

Sarnobat

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 0006000000010531

Mr. Gopal T. Lalwani.,

Age : adult, residing at

Flat No. 1501/02, Raheja Garden,

Fantasia A. Wing, Thane (W),400602. ... Appellant/Allottee

Vs.

Runwal Homes Pvt. Ltd.,

Runwal Group, having their office at

Runwal & Omkar Esquare, 5th floor,

Opp. Sion Chunabhatti Signal,

Sion (East) Mumbai-22.

... Respondent/Promoter

ALONG WITH

APPEAL NO. 0006000000010543

Mr. Manoj T. Lalwani.,

Age : adult, residing at

Flat No. 1501/02, Raheja Garden,

Fantasia A. Wing, Thane (W),400602. ... Appellant/Allottee

Vs.

Runwal Homes Pvt. Ltd.,

Runwal Group, having their office at

Runwal & Omkar Esquare, 5th floor,

Opp. Sion Chunabhatti Signal,

Sion (East) Mumbai-22.

... Respondent/Promoter

Advocate Mr. Sanjay Puranik, for the Appellant.

Advocate Mr. Abir Patel, for the Respondent/s.

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

DATE : MARCH 27, 2019.

Appeal Under Section 44 of RERA ACT 2016.

COMMON JUDGMENT :

1. Both Appeals are directed against the common order

passed by Ld. Chairperson of MahaRERA Authority dated 16.07.2018 in Complaint No. CC006000000023434 and Complaint No. CC006000000023348.

2. In brief the facts are as under :-

Appellant in both Appeals is allottee. Respondent is the promoter. Both allottees had filed separate complaints against the promoter and prayed for giving direction to the promoter to hand over the possession of the flats and to pay interest for the delay in handing over the possession. Both allottees had separately booked flat No. T8-2306 and flat T8-2305 situated on 23rd floor of wing 'H' of Runwal Green project at Mulund (W), Mumbai. Each flat admeasures 1090 sq.ft. Agreed price of each flat is Rs.1,28,77,500/-. Separate registered agreement for sale took place on 06.09.2013 between promoter and allottees for each flat. Promoter agreed to hand over the possession on or before December, 2015 as per clause 17 of an agreement for sale. In the month of January, 2016 promoter issued letter and informed the allottees that the possession will be delayed and will be given in the month of September, 2017 for the reasons which were beyond his control. Allottees have made payment as per schedule of the payment mentioned in clause 5 of an agreement for sale. Towards the price of the flat allottees have paid 97% price i.e. Rs.1,24,93,503/- between the period from 27.12.2012 to 20.10.2016. Again promoter issued letter in the month of February, 2017 and informed the allottees that possession will be given in October, 2017 for the reasons beyond his control. Promoter had specifically mentioned in the said letter that allottees may withdraw

and get refund of the amount with interest if they are not satisfied due to delayed possession. Promoter also informed in the said letter that if allottees failed to reply the said letter then, it will be presumed that there is deemed consent of the allottees for the delay. Allottees had not replied the said letter. However, in the month of December, 2017, allottees send E-mail to promoter and informed that allottees are not giving consent to the delay as specified in letter issued by promoter in the month of February, 2017 and allottees had claimed compensation for delayed possession i.e. interest at the rate of 18% per annum on the amount of price of Rs. 1,24,93,503/- from December, 2015.

3. After hearing both the sides and considering respective cases and documents the Ld. Chairperson of MahaRERA passed common order and disposed of both the complaints by giving direction to the promoter to pay the interest for delay to the allottees from 01.11.2017 to 17.03.2018 on the entire amount paid by the allottees to the promoter and the interest will be at the rate as prescribed under Rule 18 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules 2017 and advised to allottees to take the possession of their respective flats.

4. Feeling aggrieved by the order, both allottees have preferred separate appeal. Heard Ld. advocate for the allottees. Heard Ld. advocate for the promoter. Perused the documents. The following points arise for my determination :-

POINTS

- i) Whether the impugned order is just, proper and legal?
- ii) Whether the impugned order needs to be modified?
- iii) What order?

My findings to the above points for the reasons stated below are as under;

FINDINGS

- i) Partly affirmative.
- ii) Partly affirmative.
- iii) As per final order.

REASONS:

POINT NO. 1 TO 3 :

5. Registered agreement for sale took place on 06.09.2013 between allottees and promoter in respect of two flats. Promoter agreed to hand over the possession of the flats on or before December, 2015. Admittedly, agreed price of each flat was Rs.1,28,77,500/-. Each allottee had paid Rs.1,24,93,503/- to the promoter as per schedule of the payment mentioned in the agreement between 27.12.2012 till 20.10.2016. Allottees have paid 97% of the price to the promoter. Promoter issued letter in January, 2016 as the possession was not given in December, 2015 as per agreed date mentioned in an agreement. Promoter assured to give possession of both the flats in September, 2017. Promoter explained the reason for delay. The reasons were beyond the control of the promoter and hence, delay was occurred. Thereafter,

in the month of February, 2017, promoter again issued letter to the allottees and assured to give possession in October, 2017. Promoter had also given the reasons for which delay of one more month in handing over the possession as per his previous commitment. In the letter issued in February, 2017. Promoter had informed the allottees that if allottees are not satisfied with delayed date of possession of the flat, then they may withdraw from the project and amount paid by them will be given back with interest to them. It was specifically mentioned by promoter in the letter issued in February, 2017 that if allottees did not reply, it will be presumed that there is a consent of allottees for such delay in possession. Admittedly, allottees did not reply the said letter for ten months. Thereafter, allottees send e-mail on 22.12.2017 to the promoter and informed that there is no consent of allottees for such delay in possession and allottees demanded the compensation including interest at the rate of 18% per annum for delayed possession on the price of Rs.1,24,93,503/- from December, 2015 against the promoter. It is alleged by the allottees that all the necessary permissions and approvals required for carrying out the project were not obtained by the promoter and construction was started in absence of such approvals and permissions and promoter had committed breach in completing the project within the stipulated time.

6. The Ld. Chairperson of MahaRERA Authority granted the relief of interest in favour of allottees for the period of delay from November, 2017 to March, 2018 for five months only. The Ld. Chairperson of MahaRERA Authority accepted the justification and

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the reasons given by promoter for not completing the project within stipulated time. So, the request of allottees to award the interest from December, 2015 was not considered by Ld. Chairperson of MahaRERA Authority. Admittedly, part occupation certificate is received in May, 2018 and promoter has started giving the possession to the flat purchasers in the project. The Ld. Chairperson of MahaRERA Authority has also advised the allottees to take the possession of the apartment. Now the allottees have challenged the impugned order granting interest only for five months mainly on the ground that promoter deliberately delayed the possession from December, 2015 and there were no justifiable reason for condonation of delay in handing over the possession. I would like to point out that as per registered agreement possession was to be given on or before December, 2015. Since the project was incomplete, promoter was punctual enough to immediately informed the allottees by letter in the month of January, 2016 that he will hand over the possession of flats in September, 2016 on account of delay due to the reasons which were beyond his control. It cannot be ignored that allottees have made the payment towards price as per schedule mentioned in the agreement even after the extended date of possession without raising the issue of interest for delayed possession. It is a matter of record that in February, 2017 promoter again informed to allottees by letter that the possession of flats will be delayed by one month and will be given in the month of October, 2017. Promoter had made it clear in the said letter to the allottees that if they are not satisfied with such delayed possession, they may withdraw from the project and they will get refund of the amount which they have paid to the promoter and also

interest thereon. Admittedly, allottees did not reply the said letter either promptly or within the reasonable period. After ten months i.e. in the month of December, 2017 the allottees sent e-mail to the promoter and informed that they did not consent for delay in possession and they claimed interest at the rate of 18% p.a. for delayed possession from December, 2015 on the part of price paid i.e. Rs.1,24,93,503/- to the promoter. It cannot be ignored that provisions of RER Act, 2016 are made applicable with effect from 01.05.2017 and promoter had registered the present incomplete project with MahaRERA Authority. Before application of RER Act, 2016, the transaction between promoter and allottees was governed by MOFA Act. It cannot be ignored that in MOFA Act also there is provision under Section 8 for the allottees to withdraw from the project and to claim the amount paid to the promoter and interest thereon. Allottee did not prefer to take action for claiming interest from the promoter in view of the provisions of MOFA Act, 2013. Moreover, after receiving the letter of February 2017 from promoter by which the liberty was given to the allottees to withdraw from the project and to get refund of the amount along with interest on account of delayed possession, allottees kept mum for ten months. There is no explanation on the part of allottees as to why they did not prefer any action under MOFA Act against the promoter for recovery of interest or did not promptly reply the letter of February, 2017 of the promoter by refusing to give consent for delayed possession. Thus, no reply on the part of allottees promptly or within reasonable time to the promoter from February, 2017 till ten months has created presumption that there is deemed consent of allottees for delayed possession. Thus, there was sufficient

reason to infer the deemed consent on the part of allottees for delayed possession.

7. Admittedly, occupancy certificate is received in the month of May, 2018 and promoter has started giving possession of the flats to the purchasers. So, Ld. Chairperson of MahaRERA Authority accepted reasons narrated by the promoter for justifying the delay in giving possession and awarded the interest to the allottees only for five months i.e. from November, 2017 to March, 2018. Allottees have prayed for interest from December, 2015 and alternatively from 01.05.2017 i.e. date on which RER Act, 2016 was applied. Since, justifiable reasons for delay were there for promoter for not completing the project in stipulated time, allottees are not entitled for interest from December, 2015. As far as alternative prayer of interest from 01.05.2017 is concerned, I would like to point out that the present project was incomplete and as per Section 3 of RER Act, 2016 it was mandatory for the promoter to register the incomplete project with MahaRERA Authority. Thus, the present incomplete project is registered with MahaRERA Authority and the said project is governed by RER Act, 2016. It cannot be ignored that proviso of Section 3 of RER Act, 2016 has given three months period to the promoter to make application for registration of incomplete project. So, this three months period will have to be excluded while counting the delay with effect from 01.05.2017. Moreover, there was an extension of one month more for making registration of ongoing project as per Section 3 of RER Act, 2016 since promoter was required to collect many documents and required to furnish detailed particulars of the project while making

registration with MahaRERA Authority. Thus, one more month will have to be deducted while calculating the delayed possession from 01.05.2017. Now interest is already given from November, 2017. If promoter is entitled for exemption of four months i.e. the period permitted under RER Act, 2016 for making registration of his incomplete project with MahaRERA Authority from 01.05.2017, so he is not required to pay the interest for the month of May, June, July and August i.e. four months. Thus, promoter shall be required to pay interest only for the months of September, 2017 and the month of October, 2017 i.e. two months. Allottees are justified in claiming the interest for two more months in addition to five months already granted in their favour as per impugned order.

W/S
8. It is a matter of record that an amount of Rs.23,72,438/- is yet to be paid by the allottees to the promoter towards price of the flat. Promoter demanded the said amount by claiming interest on this balance price as occupancy certificate is already received and allottees were informed to take the possession. Allottees are under obligation to take possession within two months as per Section 19(10) of RER Act, 2016 once occupancy certificate is received. While considering the right of allottees to claim the interest, it is just and proper to consider the obligation of promoter and his right to claim the balance price from the allottees. Considering the facts and circumstances of this case, I am of the opinion that the interest for the period of delayed seven months to be paid by promoter to the allottees shall be adjusted against the balance price i.e. Rs.23,72,438/- of the flats at the time of handing over the possession to the allottees. Promoter will not justify in

claiming interest on this balance price. Thus by striking the balance between rights of promoter as well as allottees and considering the objects of RER Act, 2016 and the nature of RER Act, 2016 as social and beneficial legislation, I am of the opinion that the impugned order as passed by Ld. Chairperson of MahaRERA Authority is partly just, proper and correct and it needs partial modification by extending the period of delay of five months to seven months for awarding the interest on the said period to allottees which is to be adjusted against balance price of Rs.23,72,438/- to be paid by Allotees to the promoter at the time of handing over the possession of the flats. So, I answer the points accordingly. In the result, I pass the following order;

ORDER

- W/S
- i) Appeal No. APPEAL No.0006000000010531 and Appeal No.0006000000010543 are partly allowed.
 - ii) Impugned order dated 16.07.2018 passed in Complaint No.CC006000000023434 and Complaint No. CC006000000023348 is modified as under
 - a) The promoter shall pay interest on amount of Rs.1,24,93,503/- to the allottees for every month of delay i.e. from 01.09.2017 till 31.03.2018 for period of Seven months.
 - b) Rate of interest shall be as per Rule 18 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules 2017.
 - c) Interest accrued for delayed possession of Seven

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months on amount of Rs.1,24,93,503/- as directed above shall be adjusted against the balance price of the flat i.e. Rs.23,72,438/- which is to be paid by Allottee to the promoter at the time of handing over the possession of the flat.

- W/S
- d) Promoter is not entitled to claim interest on balance price of Rs.23,72,438/- from the allottees.
- e) Both parties shall comply the above directions and hand over the possession of the flats within one month from the date of this order as directed above.
- f) No order as to costs.
- iii) Original common order is kept in Appeal No. 0006000000010531 and the copy is maintained in Appeal No. 0006000000010543.

W. Kolhe
27/03/19.

[SUMANT M. KOLHE,]
JUDICIAL MEMBER,

Maharashtra Real Estate
Appellate Tribunal, (MahaREAT)
Mumbai.

27.03.2019.

