BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000010603 of 2018

1. Shri Bhuvneshwar Prasad

Pathak

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2. Mrs. Nirupama Bhuvneshwar

Pathak

Flat No.701, D-Wing, Ekta

Meadows, Siddharth Nagar,

Borivali (East)

Mumbai-400 066.

Appellants

Versus

M/s Sanvo Resorts Pvt. Ltd.,

Mulund-Goregaon Link Road,

Mulund (West)Mumbai 400080.

Respondent

(Adv. Shri Nilesh Gala a/w Gauri Tyagi i/b Desai Carrimjee & Mull, Advocates for Appellants Advocate Jai Karande a/w Sonam Mhatre a/w Sana Khan i/b Dhaval Vussomji & Associates, Advocates for Respondent)

CORAM:

SUMANT KOLHE, MEMBER(J)

S.S. SANDHU, MEMBER(A)

DATE:

13.11.2019

JUDGMENT (PER S.S. SANDHU, MEMBER (A))

The original Complainant allottee has filed this appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act') to challenge order dated 31.07.2018 passed by Learned Chairperson,

MahaRERA (the Authority). The order declines his claim for payment of interest under Section 18 of the Act for delayed possession of the flat he booked in the rental housing project being executed by Respondent at Panvel, District Raigad, Maharashtra.

As per short facts of this case, the Complainant claims 2. to have paid the requisite amount till date towards consideration of the flat. He does not intend to withdraw from the project. Agreed date of possession is on or before December, 2015 as per clause 15.1 of the registered agreement for sale dated 21.6.2013. On receiving the Part Occupancy Certificate (OC) on 26.3.2018, Respondent offered possession on 8.4.2018 subject to payment of certain amounts due to be paid. Complainant paid the said amount on 10.4.2018. On being asked to pay some further amount, Complainant demanded interest for the delay in possession. As there was no consensus and the parties stuck to their respective stand in the longdrawn correspondence that ensued, Complainant filed the complaint dated 16.5.2018 with the Authority to claim interest under Section 18 of the Act for delayed period of possession.



3. In the proceedings before the Authority, Respondent argued that Section 18 does not apply as Part OC received on 26.3.2018 and possession offered was prior to filing of the complaint. Though the Complainant countered the claim by alleging that conditions in the Part OC have not yet been complied with, Respondent denied the same and asserted

due compliance. After hearing the parties, the Authority referred to Section 18(1)(a) of the Act, as reproduced in the impugned order and observed thus—

"Simple present tense used in the starting line of the Section 18 clearly indicates that the provisions shall apply only till the project is incomplete or the promoter is unable to give possession. Once the project construction is complete or possession is given as the case may be, the said provisions ceases to operate".

Observing as above, the Authority held that the Respondent is not liable to pay interest to Complainant under Section 18 and advised the Complainant to take possession of the flat.

- 4. Grounds of challenge to the impugned order are summarised as under:
- (i) The Authority failed to appreciate that Respondent was obligated to obtain full OC and not Part OC and hand over the possession before December 2015 as per clause 15.1 of the agreement for sale. Also, though certain conditions of even the Part OC were not complied by Respondent, the Authority misconstrued the provisions of Section 18 of the Act by holding the Respondent as not liable to pay interest as construction was complete based on Part OC.
- (ii) Even assuming without admitting that Part OC is sufficient for compliance of clause 15.1 of the



agreement, the Respondent is liable to pay the interest till the date 26.3.2018 on which Part OC is issued.

- 5. In reliefs, the Complainant has sought directions to the Respondent to pay interest and compensation for delayed possession along with cost of the appeal by setting aside the impugned order.
- 6. Heard the parties comprehensively on 18.10.2019 after the matter was treated as de-part-heard on account of reconstitution of the Bench.
- 7. In his written submissions and oral arguments, Learned Counsel for Complainant reiterated that there is a clear delay of 2 years 3 months when Part OC for possession was obtained on 26.3.2018. He argued that Complainant refused to take possession and filed the complaint with the Authority because the Respondent has not offered possession with full OC as per terms of the agreement. He had challenged the conditional Part OC as certain conditions were not complied with which is evidently clear from the communications received from CIDCO vide letters dated 24.7.2018, 3.9.2018 and 25.9.2018 submitted by the Complainant on record. He pointed out that consent letter dated 2.8.2018 from Maharashtra Pollution Control Board (MPCB) annexed with Respondent's affidavit dated 2.5.2019 for complying the condition 17 of Part OC is obtained even after passing of the impugned order.



He argued that aforesaid facts prove that the claim made by Respondent in para 3 of the order and para 4 of his affidavit dt. 2.5.2019 that he offered possession in April 2018 to Complainant only after complying with all conditions of Part OC is false, untrue and mala fide to misguide the Tribunal. He alleged that the Authority did not verify the veracity of such false and incorrect undertaking and by considering the said Part OC as sufficient for possession has passed erroneous order to cause grave injustice to Complainant by holding that Respondent is not liable to pay interest for delayed possession under Section18 of the Act. He argued that such a view is violative of the provisions of the Act as also held by this Tribunal in orders dated 4.4.2018 and 14.3.2019 passed in the cases of M/s Sea Princess Realty Vs Manoj Votavat & others and Rekha Sinha Vs. L & T Ltd. in Appeal No. AT006000000010425 respectively. In these orders, an allottee who is staying back in the project is held entitled for interest under Section 18 of the Act even when he has taken possession after due date was over.



8. The learned Counsel for Complainant also vehemently refuted the alleged grounds that the delay in possession is due to the reasons beyond the control of Respondent by terming them to be false and untrue. It is contended that NAINA as Planning Authority was notified well before signing of the agreement on 21.6.2013 and therefore cannot be treated as unforeseen factor to be beyond the control of Respondent. He also submitted

following references quoted in various permissions to contend that there is no inordinate delay by Authorities in granting requisite permissions but the Respondent himself only failed to take steps in seeking the same well in advance.

- NAINA's approval dated 7.5.2014 is granted in two months on application by Respondent's architect on 14.3.2014.
- ii) NAINA granted approval upto 33 floors on 9.1.2018 for which application is made on 7.12.2017.
- iii) NHAI's Highway Access Permission was granted on 16.3.2016 for which proposal was submitted vide letters dated 3.11.2015 and 26.2.2016 only.
- iv) Permission for crossing and laying of water pipeline is granted on 17.6.2016 by NHAI on Respondent's application dated 15.2.2016.
- v) For water supply permission, the Complainant applied only on 14.11.2016 in response to which the Maharashtra Jeevan Pradhikaran (MJP) responded on 17.5.2017.
- 9. Based on the above facts, the Learned Counsel contended that there are no justifiable reasons for delay and in no case those can be accepted to be beyond the control of Respondent for granting any allowance to extend the date of possession. Also there being no possession in terms of clause 15.1 of the agreement as conditions of even Part OC were



not complied with the Complainant is entitled for the reliefs as prayed for.

- Counsel submitted that the delay alleged by Complainant is on account of factors beyond the control of Respondent and the same is covered under Clause 15.1 of the agreement read and considered with sub clauses 15.1.3 & 15.1.6 thereunder. She contended that though Respondent submitted proposals timely with all documentation in order, the inordinate delay by the concerned authorities in granting necessary approvals delayed the completion of project. She submitted following facts and documents on record to justify the delay being beyond the control of Respondent.
 - After the Collector, Raigad a) granted commencement certificate (CC) on 20.10.2012 for 27 floors as against the plan to construct 33 floors, Navi Mumbai Airport Influence Notified Area (NAINA) was established vide Notification dated 10.01.2013 Special Planning Authority. Respondent had to submit revised proposal for approval to NAINA. NAINA took almost a year to commence its operations and issued Commencement Certificate (CC) for construction of on 7.5.2014 only. Further, the amended proposal for permission to increase the height upto 33 floors submitted to NAINA on 17.5.2014 was approved after several follow ups

only on 9.1.2018 i.e. with a delay of more than three and half years.

- b) Though the Respondent applied for Highway Access Permission on 10.1.2008, the NHAI Panvel granted the same on 16.3.2016 only.
- c) Permission for crossing and laying water supply pipeline applied on 1.11.2008 was received only on 17.6.2016 after an inordinate delay of 7 years.
- d) After being informed that water supply permission granted in-principle earlier on 31.7.2006 lapsed because Respondent did not have laying and crossing permission until June 2016, Respondent applied for water tapping permission on 14.11.2016. After repeated follow ups the permission for water connection was granted by MJP on 29.5.2017.

With reference to the above, learned Counsel for Respondent argued that the aforesaid delay is caused by various factors outlined as above and the same cannot be attributed to him as countenanced under sub clauses 15.1.3 and 15.1.6, of the agreement. She also contended that from clause (m) of the agreement, the Complainant knew that proposed building was of 33 floors and he knowingly signed agreement by agreeing to the possibility of various factors beyond control of the parties as contemplated under the subclauses. Therefore, he now cannot attribute the alleged delay to Respondent.



11. It was further argued that Complainant never ever raised the issue of delay and payment of interest until April 2018 when after obtaining Part OC he was asked to pay the requisite amount prior to taking the possession. Also by making payment after December 2015 and after offer of possession, Complainant has waived his right to claim interest on account of the alleged delayed possession. Now therefore, as an afterthought Complainant has raised the issue of interest for delay to extract monies from the Respondent.

12. With regards to conditions of Part OC, Respondent vide additional affidavits in reply filed on 2.5.19 and 20.8.19 and in oral and written submissions contended that all conditions of Part OC including 4, 9, 12 and 17 as mentioned specifically by Complainant have been duly complied by the Respondent.

To substantiate the compliances the Respondent has submitted various documents on record. Certificate of Completion dated 15.4.2017 is submitted to show that STP was in operation on the site since 2017 as per condition 4 of Part OC. Purchase order dated 20.1.2018 for purchase of Main Engine is submitted towards compliance of condition 9. For compliance of condition 12 regarding availability of adequate water supply MJP's letter dated 29.5.2017 is submitted. To substantiate further copy of water bill for the month of August 2017 is also submitted alongwith affidavit dated 2.5.2019. With the same affidavit an electricity bill



dated 12.4.2019 for the Complainant's flat No. 2201 is submitted showing that electric supply is procured in February 2018.

With regard to compliance of condition 17 pertaining to precautionary measures for noise and air pollution etc. and display of traffic signages, Respondent stated that he has taken all necessary steps and regular reports are being sent along with test reports to Central Pollution Control Board (CPCB). In this regard a letter dated 4.9.2018 is submitted attaching therewith compliance reports for the period October 2017 to March 2018 and April 2018 to September 2018 along with relevant test reports. A consent order dated 2nd August, 2018 given by Maharashtra Pollution Control Board is also submitted for showing compliance of this issue.

The Respondent further submitted that in reply to the letter dated 3.9.2018 from CIDCO on which reliance is placed by the Complainant, the Respondent has provided all details to CIDCO vide his reply dated 10.9.2018 regarding due compliance of all conditions of Part OC.

With submissions as above, the Learned Counsel for Respondent contended that if the date of possession is extended to the extent of delay as above being beyond the control of Respondent there is no delay in handing over the possession as per terms of the agreement. Therefore, possession offered on the basis of duly complied Part OC is the proper possession and accordingly the Authority has committed no illegality in holding that Respondent is not liable to pay interest to Complainant under Section 18(1)(a).

13. After considering the submissions of the parties and documents on record, issues emerging for our consideration are specified as follows-

ISSUES

FINDINGS

- (i) Whether the view taken by Negative the Authority of Section 18(1)(a) of the Act to deny interest to Complainant under is just and proper?
- (ii) Whether the Part OC is sufficient compliance for handing over possession?

Affirmative

(iii) Whether the delay in handing over possession is justifiable?

Partly affirmative

(iv) Whether Complainant is entitled for interest for delayed possession?

Partly affirmative

(v) What order?

As per final order.

Our findings against the above issues for the reasons as stated hereinafter are as under:

Issue (i)



14. This issue relates to the view taken by the authority in para 4 of the impugned order holding thereby that once the project construction is complete or possession is given, as the case may be, Section 18(1)(a) ceases to operate. On the sole basis of this view, respondent is held not liable to pay interest to complainant for delayed possession. The correctness and validity of this view needs examination for addressing the grievances of the complainant in this appeal.

- 15. Perused carefully, the Section 18(1)(a) in simple terms provides that if the Promoter fails to complete or is unable to give possession in accordance with the terms of agreement for sale or as the case may be duly completed by the date specified therein, then on demand from an allottee, the respondent shall have the liability to (i) return the amount paid with interest, if the allottee wishes to withdraw from the project; or (ii) pay interest every month to month till handing over the possession where the allottee does not intend to withdraw from the project.
- 16. It may be observed that arrangements under provisions of Section 18(1)(a) are conditional in nature. As per those the applicability or inapplicability of this Section in terms of attracting the above liability (i) or (ii) will solely depend on completion/possession (of an apartment) as per provisions in sub clause (a) of the Section 18(1). Impliedly, to decide whether this section will apply or not, it is mandatory to take into consideration and find out after examination that the completion/possession conforms to terms/date as specified in the agreement as per sub clause (a) of this Section. Mere completion of an apartment or possession thereof without having regard to compliance of the provisions of sub clause (a) will not render the provisions of Section 18(1)(a) inapplicable to absolve a promoter from the aforementioned liability (i) or (ii).
- 17. Considering the facts of this case in the light of above observations, we find that there is an obvious delay of over two years in giving possession of the flat to Complainant



counted from the date of possession committed in the agreement i.e. December 2015. In such circumstances, before coming to conclusion on the basis of Part OC that once project construction is complete or possession is given Section 18 (1)(a) ceases to operate, the Authority ought to have examined and considered as to whether the possession was being given on the committed date or as per terms of the agreement as mandated under sub clause (a) of Section 18(1). Since delay was alleged by Complainant, it was necessary to examine the justifiability of delay in terms of agreement. The Part OC simpliciter cannot offset the effect of delay to render Section 18(1)(a) inoperative for incurring liability (i) or (ii) by Respondent unless on examination the said delay is found justifiable in terms of the agreement as mandated under sub-clause (a).

It is evident from the order that no such exercise is undertaken by the Authority before coming to the conclusion in Para 4 of the order on the basis of Part OC. In the result, we find that the view of the Authority is based on one-sided and incomplete appreciation of the facts and without consideration of provisions Section 18(1)(a) in their entirety. Such a view being contrary to the provisions of the said Section cannot be held as just and proper to deny the interest to the Complainant on delayed possession. Hence we answer this issue in the negative.



Issue (ii)

18. The Complainant appears to have two-fold objections to the relevancy of Part OC for giving possession of the flat

(i) full OC and not conditional Part OC is required to construe that construction is complete (ii) no physical possession can be given until there is an actual compliance of conditions stipulated in the Part OC.

On consideration of relevant material on record with regard to objection (i) we observe that OC is defined under Section 2(zf) of the Act to mean a certificate issued by the competent authority permitting occupation of any building as provided under local laws which has provision for civic infrastructure such as water, sanitation and electricity. In this context, the Part OC is nothing but an OC only which is well recognised and provided by the competent authorities to authorise or give right under local laws to occupy the completed building/blocs in larger projects pending the completion of all relevant phases of such projects. In our view, as the Part OC in this case has been issued by the competent planning authority the contentions of the complainant that Part OC is not sufficient or proper compliance for possession cannot be accepted. Accordingly, we find nothing wrong in giving possession on the basis of the Part OC dated 26.3.2018.

19. With regard to second aspect relating to actual compliance of certain conditions of the Part OC as a precondition for physical possession both the parties have tendered their detailed submissions in support of their contentions. Without repeating the details already furnished by the rival parties, suffice to observe that Respondent has submitted various documents on record on

affidavits to demonstrate sufficient compliance of the conditions of the Part OC especially conditions 4, 9, 12 and 17 therein. It is further observed that except letter dated 2.8.2018 issued by MPCB for compliance of condition 17 of the Part OC, no other document is controverted by the Complainant to allege non-compliance of the conditions of the Part OC.

After perusal of documents we clearly find that substantive compliance of various issues under conditions including 4, 9, and 12 is already done by Respondent even before the Part OC is issued. With regard to condition 17 relating to air/noise pollution etc. even though the MPCB's letter dated 2.8.2018 was obtained later, the documents submitted by Respondent along with affidavits dated 2.5.2019 and 20.8.2019 show that Respondent has taken necessary measures from October, 2017 onwards as desired by CIDCO under condition 17 of the Part OC. For instance, a report submitted belatedly on 4.9.2018 along with requisite test reports to the concerned Authority is submitted on record to show that Respondent has taken necessary precautionary measures to keep air/noise pollution within permissible limits for the period from October, 2017 to March, 2018. Report is submitted for the next six months also. In this regard, it is also pertinent to note that no violation or failure on the part of Respondent to take precautionary measures to maintain air/noise pollution levels noticed by any Authority is brought to our notice.

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In view of the above observations, it appears that the Respondent has substantially complied with the relevant conditions stipulated in the Part OC. In all, it appears that by inviting reference to various communications from CIDCO the Complainant is targeting the non-submission of reports on compliance of issues under the respective conditions of the Part OC and not at the non-compliance of the concerned issues per se. For example, even though actual compliance of issue relating to installation and operation of STP is already made in 2017 only, the objection appears regarding non-submission of the report to that effect to CIDCO in compliance of condition 4 of the Part OC. Such a non-submission at best can be regarded as a technical/procedural lapse. But mere non-submission of a report to CIDCO cannot negate the actual compliances already made by the Respondent relating to the subject matter of the conditions of the Part OC. Accordingly in our view the Respondent has complied with the relevant conditions of the Part OC and therefore, there is no problem in holding it as sufficient and proper compliance for handing over the possession. Hence, we answer the issue (ii) in the affirmative.



Issues (iii) & (iv)

20. We now advert to decide above issues regarding justifiability of the reasons for delay and the consequent entitlement of complainant to interest on account of the said delay. As observed above, the possession was offered in April, 2018 on the basis of Part OC. Considering December, 2015 as committed date for possession there is an obvious

delay of over 2 years 3 months in offering the possession after the Part OC was received on 26.3.2018.

Learned Counsel for Respondent has submitted 21. detailed reasons for delay in her affidavits/additional affidavits in reply and during oral submissions as may be seen from Para 10 above to deny any liability of interest as claimed by Complainant. It is argued by Respondent that reasons for delay in giving possession on account of the factors like notification of NAINA and delay in grant of permissions by NAINA and other authorities are beyond the control of Respondent. Therefore Respondent is entitled to seek extension of time for giving possession to the extent of time lost on account of the delay by considering the Clause 15.1 in its entirety along with other sub clauses thereunder specifically 15.1.3 and 15.1.6. Complainant has strongly objected to the grounds advanced by Respondent in support of the alleged delay. According to him, NAINA being notified before execution of agreement was not an unforeseen event. Also, the delay in handing over possession is not on account of reasons beyond the control of the Respondent but the same is caused as Respondent himself failed to take timely steps to procure necessary permissions from the respective authorities.

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22. After thoughtful consideration of submissions of the parties and facts on record, we find some merit in the contentions of Respondent to the extent of delay caused on account of establishment of the NAINA and its overall impact whatsoever on completion of the project. There is no

denying the fact that After approval of the project by Collector Raigad in October, 2012, the NAINA came to be notified as Special Planning Authority in January 2013 requiring the Respondent to process and submit the proposal again to be approved in May 2014 only. This event can be certainly considered as an unforeseen factor as the Respondent was not expected to foresee this even as an experienced promoter while planning the timelines for completion of the project. In agreement with the contentions of Respondent that NAINA took almost a year to become fully functional, we appreciate that disruption in operations combined with teething problems lead to a sub-optimal performance of a new institution in its formative stage. This adversely effects the performance of dependent stakeholders in multiple ways and one of them is delay in accomplishing the tasks as per committed timelines. As an unforeseen event in the lifecycle of the project, some such impact on the pace of Respondent's project in the initial phase of NAINA cannot be ruled out. It appears due to lack of comprehension in the period immediately after notification of the NAINA, the likely impact of this unforeseen event on the date of possession was not taken into account by the Respondent while executing the agreement on 21.6.2013. In such circumstances, we hold that the unforeseen event of setting up of NAINA vide Government notification being beyond the control of Respondent squarely falls under Sub clause 15.1.3 and 15.1.6 under Clause 15.1 of the agreement and accordingly the Respondent is entitled to a reasonable extension in the period of handing over the possession.

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In overall consideration of factors as above, we feel it appropriate to grant one year's extension in all in the committed period for handing over possession on account of the justifiable delay associated with NAINA related issues in its formative stage and thereafter in addition to the grace period of six months as already agreed upon by the parties under Clause 15.1 of the agreement. Thus, in all the Respondent is held entitled to overall period of extension of 18 months from the committed date of possession of December 2015.

Respondent's plea to consider the delay of three and half years by NAINA in approving revised proposal for height increase as the proposed building was for 33 floors as per clause 'm' of the agreement cannot be accepted. In our view, barring the problems encountered in the initial phase of NAINA, this authority was into normal functioning after 2014 and now being aware of market situation, Respondent was expected to pursue the matter diligently by complying with requirements of NAINA for expediting the approvals. Moreover, no separate consideration for this aspect is necessary as we have already considered the overall impact of NAINA while working out the justifiable delay which Respondent is held entitled to as above.

23. Apart from the above, we do not accept the plea of Respondent to consider the delays alleged in obtaining requisite permissions from various authorities. As held by Hon'ble Bombay High Court in the case of Neelkamal Realtors, Respondent having sufficient experience in the



for obtaining various permissions for completing the project. Moreover, it is also seen from the facts submitted by Complainant in Para 8 above that Respondent himself has not taken timely steps to submit necessary proposals for approval even though the concerned authorities appear to have granted the permissions expeditiously. Therefore Respondent does not deserve any concessions on this count. We also do not agree with the Respondent that by paying all instalments even after December 2015 without any protest, the Complainant has waived his right to claim interest on alleged delay in possession. We are of the view that by making payment of the due amount, an allottee discharges his obligations to avoid consequences if any in case of default on his part. But that does not take away the liability if any of the promoter on account of delay under Sec. 18(1)(a) of the Act. Such an act of making payment or taking possession with due compliances on the part of an allottee cannot be termed as waiver of his right unless he does so voluntarily or intentionally in an express manner. In the instant case Complainant's act of making payment cannot be construed as waiver of his right to claim interest on delayed possession. Therefore Complainant is fully entitled to interest as per law for the period of delayed

open market should have fairly assessed the time required



25. As a cumulative effect of the aforesaid discussion and observations on issues (iii) and (iv), we hold that delay of 18 months w.e.f. 1st January 2016 to June 2017 only is

possession as held in Para 25 hereunder.

justifiable as observed in Para 22 above. Thus the revised date of possession would be June 2017. As the parties are seen finalising the final amount to be paid by the Complainant till the later half of April 2018 for handing over the possession, we consider 10 months w.e.f. 1.7.2017 till April 2018 as an overall period of delay. Consequently, we hold that Complainant is entitled for interest for the said 10 months. Accordingly, we record our findings on issues (iii) and (iv) as partly affirmative.

PER SUMANT KOLHE, MEMBER (J)

Challenge to Impugned Order

27. The appeal is directed against the order dated 31.7.2018 passed by Learned Chairperson, MahaRERA in the complaint No.CC006000000044479 whereby the complaint was disposed of by rejecting the claim of refund of interest for delayed period as per Sec. 18 of the RER Act, 2016 (for short, "the Act")

Status of Parties

The appellant is allottee. Respondent is the promoter. We will refer the parties as "allottee" and "promoter".

Case of Allottee

28. The allottee agreed to purchase and the promoter agreed to sell a flat No. 2201 admeasuring 563.06 sq.fts. situated on 22nd floor of building known "S1" in "A" wing of Zodiac in complex viz. "Marathon Next Zone". The agreed total price of flat is Rs.28,55,000/- (Twenty Eight



Lacs Fifty Five Thousand). The agreement for sale was executed and registered on 21.6.2013. The allottee has paid a total consideration amount to the promoter. The promoter agreed to hand over possession of flat on or before December, 2015. The promoter is unable to hand over possession as per agreed date and there is a considerable delay in giving possession of flat to allottee. The complaint No.CC006000000044479 came to be filed by the allottee against the promoter before MahaRERA. The allottee sought the relief that the promoter be directed to hand over possession of flat and to pay interest for delayed period of possession as per Sec.18 of the Act.

RER Act, 2016

29. The RER Act, 2016 has come into force since 1.5.2017. In view of Sec.3 of the Act, the promoter registered his project with MahaRERA as the project was incomplete on 1.5.2017. The project is governed by provisions of the Act. The rights and obligations of allottee and promoter are governed by provisions of the Act. The allottee preferred the complaint U/Sec. 31 of the Act against the promoter.

Defence of Promoter

30. The promoter resisted the complaint. The promoter has contended that due to reasons beyond his control, delay has been caused in completing the project and handing over possession of flat to the allottee on or before

December, 2015. The promoter has also contended that he applied for necessary permissions required for the project within time but the Competent Authority delayed to grant the permission and the promoter was not at fault. The promoter has enumerated various grounds due to which delay in handing over possession is caused. The promoter has also contended that part occupancy certificate is issued in the month of March 2018 and possession of flat is offered to allottee. It is contended that allottee is reluctant in taking possession with the occupancy certificate.

Decision of MahaRERA

- 31. After considering rival cases of both the sides and after hearing submissions, learned Chairperson, MahaRERA held that allottee is not entitled for relief of refund of interest for delayed period of possession once the occupancy certificate is issued by the Competent Authority and possession with the occupancy certificate is also offered to allottee. It is also held that Sec. 18 of the Act is not attracted to the present matter. The learned Chairperson, MahaRERA advised the allottee to take possession of his flat which is ready for occupation.
- 32. Feeling aggrieved by the impugned order the allottee has preferred the present appeal.

Documents relied & submissions made

- 33. Heard learned Counsel for allottee and promoter at length. Perused written submission filed by allottee. Read various documents filed by the parties on record and referred by their learned Counsel.
- 34. The parties rely on judgments passed by MahaRERA Authority and Member (J) of the appellate Tribunal to substantiate their respective cases.

Points for determination

The following points arise for determination –

POINTS

- 1. Whether Sec. 18 of the Act is attracted to the present matter?
- 2. Whether there is a delay in handing over possession of flat to allottee?
- 3. Whether allottee is entitled to claim interest on delayed period of possession?
- 4. What order?

Finding to above points for the reasons as stated are as under –

FINDINGS:

- 1 Affirmative
- 2 Affirmative
- 3 Partly affirmed for 10 months
- 4 Appeal is partly allowed.

REASONS

POINTS NO.1, 2,3 AND 4:

Applicability of Section 18 of RER Act, 2016.

35. The core dispute arises in this appeal is in respect of applicability or non-applicability of Sec. 18 of the Act.

Let us turn to Sec. 18 of the Act which reads as under-

Sec. 18: Return of amount and compensation -

- (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 allottes, 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

- (2) The promoter shall compensate the allottees in case 1 under any law for the time being in force.
- (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to

the allottees, in the manner as provided under this Act.

The promoter has agreed to hand over possession of flat on or before December, 2015 as seen from clause 15 of agreement for sale. Admittedly, part occupancy certificate is issued in the month of March 2018 whereas the promoter offered possession with part occupancy certificate to allottee only after March, 2018. According to allottee, possession is required to be handed over with the occupancy certificate. It is true that occupancy certificate is conditional. According to allottee, conditions laid down in occupancy certificate have not been fulfilled by the promoter to hand over legal possession of flat. According to the promoter, conditions laid down in occupancy certificate are satisfied and accepted and they are no more in existence.

Definition of Occupancy Certificate

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The definition of occupancy certificate as per ${
m Sec.2(zf)}$ of the Act as under -

"occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for

civic infrastructure such as water, sanitation and electricity"

Once flat is ready for habitation and it is provided with civil infrastructure like electricity, drainage and water, the possession of said flat duly completed with above mentioned amenities can be handed over by obtaining occupancy certificate from the Competent Authority. The allottee is not disputing that construction of flat is completed and it is provided with civic infrastructure such as electricity, drainage and water.

I am of the opinion that the core dispute involved

between the parties pertains to Sec.18 of the Act and the

complaint for redressal of the dispute was accordingly

filed U/Sec.31 of the Act. It is not the case of allottee that as per the definition of occupancy certificate U/Sec. 2(z)(f) of the Act, the part occupancy certificate issued by the competent authority does not fulfill the said definition. I am of the opinion that we are adjudicating the dispute as to whether Sec.18 of the Act is attracted and not and not about the dispute as to correctness and incompleteness of part occupancy certificate. The occupancy certificate is issued by the competent authority under the local laws. Genuineness and truthfulness of occupancy certificate

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cannot be the subject of adjudication under the RER Act

and particularly while adjudicating the matter U/Sec. 18 of

the Act for deciding the claim of awarding interest on

delayed period of possession. Thus, occupancy certificate is duly issued by the competent authority and the promoter has informed the allottee to take possession of flat with occupancy certificate. The promoter failed to complete his project and hand over possession of flat to allottee on or before December, 2015 as agreed in agreement for sale. So, there is delay in handing over possession of flat to allottee. The project in question was incomplete on 1.5.2017 when the Act come into force. So. the parties are governed by provisions of the Act. Once agreed date of handing over possession is over and possession is not handed over, allottee gets statutory right to claim the interest for delayed period. The right to claim the interest for delayed period is accrued to allottee after December, 2015. Moreover, such accrued right of allottee was never surrendered by allottee. The issuance of occupancy certificate by the competent authority after delay in handing over possession will not absolve the promoter from the liability to pay the interest on delayed period of possession. So, allottee is entitled to claim the interest for delayed possession against the promoter in view of Sec. 18 of the Act. The present matter is governed by the said provision.

Decision in Rekha Sinha Case

37. Allottee has relied on the judgment of this Tribunal in Appeal No. AT006000000010425 in the case of Mrs. Rekha Sinha vs. Larsen Toubro Limited. M/s Larsen &

Toubro Limited preferred Second Appeal bearing ST No.140601 of 2019 in the Hon'ble Bombay High Court in which the Hon'ble High Court set aside the above mentioned order dated 14.3.2019 on the ground that the bench shall consist of atleast one judicial member and one administrative or technical member. Thus, the Hon'ble High Court remitted the matter to the Tribunal for fresh hearing on merits in accordance with law and kept all the contentions of the parties open to be decided on merits. The decision in Rekha Sinha Case is set aside and that cannot be taken into consideration though allottee has referred it.

Period of delayed possession

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38. Now, let us see what is the delayed period of possession and whether allottee is entitled to refund of interest on delayed period. The agreed date of possession was December, 2015 whereas part occupancy certificate was received in the month of March,2018 and possession was offered to allottee in April 2018. So, delayed period of possession of 2 years and 4 months i.e. period from due date of possession till the date of offering possession with occupancy certificate. The submission made by learned Counsel for allottee that occupancy certificate was conditional and conditions laid down were not fulfilled by the promoter and part occupancy certificate being conditional in nature cannot be taken into consideration is not acceptable. I would like to point out that allottee has

not challenged genuineness or correctness of part occupancy certificate by filing appropriate legal proceeding before the competent authority prescribed under the Local Law.

39. After carefully going through objects and provisions of the Act, I am of the opinion that the dispute pertaining to correctness and genuineness of occupancy certificate does not fall within jurisdiction of adjudicating forum established under the RER Act,2016. So, delayed period of possession will be only upto the date of offering possession with occupancy certificate to allottee i.e. April, 2018.

Reasons beyond control

- 40. The promoter has made out the case that the project remained incomplete and possession could not be handedover on or before agreed date on account of the reasons beyond the control of the promoter. Two additional affidavits have been filed on behalf of the promoter to substantiate the various reasons beyond the control of the promoter due to which delay was caused in handing over possession to allottee. According to the promoter, following are the reasons beyond his control due to which the delay has been caused.
 - (a) There was inordinate delay by the planning authority to not grant the requisite approval to the promoter which can be seen as under –



- (i) The District Collector, Raigad was the planning authority in the year 2012 and commencement certificate was issued in the month of October, 2012 for development upto plinth level. The commencement certificate is produced at **Exh.** A(pg. 190);
- (ii) As per the notification dated 10.1.2013, Government of Maharashtra notified Navi Mumbai Airport in its notified area i.e. CIDCO -NAINA as special authority for the notified area in which the project of the promoter is situated. Copy of the notification is at Exh. B.
- (iii) In the month of May 2014 CIDCO-NAINA issued the commencement certificate for the development upto 3rd floor though the application was made for the commencement certificate upto 33rd floor. The commencement certificate upto 3rd floor is at Exh. 6. The application for sanction of amended plan was submitted by an architect. The copy of said plan is at Exh.10.
- (iv) Despite regular follow up on the part of the promoter, CIDCO-NAINA approved the amended plan only in January 2018 for development upto 29th floor includes the

terrace floor. The copy of amended plan is at **Exh. F.**

- (a) There was much delay in grant of approval on the part of the planning authority and it was beyond the control of the promoter;
- (b) Delay in grant of highway access permission. The promoter applied in the month of January, 2008 but National Highway Authority of India, Panvel for access to the project, no objection certificate was issued after 8 years i.e. in the month of March, 2016. The application and no objection certificate are at "Exh. G & H" respectively.
- of laying pipeline (c) Delay in grant The promoter made permission. November, for application in 2008 lay the pipeline. The permission to concerned Authority initially rejected the said application on the ground that the Authority was awaiting any proposed plan for widening Highway. Only after 7 years i.e. in the month of June 2016, the promoter received the permission for laying pipeline across Highway. The relevant documents are at Exh.I & J.

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(d) Delay in grant of water supply permission. The permission for supply of water was initially granted in July, 2006. The promoter had applied for water supply and the competent authority informed the promoter that previous permission had lapsed. The promoter had submitted another application for permission and such permission was granted in the month of May 2017. The relevant documents are at Exh. K & L.

All the above reasons for delay in completing the project are evident from the relevant documents filed by the promoter on record.

- 41. Assuming for the sake of argument that conditional part occupancy certificate cannot be accepted unless conditions laid down in the occupancy certificate are completely fulfilled, it is revealed that the conditions laid down in occupancy certificate stand fulfilled in view of the reasons stated below with supportive documents.
- As far as conditions of precaution measure regarding noise pollution, air pollution etc. are concerned, it is revealed that the promoter has duly complied. The compliance reports of 2018 are at Exh.M & N.

- 43. It is revealed from the document at Exh. D that the necessary scrutiny regarding entry and exit movements of vehicular and pedestrian traffics is complied with.
- 44. Considering the above discussion, I am of the opinion that the promoter has substantiated his case that delay in completion of the project was caused due to the reasons beyond his control. The promoter has also substantiated his submission that conditions laid down in part occupancy certificate are substantially complied.

Neelkamal Realtor Case

Realtors case has observed that in case where the promoter has taken bonafide and genuine efforts to complete the project, the adjudicating authority may mould the relief accordingloy as RER Act, 2016 is social and beneficial legislation. The total delayed period of 2 years and 4 months in handing over possession of flat cannot be attributed to the promoter and the promoter cannot be held liable for entire period of delay in handing over possession. Since delay is caused due to reasons beyond the control of the promoter in completing the project, allottee is not justified and entitled to claim the interest on entire delayed period of possession as mentioned above.



The RER Act. 2016 is social and beneficial 46. legislation. One of the objects of the Act is to protect interest of customers. Their Lordships of the Hon'ble Bombay High Court have also observed in Neelkamal Realtors case that "To complete the incomplete project" is the object of RER Act, 2016. Poor homebuyers are interested in getting their homes in project. If the project remained incomplete, homebuyers may suffer great hardship and their dream may not be achieved. So, while adjudicating dispute between Promoter & Allottee by applying provisions of RER Act, 2016 and while deciding claims of both sides on the basis of their respective rights and obligations, it is necessary to strike balance. Thus, promoter needs to be survived for completing the project from heavy burden of payment of interest on delayed period of possession. Financial crunch due to payment of interest on delayed period of possession to allottees should not be cause of stalling the project. So, giving top priority for completing project and fulfilling dreams of homebuyers of getting homes and also making promoter to discharge obligation of payment of interest for delayed period of possession by not stalling the entire project for reason of financial crunch, I am of the opinion that in present case, based on reasons substantiated with documents, promoter is entitled to get exemption of 12 months from payment of interest for delay. Apart from this, the relevant clauses in an agreement for sale provides six months grace period in

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addition to agreed date of completion of project. Thus, for

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total 18 months (12 + 6) out of delayed period of 28 months, promoter is entitled to absolve from paying interest. Thus, dispute is governed by Section 18 of the RER Act, 2016. The promoter is liable to pay interest for delayed period of possession of 10 months to allottee. So, I answer points accordingly.

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

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: ORDER:

- 1) Appeal is partly allowed.
- 2) The impugned order is set aside with the direction that Respondent shall pay interest @ SBI's highest Marginal Cost of Lending Rate + 2% w.e.f. 1st July, 2017 till 30th April, 2018 on the amount paid by Complainant.
- 3) No costs.
- 4) Copy of this order be communicated to the Authority and the respective parties as per Section 44 Sub Section 4 of the Act.

(S. S. SANDHU)

(SUMANT KOLHE)

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