

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI.

Appeal No. AT006000000010451

Mr. Ashok Rawatappa Bannatti ... Appellant
Versus
M/s Vasudha Builder ... Respondent

*(Advocate B.K. Barve & Co. for Appellant
Advocate Yogendra M. Kanchan for Respondent)*

CORAM: SUMANT KOLHE, MEMBER(J)
S. S. SANDHU, MEMBER (A)

DATE: 23RD DECEMBER, 2019

JUDGMENT (PER SUMANT KOLHE, MEMBER(J))

The impugned order dated 22.6.2018 passed by Learned Chairperson, MahaRERA in Complaint No.CC006000000023758 is challenged in this appeal.

2. Appellant is an allottee. Respondent is a promoter. We will refer the parties as "Allottee" and "Promoter".

3. Promoter launched the project namely "Arham Villas" at Palghar. Allottee agreed to purchase 2 bungalows. As per terms and conditions of the agreement for sale dated 20.2.2015, Rs. 99 lacs is the agreed price of bungalows. The

allottee paid Rs.72 lacs towards consideration of bungalows to promoter from time to time. As per clause 9 of the agreement, promoter agreed to hand over the possession of bungalows within 2 years i.e. on or before 20.2.2017. As the promoter failed to give the possession of bungalows as per agreed date, the allottee filed Complaint No. CC006000000023758 against promoter and prayed for possession of bungalows and interest for delayed period of possession.

4 The promoter appeared in the said Complaint and contended that construction of bungalows could not be completed on account of mitigating circumstances which were beyond his control. According to promoter, delay in handing over the possession was not deliberate and intentional.

Both the parties were heard. Learned Chairperson, MahaRERA disposed of the Complaint and directed the promoter to hand over the possession of bungalows with occupancy certificate to allottee before 31.12.2018, failing which the promoter is directed to pay interest on the amount paid by allottee with effect from 1.1.2019 till the possession is given. The rate of interest was as Maharashtra Real Estate (Regulation & Development) (Registration of Real Estate, Projects, Registration of Real

Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 (hereinafter referred to as “ the Rules, 2017”)

5. Feeling aggrieved by order passed by Learned Chairperson, MahaRERA, allottee has challenged the correctness, legality and propriety of the said order in this appeal.

6. Heard Learned Counsel for allottee and Learned Counsel for the promoter. Perused documents referred by both the parties. Read the impugned order.

Following points arise for our determination :-

POINTS

1. Whether impugned order is just, proper and correct ?
2. Is it necessary to modify impugned order ?
3. What order ?

Our findings on above points for the reasons stated below are as under :-

FINDINGS

1. Partly affirmative.
2. Affirmative.
3. As per final order.

REASONS

POINT NOs. 1, 2 & 3

7. As per impugned order, allottee is entitled for interest on delayed period of possession from 1.1.2019 till allottee gets the possession. The allottee preferred this appeal and prayed for the modification of impugned order and sought the relief of interest from 21.2.2017 till possession of bungalows.

8. The agreement for sale was executed on 20.2.2015. As per clause 9 of the agreement, promoter agreed to give possession of bungalows within 2 years i.e. before 20.2.2017. Admittedly, the promoter failed to give the possession before agreed date i.e. 20.2.2017. The promoter submitted that the construction of bungalows could not be completed and a delay for giving the possession is due to justifiable reasons which were beyond control of the promoter.

9. The project was incomplete on 1.5.2017 i.e. the date of advent of RER Act, 2016. The promoter registered the incomplete project with MahaRERA and extended the time limit for completion of the project. Now, Their Lordships have laid down in **Neelkamal Realtors case** that the date of possession as agreed between the parties and mentioned in the agreement for sale though extended at the time of registration of the project, it does not absolve the promoter

of his liability of paying interest for delayed period of possession. Therefore, an extension in the date for completion of the project at the time of registration of the project with MahaRERA is useful and beneficial to the promoter only for absolving him from penal consequences as laid down under RER Act, 2016 for breach of provisions of the RER Act, 2016. However, as per Sec. 18 of the RER Act, 2016 if the promoter fails to give the possession on agreed date, an allottee is entitled to claim the refund of entire amount along with interest and compensation if he withdraws from the project or if he continues to stay in the project, then he can claim interest for every month of delay on the amount paid to the promoter till actual date of possession.

10. In the present matter the allottee has chosen the option of interest on delayed period of possession which according to the allottee must be from the agreed date of possession in the agreement for sale till handing over the possession.

In para 2 of the impugned order, Learned Chairperson based on submissions of promoter observed that promoter shall give possession of bungalows before December, 2018 and the allottee accepted the said statement of revised date of receiving the possession of bungalows. In our view if at all, the allottee had accepted before Learned Chairperson

the revised date of the possession i.e. December, 2018, as suggested by Learned Counsel for the promoter then such an understanding between the parties ought to have been in writing before the MahaRERA. If not, Such mutual consent of both the parties as agreed during hearing of the complaint before MahaRERA to take possession on mutually extended date and to claim interest from such mutually extended date should have been reduced in writing and signed by both parties before MahaRERA. However, it is observed that no such undertaking is executed by the parties and hence, it cannot be accepted that allottee has agreed or consented to extend the date of possession.

11. In this matter, it is pertinent to note that promoter had agreed as per clause 9 of the agreement to develop the plot tentatively within 24 months i.e. tentatively by February, 2017. There is a proviso to clause 9 of the agreement. As per the said proviso, promoter is entitled for reasonable extension of time for handing over possession of the developed plot, if at all, delay was caused on account of reasons mentioned in clause 1 to 9 of the said proviso. Such reasonable extension may be of 6 months.

12. Considering the tentative date of handing over possession as February, 2017 and the fact that interest for delayed possession is already awarded only from January 2019 in the impugned order, allottee has filed this appeal for

interest for the period from February 2017 to December, 2018. Having regards to the reasons beyond the control of promoter as submitted, we consider it justifiable to extend the period of possession by six months. With this extension, promoter will be under obligation to give possession by August 2017 and liable to pay interest from September 2017 till the possession is given to the allottee.

13. In view of above discussion and observations, the impugned order deserves to be partly confirmed and therefore it is necessary to modify the same by awarding interest after deducting reasonable period of delay of 6 months for calculating interest. In view thereof, the allottee is entitled to claim the interest on the amount paid to promoter from September, 2017 till possession of bungalows is given. We answer the points accordingly.

14. In the result, we pass the following order.

: O R D E R :

WJS
1) Appeal No.AT006000000010451/18 is partly allowed as under :-

(I) Impugned order dated 22.6.2018 passed by Learned Chairperson, MahaRERA in Complaint No. CC006000000023758 is modified as under :-

(a) The promoter shall pay interest on the amount paid by allottee from the

date of such payment till the date of handing over possession of bungalows to allottee.

2) The rest of impugned order stands confirmed.

3) In peculiar circumstances, parties to bear their respective costs.

4) Parties and the Authority be informed of this order as per Sec.44(4) of the RER Act, 2016.

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(S. S. SANDHU)


(SUMANT KOLHE)

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