

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI**

**APPEAL NO. AT006000000010735 OF 2018**

**M/s. L & T Parel Project LLP**

**(JV with ORDPL)**

L & T House, N. M. Joshi Marg,  
Ballard Estate, Mumbai – 400 001.

... *Appellant*

~ *versus* ~

**1. Ms. Nirmala Gill**

14, Ramnagar Colony, Bavdhan,  
Pune – 411 021.

**2. M/s. Omkar Realtors &**

**Developers Pvt. LTd. (ORDPL)**

**3. M/s. Darshan Realtors Pvt. Ltd.**

Omkar House, Off. Eastern Express Highway,  
Opp. Sion Chunnabhatti Signal,  
Sion (East), Mumbai – 400 022.

... *Respondents*

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*Mr. Rubin Vakil a/w. Saloni Sulakhe, Advocate for Appellant.*

*Mr. J. P. Sen, Senior Advocate for Respondent No. 1.*

*None for Respondent Nos. 2 and 3 (Ex-parte).*

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**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J)**

**& DR. K. SHIVAJI, MEMBER (A)**

**DATE : 12<sup>th</sup> FEBRUARY 2024**

**(THROUGH VIDEO CONFERENCE)**

**JUDGEMENT [PER: Dr. K. SHIVAJI, MEMBER (A)]**

Captioned appeal has been preferred under Section 44 of The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "The Act") seeking reliefs *inter alia* to quash and set aside the order dated 4<sup>th</sup> September 2018 passed in complaint No. CC



0060000000 54619 by learned Member and Adjudicating Officer, Maharashtra Real Estate Regulatory Authority, (MahaRERA), wherein Appellant along with Respondent nos. 2 & 3 have been directed *inter alia* to pay interest on the amount paid by Respondent no. 1.

2. Appellant along with Respondent nos. 2 & 3 are constructing a duly registered real estate project namely the "Crescent Bay", located at Parel, Mumbai, (in short said project). Respondent nos. 2 and 3 are JV partners of appellant promoter. Respondent no. 1 is purchaser of flat in the said project and is complainant before MahaRERA. For convenience, appellant and respondent nos. 2 & 3 will be addressed hereinafter collectively as promoters. Whereas Respondent no. 1 will be addressed as complainant in their original status before MahaRERA.

**3. Brief background giving rise to the filing of the captioned appeal: -**

a. Complainant booked flat no. 2803 of tower "T4" of the promoter's said project by executing and registering agreement for sale (AFS) dated 31<sup>st</sup> March 2015 between complainant and promoters (appellant and respondents nos. 2 and 3 collectively) for total lump sum consideration of ₹ 4,03,78,720 as mentioned in the agreement. According to clause no. 15.1 of the said agreement for sale, promoters, upon receipts of all the dues, have agreed to handover possession of the said booked flat by 30<sup>th</sup> September 2017 with grace period of 6 months and further provided for reasonable extension on account of certain force majeure events as set out in clause 15.1 of the agreements for sale.

b. On account of alleged delay in delivery of possession within the agreed timeline, captioned complaint came to be filed by respondent



no.1 before MahaRERA seeking various reliefs *inter alia* direction to promoters to pay interest under Section 18 of the Act till the time of the receipt of the completion certificate under the BMC Act as well as to provide all the agreed amenities together with the facilities stipulated in the agreement for sale.

- c. Promoters appeared before MahaRERA and contended that promoters have completed construction of the said building and obtained part occupation certificate on 15<sup>th</sup> March 2018. Thereafter, Complainant was offered possession of the booked flat on 29<sup>th</sup> March 2018 to take possession of the said flat after making payment of the balance amount due. However, complainant refused to take possession by contending that clubhouse was not operational, and water connection has not been provided as per the BMC Act.
- d. Upon hearing the parties, learned Member and Adjudicating Officer, MahaRERA passed the impugned order dated 04<sup>th</sup> September 2018 directing Appellant and Respondent Nos.2 and 3 *inter alia* to pay Respondent No.1 complainant interest on her investment i.e. consideration amount of Rs. 4,03,87,720/- and TDS amount from 01<sup>st</sup> April 2018 to 31<sup>st</sup> August 2018.
- e. Aggrieved by this order, appellant preferred the instant appeal seeking various reliefs *inter alia* to quash and set aside the impugned order dated 4<sup>th</sup> September 2018.
- 4.** Respondent nos. 2 and 3 failed to appear despite being duly served. Hence, the appeal has proceeded *ex parte* against respondent Nos. 2 and 3.
- 5.** Heard Mr. Rubin Vakil along with Ms. Saloni Sulakhe, learned counsel appearing for appellant and Mr J. P. Sen, learned senior counsel for respondent No. 1 *in extenso*.

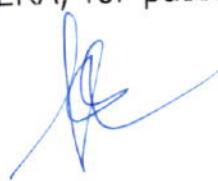


6. Learned counsel for appellant sought to allow the present appeal by submitting that; -

- a. Promoters have already completed the construction of the said building and have also secured a part occupation certificate on 15<sup>th</sup> March 2018 as contemplated under Section 2(zf) of the Act. Appellant has also offered complainant to take possession of the subject flat on 29<sup>th</sup> March 2018 after making payment of the balance amount within the period contemplated under the agreement for sale. Therefore, appellant has complied with its obligation to offer possession to complainant within the agreed time in terms of the terms of the agreement and has not violated Section 18 of the Act. However, it is the complainant, who has refused to take possession and did not clear the outstanding dues. Therefore, Complainant was bound under Section 19(10) of the Act to take possession within two months from the date of occupancy certificate.
- b. However, MahaRERA has held that there is delay in handing over the possession of the subject flat, because the water connection from the Municipal Corporation was actually provided only on 04<sup>th</sup> July 2018. Thus, the complainant has been awarded interest for the delay from 01<sup>st</sup> April 2018 to 31<sup>st</sup> August 2018 on the paid amounts.
- c. But appellant has made arrangements for adequate water supply to all the units in the building including to the said flat right from the date, when the possession was offered to complainant on 29<sup>th</sup> March 2018. Thus, the building has sufficient water, sanitation and electricity supply. Therefore, there is no delay whatsoever in handing over the said flat. However, MahaRERA has failed to appreciate that the said building has enough water supply and not recognised the fact that the water connection was actually delayed by MCGM itself and not by appellant.



- d. Impugned order has failed to consider that appellant has made all the required efforts and completed all the formalities to secure water supply connection from MCGM promptly upon receipt of the occupation certificate. However, this got delayed up to 04<sup>th</sup> July 2018 even after vigorous and diligent follow-ups on account of road cutting and road widening in the locality and the said delay was not on account of any failure or default of the appellant promoter. Thereby, the purported delay alleged in the complaint is on account of factors beyond the control of promoters and appellant is entitled to such extensions of time as contemplated under the Clause 15.1 of the agreement for sale. Therefore, there is no delay in delivery of possession of the subject flat.
- e. Even after the offer to take possession upon the receipt of the occupation certificate, the complainant has not taken possession of the flat by raising baseless and frivolous reason and has also not made payment of the amount contractually agreed to. Thus, the impugned order is *ex facie* contrary to Section 19 (10) read with Section 72 of the Act and other provisions of the Act.
- f. Impugned order passed by MahaRERA was in the capacity as Adjudicating Officer and the award of interest for purported delay, is compensatory in nature. Therefore, there is no necessity for granting additional compensation in the instant case. Moreover, the power of the Adjudicating Officer is confined to adjudging compensation only and not for any reliefs sought for other than compensations. However, in the instant case, relief sought is *inter alia* for interest for the delay in delivery of possession. Therefore, in view of the judgment of the **Hon'ble Supreme Court in the case of M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of U.P and Ors.**, impugned order is *ex facie* passed without the jurisdiction of MahaRERA, for passing the

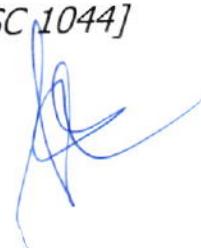


said impugned order in the capacity as Adjudicating Officer. Thus, the impugned order is liable to be set aside on this ground alone.

g. Upon the receipt of the part occupancy certificate on 15<sup>th</sup> March 2018, appellant has applied for the certificate required under Section 270A of the BMC Act and sought supply of permanent water connection. However, the water supply connection got delayed due to road excavation permission and certain objection from the local slum dwellers denying access for excavation, which was applied on 03<sup>rd</sup> May 2018 itself. After diligent follow-up, MCGM issued certificate dated 07<sup>th</sup> June 2018 certifying the water supply connection through the newly laid pipeline and issued P-form on 14<sup>th</sup> June 2018. Eventually, metered water supply connection was commenced to the said building tower of the promoters project from 04<sup>th</sup> July 2018.

h. Aforesaid documents reveal that purported delay in obtaining water connection is beyond the reasonable control of the promoters and these are within the provisions of clause 15.1 of the agreement, possession date duly extended to 04<sup>th</sup> July 2018 therefore, there is no delay in handing over possession of the subject flat and promoters have no liability under Section 18 of the Act.

i. Impugned order passed by MahaRERA contains contradictory findings, more specifically, on one hand impugned order concludes that flat was ready for occupation on 04<sup>th</sup> July 2018 and on the other hand, interest for the delay has also been granted to be paid to complainant from 01<sup>st</sup> April 2018 till 31<sup>st</sup> August 2018 and erroneously relied upon judicial pronouncements; "*M/s. Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P & Ors.*" [2021 SCC OnLine SC 1044]



j. Accordingly, the impugned order dated 04<sup>th</sup> September 2018 passed by MahaRERA for awarding interest payment be quashed and set aside with compensatory costs.

7. Per Contra complainant submits that -

- a. Promoter itself has submitted that promoters have promised certain amenities including water supply, sanitation, sky garden with jogging track, swimming pool, state of the art gym and spa, sauna. However, these amenities were not ready for delivery even on the stipulated date in the agreement as on 30<sup>th</sup> September 2017 nor even after the maximum period of six months of grace period as on 31<sup>st</sup> March 2018.
- b. Part occupancy certificate dated 15<sup>th</sup> March 2018 is qualified by various material conditions including *inter alia* for basic amenities of water supply as that of the

*"3. The certificate under Section 270A of MBC Act shall be obtained from A.E.W.W – 'F/S' ward and a certificate copy of the same shall be submitted to this office."*

Whereas the "Section 270A of the BMC Act stipulates for Private Water Supply legal requirements, being reproduced below as; -

*[270A. Premises **not to be occupied without** Commissioner's certificate in respect of adequate water supply-*

**No person shall occupy or permit to be occupied,** or use or permit to be used, any premises or part thereof constructed or reconstructed after the date of the coming into force of the Bombay Municipal Corporation (Amendment) Act, 1953, until he has obtained a certificate from the Commissioner to the effect that there is provided within, or within a reasonable distance of, the premises a supply of pure water to the persons intending to occupy or use such premises or, where the premises are situated within any portion of [Brihan Mumbai] in which a public notice has been given by the Commissioner under section 141, **until he has obtained a certificate from the Commissioner to the effect that a supply of pure water has been provided** for the premises from a municipal water work.]"

- c. It is admitted position that municipal water supply connection was made available to this building only on 04<sup>th</sup> July 2018 and the certificate in respect thereof was issued on 14<sup>th</sup> August 2018. Therefore, it was *prima facie* illegal for promoter to offer and permit occupation of any of the units in the said building without complying the legally binding requirements for prior compliance of Section 270A of the BMC Act of prior water supply connection. Therefore, complainant had declined the said illegal offer of appellant to take possession for want of *inter alia* water supply connection of BMC. Whereas admittedly, permanent water connection was granted only on 14<sup>th</sup> August 2018.
- d. Moreover, the Section 2(zf) of the Act defines the occupation certificate as "*the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws which has provision for civic infrastructure such as water, sanitation and electricity.*"
- e. It is thus clear that only where the provisions have been made for civic infrastructure including water supply then only, an occupation certificate satisfy the requirements of Section 2(zf) of the Act.
- f. In the present case, part occupancy certificate dated 15<sup>th</sup> March 2018 has specifically stipulates *inter alia* a prerequisite condition of "***may be occupied on the following conditions which included the issuance of certificate under Section 270A of the BMC Act.***" Admittedly, the certificate has been issued only on 14<sup>th</sup> August 2018.
- g. Appellant Promoter has belatedly claimed benefits of the force majeure and extension of time under Clause 15.1 of the agreement for sale, which is entirely misconceived by contending that this delay has occurred on account of alleged road cutting without any supporting



document and therefore, appellant promoter is not entitled for any extension of time in the name of purported force majeure event, more particularly in view of the binding judicial pronouncements of the Hon'ble Bombay High Court dated 14<sup>th</sup> October 2022 in the case of Subodh M. Joshi V/s. MCGM & Ors. in Writ Petition (L) No. 21683 of 2022.

h. In view of above, complainant urged that impugned order suffers from no infirmity and appeal is liable to be rejected with compensatory costs.

- 8.** From the rival pleadings, submissions and documents relied upon by the parties, following points arise for our determination in this appeal and we have recorded our findings against each of them for the reasons to follow: -

POINT(S)	FINDING(S)
1. Whether Appellant Promoter establishes that possession of flat was delivered as per the agreed timeline in terms of the agreement for sale?	In the negative.
2. (a) Whether complainant is entitled for reliefs/ interest under Section 18 of the Act on account of purported delay in delivery of possession?  (b) If yes, then, for what period?	In the affirmative.  As per the order.
3. Whether the impugned order is sustainable in law?	As per the order.
4. Whether impugned order calls for interference in this appeal?	As per the order.

## R E A S O N S

### Points 1: Possession status:

- 9.** It is not in dispute that complainant has booked flat no. 2803 in the appellant Promoter's said project and agreement for sale dated 31<sup>st</sup> March 2015 has also been executed/ registered between the parties on 31<sup>st</sup>



March 2015. The project under reference is duly registered before MahaRERA under the Act of 2016. Therefore, under the provisions of the Act 2016, appellant is promoter. Whereas Respondent No.1 is an Allottee.

- 10.** According to the agreement for sale, promoters have agreed to deliver possession of the subject flats on or before 30<sup>th</sup> September 2017 with a grace period of six months and further reasonable extension on account of the factors set out in clause 15.1 of the agreement and upon payment of all the amounts due payable by complainant. Therefore, even after adding the maximum grace period of six months, promoters have agreed to handover possession of the subject flat after the receipt of occupation certificate including after providing the basic amenities of permanent water supply connection duly certified by the municipal corporation before the 31<sup>st</sup> March 2018.
- 11.** However, it is the admitted position of the parties that only a conditional part occupation certificate has been received on 15<sup>th</sup> March 2018, which stipulates the specific requirements of having prior existence of basic facility of the water supply together with certificate under Section 270A of the BMC Act before the building is permitted to be occupied. Learned counsel for the promoter himself during the argument submits that permanent water supply connection from MCGM was secured only on 04<sup>th</sup> July 2018 and the required certificate under Section 270A of the BMC Act was issued on 14<sup>th</sup> August 2018.
- 12.** In view of above, it is crystal clear that possession of the subject flat was not handed over after completion of the project and upon receipt of the occupation certificate satisfying the requirement of Section 2(zf) of the Act before 31<sup>st</sup> March 2018 as per the agreed timeline in the agreement for sale duly executed between the parties on account of the following:-



- a. Legal possession of the subject flat can be handed over for occupation only after the receipt of fully complied occupational certificate duly issued by the competent authority, which is MCGM in the instant case. However, the Occupational certificate dated 15<sup>th</sup> March 2018 clearly stipulates conditions *inter alia* for the requirement for the prior receipt of certificate under Section 270A of the BMC Act. Whereas admittedly, this certificate has been received only on 14<sup>th</sup> August 2018, which is much later than the agreed timeline of 31<sup>st</sup> March 2018.
- b. Diligent perusal of Section 270A of the BMC Act also clearly requires *inter alia* that **no person can occupy any premises without the prior certificate** of the Commissioner in respect of adequate water supply. Whereas this certificate was obtained by promoter on 14<sup>th</sup> August 2018 after the water supply connection was made available on 04<sup>th</sup> July 2018.
- c. Bare perusal of Section 2(zf) of the Act itself clearly stipulates the prior existence of the required basic civic infrastructures such as water supply, sanitation, electricity etc. for a qualified occupancy certificate and to entitle promoter to offer legal possession.
- d. The Hon'ble Bombay High Court has also deprecated the issuance of part occupation certificate by the Municipal Corporation without prior existence of basic amenities more particularly the permanent water supply connections etc. vide para 19 of the judgement in the case of **Subodh M. Joshi Vs. MCGM & Ors.** as being reproduced hereunder.

*"19. We intend to pass a direction in future that no Occupation Certificate is to be issued unless the developer can demonstrate that he has already made preparations by laying the appropriate pipelines for connecting to the municipal mains. In high rise buildings all lifts*



(not construction elevators or construction lifts) must be in full working order."

- e. Learned counsel for promoter submit that appellant had made arrangement for adequate water supply through water supply tankers. However, appellant has failed to place any documentary evidence demonstrating the existence of such facility to this effect *inter alia* the water supply receipts etc, on record. Moreover, the provisions of the Act and also the BMC Act do not entitle promoter to offer legal possession based on such temporary water supply arrangement.
- f. Perusal of provisions under Section 270A of the BMC Act reveals the very categorical legal requirements that premises shall not be occupied without the prior certificate of Commissioner's in respect of the adequacy water supply. Accordingly, the Act does not provide any scope for any other substituted temporary arrangement/s for the permanent water supply connection and also without the requisite Commissioner's certificate to this effect. It is admitted position that this certificate has been made available only on 14<sup>th</sup> August 2018 and not before the agreed timeline of 31<sup>st</sup> March 2018. Therefore, the contention of the learned counsel for the promoter is legally not tenable.
- g. It is also not disputed that the other amenities agreed by the promoters in the agreement for sale including the swimming pool, gym etc. have also not been ready till the agreed timeline of 31<sup>st</sup> March 2018.
- h. In view of above, the legally binding conditions stipulated in the part occupation certificate for the availability of a duly sanctioned and functional water supply connection along with the required certificate under Section 270A of the BMC of the Commissioner was fulfilled only on 14<sup>th</sup> August 2018. Accordingly, it is more than evident that subject flat has not been handed over by the promoters before the stipulated



timeline in the agreement. Accordingly, we answer point 1 in the negative.

**Points 2. (a), 2. (b), 3 and 4: Reliefs status under Section 18:**

**13.** These points are interlinked and therefore, have been considered together as hereunder.

**14.** The principal controversy between the parties revolves around the provisions of Section 18 of the Act. Therefore, the same is being reproduced here as follows: -

**"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."

**15.** Admittedly, promoter has agreed to deliver possession of the subject flats by 31<sup>st</sup> March 2018. But promoter has failed to deliver the possession within the agreed timeline. In view of the delay in delivery of the possession of the subject flats, Section 18 of the Act will be attracted.

**16.** Section 18 of the Act specifically delineates the importance of agreement for sale for the purpose of assessing delay in handing over possession, which may be due to discontinuation of business as developer **or for any other reasons**. On meticulous examination of Section 18, it can be seen



that under Proviso to Sub section (1) of Section 18, if, Promoter fails to complete the project or is unable to deliver possession of apartment, plot or building by agreed time and allottees do not intend to withdraw from the project then, complainant shall be paid by the promoter, interest for every month of the delay, till the handing over of the possession, at such rate as may be prescribed.

- 17.** Explaining these causes for delay in completion of project with permanent water supply connection from the MCGM, learned counsel for appellant submits that promoter has applied for water supply connection to MCGM promptly upon the receipt of occupation certificate. However, this got delayed on account of various factors beyond the control of the promoter including due to road cutting and road widening in the locality, resistance from the local slum dwellers. Thus, the delay was not due to the fault of the promoters and the appellant promoter is entitled to such extensions of time as contemplated in Clause 15.1 of the agreement for sale, which has been contractually agreed upon by the complainant itself.
- 18.** Per Contra, complainant submits that the contention of the promoter is not legally tenable in view of the fact that with no stretch of imagination the said delay on the part of the MCGM or due to resistance from the local slum dwellers for road cutting etc. can be termed as the force majeure events as defined in Clause 15.1 of the agreement.
- 19.** In addition, learned counsel for the complainant further submits that the prior requirements of basic amenities including that of permanent water supply connection duly certified by MCGM under section 270 A of BMC Act including in view of the provisions under section 2 (zf) of the Act and even based on the conditions stipulated in the part occupation certificate itself, it is legally prerequisite before the said building is permitted to be occupied. Learned counsel in support of his case, placed reliance on the



judgement. Subodh M. Joshi V/s. MCGM & Ors. in Writ Petition (L) No. 21683 of 2022 of the Hon'ble Bombay High Court dated 14<sup>th</sup> October 2022.

- 20.** To explain the delay, learned counsel for the appellant promoter has come with a case that reasons were **beyond its control** and therefore, delay in possession is covered as per agreement and therefore complainant is not entitled for relief under section 18 of the Act.
- 21.** However, the contentions of the promoter are legally not sustainable on account of the followings; -
- a. The Hon'ble Supreme Court in para nos. 25 and 78 of its judgment in the case of **M/s. Newtech Promoters and Developers Pvt. Ltd vs. State of Uttar Pradesh & Ors. [2021 SCC Online 1044]** dated 11<sup>th</sup> November 2021 has clarified that if Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, then, Allottee's right under the Act to seek refund/ claim interest for delay is unconditional & absolute, regardless of unforeseen events or stay orders of the Court/Tribunal. Relevant abstract is being reproduced below for ready reference.
- "25. The unqualified right of the Allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the Allottee, if the Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement **regardless of unforeseen events or stay orders** of the Court/Tribunal, **which is in either way not attributable to the Allottee/home buyer**, the Promoter is under an obligation to refund the amount on demand with interest at the rate

prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the Allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

In para 78 of this Judgment- ".....The proviso to Section 18(1) contemplates a situation where the Allottee does not intend to withdraw from the Project. In that case, he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the Allottee to proceed either under Section 18(1) or under proviso to Section 18(1)....."

- b. Accordingly, it has been held that the rights of Allotees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including any other reasons even factors beyond the control of the Promoter.
- c. The Hon'ble Bombay High Court, in the case of (Promoter company itself) **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302]** in para 119, further held that "While 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 open market, the Promoter is expected to **have a fair assessment of the time required for completing the project....**".
- d. Accordingly, it is evident that Promoter is inherently better equipped about market/project related relevant information and is structurally at advantageous position in as much as the information about the said project updates are concerned. Therefore, Promoter is liable to provide



unambiguous and expressed/ definite information about project completion date / possession delivery date at the time of booking itself.

- e. Moreover, these delays in project completion and consequent delay in delivery of possession of the subject flat are not attributable to allottee and delivery of possession in timely manner is the contractual commitment of promoter under the agreements for sale. Therefore, promoter is legally liable to pay interest at prescribed rate for the period of delay in delivery of possession under the section 18 of the Act.
- f. Thus, appellant has failed to demonstrate its stated contentions of delay and the other causes. Therefore, grounds raised by appellant in the captioned appeal, lack substance, devoid of merits and are legally not sustainable. Thus, appellant cannot deny the accrued rights under Section 18 of the Act to Allottees, especially because the rights so accrued to allottees under Section 18 are unconditional, unqualified and absolute.

**22.** Upon consideration of foregoing discussions, it is crystal clear that the promoter has failed to deliver possession of the flat as per the contractual commitments stipulated in the agreement for sale despite being responsible for timely delivery of possession of the booked flat. Therefore, promoter has violated the statutory provisions under Sections 18 of the Act on this count.

**23.** It is also important to note that the project has been registered under the Real Estate (Regulation & Development) Act, 2016 ("the Act), which provides several welfare provisions including for greater accountability towards consumers to protect consumers as contemplated in the statement of Objects and Reasons of the Act. Whereas it is distressing to note that there is undue and inordinate delay in delivery of the possession of the subject flats despite payment of substantial amounts by the



complainant. As a result of this, complainant continues to be deprived of her legitimate entitlement to get the possession of the flat in time.

**24.** Regulation 39 of Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 further stipulates inherent powers of the Authority. It reads as under; -

“Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.”

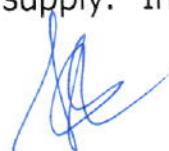
Similarly, Regulation 25 of Maharashtra Real Estate Appellate Tribunal, 2019 speaks about saving of inherent powers of the Tribunal; -

“25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal.”

**25.** It means the Regulatory Authority and the Appellate Tribunal have inherent powers under the Regulations framed under RERA Act, 2016 to pass appropriate Orders, which are necessary to meet the ends of justice.

**26.** In view of the foregoing findings herein above and after considering overall facts, circumstances as well as the context of the case more particularly in view of deficiencies and the non-compliances including the statutory breaches on the part of the promoter under Section 18 of the Act, complainant is entitled for interest at prescribed rate for the delay in delivery of the possession of the subject flat from 1<sup>st</sup> April 2018 onwards.

**27.** The promoter has secured permanent water supply connection on 04<sup>th</sup> July 2018 and certificate under Section 270A of the BMC Act on 14<sup>th</sup> August 2018. Whereas Section 2(zf), defining the Occupancy Certificate requires the provisions of the permanent water supply. In view of this,



learned counsel for the appellant further submits that the said building was available, has already been offered for possession to complainant by promoter and water supply connection was also provided on 04<sup>th</sup> July 2018. Therefore, he submits that in any case appellant is not liable to pay interest beyond 4<sup>th</sup> July 2018 after the provision of permanent water supply connection in the said building. Accordingly, the impugned order of MahaRERA directing promoters to pay to complainant the interest on her total paid amounts from 01<sup>st</sup> April 2018 till 31<sup>st</sup> August 2018 requires to be corrected for payment of interest for delay.

- 28.** However, perusal of the legal requirements of 'Section 270A of the BMC Act clearly stipulates for Private Water Supply and the Premises **not to be occupied without** Commissioner's certificate in respect of adequate water supply, more particularly prescribing 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 a supply of pure water has been provided** for the premises from a municipal water work."
- 29.** Therefore, it is the legal requirement under the BMC Act that said building may be occupied only after the fulfilment of the legal requirement inter alia which included the issuance of certificate under Section 270A of the BMC Act and this certificate of the BMC is issued only on 14<sup>th</sup> August 2018 in the instant case. Therefore, the building was available for occupation on 14<sup>th</sup> August 2018.
- 30.** In view of the foregoing reasons, it is crystal clear that promoter is liable to pay interest at prescribed rate for the delay in delivery of the possession from agreed date of 01<sup>st</sup> April 2018 till 14<sup>th</sup> August 2018 only and not till 31<sup>st</sup> August 2018 as directed by MahaRERA vide its impugned order dated 04<sup>th</sup> September 2018 on the paid amounts. Thus, the



impugned order is not in accordance with the provisions of the Act and suffers from infirmities, is not sustainable. Accordingly, it is liable to be interfered in this appeal and needs to be modified to this extent. Accordingly, we answer **points 2. (a), 2. (b), 3 and 4** as above and proceed to pass order as follows: -

**ORDER**

- a. The captioned Appeal No. AT0060000000 10735 is partly allowed.
- b. The Impugned order dated 04<sup>th</sup> September 2018 passed in Complainant no. CC 006 000000 54619 stands modified as hereunder: -
  - i. *The respondent is directed to pay interest to the complainant from 01<sup>st</sup> April 2018 till 14<sup>th</sup> August 2018 on the actual amount paid by the complainant towards the cost of the said flat at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of Section 18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder.*
- c. The remaining parts of the captioned impugned order are confirmed.
- d. No order as to costs.
- e. In view of the provisions of Section 44(4) of the Act of 2016, a copy of the Judgment be sent to the parties and MahaRERA.



(Dr. K. SHIVAJI)



(SHRIRAM. R. JAGTAP, J.)