

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 006000000010587

M/s. Akshar Space Pvt. Ltd.

A Company registered under
The companies Act, 1956
Having address : Office at : 230,
2nd floor, Big Splash,
Plot No. 78 & 79, Sector-17,
Vashi, Navi Mumbai-400705.
Vs.

... Appellant/s.

Shri Nitin Jaigude,

Age : Adult, Occupation : Service,
Residing at C-14/2:4,
Shree Samartha CHS, Sector-15,
Airoli, Navi Mumbai-400708.

... Respondent.

ALONG WITH

APPEAL NO. 006000000010588

M/s. Akshar Space Pvt. Ltd.

A Company registered under
The companies Act, 1956
Having address : Office at : 230,
2nd floor, Big Splash,
Plot No. 78 & 79, Sector-17,
Vashi, Navi Mumbai-400705.
Vs.

... Appellant/s.

Shri Prathamesh Ternikar,

Age : Adult, Occupation : Service,
Residing at 1103, Gopal Deep Heights,
Mithagar Road, Mulund East,
Mumbai-400 081.

... Respondent.

Advocate Ms. Ritika Agarwal for the Appellant/s.

Advocate Mr. Jairam Chandani for the Respondent/s.

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

DATE : MAY 16, 2019.

Appeal Under Section 44 of RER ACT 2016.

COMMON JUDGMENT :

1. Common order dated 23.07.2018 passed by Ld. Member 1 of MahaRERA Authority in Complaint No. 12750 and Complaint No. 55006 is assailed in both the Appeals.

Status of the Parties

2. Appellant is promoter and Allottee is respondent in both appeals. I will refer the parties as per their status of promoter and allottees.

Transaction

3. Promoter launched a project namely Green World at Airoli, District Thane. Promoter agreed to sale and Allottees agreed to purchase the flat in the project namely Green World at Airoli District Thane. Accordingly, agreements for sale were executed and registered on 16th March, 2012. Promoter agreed to hand over the possession of the flats to the Allottees on or before 31st December, 2015. Allottees have paid the agreed price as per schedule of payment mentioned in registered agreement. RER Act, 2016 came into force on 01.05.2017. Promoter registered the project with MahaRERA Authority as the project was incomplete. Promoter extended the date for delivery of possession of the flat while making the registration of the project with MahaRERA Authority.

Complaint by Allottee

4. Allottee had filed separate complaint against the promoter before MahaRERA Authority as promoter failed to hand over the possession of the flat on due date. Allottee had claimed interest for

delayed period of possession from the promoter. Allottee had filed the complaint under Section 18 of RER Act, 2016.

Defence

5. Promoter resisted the complaint and contended that there was no deliberate and intentional delay in handing over the possession of the flat to the Allottee. Promoter has further contended that there were genuine reasons beyond his control and hence, there was a delay in completing the project. It is further contended that promoter extended the date of completion of project while making the registration of the ongoing project with MahaRERA Authority. It is contended that Allottees were aware about reasons for delay in completing the project as per terms and conditions mentioned in registered agreements.

Maintainability of the Complaint

6. Promoter has challenged the maintainability of the complaint on the ground that occupancy certificate is issued and promoter had offered the possession of the flat to the allottee in the month of March, 2018. According to the promoter once occupancy certificate is issued, allottee is not entitled to claim interest for delayed period of possession.

Decision

7. After hearing both the sides and considering respective cases and the documents on record, the Ld. Member 1, MahaRERA has passed impugned order and directed the promoter to pay interest to the Allottees with effect from 01.07.2017 on the amount paid by the Allottees towards price of the flat to the promoter.

8. Feeling aggrieved by the impugned order, Promoter has challenged correctness, legality and propriety of the said order by filing the Appeals.

9. Heard Ld. advocate for the Promoters, Heard Ld. advocate for the Allottees. Perused the notes of arguments filed on record. Perused the documents filed by both the sides on record. Perused the compilation of the documents submitted by Allottees on record.

Points for determination

10. The following points arise for my determination;

POINTS

- i) Whether the complaints are maintainable?
- ii) Whether Allottees are entitled to claim interest on delayed period of possession? If Yes what is the period of delayed possession and what is the rate of interest?
- iii) Whether the impugned order is correct, legal and proper?
- iv) What order?

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

FINDINGS

- i) Affirmative.
- ii) Affirmative. 8 months, as per Rule 18 of RER Act.
- iii) Affirmative.

iv) As per final order.

REASONS

Admitted facts

11. Allottee had filed complaint and claimed interest for delayed period of possession as per Section 18 of RER Act, 2016. Promoter had agreed to deliver the possession of the flat on or before 31.12.2015 to the Allottees. As per schedule of the payment mentioned in registered Agreement, allottee has paid the amount towards price to the promoter. Admittedly, the project was incomplete on 01.05.2017 when RER Act, 2016 came into force. Promoter registered the project with MahaRERA Authority and extended the time for completion of the project. It is not in dispute that occupation certificate is issued and promoter has offered the possession of the flat with OC to the allottees in the month of March, 2018.

Section 18 of RER Act, 2016

12. If we carefully perused the provision of Section 18 of RER Act, 2016 it is revealed that Allottee is given two options if promoter failed to give the possession of the flat on due date. As per first option, allottee may withdraw from the project and get refund of the entire amount paid to the promoter along with interest. As per second option, allottees may not withdraw from the project but may claim interest from the promoter on the delayed period of possession. Section 18 of RER Act, 2016 is to some extent similar and identical to Section 8 of MOFA Act, 1983.

Section 8 of MOFA Act 1983

13. As per Section 8 of MOFA Act, 1983 the option was given to the allottees to withdraw from the project and to get refund

with interest from the promoter.

Choice of Allottee

14. However, as per Section 18 of RER Act, 2018 option of claiming interest on delayed period of possession without withdrawing from the project is given to the allottees. In the present matter, allottee has chosen to continue with project and to claim interest for delayed period of possession as per Section 18 of RER Act, 2016 since promoter failed to hand over the possession of the flat on due date i.e. on 31.12.2015.

Occupancy Certificate issued

15. Now occupancy certificate is received and promoter informed the allottee and offered the possession in the month of March, 2018. Thus, flat is ready to occupy as occupancy certificate is issued by competent authority. Once, occupancy certificate is issued and flat is habitable and promoter has offered the possession to the allottee, the period of delay in handing over the possession comes to an end from March, 2018. So, the delayed period in the present matter starts from December, 2015 and ends in March, 2018.

Effect of O.C. on right to claim interest

16. Merely because occupancy certificate is issued it cannot deprive the allottee to claim interest on the delayed period of possession. Allottee may file the complaint for recovery of interest on delayed period even after issuance of occupancy certificate and after getting the possession of the flat also. Unless there is sound evidence to show that allottee had relinquished right to claim interest on the delayed period of possession or there are circumstances to show that allottee has expressly or impliedly

W/S

relinquished right to claim interest on the delayed period of possession by his conduct and action. It cannot be said that the Allottees had lost their right to claim interest on delayed period of possession once the occupancy certificate is issued. So, the present complaints filed by the Allottees are maintainable under Section 18 of RER Act, 2016 even though occupancy certificate is issued in the month of March, 2018.

Period of delay

17. As far as period of delay in handing over the possession is concerned, it is between December, 2015 to March, 2018. So, total period is of 26 months.

Exempted period of delay

18. As per the impugned order the promoter is exempted to pay the interest to the Allottee for delayed period of 18 months on the ground that promoter had genuine reasons beyond his control for completing the project or handing over the possession of the flats within the agreed time.

Similar other complaints settled

19. There were 13 such more complaints filed by other Allottees in respect of this project against the present promoter. Those were decided by Ld. Member 1, MahaRERA Authority on 12.03.2018. Since, those complaints were similar and identical with two complaints filed by present Allottee, Ld. Member 1 MahaRERA Authority had given similar and identical decision in all such complaints including the present two complaints of the allottee. Admittedly, promoter has not preferred Appeals against other allottees since promoter and other allottees amicably settled the dispute and promoter has already handed over the possession of

respective flats of such other allottees to them.

Rival claims about period of delay

20. Thus, promoter has challenged the impugned order only against the present two allottees. Promoter has made out the case that he is entitled for exemption in paying the interest for entire delayed period of 26 months. According to the promoter, the Ld. Member 1 MahaRERA Authority committed error by giving concession only for 18 months instead of 26 months. On the other hand allottee has claimed the interest for 12 months instead of 8 months which is awarded as per impugned order. According to the Allottee concession of 18 months on delayed period of possession as given by the Ld. Member 1, MahaRERA Authority to the promoter is not correct and legal and it should have been at the most for 14 months only.

Genuine Reasons for delay

21. After carefully perusing the impugned order it is revealed that the Ld. Member 1 of MahaRERA Authority has discussed the genuine reasons and evidence in support of all such genuine reasons for delay in handing over the possession of the flats.

Delay for issuing Environmental Clearance

22. Time spent for obtaining the Environmental clearance was the main genuine reason for delay. In fact SEIAA and NMMC were the authorities which were empowered to issue the environmental clearance certificate. It is true that environmental clearance certificate was necessary for the completion of the present project as the construction area involved in the present

project is more than 20,000 sq. meters. So, promoter was aware that it was mandatory to obtain environmental clearance certificate from the competent authority for his project. Allottee was also aware of this fact as seen from clause 12 of registered agreement for sale. Allottee had knowledge that commencement certificate was issued for the said project with condition of commencing the construction work on obtaining environmental clearance from the competent authority. It is properly and correctly discussed in the impugned order that the promoter had applied for such environmental clearance certificate to the competent authority in the year 2010. Para 7 to 11 of the impugned order are very clear to show that delay in issuance of environmental clearance was attributed to the competent authorities and there was no fault of promoter in such delay for getting environmental clearance certificate for the project.

Delay for water and electricity connection

23. Similarly, it is further discussed in para 12 of the impugned order that the delay in getting water connection and electricity connection cannot be accepted as genuine reason since it was the duty of promoter to take the necessary care and caution for getting the electricity connection as well as water connection for commencement of such project. In clause 4, 18 and 19 of registered agreement, the various reasons that may cause the delay in completion of the project are exhibited and allottee had agreed for such reasons while executing and registering the said agreements.

Case Law

24. In **Neelkamal Realtors Pvt. Ltd. Case law**, Writ Petition No. 2737/2017 decided on 06.12.2017 Hon'ble Bombay High Court

laid down that "to complete the incomplete project is also one of the most important object of RER Act, 2016" and RER Act, 2016 is social and beneficial legislation.

On the backdrop of objection of RER Act and intention of Legislation behind enacting this new Act read together with ratio laid down by Hon'ble Bombay High Court, in Neelkamal Realtor Pvt. Ltd. Case, it can be easily said that Promoter and Allottee are two pillars of Real Estate Sector. Unless there is a demand of home by the Allottee promoter will not come forward to launch the project and vice-versa. So, it is the responsibility of both the sides to see that project should be completed. Allottee is bound to make the payment as per the schedule of payment as well as promoter is bound to hand over the possession of the flat on or before due date.

Moulding of Relief

25. Their Lordships of Hon'ble Bombay High court had made it clear in **Neekamal Realtors Pvt. Ltd. Case law** that in a given case and for genuine reasons, a relief may be moulded and bonafide efforts of promoter if seen, should be considered to mould the relief. So, we have to strike the balance between the right of allottee to claim the interest for period of delayed possession on one hand and obligation of the promoter to hand over the possession and existence of genuine reasons if any beyond control of the promoter due to which the delay in handing over the possession is occurred. The Ld. Member 1 of MahaRERA Authority has correctly ad properly decided the dispute on equitable basis by giving concession of 18 months to the promoter out of total delayed period of possession of 26 months.

Dream of Home

26. At this stage, I would like to point out that Allottee is interested in getting the possession of his own home as early as possible. The date of possession of home is the happiest moment in the life of home buyer, as homebuyers purchase such home by spending entire life earning and by raising the funds on loan. When the agreement between the parties was executed, in the year 2012, rights and obligations of the parties were governed by MOFA Act, 1963. Allottee was at liberty to exercise option as per Section 8 of MOFA Act, 1963 to withdraw from the project and to get the refund of entire amount along with interest from the promoter if there was a delay in handing over the possession on the part of promoter. However, there was no such option of claiming only the interest on delayed period of possession by not withdrawing from the project on the part of allottee as per Section 8 of MOFA Act, 1963. After enactment of RER Act, 2016 and its application from 01.05.2017, such option to claim only the interest for delayed period of possession without withdrawing from the project was given to the Allottee as per Section 18 of RER Act, 2016. Whenever there is delay in getting the possession, Allottee may suffer stress and hardship and loss. It depends on facts of each case. So, in present matters it is statutory obligation of Promoter to deliver possession of flat with O.C. and both parties shall adjust their rival monetary claims against each other (claim of interest of Allottee and claim of balance price or other charges payable to the promoter by Allottee). If promoter has amicably settled the similar matters of other Allottees arising out of same impugned order. It is just and equitable to settle the present matters by promoter with present allottee also.

Conclusion

27. The impugned order passed by Ld. Member 1 MahaRERA Authority in granting interest for delayed period of possession of 8 months out of total delayed period of possession of 26 months is quite just, proper and equitable. The rate of interest as awarded in impugned order as per Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 is also proper and correct. It needs no interference in the Appeals.

Expectation

28. Before parting with this dispute, I reiterate that as O.C. is issued, promoter and allottee shall discharge their respective obligation of handing over and taking over the possession of Flat by settling the accounts regarding rival monetary claims against each other within one month and to give full stop to the dispute forever.

29. In the result I pass the following order;

ORDER

- 1) Appeal No.006000000010587 and Appeal No. 006000000010588 are dismissed.
- 2) Common impugned order dated 23.07.2018 passed by Ld. Member 1, MahaRERA Authority in Complaint No. 12750 and 55006 is confirmed.
- 3) Promoter to pay costs of Rs.25,000/- to the Allottees in each Appeal and shall bear his own costs in each Appeal.
- 4) Original judgment be kept in Appeal No.

Appeal No.10587 & 10588
006000000010587 and copy be maintained in
Appeal No. 006000000010588.

MS

16.05.2019.

W. Kolhe 16-05-19.
[SUMANT M. KOLHE,]
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal, (MahaREAT)
Mumbai.

