

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 63 OF 2024**

Karan Chopra

.. Appellant

Versus

Skystar Buildcon Pvt Ltd

.. Respondent

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Mr. Manish Gala a/w Mr. Minil Shah i/b Mr. Nilesh Gala, for the Appellant.

Mr. Vikramjeet Garewal a/w Mr. Rupesh Geete & b Mr. Jaiveer Dhakan i/b Satyaki Law Associates, for Respondent.

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CORAM : SANDEEP V. MARNE J.**DATE : 5 FEBRUARY 2024.****P.C. :-**

1) This Appeal is filed challenging Judgment and Order dated 25 July 2023 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (**Appellate Tribunal**) in Appeal No. AT006000000053550, by which the Appeal has been partly allowed and the Order dated 21 December 2021 passed by Maharashtra Real Estate Regulatory Authority (**Regulatory Authority**) has been set aside and the complaint filed by the Appellant have been remanded to the Adjudicating Officer for quantification of compensation. Though Appellant has succeeded in the Appeal filed before the Appellate Tribunal, he has still challenged Tribunal's Order dated 25 July 2023 to the limited extent of not remanding the complaint to the Regulatory Authority for determination of Appellant's entitlement to interest under provisions of Section 18 (1) the Real Estate (Regulation and Development) Act, 2016 (**RERA**).

2) I have heard Mr. Gala, the learned counsel appearing for Appellant and Mr. Garewal, the learned counsel appearing for Respondent

3) After having considered the submissions canvassed by the learned counsel appearing for parties, the short issue that arises for consideration in the present Appeal is about refusal, rather failure, on the part of the Regulatory Authority to decide Appellant's claim for interest under provisions of Section 18 (1) of the RERA Act for delayed possession. Appellant filed complaint under Sections 12, 14 and 18 read with Sections 31, 71 and 72 of the RERA before the Adjudicating Officer, Maharashtra Real Estate Regulatory Authority in Form 'B'. That form is prescribed under Rule 7 of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interests, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules 2017 (**RERA Rules**) for filing the complaint with the Adjudicating Officer seeking compensation under provisions of Sections 12, 14, 18 and 19 of the RERA.

4) Section 18 of RERA provides for return of amount and compensation and reads thus:

“18. (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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub- section shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

5) Thus under Proviso to sub Section 1 of Section 18, when an allottee does not intent to withdraw from the project, he can raise a claim for interest for delay in handing over possession. On the other hand, under sub-section 3 of Section 18, the flat purchaser is entitled to claim compensation from the promoter for failure to discharge any other obligations imposed on him under the Act, Rules or Regulations. Thus, what can be claimed under sub-section 1 of Section 18 is the interest for delayed possession, whereas compensation can be claimed for failure to discharge other obligations under sub-section 3 of Section 18.

6) By now, the position is well established by the judgment of the Apex Court in ***M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of Uttar Pradesh***¹ that the jurisdiction to decide claim for interest under sub-section 1 of Section 18 is with the Regulatory Authority, whereas the jurisdiction to decide issue of compensation is in the realm of Adjudicating Officer under Section 71 of the RERA Act.

7) Appellant has booked two residential units by executing two separate registered Agreement for Sale dated 31 January 2014, under which the possession was to be delivered within 54 months of date of execution of

¹ (2021) 18 SCC 1

Agreements with further grace period of 9 months. Appellant was aggrieved by various acts of the Respondent-Promoter such as failure to procure full Occupancy Certificate, failure to provide physical and actual possession, modification/change of structural layout floor plans, area, dimensions etc. The Appellant accordingly filed complaint under Sections 12, 14 and 18 read with Sections 31, 71 and 72 of the RERA Act in Form 'B' (Rule 7) before the Adjudicating Officer with following prayers:

“a. That this Hon'ble Tribunal be pleased to direct the Respondents to obtain Full Occupation Certificate of the Building known as 'Sunteck City Avenue-I, Naharsingh Estate' together with exclusive right to use open areas attached to the said unit, proportionate share in the common areas, amenities and facilities of the said building and the right to use 2 car parking spaces on the property i.e. All that piece and parcel of land or ground together with chawls or structures thereon situate lying and being at Ram Mandir Road, Goregaon (west), Mumbai-400 104 bearing Survey No. 117, Hissa No. 2 correspondingly City Survey Nos. 117, 118/2, 118/3, 118/4 and 118/5 aggregating to 124.06 sq.mts.

*b. That this Hon'ble Tribunal be pleased to direct the Respondents to provide actual physical and actual possession of (i) Residential Units bearing No. 603 admeasuring about 809 sq. ft. carpet area and (ii) Residential Unit bearing Unit no. 604 admeasuring 857 sq.ft. carpet area on the 6 floor of the Building known as 'Sunteck City Avenue-I, Naharsingh Estate' together with exclusive right to use open areas attached to the said unit, proportionate share in the common areas, amenities and facilities of the said building and the right to use 2 car parking spaces on the (ground/podium/stilt) level of the **said property** i.e. All that piece and parcel of and or ground together with chawls or structures thereon situate lying and being at Ram Mandir Road, Goregaon (west), Mumbai-400 104 bearing Survey No. 117, Hisea No. 2 correspondingly City Survey Nos. 117, 118/2, 118/3, 118/4 and 118/5 aggregating to 124.06 sq.mts.*

*c. That this Hon'ble Forum be pleased to order and direct the Respondent not to modify and/or change and/or in any manner interfere with the structural layout, floor plans, area, dimensions and/or not to make any alterations in sanctioned plans, layout plans and specifications and the nature of fixtures, fittings, amenities plans of (i) Residential Units bearing No. 603 admeasuring about 809 sq. ft. carpet area and (ii) Residential Unit bearing Unit no. 604 admeasuring 857 sq.ft. carpet area on the 6th floor of the Building known as 'Sunteck City Avenue-I, Naharsingh Estate' together with exclusive right to use open areas attached to the said unit, proportionate share in the common areas, amenities and facilities of the said building and the right to use 2 car parking spaces on the (ground/podium/stilt) level of the **said property** i.e. All that*

piece and parcel of land or ground together with chawls or structures thereon situate lying and being at Ram Mandir Road, Goregaon (west), Mumbai-400 104 bearing Survey No. 117, Hissa No. 2 correspondingly City Survey Nos.117, 118/2, 118/3, 118/4 and 118/5 aggregating to 124.06 sq.mts.

d. This Hon'ble Tribunal by an order direct the Respondents to pay the Petitioner interest on delay in possession computed at the rate of 24% per annum on the total consideration paid by the Complainant upon the said flats bearing Flat nos. 603 and 604 computed from 1st January, 2017 till date and further interest at the rate of 24% per annum from the date of filing of the present complaint till realization of the said amounts;

e. That this Hon'ble Tribunal be pleased to direct the Respondent to forthwith hand over the latest Title Certificate along with the latest Public Notices, Search Reports and/or other ancillary documents in respect of the project "Sunteck City Avenue-I, Naharsingh Estate" and/or the said property with all the details of sanctioned plans, maintenance, if any paid, and/or any taxes, if any paid, by the Respondent.

f. This Hon'ble Tribunal by an order direct the Respondents to pay the monthly compensation of Rs.1,00,000/- per month towards compensation from the date of possession as promised i.e. 1st January, 2017 along with a further interest on the said amount from the date of filing of this complaint till realization thereof at the rate of 24% per annum.

g. That this Hon'ble Tribunal be pleased to direct the Respondents to pay a sum of Rs.25,00,000/- towards cost of the present Complaint i.e. as compensation caused for mental harassment and hardships arising from the repeated and perennial false disclosures made by the Respondent.

h. That this Hon'ble Tribunal be pleased to penalize the Respondents as per section 60 of RERA Act for giving false information as per section 4 of the Act.

i. That this Hon'ble Tribunal be pleased to revoke the permission/registration of the project with RERA as per section 7 of the said Act for violating the permissions given by competent authority.

j. That this Hon'ble Tribunal be pleased to order and direct the payment of Rs.5,00,000/- as legal costs.

k. Any other order as the nature and circumstances may require."

8) Though the Complaint was filed before the Adjudicating Officer, it came up before the Regulatory Authority on 12 August 2021 and the Appellant prayed before the Regulatory Authority for transfer of his complaint to the Adjudicating Officer for adjudicating the quantum of compensation. Accordingly, the Regulatory Authority passed Order dated

12 August 2021 transferring his case to the Adjudicating Officer for deciding the issue of compensation under Section 18 (3) of RERA. Appellant did not challenge the Order dated 12 August 2021 and the same attained finality. The Appellant thereafter prosecuted the complaint before Adjudicating Officer, who passed Order dated 21 December 2021 rejecting the complaint holding Appellant is not entitled to any compensation.

9) Appellant challenged the Order of the Adjudicating Officer before the Appellate Tribunal, which has remanded the complaint before the Adjudicating Officer holding that though Appellant is not entitled for compensation due to delay in delivery of possession, his claim for compensation on the grounds other than delay in possession is required to be adjudicated. To this limited extent, the Order of remand has been made before the Adjudicating Officer.

10) Appellant is aggrieved by the Appellate Tribunal's decision dated 25 July 2023 to the limited extent of non-remand of the part of the complaint to the Regulatory Authority for deciding claim for interest on delayed possession under Section 18 (1) of the Act.

11) In my view, the Appellant invited Order dated 12 August 2021 from the Regulatory Authority by urging before it that he desires to claim compensation under Section 18 (3) of the Act. It is Appellant who prayed that his claim for compensation be transferred to the Adjudicating Officer for adjudging the quantum of compensation. In this regard the observations made by the Regulatory Authority in para 5 of the Order dated 12 August 2021 reads thus:

“5. The complainant further stated that by filing this complaint, he is seeking reliefs towards compensation under Sections 12 and 18 of the RERA since the respondent has failed to handover possession of his flat on the agreed date of

possession mentioned in the agreement for sale and also made misrepresentation about the date of possession which caused mental harassment to him. Hence the complainant prayed to transfer this complaint to Ld. Adjudicating Officer/MahaRERA for adjudging the quantum of compensation.”

12) Apart from Appellant’s own request for transfer of the complaint to the Adjudicating Officer for determination of quantum of compensation, from perusal of the Complaint filed by the Appellant, it is clear that the same was filed purely for claiming compensation from Adjudicating Officer. The complaint was filed before Adjudicating Officer. It was filed in Form ‘B’ which is to be used only for claiming compensation and not for getting interest. This appears to be the reason why Appellant requested for transfer of the complaint to Adjudicating Officer.

13) Mr. Gala had attempted to urge that such a request was required to be made on 12 August 2021 by Appellant on account of Division Bench Judgment of this Court in ***Marvel Sigma Homes Pvt. Ltd. Vs. State of Maharashtra and Ors.*** Writ Petition (L) No. 3221 of 2020 in which this Court held *inter alia* that compensation under Section 18 (3) of the Act would also include claim for interest. Mr. Gala would submit that the distinction between claim for interest for delayed possession under Section 18 (1) and claim for compensation under Section 18 (3) came to be clarified subsequently by the Apex Court in its judgment ***Newtech*** (supra) on 11 November 2021. Mr. Gala has therefore submitted that request made by Appellant for transfer of complaint to Adjudicating Officer made on 12 August 2021 cannot be held against the Appellant.

14) However even after the judgment of the Apex Court in ***Newtech*** was delivered on 11 November 2021, Appellant continued agitating his complaint before Adjudicating Officer and did not urge before the

Adjudicating Officer that his claims be bifurcated by referring the claim for interest to Regulatory Authority while retaining the claim for compensation before Adjudicating Officer. Appellant took a calculated chance before the Adjudicating Officer, who proceeded to dismiss his complaint by Order dated 21 December 2021.

15) Even if the short time gap between delivery of the judgment by the Apex Court in **Newtech** (11 November 2021) and Order of the Adjudicating Officer (21 December 2021) is to be considered to the advantage of the Appellant, still his conduct post passing of Order by Adjudicating Officer does not save him from the consequences of the election/choice made by him. While filing his Appeal before the Appellant Tribunal, the Appellant attacked the Adjudicating Officer's Order dated 21 December 2021 on merits and did not raise a single ground to the effect that his claim for interest ought to be determined by the Regulatory Authority. After going through lengthy memo of Appeal (running into 47 pages) filed by Appellate Tribunal, I am unable to locate any grievance being raised therein about transfer of claim for interest to Regulatory Authority. Thus, even at the time of filing Appeal before the Appellate Tribunal, Appellant once again choose not to insist that his claim for interest be decided by the Regulatory Authority. The grievance appears to have been raised vaguely during the course of hearing before the Appellate Tribunal. Thus in absence of any pleading, Appellant sought to urge before the Appellate Tribunal that he wanted interest on account of delay in delivery of possession which claim can only be decided by Regulatory Authority and not by the Adjudicating Officer. The Appellant Tribunal has rejected the said vague submission by referring to Order dated 21 December 2021 and implied waiver of claim for interest for delay in delivery of possession.

16) After considering overall conspectus of the case, I am of the view that the Appellant has to blame himself for virtually giving up of claim for interest by praying for transfer of the complaint to Adjudicating Officer thereby restricting his claim for compensation under Section 18 (3) of RERA Act. He took a calculated chance before Adjudicating Officer by claiming compensation. Even in the Appeal memo filed before the Appellate Tribunal, he did not raise the issue of transfer of complaint to Regulatory Authority for deciding claim for interest.

17) This Court, in exercise of jurisdiction in Second Appeal under Section 58 of RERA cannot decide something which was never pleaded before the Appellate Tribunal. I therefore find that no substantial question of law is involved in the present Second Appeal.

18) Mr. Gala has relied upon judgment of the Apex Court in ***Nadakerappa Since Deceased By Lrs. & Ors. Vs. Pillamma Since Deceased By Lrs. & Ors.*** Civil Appeal Nos. 7657-7658 of 2017 decided on 31 March 2022 in which the Apex Court has held that an Order of remand cannot be passed as a matter of course. In my view, the judgment in ***Nadakerappa*** would have no application to the present case as the Order of remand is passed not only in favour of Appellant, but the Appellate Tribunal is not supposed to undertake the exercise of quantifying the amount of compensation. The Adjudicating Officer had decided only the claim for compensation for delay in delivery of possession. Appellant has other grievances with regard to non procurement of full occupancy certificate, modification of plans etc. based on which also claim for compensation is raised. Since the said claim was not decided by the Adjudicating Officer and the order of remand has been made by the Appellate Tribunal in Appellant's favour. It is therefore quite perplexing that the Appellant is raising grievance about an Order passed in his favour.

19) At one point of time, this Court felt as to whether the doors for the Appellant, (which are closed due to his own conduct) could be opened so as to enable him to claim interest for delay in delivery of possession. However, in the facts of the present case it is seen that the possession of the flat was agreed to be given by March 2020 and part occupancy certificate in respect of the building is issued in September 2020. Thus, the claim for interest is essentially for period of roughly 9 months which again is covered by Covid-19 pandemic in respect of which Circulars were issued by MahaRERA putting freeze on payment of interest. I am therefore not inclined to entertain the present Appeal by interfering in the Order passed by the Appellate Tribunal.

20) The Part occupancy certificate in respect of the building is received in September 2020. Appellant is apparently not showing interest in taking over possession of the flats by insisting that full occupancy in respect of the building is yet to be received. In my view it is in the interest of Appellant that he takes possession of the flats immediately as issuance of part occupancy certificate entitles him to occupy and reside in that flats. His claim for compensation for non-procurement of full occupancy certificate is already remanded to the Adjudicating Officer. Therefore, it is in the interest of the Appellant that he takes possession of both the flats immediately.

21) Since no substantial question of law is involved in the Appeal, no interference is warranted in the Order passed by the Appellate Tribunal. The Appeal filed by the Appellant is accordingly rejected.

[SANDEEP V. MARNE J.]