IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.525 OF 2024
WITH
INTERIM APPLICATION NO.11982 OF 2024

Vital Developers Pvt. Ltd. and Anr. ... Appellants
versus
Prashant Sane … Respondent

Mr. Makarand Raut with Ms. Hima Khuman for appellants.
Mr. Manohar Shetty (through VC) for Respondent.
Mr. Prashant Sane, Respondent present.

CORAM: N.J.JAMADAR, J.

DATE : 21 JANUARY 2026

ORDER :

1. This appeal under Section 58 of the Maharashtra Real Estate Regulatory Authority Act, 2016 (MAHARERA 2016) is directed against the judgment and order dated 9 May 2024 passed by the Real Estate Appellate Tribunal (the Appellate Tribunal) in Misc. Application No.807 of 2021 in Appeal No.53027 of 2021, whereby while partly allowing the appeal preferred by the Respondent – allottee, the Appellate Tribunal modified the order dated 21 December 2020 to the extent of payment of interest from 1 April 2019, being the agreed date of delivery of possession of the subject flat, instead of 31 December 2019 as ordered by MAHARERA in Complaint No.182099.

2. The Respondent – allottee had booked a flat in a project named 'Odima' situated at Chembur, Mumbai, then being developed by the Appellant

– Promoter. The total consideration for Flat No.1504 was agreed at Rs.1.06 Crores. An Agreement for Sale was executed on 15 November 2017, under the terms of which, the Promoters were to handover possession of the said flat to the allottee on or before 31 March 2019, with a stipulation for a grace period of nine months, or such further period as may be agreed between the parties. The Promoter failed to deliver possession of the subject flat within the period, as agreed. Thus, the allottee filed a Complaint being No.182099 before the MAHARERA.

3. By an order dated 21 December 2020, MAHARERA directed the Appellant to pay interest for the delayed period commencing from 1 January 2020, after accounting for the grace period of nine months from 31 March 2019, till the date of obtaining the occupation certificate. With regard to the contention of the complainant – allottee that, though the occupation certificate (OC) was obtained, yet the building was incomplete, MAHARERA was persuaded to hold that, in view of the issue of OC, the subject flat could be termed to be in a habitable state.

4. Being aggrieved, the allottee preferred an appeal before the Appellate Tribunal. By the impugned order dated 9 May 2024, the Appellate Tribunal interfered with the order of MAHARERA on the ground that the OC dated 12 June 2020 was subject to the condition, inter alia, that the promoter shall obtain a certificate under Section 270A of the Mumbai Municipal Corporation

Act, 1888. Water supply was provided by the Corporation on 8 April 2021, and, therefore, the allottee was entitled to interest from 1 April 2019 till 8 April 2021, though the possession was, in fact, delivered on 3 August 2022. The delay beyond 8 April 2021 was attributable to the allottee, and, thus, the allottee was not entitled to interest for delayed delivery of the subject flat from 8 April 2021 till 3 August 2022.

5. Being aggrieved, the Promoters have preferred this Appeal.

6. I have heard Mr. Raut, learned Counsel for the Appellant, and Mr. Shetty, learned Counsel for the Respondent, at some length. With the assistance of the learned Counsel for the parties, I have perused the impugned order, the order passed by the MAHARERA and the material on record.

7. Mr. Raut, learned Counsel for the Appellant, would urge that, the impugned order passed by the Appellate Tribunal suffers from manifest error of law, as the Appellate Tribunal erred in directing payment of interest under Section 18 of RERA 2016 from the date agreed for the delivery of possession, despite grace period of nine months having been specifically provided for by the parties. Secondly, the Appellate Tribunal lost sight of the fact that the OC was obtained on 12 June 2020 and the possession of the subject flat was offered to the allottee, as water supply was available at the project, though a certificate under Section 270A of the Act, 1888 was obtained at a later point of

time.

8. Laying emphasis on the provisions contained in Section 2(zf) of the RERA 2016, Mr. Raut would urge that the OC does not contemplate a certificate under Section 270A of the Act, 1888. Therefore, substantial questions of law in regard to the grave error in not excluding the grace period, as provided in Clause 9 of the Agreement for Sale, and mis-construction of the import of the OC under Section 2(zf) of the RERA 2016, arise for consideration.

9. In contrast, Mr. Shetty, learned Counsel for the Respondent, would submit that, from the perusal of the Appeal Memo, not a single substantial question of law is discernible. The issues sought to be canvassed by the Appellant essentially revolve around facts. Since the Appeal under Section 58 of the RERA 2016 is governed by the regime of Section 100 of Code of Civil Procedure, 1908, the appeal does not deserve to be entertained as it raises no substantial question of law.

10. There is no controversy over the jural relationship between the parties formed by the Articles of Agreement dated 15 November 2017 and the essential terms thereof. Under clause 9 of the said Agreement, under the caption ‘Possession and force mejeure’, it was, inter alia, provided that, unless prevented by force majeure event/s, the co-promoters will handover possession of the said flat to the allottee on or before 31 March 2019,

excluding the grace period of nine months or such further period as may be agreed between the parties, subject to the allottee making timely payments of the installments towards the purchase price for the ultimate sale of the said flat. The allottee claimed that, there was default on the part of the promoter to deliver the possession of the subject flat, as agreed.

11. In the view of the MAHARERA, the promoter were liable to pay interest under Section 18 of the RERA 2016, after the expiry of the grace period of 9 months, till the date of issue of OC. It is not in dispute that, part OC was issued by the SRA on 12 June 2020. Incontrovertibly, the said part OC was subject to the condition that a certificate under Section 270A of the Act, 1888 shall be obtained from the concerned Engineer. The said requirement was complied with, on 8 April 2021.

12. The Appellate Tribunal was of the view that the allottee was entitled to interest from 1 April 2019, without providing any benefit for grace period to the promoter, till 8 April 2021, on which date the water supply was provided by the Municipal Corporation, though part OC was issued on 12 June 2020. There is not much controversy over these dates as well.

13. The controversy between the parties, thus, revolves around the date from which the liability to pay interest under Section 18 of the RERA 2016 should commence and upto what date the interest be paid. Under Section 18 of the RERA 2016, 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 and the allottee does not intend to withdraw from the project, the allottee is entitled from the promoter interest for every month of delay till the handing over of the possession at the rate of MCLR of SBI plus 2%.

14. The submission sought to be canvassed by Mr. Raut was two fold. One, on account of the circumstances beyond the control of the promoter, the possession could not be delivered within the stipulated period, and, that constituted a force majeure event, so as to exclude the said period from the liability to pay interest. Two, the grace period was required to be excluded.

15. The first submission does not merit acceptance unreservedly. In view of the decision of the Supreme Court in the case of **M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P. & Ors.**[1], the allottee has an unqualified right to seek interest on the delayed handing over of possession of the flat, as agreed.

16. The Appellate Authority rightly referred to a Division Bench judgment of this Court in the case of **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors.**[2] wherein it was held that when the proposal is submitted, the Promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the

1 2021 SCC Online SC 1044
2 (2017) SCC Online Bom 9302

open market, the Promoter is expected to have a fair assessment of the time required for completing the project.

17. Thus, the submission sought to be canvassed by Mr. Raut premised on force majeure, does not carry any substance. It was the obligation of the promoter to deliver possession of the subject flat to the allottee in accordance with the terms of the contract and the failure to do so entailed the liability to pay interest under Section 18(1) of the RERA 2016.

18. To buttress the submission that the grace period was required to be excluded, Mr. Raut placed reliance on the judgments in the cases of Supertech Limited V/s. Rajni Goyal[3], Aaj Legal and Management Consultancy LLP V/s. Keltech Infrastructure Ltd.[4] and Kolkata West International City Pvt. Ltd. V/s. Devasis Rudra[5].

19. I have perused the aforesaid decisions. They do not address the controversy at hand. Even if clause 9 of the Agreement is construed rather generously, it cannot be said that the promoter was automatically absolved from the liability to pay interest on the delayed delivery of the possession from a mere stipulation for providing grace period. The Appellate Tribunal has held that there was no such agreement between the parties to exclude the grace period, in as much as the promoter had not sought the extension of period by addressing a communication to the allottee. It is also not a case that during

3 (2019) 17 SCC 681
4 2021 SCC Online SC 254
5 (2020) 18 SCC 613

the grace period of nine months or such other period as the parties agreed, the promoter delivered the possession of the subject flat. Once the promoter fails to deliver possession of the subject flat, even in the grace period, in the absence of a clear agreement to exclude the liability to pay interest for the grace period, the statutory liability under RERA 2016 must relate back to the date originally agreed. Lest, the object of RERA 2016 in making the promoter to adhere the timeline would be defeated.

20. As noted above, OC was obtained on 12 June 2020, much beyond the grace period. Resultantly, the liability to pay interest must relate back to the date on which the possession was agreed to be delivered.

21. The submission of Mr. Raut that the allottee could not have refused to accept the delivery of possession of the subject flat once OC was issued on the ground that a certificate under Section 270A of the Act, 1888 with regard to the supply of water was yet not obtained, also does not merit countenance. A mere offer to deliver possession of the subject flat, without complying with the necessary conditions, subject to which the OC has been issued, where those conditions bear upon the occupation of the subject flat as a habitable unit, cannot be considered as the compliance of the obligation of the promoter under the Act, 2016.

22. Section 270A of the MMC Act, 1888, inter alia, provides that no person shall occupy or permit to be occupied, or use or permit to be used, any

premises or part thereof until he has obtained a certificate from the Commissioner to the effect that there is adequate supply of water to the persons intending to occupy or use such premises. Thus, the existence of adequate water supply to the project in question was a pre-condition subject to which the OC was granted.

23. Incontrovertibly, water supply was provided by the Municipal Corporation to the project on 8 April 2021. In the face of statutory provisions, the submission of Mr. Raut that the promoter had made alternate arrangement of water, does not salvage the position. The language of Section 270A of the Act, 1888 is peremptory and precludes a person from occupying or permitting another person to occupy, any premises or part thereof, until he has obtained a certificate from the Commissioner about the availability of adequate water supply.

24. The contention based on parol evidence, with regard to the availability of water supply, to dilute the statutory requirements cannot be accepted. Thus, the substantial questions of law sought to be formulated on the ground that the definition of Occupation Certificate under Section 2(zf) of the RERA 2016 does not include a certificate under Section 270A of the Act, 1888, does not arise for determination.

25. The conspectus of aforesaid consideration is that, this Court does not find that any substantial question of law arises for determination in this

Appeal. Resultantly, the appeal deserves to be dismissed.

26. Hence, the Second Appeal stands dismissed.

27. In view of the dismissal of the Second Appeal, IA No.11982 of 2024 also stands dismissed.

(N.J.JAMADAR, J.)