

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO.006000000010478

1) **Mr. Prashant Prabhakar Kale,**
2) **Mrs. Nilima Prashant Kale,**
110, Shri Mauli Niwas Apartment,
Flat No. 302, Shivaji Nagar,
Nagpur-440010.

Vs.

... Appellants.
(Allottees)

**Swapnil Promoters and Developers
Pvt. Ltd.,**

Block No. 363, Swapnil Swarnadi,
Beside Jichkar Driving School,
M.A.K. Azad Road, Gandhi Nagar,
Nagpur-440010.

... Respondents.
(Promoters)

Advocate Mr. U. J. Deshpande for the Appellants.

None for the Respondents.

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

DATE : MAY 7, 2019.

Appeal Under Section 44 of RER ACT 2016.

ORAL JUDGMENT :

1. Impugned order dated 21.05.2018 passed by Ld. Chairman, MahaRERA Authority in Complaint No. CC004000000010035 is challenged in this Appeal.

2. Appellants are the Allottees. Respondents are the promoters. Swapnil Parijat is the project launched by the Respondents at Shivaji Nagar, Nagpur in the year 2015. Allottees booked flat No. 603 in the said project. Total agreed price of the flat

was Rs.1,55,00,000/- excluding stamp duty, registration fees, M.S.E.B. charges, water meter charges etc.. Allottees paid Rs.23,50,000/- by cheque on 05.11.2015 to the promoter. Allotment letter was issued in the name of Allottees in respect of flat No.603 by the promoter. Allottees again paid Rs.24,00,000/- by cheque on 03.12.2015. Allottees paid in cash Rs.2,50,000/- on 03.12.2015 to the promoters. Thus, allottees had paid total amount of Rs.50,00,000/- to the promoters from 05.11.2015 to 03.12.2015.

3. Allottees wanted to avail loan facility from State Bank of India. Allottee No. 1 was the employee of State Bank of India. He was due for retirement. Allottees demanded necessary papers regarding transaction of sale and purchase of the flat such as agreement for sale and sanction plan etc. from the Respondents. However, Respondents could not hand over the said documents to the Allottees and finally allottee No.1 was retired from State Bank of India without availing the facility of loan to purchase this flat. Thereafter, Allottees came to know that there was sanction up to 4th floor. Allottees had booked flat at 6th floor. In such circumstances, Allottees decided to withdraw from the project. They asked for refund of the amount paid to the Respondents along with interest. Respondents assured them to pay the amount from time to time. Some how Respondents could pay only Rs.20,00,000/- on 10.10.2017 and thereafter, Rs.10,00,000/- on 31.01.2018. Promoter is still liable to pay Rs.20,00,000/- and also an interest on the said total amount of Rs.50,00,000/-. Allottees filed complaint under Section 31 of RER Act, 2016 as the project was registered with MahaRERA Authority by the promoters. Allottees claimed

refund along with interest and compensation from the promoter.

4. After hearing both the sides and considering the documents on record MahaRERA Authority passed impugned order and directed to promoter to refund the balance amount on or before 30th September, 2018 with interest as per letter dated 10.10.2017 issued by the promoters. MahaRERA Authority did not pass any order in respect of interest on the amount which is already paid as well as the compensation as sought by the Allottees.

5. Feeling aggrieved by the impugned order of MahaRERA Tribunal, Allottees had preferred this Appeal. Heard the Ld. advocate for the Allottees. Nobody is present for the Respondents. The Ld. advocate for the allottees argued to modify the impugned order and requested to grant the relief of interest as well as the relief of compensation which was not considered at all by MahaRERA Authority while passing the impugned order.

6. In such circumstances the following points arise for my determination;

POINTS

- i) Whether allottees are entitled to refund of Rs.20,00,000/- with interest from 03.12.2015 till its realization?
- ii) Whether allottees are entitled for interest on Rs.20,00,000/- from 03.12.2015 to 10.10.2017?

- iii) Whether allottees are entitled for interest on Rs.10,00,000/- from 03.12.2015 to 31.01.2018?
- iv) Whether allottees are entitled for Rs.25,00,000/- as a compensation and Rs.50,00,000/- towards litigation expenses?
- v) What order ?

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

FINDINGS

- i) Affirmative.
- ii) Affirmative.
- iii) Affirmative.
- iv) Does not survive for determination.
- v) As per final order.

REASONS :

7. Impugned order is challenged in this Appeal for seeking some reliefs which were neither granted nor rejected by MahaRERA Authority. Considering all the admitted facts in respect of the matter, I would like to point out that Allottees had paid total amount of Rs.50,00,000/- on two different dates to the promoters towards price of the flat in the project launched by the promoters and promoters had refunded Rs.20,00,000/- and Rs.10,00,000/- on two different dates without any interest and promoters are due to pay balance amount of Rs.20,00,000/- along with interest thereon and the amount of compensation. Admittedly, Rs.20,00,000/- were

paid on 03.12.2015 to the promoters and promoter refunded the said amount on 10.10.2017 without interest. So, allottees are entitled to claim interest on Rs.20,00,000/- from 03.12.2015 to 10.10.2017. Similarly, an amount of Rs.10,00,000/- was paid to promoters on 03.12.2015 and promoters refunded the said amount on 31.01.2018 without interest. So, allottees are entitled to claim interest on Rs.10,00,000/- from 03.12.2015 to 31.01.2018. Promoter is still liable to pay Rs.20,00,000/- to the allottees which were paid to him on 03.12.2015. So, promoter is liable to pay the said amount of Rs.20,00,000/- along with interest from 03.12.2015 till its realization.

8. As far as rate of interest is concerned it will be as per Rule 18 of Maharashtra Real Estate (Regulation and Development) Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

9. Allottees have also claimed compensation and litigation charges. I would like to point out that the issue of compensation was neither rejected nor allowed by MahaRERA Authority. If we perused Section 71 and Section 72 of RER Act, 2016, the jurisdiction to decide the point of compensation is vested with adjudicating officer who is retired District Judge. The issue of compensation in this matter was not raised before adjudicating officer under Section 71 and 72 of RER Act, 2016. Allottees are at liberty to file separate Petition for claiming the compensation as per Section 71 and 72 of RER Act, 2016 against the promoters on the same cause of action of this complaint. So, I answer points

accordingly.

10. In the result, I modify the impugned order and pass the following order;

ORDER

1. Appeal No. 006000000010478 is allowed.
2. Impugned order dated 21.05.2018 passed in Complaint No. CC004000000010035 is modified as under;
 - a) Promoters shall pay Rs.20,00,000/- to the Allottees with interest from 03.12.2015 till the realization of the said amount.
 - b) Promoters shall pay interest on Rs.20,00,000/- from 03.12.2015 to 10.10.2017 and also an interest on Rs.10,00,000/- from 03.12.2015 to 31.01.2018 to the Allottees.
 - c) The above interest shall be paid at the rate as per Rule 18 of Maharashtra Real Estate (Regulation and Development) Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.
 - d) Allottees are at liberty to file separate Petition for claiming compensation per Section 71 and 72 of RER Act, 2016 before adjudicating officer on the same cause of action.
 - e) No order as to costs.

W. Kolhe 07/05/19.

[SUMANT M. KOLHE,]
JUDICIAL MEMBER,

Maharashtra Real Estate
Appellate Tribunal, (MahaREAT)
Mumbai.

07.05.2019.