

**cBEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL,MUMBAI**

AT006000000010965

Mr.Raymond Alies Nunes ... Appellant

Versus

Westin Developers P. Ltd. ... Respondent

*(Appellant in person
None for Respondent)*

**CORAM: SUMANT KOLHE, MEMBER (J)
S. S. SANDHU, MEMBER (A)
DATE : 20TH JANUARY, 2020**

JUDGMENT: (PER SUMANT KOLHE, MEMBER (J))

The legality, propriety and correctness of order dated 16.11.2018 passed by Learned Member 1, MahaRERA in Complaint No.CC006000000055979 is challenged in this appeal.

2. Appellant is an allottee. Respondent is promoter.
3. Allottee had filed complaint No. CC006000000055979 against promoter before MahaRERA seeking relief of recovery of interest for delayed period of possession.

4. After hearing both the sides, Learned Member-1, MahaRERA disposed of the complaint and directed promoter to pay interest to allottee from 1.1.2018 till the actual date of possession on the payment made at the rate prescribed under RER Act and Rules made thereunder i.e. SBI's highest MCLR + 2%.

5. Feeling aggrieved, the allottee has challenged the said order in this appeal.

6. Heard allottee in person. Respondent though given sufficient opportunity to appear in the matter remained absent on the appointed dates. Therefore, appeal proceeded ex-parte against respondent.

7. Following points arise for our determination.

POINTS

1. Whether impugned order needs to be modified ?
2. What order ?

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

FINDINGS

1. Affirmative.
2. As per final order.

POINT NOs. 1 & 2

8. Copy of registered agreement for sale is on record. As per clause 15 thereof, promoter agreed to hand over possession of flat by the end of June 2017. Admittedly, as promoter failed to hand over possession as agreed i.e. before June 2017 allottee claimed interest for delayed period of possession which starts from 1.7.2017. However, as per impugned order, interest is awarded with effect from 1.1.2018. Learned Member-1, MahaRERA has observed in order at the bottom of para 5 that “ respondent can be given an extension of six months grace period in the date of possession mentioned in the registered agreement for sale to calculate the period of delay. Accordingly promoter was directed to pay interest for period with effect from 1.1.2018 instead of 1.7.2017. Learned Member-1, MahaRERA has observed and held in para 5 that promoter had not given any plausible reasons for delay. Moreover, it is also held that reasons cited by promoter for delay cannot be accepted at this stage and promoter cannot blame Competent Authority for any incomplete work at the site. It is specifically mentioned

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in impugned order that there is no fault on the part of allottee who has put in his hard earned money for booking of flat in promoter's project. Thus, while passing impugned order, Learned Member-1, MahaRERA has held that reasons cited for delay are not acceptable. In such circumstances, allottee deserved to get interest for delay with effect from due date of handing over possession as mentioned in the agreement for sale i.e. with effect from 1.7.2017. The grace period of six months as awarded in the impugned order to promoter is not substantiated by terms and conditions of registered agreement. There is no specific clause to indicate that promoter shall be entitled for further extension of six months from the due date for handing over possession for the reasons which are beyond the control of promoter.

W/S


9. In view of above discussion, we are of the opinion that impugned order needs modification as the promoter is not entitled for an extension of grace period of six months in handing over possession of flat and allottee is entitled to claim interest from 1.7.2017 till allottee gets possession of the flat. In the fact circumstances, we answer point Nos.1 and 2 accordingly.

10. In result, we allow the appeal and pass the following order.

: ORDER :

- 1] Appeal No. AT006000000010965 is allowed.
- 2] Impugned order dated 16.11.2018 passed by Learned Member -1 MahaRERA in Complaint No.CC006000000055979 is modified as under :-
 - i. Promoter shall pay interest to allottee from 1.7.2017 till the actual date of possession on the amount paid by allottee at the rate prescribed under RER Act,2016 and Rules made thereunder i.e. SBI's highest MCLR + 2%.
- 3) Promoter shall pay Rs.10,000/- towards cost of this appeal to allottee and shall bear his own cost.
- 4) Copy of order be sent to MahaRERA and the parties as per Sec. 44(4) of the RER Act, 2016.

W/S


(S. S. SANDHU)
R/-

 20-01-20
(SUMANT KOLHE)