

उ0प्र0 भू-सम्पदा विनियामक प्राधिकरण, क्षेत्रीय कार्यालय, गौतमबुद्धनगर।

सुनवाई पीठ-02,

उपस्थिति :- श्री बलविन्दर कुमार, सदस्य (रेरा)

शिकायत संख्या : 6201812810

देवाशीष मुखर्जी निवासी डी-6/4 रेल विहार निति खण्ड-3, गाजियाबादवादी

बनाम

अंसल अर्बन कान्डोमिनिम्स प्रा.लि., पता- 115, अंसल भवन, के.जी. मार्ग नई दिल्ली..... प्रतिवादी

अधि-निर्णय

प्रस्तुत वाद वादी द्वारा प्रतिवादी के विरुद्ध जमा धनराशि पर विलम्बित अवधि का ब्याज व कब्जा दिलाये जाने हेतु संस्थित किया गया है।

संक्षिप्त में वादी का कथन है कि वादी का कहना है कि प्रतिवादी द्वारा संचालित परियोजना सुशांत एक्वापालिश गाजियाबाद में जून 2015 में फ्लैट संख्या 6/1 एस 3बी बुक किया था, जिसके एवज में वादी ने प्रतिवादी को रु0 28,00,000/- भुगतान किया था। वादी व प्रमोटर के बीच हुये हस्ताक्षरित अनुबंध पत्र दिनांक 12 अगस्त 2015 में अंकित कब्जा 36 माह तथा 6 माह ग्रेस पीरियड अर्थात जनवरी 2019 है। अतः वादी द्वारा फ्लैट का कब्जा व विलम्ब के लिए क्षतिपूर्ति दिलाये जाने की याचना किया गया है।

वादी ने वादपत्र के समर्थन में आवंटित पत्र, अनुबंधपत्र, प्रतिवादी को भुगतान की गयी धनराशि की रसीदें, की छायाप्रति दाखिल किये हैं।

प्राधिकरण की ओर से प्रतिवादी को नोटिस जारी किये गये और जिसकी तामीला प्रतिवादी पर सम्यक रूप से की गयी। प्रतिवादी अधिवक्ता द्वारा दाखिल लिखित प्रतिवादपत्र में अंकित किया गया है कि शिकायतकर्ता को 18 माह में कब्जा प्रदान कर दिया जाएगा।

सुना एवं पत्रावली का अवलोकन किया। उपरोक्त विश्लेषण से स्पष्ट है कि वादी अपनी यूनिट का कब्जा चाहता है और जब तक उसकी यूनिट नहीं दी जाती



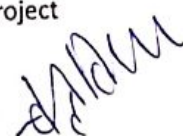
है, तब तक उसे जमा धनराशि पर ब्याज दिलाया जाये। इस सम्बंध में उल्लेखनीय है कि :-

Under the Act, obligation of promoter has been provided under Sect 11 (4), which reads as: *The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

On the other hand, rights and duties of allottee have been clearly provided under the Act. Sub-section 4 of Section 19 Read as under; (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made there under.

Besides, Section 18 (1) 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; 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.

If we read these provisions conjointly, the language of these provisions suggest that if the promoter/developer fails to fulfill his obligations to handover the possession as per terms of the agreement, the allottee is entitled to claim refund. However, different Authorities set up under the Real Estate (Regulation & Development) Act, 2016 across the country are taking a balanced /pragmatic view as far as refund to the allottees of project is concerned when the projects are at a much more advance stage of development. Authorities are considering the situation of allottees of a real estate project as well as status of the project



i.e stage of construction , timelines for completion, tentative possible 'offer date of possession' from the developer/promoter, possible consensus of the allottee in acceptance of possession within the possible new 'offer date of possession' etc.

Section 32 of the RERA Act deals with functions of the Authority for promotion of Real Estate Sector. This Section reads as: *The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on, (a) protection of interest of the allottees, promoter and real estate agent; (b).....; (c).....; (d).....; (e).....; (f) (g).....; (h).....; (j) any other issue that the Authority may think necessary for the promotion of the real estate sector."*

On the other hand, Section 38 of the RERA Act, which deals with powers of the Authority expect the authority/RERA to act on the principle of natural justice. The Section reads as (1) *The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made there under. (2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made there under, the Authority shall have powers to regulate its own procedure"*

This provision confer power to the Authority to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents for contravention of any provisions of the Act and Rules made there under and it also provides that the Authority shall be guided by the principles of natural justice.

If we read these provisions together along with the scheme of the Act, the Authority is created not only to protect interest of the allottee of the real estate project but also to protect the interest of promoters in order to promote a healthy growth of the real estate sector Thus, from the provisions referred above and view taken by the different authorities, it is clear that complainant has right to withdraw from the project if promoter failed to deliver the flat/unit within the time specified in the agreement. However, different real estate regulatory Authorities are deciding matters and awarding refund on the basis of fact of each case considering stage of construction of the project and period and reasons of delay in handing over the possession to homebuyers.

In the project which are at advance stage of completion i.e 70% -80% complete and /or is about to be offered for possession within this year (up to the end of 2019), the Adjudicating Authorities are allowing interest for delayed possession at prescribed rate of interest from the due date of handing over of the



possession as originally agreed (as provided in Agreement to Sale) till actual date of handing over the possession. In this very case, the promoter has promised to hand over possession of flat to complainant by January 2019. The promoter has even applied for occupation certificate or promised to apply OC by end of According to the promoter, the construction at site is in full swing.

Under the circumstances, when the promoter is showing the seriousness of completing the project and handing over the possession of flat by the end of June 2020, it's fully justifiable to give the promoter the last opportunity to complete the project. If the Authority starts allowing refund in every case of delay in possession, it will defy the very object and scheme of the Act. Moreover, there are a large percentage of homebuyers who are keenly interested in taking over the possession of their flat. Now the promoter is also making efforts and trying to make arrangements of funds required to complete this project. In the cases, where the project is in very advance stage of completion and promoter is making serious efforts to hand over possession of flats to homebuyers within a fixed/revised timeline, homebuyers should not withdraw from the project and claim refund of deposited amount. In any case, the promoter will be required to pay interest on delayed period till the date of possession. However, if the promoter fails to provide possession as committed in this case to UP RERA, then the promoter will be liable to refund the entire monies paid by the allottee with prescribed rate of interest.

उपरोक्त निर्णय के आलोक में यह स्पष्ट है कि उपरोक्त रेरा के प्राविधानों के अन्तर्गत प्रमोटर व केता के बीच किये गये अनुबंध के अनुरूप विलम्ब अवधि तथा मूल धनराशि पर ब्याज देय होगा, क्योंकि प्रमोटर द्वारा उक्त धनराशि का उपभोग किया गया है। अतः शिकायतकर्ता को विलम्बित अवधि तथा कब्जा देने तक की तिथि तक ब्याज दिलाया जाना न्यायोचित प्रतीत होता है।

आदेश

प्रतिवादी/प्रमोटर को आदेशित किया जाता है कि occupation certificate प्राप्त करके, वादी को जनवरी 2019 से 18 माह अर्थात् जून 2020 में कब्जा (physical possession) उपलब्ध कराये। साथ ही शिकायतकर्ता व प्रमोटर के बीच हुये हस्ताक्षरित Builders Buyers Agreement (BBA) के अनुसार विलम्बित अवधि (delayed period) के सम्बंध में दिनांक 30.04.2016 तक BBA में उल्लिखित दण्ड/penalty के अनुसार तथा दिनांक 01.05.2016 (Real Estate Regulation &



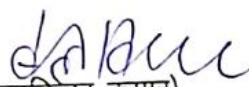
Development Act, 2016 के लागू होने की तिथि) से MCLR +1% की दर से प्रमोटर द्वारा दण्ड ब्याज/penal interest अदा किया जाएगा। ब्याज /दण्ड की इस धनराशि को कब्जा दिये जाने के समय अंतिम देय धनराशि में समायोजित की जाएगी।

यदि प्रमोटर/प्रतिवादी शिकायतकर्ता को जून 2020 में कब्जा देने में असफल रहा तो शिकायतकर्ता रिफण्ड प्राप्त करने के लिए स्वतंत्र होगा, जिसके लिए शिकायतकर्ता रिफण्ड प्राप्त करने हेतु पुनः रेरा के समक्ष आवेदन कर सकता है।

उक्त प्रकरण के सम्बंध में कंसीलिएटर को निर्देशित किया जाता है कि परियोजना में कार्य प्रगति के सम्बंध में प्रत्येक 4 माह बाद रिब्यू करेंगे।

इस आदेश का उल्लंघन उ०प्र०भू-सम्पदा (विनियमन तथा विकास) अधिनियम, 2016 की धारा-63 तथा अन्य सुसंगत प्राविधानों के अन्तर्गत दंडनीय होगा। आदेश पोर्टल पर अपलोड किया जाये।

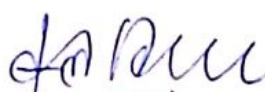
दिनांक : 10/01/2019


(बलविन्दर कुमार)
(सदस्य)

उ०प्र० भू-सम्पदा विनियामक प्राधिकरण

आज यह निर्णय हमारे द्वारा खुले न्यायालय में हस्ताक्षरित एवं दिनांकित करके सुनाया गया।

दिनांक : 10/01/2019


(बलविन्दर कुमार)
(सदस्य)

उ०प्र० भू-सम्पदा विनियामक प्राधिकरण