promoter did not give the possession by 30.06.2016.

### MahaRERA Authority Order

The MahaRERA Authority passed the order directing the promoter to handover the possession without any interest for delay in possession. While deciding the complaint MahaRERA Authority observed that since the complainant is interested in having the project completed and will therefore not insist that the Respondent pay them interest for the delayed possession as on date, provided, the Respondent completes the project by committing to a reasonable timeline. However, liberty was granted to the complainant, in case there is no efforts by the promoter to complete the project on timeline. The said order was not challenged however, the promoter failed to give the possession

therefore another complaint was filed seeking interest for delay in possession. For which MahaRERA passed the order directing the promoter to give the interest for delay possession.

Aggrieved with the above order of payment of interest, the complainant approached MahaRERA Appellate tribunal as the interest was not awarded from the period 01.07.2016 (i.e. original date of possession as per agreement to sale). Aggrieved with the same order, the promoter also filed the appeal on the ground that while awarding the interest on delay possession the MahaRERA Authority did not exclude the period (i.e., 25.03.2020 to 27.06.2021) of nationwide lockdown.

### **MahaRERA Appellate Tribunal order**

The MahaRERA Appellate Tribunal disposed of the both appeal together. While decide the appeals it is observed that in the earlier complaint the submission of the allottee was regarding the interest in possession of property and therefore the MahaRERA Authority passed the order dated 04.07.2018 directing the promoter to complete the project by December, 2019 and liberty was granted to the complainant to demand the interest for delay in possession. Further, it is observed by the Appellate Tribunal that the complainant did not want to put the burden of interest on the Promoter and they had shown their Bonafede by not claiming interest by not pressing relief of interest. However, at the same time it cannot be ignored that the Allottees have not relinquished or abandoned their claim of interest as sought in the original complaint w.e.f. 01.07.2016. The Allottees have simply deferred or postponed their claim of interest. Therefore, they are entitled for the interest from the period 01.07.2016.

Further, while deciding the present appeal the MahaRERA Appellate Tribunal Observed the order passed by the Hon'ble Supreme in the matter of *M/s Newtech Promoters and Developers Pvt. Ltd vs. State of Uttar Pradesh & Ors. [2021 SCC Online 10441 dated 11th November 2021* wherein in para no. 25 it is observed that

*"25. The unqualified right of the Allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the Allottee/home buyer, the Promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Ad with the proviso that if the Allottee does not wish to withdraw from the project he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

Further, while dealing with the question of the exclusion of period due to covid-19 in calculating the period of interest it is observed that completion date of the project was before the Covid-19 Pandemic therefore, the ground of Covid-19 is not sustainable.

### **Conclusion:**

- a. As per provision of Section 18 of the RERA once the promoter failed to give the possession as per date given in the agreement for sale the promoter is liable to pay the interest for every month of delay, till the handing over of the possession.
- b. Ground of Covid-19 is also not sustainable as the same happened much after expiry of agreed dates of possession.