

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

**SECOND APPEAL NO. 180 OF 2024
WITH
INTERIM APPLICATION NO. 6716 OF 2024**

Park Xpress JV Through Its Partner
Mr. Shravan D. Agarwal } ..Appellant
V/S.
Sagar H. Saboo and Ors. } ..Respondents

**SECOND APPEAL (St.) NO. 4719 OF 2024
WITH
INTERIM APPLICATION NO. 6715 OF 2024**

Park Xpress JV Through Its Partner
Mr. Shravan D. Agarwal } ..Appellant
V/S.
Sagar H. Saboo and Ors. } ..Respondents

Mr. Sagar Sankpal, for the Appellant in both the Appeals.

CORAM : SANDEEP V. MARNE, J.

Dated : 22 March 2024.

P.C. :

1) In Second Appeal No. 180/2024, the Appellant has challenged the Judgment and Order dated 27 June 2023 passed by the

Maharashtra Real Estate Appellate Tribunal (**Appellate Tribunal**) confirming the order passed by the Regulatory Authority on 17 June 2019. By order dated 17 June 2019, the Regulatory Authority directed the Appellant to pay to the Complainant simple interest at the rate of 10.75% p.a. on the various amounts paid from time to time upto 30 August 2018 i.e. when the Occupancy Certificate was obtained.

2) I have heard Mr. Sankpal, the learned counsel appearing for the Appellant. He would submit that the cause of delay in completion of the Project was beyond the control of the Appellant. That Pune Municipal Corporation had issued stop work notice in respect of the Project which operated for nine long months. That issuance of the said stop work notice was not attributable to the conduct of the Appellant as the same was issued on account of occurrence of mishap/accident at the construction site. He would further submit that by Order dated 23 June 2017 passed by this Court, there was restriction on use of ground water for construction as well as on mining of sand. He would further submit that the Appellant has continued with the Project and has taken possession of the flat and therefore the observations made by the Apex Court in **M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh**¹ would not apply to the present case. According to him, the principles enunciated in the said judgment essentially apply to the case where the allottee opts for withdrawal from the Project and the interest can be awarded only on the amount of refund. Lastly, Mr. Sankpal would submit that the allottee took

¹ [Civil Appeal Nos.5745, 6749 and 6750 to 6757 of 2021]

possession of the flat and thereafter filed the complaint in April 2019 by way of afterthought. He would accordingly submit that the direction of the Regulatory Authority for payment of interest is therefore required to be set aside.

3) I have considered the submissions canvassed by Mr. Sankpal. So far as the issuance of stop cause notice by Pune Municipal Corporation is concerned, it cannot be said that the Appellant is not absolutely responsible for the same. If any accident/mishap occurs at the site leading to issuance of stop cause notice, the responsibility of delay in completion of the project would obviously come on the shoulders of the promoter. Undoubtedly, the allottee is not responsible for issuance of the stop work notice. So far as the reason of restraint order passed by this Court on use of ground water for construction and on mining of sand is concerned, the said pretexts are of general nature. It is for the Promoter to ensure that the required construction material is made available for completion of the project within the agreed time. The Promoter cannot be permitted to cite reasons such as non-availability of ground water or sand for the purpose of avoidance of liability to pay interest under Section 18, which liability is interpreted by the Apex Court in **M/s. Newtech Promoters and Developers Pvt. Ltd.** to be absolute and unconditional.

4) The submission of Mr. Sankpal that the principle enunciated by the Apex Court in **M/s. Newtech Promoters and Developers Pvt. Ltd** is applicable only in case where allottee opts

for withdrawal from project is concerned, the same appears, to my mind, to be totally misplaced. Section 18 of the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**) applies both, where the allottee seeks withdrawal from the project as well as when there is delay in completion of the project in respect of which, the allottee continues to participate.

5) The last submission of Mr. Sankpal about the allottee accepting possession of the Flat and filing of complaint before the Regulatory Authority is concerned, I do not see why the allottee should be prevented from doing so. If the allottee was to file complaint before the Regulatory Authority and keep on litigating with the Appellant, the same would have put the allottee to further losses as the interest liability of the Promoter would have been frozen on the date of procurement of Occupancy Certificate, whereas the monies paid by the allottee to promoter would have remained blocked. It was therefore in the interest of allottee to first take possession of the flat before filing of the complaint under Section 18 before the Regulatory Authority.

6) Taking overall conspectus of the case, I am of the view that no substantial question of law is involved in the Appeal. The Second Appeal is accordingly rejected with no order as to costs.

7) So far as Second Appeal (St.) No. 4719/2024 is concerned, the only difference is that the complaint of the allottee was entirely dismissed by the Regulatory Authority by Order dated 20 November

2020 holding the same as not maintainable as the same was filed after issuance of Occupancy Certificate. The Appellate Tribunal has rightly corrected the error committed by the Regulatory Authority by observing that there is no bar under Section 18 of RERA which prohibits an allottee from filing claim for interest after issuance of Occupancy Certificate.

8) Another difference in Second Appeal (St.) No. 4719 of 2014 is about the claim raised by the Appellant for having paid compensation of Rs.95,000/- to the allottee towards delay in completion of the Project. The first Appellate Court has applied its mind to the said defence taken by the Appellant and after conducting factual enquiry, it has arrived at the conclusion that only an amount of Rs.71,795/- was adjusted in the form of discount while demanding balance payment from allottee. The Appellate Tribunal has directed deduction of amount of Rs.71,795/- from the interest liability of the Appellant. I am not inclined disturb the said finding of fact recorded by the Appellate Court in respect of the difference amount of Rs.23,928/- in exercise of jurisdiction under Section 100 of the Civil Procedure Code.

9) Mr. Sankpal has strenuously attempted to submit that the in lieu of accepting the compensation of Rs.95,000/-, the allottee had executed an Undertaking/agreement with the Promoter not to raise any claim in respect of the sale transaction. Firstly, no such Agreement/Undertaking is produced before me. Perusal of the grounds raised in the Second Appeal would indicate that there is no ground of

waiver raised in the Second Appeal. It is not the contention of the Appellant in the Appeal that by executing such an Undertaking/agreement, the allottee waived off right to claim interest from the Appellant. In the absence of plea of waiver being raised in the Appeal, I do not think it necessary to entertain the Appeal on the basis of alleged Agreement/Undertaking. Therefore, even in Second Appeal (St.) No. 4719 of 2024, no substantial question of law is involved.

10) Both the Second Appeals are accordingly **rejected**. Interim Applications taken out therein also do not survive. The same also stand disposed of.

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[SANDEEP V. MARNE, J.]