

Sarnobat

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 0006000000000273

Mr. Ravi Bhikaji Gawali,
Mrs. Priya Ravi Gawali,
Residing at 35, Casablanca CHS,
Santoshi Mata Road, Ramdaswadi,
Opp. Saibab Mandir, Chikanghar,
Kalyan, District Thane.

... Appellant/s.

Vs.

M/s. Nirmal Lifestyle Kalyan Pvt. Ltd.
Having its Corporate Office at 3rd floor,
Multiplex Building, LBS Marg,
Mulund (West), Mumbai-400 080.

... Respondents.

Appellant present in person.

Advocate Mr. Vivek Salunkhe a/w Mr. Tushar Kadam for
the Respondent/s.

CORAM : SUMANT M. KOLHE,(Member J.)

DATE : MAY 17, 2019.

Appeal Under Section 44 of RER ACT 2016.

ORAL JUDGMENT :

1. Correctness, legality and propriety of the order dated 15.03.2018 passed by Member 1, MahaRERA Authority in Complaint No.238 is assailed in this Appeal.
2. Appellant is allottee. Respondent is promoter. I will refer the parties as per their states of Allottee and Promoter in my further discussion.

3. Allottee agreed to purchase and Promoter agreed to sale a flat bearing No.603 admeasuring 679 sq. ft. in Wing 'B' in the building known as Amazon at Kalyan, District Thane for total price of Rs.35,87,794/- as per registered agreement for sale dated 31.12.2014.

4. Promoter agreed to hand over the possession of the flat on or before 31.12.2016 with grace period of Six months i.e. June, 2017. The promoter failed to deliver the possession of the flat on or before the due date. Allottee filed complaint No.238 against promoter for interest on delayed period of possession from the promoter. Allottee has also claimed recovery of rent and EMI which the allottee is paying on account of delay in getting the possession of the flat.

W/S
5. Complaint No.238 filed by the Allottee was heard by MahaRERA Authority after giving opportunity to both the sides to submit their pleadings, evidence and arguments. Ld. Member 1 of MahaRERA Authority passed the order on 15.03.2018 in the said Complaint and directed the promoter to pay interest to the allottee from 01.07.2017 till the actual date of possession at the rate of marginal costs lending rate (MCLR) + 2% as prescribed under the provisions of Section 18 of RER Act, 2016 and the Rules made there under. Promoter was also directed to take further steps for completion of the project as per the date preponed by Six months by MahaRERA Authority.

6. Feeling aggrieved by the order by MahaRERA

Authority, Allottee has preferred this Appeal. Heard Allottee in person. Heard Ld. advocate for promoter. Perused impugned order.

In such circumstances the following points arise for my determination;

POINTS

- i) Whether the impugned order calls for an interference in the Appeal ?
- ii) What Order?

My findings on above points for reasons stated below are as under :

FINDINGS

- i) No.
- ii) As per final order.

REASONS :

7. Promoter had agreed to hand over the possession of the flat to the allottee on or before 31.12.2016 with grace period of Six months i.e. June, 2017. The promoter failed to hand over the possession on or before due date i.e. June, 2017 to the allottee. So, allottee has chosen the option of claiming the interest on delayed period of possession as per Section 18 of RER Act, 2016. The Ld. Member 1 of MahaRERA Authority has accordingly passed the order on 15.03.2018 in Complaint No. 238 after hearing both the sides and directed the promoter to pay the interest from 01.07.2017 to the allottee till the actual date of possession. Promoter has not challenged this order by preferring an Appeal. Moreover, the Ld. Member 1 of MahaRERA Authority also directed

the promoter to pay the interest at rate of marginal costs lending rate (MCLR) + 2% as prescribed under provisions of Section 18 of RER Act, 2016 and the Rules made there under. Promoter was further directed to complete the construction as per date preponed. It appears that the promoter had extended the date of completion of project up to 31.07.2020 while making the registration of this ongoing project with MahaRERA Authority on application of RER Act, 2016 with effect from 01.05.2017. So, the registered date for completion of project i.e. 31.07.2020 is preponed by Six months and the promoter was directed to complete the construction on or before 31.01.2020. Thus, as per the impugned order, the balance is properly struck down between right of allottee to claim interest for delayed period of possession and obligation of promoter to complete the construction and to hand over the possession of the flat to the Allottee on or before extended date. The relief of claim of interest as well as claim of recovery of possession at earlier date are duly granted as per impugned order in favour of the allottee. Now allottee has also claimed compensation in view of rent and EMI of loan which is required to be paid by allottee for additional period on account of delay in getting the possession of the flat. There is no such provision of awarding compensation to the allottee who has not withdrawn from the project and who has claimed only an interest for delayed period of possession as per Section 18 of RER Act, 2016. In fact interest itself is a compensation and it is duly awarded to the allottee. So, relief of allottee to claim rent and EMI of loan for additional period as made by the allottee does not fall within the four corners of Section 18 of RER Act, 2016. In impugned order, the Ld. Member 1 of MahaRERA Authority has correctly discussed

this point and rejected such relief of compensation. Thus, the impugned order is correct, proper and legal and it needs no interference in the Appeal. So, I answer the points accordingly.

In the result I pass the following order;

ORDER

- 1) Appeal No.006000000000273 stands dismissed.
- 2) Impugned order dated 15.03.2018 passed by Ld. Member 1 of MahaRERA Authority in Complaint No.CC006000000000238 is confirmed.
- 3) The promoter shall deliver possession of the flat with occupancy certificate as early as possible and on or before the preponed date.
- 4) No order as to costs.

MS

17.05.2019.

Upelle 17-05-19.
[SUMANT M. KOLHE,]
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal, (MahaREAT)
Mumbai.

