

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 512 OF 2022

Sanvo Resorts Pvt. Ltd. & Ors.

...Appellants

Versus

Mrs. Shital Nilesh Deshmukh & Anr.

...Respondents

....

Ms. Akshada Shetye i/by Ms. Prasanna Tare for the Appellant.
Mr. Tejas Mane for the Respondents.

CORAM : JITENDRA JAIN, J.

DATE : 25th AUGUST, 2023.

JUDGMENT (JITENDRA JAIN, J.)

1. This appeal is filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 (for short “RERA Act”) challenging the order of the Maharashtra Real Estate Appellate Tribunal (for short “Appellate Tribunal”) dated 2nd March, 2022 and as rectified on 13th April, 2022. The Appellant has raised various questions of law in the appeal filed before this Court. However, the only question which arises from the Appellate Tribunal’s order which requires to be considered is reframed as under :

“Whether the Appellate Tribunal was justified in confirming the order of the Regulatory Authority granting interest under Section 18 of the RERA Act to the Respondent allottee ?”

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Narrative of Events :

2. The Appellant is promoter and developer of a complex known as “Marathon Nexzone” at Panvel. The Respondents are allottees of a flat allotted in the aforesaid project.

3. On 27th November, 2015 the Appellant promoter executed a registered agreement with the Respondent allottees for sale of a flat. As per the terms and conditions of the agreement, the Appellant promoter agreed to handover possession of the flat in December, 2017. However, the agreement also provided for reasonable extension of time for giving possession if the delay was on account of non-availability of steel, cement, war, civil commotion or any terrorist attack, any change in law which prevents the developer to fulfill its obligation, any strike, lock out, any act of God, any restraint order passed by any authority or any delay in getting the occupancy certificate from the concerned authority, etc., which events according to the Appellant promoter would fall within the phrase “beyond the reasonable control of the developer”. The agreement also provided for a reasonable extension of time for handing over the possession aggregating to further 9 months. However, the Appellant promoter could not handover possession as per the terms and conditions of the agreement even after expiry of extended 9 months and therefore, the Respondent allottees filed a complaint against the Appellant promoter with the

Maharashtra Real Estate Regulatory Authority (for short “Regulatory Authority”) claiming interest under Section 18 of the RERA Act for the delay in giving possession.

4. On 27th June, 2019, the Regulatory Authority passed an order on the complaint filed by the Respondent allottees by holding that the Appellant promoter has failed to handover possession of the flats as per the agreement. However, the Appellant promoter is entitled for reasonable extension of 9 months as per the agreement and further there is no need for demand of interest before filing the complaint under Section 18 of the RERA Act. The Regulatory Authority ultimately held that the Respondent allottee is entitled to interest at the rate of 10.5% from 1st October, 2018 till handing over possession of the flat. However, the Regulatory Authority permitted the Appellant promoter to adjust the said interest against any sum due from the Respondent allottee.

5. Being aggrieved by the aforesaid order, the Appellant promoter filed an Appeal No.AT00600000031751 with the Appellate Tribunal challenging the order of the Regulatory Authority on the grounds set out therein.

6. On 2nd March, 2022, the Appellate Tribunal by a speaking and detailed order dismissed the appeal of the Appellant promoter.

7. It is on this backdrop that the present appeal is filed by the Appellant promoter before this Court challenging the Appellate Tribunal's order.

8. Heard finally the counsels for the Appellant and the Respondent and with the assistance of the counsels perused the records of the present appeal.

9. **Submissions of the Appellant :** The Appellant promoter contended that the delay in handing over possession was on account of delay in obtaining various approvals from the statutory and regulatory authorities. The Appellant promoter further contended that the Respondent allottees were made aware of the delay and therefore they are not entitled to make any grievance on this count. The Appellant promoter further contended that no demand for interest was made prior to filing the complaint by the Respondent allottees and therefore they are not entitled for any claim of interest. The Appellant promoter therefore contended that the appeal be allowed and the order of both lower authorities be set aside.

10. **Submissions of the Respondent allottees :** The Respondents contended that there is no requirement of giving any demand notice prior to filing the complaint under Section 18 of the RERA Act. The Respondent allottees further contended that the reasons given for the delay were prior

to execution of the agreement and therefore same cannot constitute reasons beyond the control of the Appellant promoter to deny the claim of the Respondents. The Respondent allottees further contended that both the authorities have passed a reasoned and speaking order and therefore the present appeal is to be dismissed on this count alone.

Analysis & Conclusion :

11. For deciding the present appeal it is necessary to reproduce Section 18(1) of the RERA Act which reads as under :

18. Return of amount and compensation

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building -

(a) in accordance with the terms of the agreement for sale or as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided *that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

.....

12. The Appellant promoter executed a registered agreement with the Respondent allottees on 27th November, 2015. In the said agreement, the Appellant promoter agreed to handover possession of the flat to the Respondent allottees in December, 2017. The agreement provided for a reasonable extension aggregating to further 9 months for handing over the possession which expired on 30th September, 2018. The agreement further provided that the Appellant promoter would be entitled to further reasonable extension if the delivery is delayed on account of non-availability of steel, cement, war, terrorist attack, change in law preventing the Appellant promoter from fulfilling its obligation, strike, act of God, event beyond the reasonable control of the Appellant promoter, any restraint order passed or delay in getting the occupancy certificate from the concerned authority. The Appellant promoter has sought to justify the delay in handing over possession on account of the following reasons:

- a) Development permission and Commencement Certificate was received on 20th October, 2012.
- b) Notification by the Government of Maharashtra dated 10th January, 2013 notifying Raigad district including the land on which the project is situated as “Navi Mumbai Airport Influence Notified Area (NAINA)” and CIDCO – NAINA issued Commencement Certificate on 7th May, 2014, for increase in the height of the building.

- c) NOC obtained from CIDCO on 29th February, 2016.
- d) Highway Access Permission applied in 2008 and obtained in March, 2016.
- e) Permission for laying pipeline made in November, 2008 and same obtained on June, 2016.
- f) Application for water supply made on 14th November, 2016.
- g) Civil Aviation NOC obtained in 2010, 2011, 2015 and 2016.

13. In my view, whether the Appellant promoter was justified in explaining the delay in handing over possession beyond the time specified in the agreement is an issue which does not raise any substantial question of law for this Court to entertain the appeal under Section 58 of the RERA Act. The reasons for the delay are based on facts which both the lower authorities concurrently have given findings of fact and rejected the contention of the Appellant promoter on that count. There is no perversity shown in the said reasoning of both the lower authorities and therefore the findings of both authorities being purely on facts, no interference is called for by this Court under Section 58 of the RERA Act.

14. Even otherwise, most of the reasons given for the delay pertain prior to execution of the agreement dated December 2015 and therefore, the Appellant promoter was fully aware of the reasons mentioned above

on the date when the agreement was executed and it is only thereafter that the Appellant promoter agreed for handing over the possession in December, 2017. Therefore, the Appellant promoter cannot contend that they were prevented by cause beyond their control in handing over the possession beyond the agreed date. The extension of 9 months provided in the agreement has factored these eventualities of which the Appellant was aware of.

15. Even otherwise, the reasons given for the delay would at the most entitle the Appellant promoter to extend the time for handing over possession by a further period of 9 months as per the agreement and which benefit has been granted by both the lower authorities by directing the Appellant promoter to pay interest from 1st October, 2018 and on this count no perversity is shown in the directions of the lower authorities.

16. The reasons given by the Appellant promoter for the delay in handing over possession also do not fall within the clauses like non-availability of steel, war, injunction, strike, act of God etc. and even if it falls in any one of the categories, the extension can be only of a reasonable period and no evidence is laid on this account by the Appellant promoter to dislodge the finding of both the authorities. The Appellant promoter has not led any evidence on this count except making bald statements. The Appellant promoter has not produced any written

document signed by both the parties to the agreement to show that there was mutual agreement for extension of the date of possession beyond extended period of 9 months specified in the agreement nor there is any document to show Respondents have waived right to claim interest under Section 18(1) of the Act. Therefore, in my view even on the basis of the agreement and reasons for the delay, both the lower authorities cannot be faulted.

17. The Supreme Court in the case of *DLF Home Developers Ltd. V/s. Capital Greens Flat Buyers Association* has observed that delay in approval of a building plan is a normal incident of a construction project. The developer would have been conscious of these delays and cannot set up as a defense to resist the claim for compensation before the judicial forums. In my view, the ratio of this judgment of the Hon'ble Supreme Court squarely applies to the facts of the present appeal. The purpose and objective of the Consumer Protection Act and RERA Act being similar, this decision of the Hon'ble Supreme Court, although rendered in the context of the Consumer Protection Act, would apply with equal force for deciding the issue under the RERA Act.

18. Now coming to the legal position, Section 18 of the RERA Act provides for payment of interest if the promoter fails to complete or give possession in accordance with the terms of the agreement or due to

discontinuance of his business as a developer on account of suspension and revocation of the registration under the Act. Section 18(1) of the RERA Act provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or as, the case may be, duly completed by the date specified therein then the allottee has an option to either withdraw from the project in which case the promoter has to return the amount received with interest. However, if an allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month of delay till the handing over of possession at the rate prescribed by Rule 18 of the 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. Section 11(3)(b) of the RERA Act requires the promoter to make available to the allottee the stage-wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity. Section 4(2)(1)(C) of the RERA Act requires the promoter to give a declaration on an affidavit stating the time period within which he undertakes to complete the project.

19. On a conjoint reading of the aforesaid three provisions, in my view, the promoter becomes statutorily liable to pay interest if he fails to

give possession in accordance with the terms of the agreement for sale. Section 18 does not empower any authority under the Act to consider the reasons for delay dehors what is specified in the agreement. The authorities have to decide the issue of delay only as per the terms and conditions of the agreement. Therefore, the reliance placed by the Appellant promoter in the case of *Neelkamal Realtors Suburban Pvt. Ltd. V/s. Union of India & Ors.*¹ is not justified. The issue before the Bombay High Court was a challenge to the constitutional validity of certain provisions of the RERA Act. The High Court was not considering any specific agreement for any adjudication under Section 18(1) of the RERA Act. On the contrary, the said decision goes against the Appellant promoter. In paragraphs 128, 304, 305 and 306 of the said decision the High Court specifically states that under the provisions of Section 18, the delay in handing over possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee and the facility given to the promoter to revise the date of completion of the project under Section 4 of the Act should not be read into the contract between the flat purchaser and the promoter. This means that the issue of delay has to be examined based on the date specified in the agreement between the parties and not what is required to be mentioned by the promoter under Section 4 of the RERA Act. The

¹ (2017) Scc Online Bom 9302.

observation made by the Bombay High Court that the concerned authorities of adjudicators, forums and tribunals would certainly look into genuine cases where inspite of making genuine efforts a promoter fails to complete the project would not mean that the Appellant promoter can de hors the terms and conditions of the agreement make out a case to explain the delay to absolve himself from the statutory liability. It is settled that a judgment has to be read as a whole and one cannot pick up one sentence de hors the context and say that the ratio of the said judgment is that in all cases de hors the terms and conditions of the agreement, issue of interest should be examined. In any view, much water has flowed under the bridge after this decision on the issue of interpretation of Section 18 which is analysed by me in subsequent paras while discussing the decision of the Supreme Court in the case of *Newtech Promoters and Developers V/s. State of U.P.*².

20. When the promoter agrees for a certain date of possession in the agreement, it is only after considering all the factors, namely time period required for obtaining various permissions, etc. This is further fortified by Section 11(3)(b) of the RERA Act read with Section 4(2)(l)(C). Therefore, the promoter cannot take recourse to any event which existed prior to the date of agreement to contend that the delay is beyond his control. With

² 2021 SCC Online SC 1044.

respect to the events post signing of the agreement, the promoter is deemed to have factored the same at the time of entering the agreement, unless it is an act of God. The promoter cannot absolve himself from the statutory interest under Section 18 by contending that there is delay on the part of various regulatory or approving authorities in issuing various permissions. The allottee is not concerned with delay of the promoter in getting the approvals on time. If there is default by the promoter in giving possession as per the terms of the agreement, then he is mandatorily required to compensate the allottee as per Section 18(1) of the RERA Act. The loss suffered on account of payment of interest under section 18 of the RERA Act by the promoter as a consequence of delay in getting the approvals is a subject matter between the promoter and the governing regulatory or statutory authorities for which the allottee cannot be made to suffer. These are natural incidents of real estate business which the promoter is very well aware while calculating the timeline for completion of the project and handing over of possession.

21. In this context, the Supreme Court in the case of ***Newtech Promoters and Developers Pvt. Ltd.(supra)*** in paragraphs 22 and 25 has expressly observed that the allottee has an unqualified right to claim interest under Section 18(1) of the RERA Act if the promoter fails to discharge his obligation in accordance with the terms and conditions of

the agreement. This unqualified right is not dependent on any contingencies or stipulations and therefore the legislature has consciously provided this right of refund as an unconditional absolute right to the allottee if the promoter fails to give possession within the stipulated time regardless of unforeseen events or stay order of the Court which is in either way not attributable to the allottee.

22. In view of above, the present appeal is to be dismissed with no order as to costs.

[JITENDRA JAIN, J.]