

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

**Appeal No. AT00600000010708/2019
In
Complaint No. CC006000000012533**

Anil Agarwal

Having registered office/residence at,
Vasant Vihar, flat no.-201, B-53,
Voltas employees CHS. Ltd
Thane-4004610

... Appellant

Versus

Shree Rama Shree Const. Pvt. Ltd.

Having address at,
405, Dev Corpora,
Eastern express highway, khopat,
Near Cadbury company,
Thane-400601

... Respondent

**Along with
Appeal No. AT00600000010729/2019
In
Complaint No. CC006000000012534**

Samir Agarwal

Having existing office/residence at,
E-3/602, Phase 6. Bramhand CHS Ltd,
Azad Nagar, Ghodbunder road,
Thane-west, 400615.

... Appellant

Versus

Shree Rama Shree Const. Pvt. Ltd.

Having address at,
405, Dev Corpora,
Eastern express highway, khopat,
Near Cadbury company,

Signatures

Thane-400601

... Respondent

Adv. Namrata Solanki for Appellants

None for Respondent

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 1st April, 2024

(THROUGH VIDEO CONFERENCING)

COMMON JUDGEMENT

[PER : SHRIRAM R. JAGTAP, MEMBER (J)]

- 1) These captioned appeals emanate from the common order dated 25th July, 2018 passed by Ld. Chairperson, MahaRERA (for short "Authority") in the complaints filed by allottees. The Allottees have preferred instant appeals to raise grievance that the impugned order has not granted reliefs sought in the complaints.
- 2) For the sake of convenience, the Appellants will hereinafter be referred to as "Allottees" and the Respondent will hereinafter be referred to as "Promoter"
- 3) Facts gathered from record broadly reveal that the promoter has launched project known as "**Suraj Rama Hights**" situated at Final Plot Nos. 383, 385, Chandanwadi, Village Panchpakhadki, Behind Anuradha Mangal Karyalaya, Thane(W)- 400601. The allottees have booked flats in the

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subject project somewhere in the year 2009. The details thereof are as under-

Sr. No.	Name of Allottee	Flat No.	Total consideration	Payment towards consideration	Payment towards stamp duty and registration charges.
1.	Samir Agarwal	801	31,89,000/-	13,00,000/-	1,72,860/-
2.	Anil Agarwal	803	34,30,000/-	10,00,000/-	1,85,110/-

- 4) The allottees have paid the aforesaid amount to promoter somewhere in the year 2009. The promoter has executed agreements for sale in favour of allottees and thereby committed to hand over the possession of the subject flats to allottees on or before 31 December, 2011. The promoter has failed to hand over the possession of subject flats to allottees on specified date. Since the project was ongoing on the date of commencement of RERA Act, 2016, the promoter has registered the project with MahaRERA and declared the date of completion of project as 31.12.2020 on the portal of MahaRERA. Since the promoter has failed to adhere to his

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commitment, the allottees have filed complaints and sought relief of interest under Section 18 of RERA Act, 2016.

- 5) The promoter put its appearance in the complaint proceedings and remonstrated the complaints by filing reply contending therein that the complaints are not maintainable as agreements for sale dated 31.12.2009 were executed under the provisions of MOFA. The complainants have paid only Rs. 13 Lakhs and 10 Lakhs and promised to clear the entire balance consideration within 12 months from the date of execution of the agreements for sale. However, the complainants had failed and neglected to pay the balance consideration of the subject flats to the promoter and therefore, promoter had repeatedly raised demands orally, but the complainants did not comply with the requisitions of the promoter for the reasons best known to them.
- 6) The promoter has further contended that because of conduct of complainants, promoter was constrained to issue legal notice dated 15.05.2017 to allottees, whereby, the promoter has terminated the agreements for sale. Despite receipt of notice, the complainants did not comply with the notices. Because of conduct of the complainants, the promoter was

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constrained to file special civil suit Nos. 481/2017 and 479/2017 against the complainants in the Court of Civil Judge (Senior Division) at Thane for declaration, cancellation and injunction.

- 7) The promoter has further contended that the allottees have failed and neglected to pay the balance amount for over a period of 9 years and therefore, the complaints are barred by limitation. The complainants have not come with clean hands; therefore, the complaints deserve to be dismissed with costs.
- 8) After hearing the parties, the Ld. Authority has observed that subject matters are subjudice before the court and thereby, the Ld. Authority has disposed of both the complaints holding that the complaints are not maintainable.
- 9) We have heard Adv. Namrata Solanki for Allottees. The submissions advanced by Ld. Adv. Namrata Solanki, are nothing but reiteration of contents of appeal memo. Despite ample opportunity, the promoter has failed to argue the matters.
- 10) After considering the pleadings of the parties, impugned order and material on record following points arise for our

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consideration and we have recorded our findings thereupon for the reasons to follow:

Sr. No.	Points for consideration	Findings
1.	Whether allottees are entitled to relief of interest under Section 18 of RERA Act, 2016 on account of delay in delivering the possession of subject flats?	In the affirmative
2.	Whether the impugned common order warrants interference in these appeals?	In the affirmative
2.	What order?	As per final order

REASONS

- 11) On scanning the pleadings of the parties reveal that allottees have booked 2 flats in the subject project somewhere in the year 2009 for a total consideration of Rs. 31,89,000/- and 34,30,000/- respectively. Pursuant to the said booking, the developer had executed agreements for sale on 21.12.2009 in favour of allottees. Clause 8 of agreements for sale stipulates that the promoter had committed to hand over possession of the subject flats to allottees on or before December, 2011. It is not in dispute that the promoter did not adhere to his

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commitment and failed to hand over the possession of the subject flats to allottees on the date specified in the agreements for sale.

- 12) It is not in dispute that allottees have made payments of Rs. 13 Lakhs and 10 Lakhs respectively to promoter towards part consideration. It is specific contention of promoter that allottees were supposed to pay balance consideration amount within 12 months from the date of execution of the agreements for sale, but they did not make further payments and thereby contravened the terms and conditions of agreements for sale. Despite oral demands, the allottees did not make further payments and thereby failed to discharge their obligations, as a result thereof, the promoter by notice dated 15.05.2017 terminated the agreements for sale. It is not in dispute that being dissatisfied with this conduct of the promoter, the allottees have filed separate complaints and asked the reliefs primarily under Section 18 of RERA Act, 2016, which inter alia provides for interest on amount paid in case allottees do not wish to withdraw from the project on account of failure of developer to hand over possession as agreed.



13) On ensembling of brought factual account of events as above, it appears that considering the allegations made in the complaints and reliefs sought therein, the Ld. Authority had a doddle task to consider the issue of delay in possession and decide the entitlement of allottees in the light of provisions primarily under Section 18 of RERA Act, 2016. However, it is seen from the impugned order that on the basis of contentions of promoter more particularly Civil Suits with regard to termination of agreement for sale are pending in the court at Thane the Ld. Authority disposed of the complaints by holding that the complaints are not maintainable because the matters are subjudice before the Civil Court, Thane. The Ld. Authority sans going into the merits of the case disposed of the complaints as above, therefore, the impugned common order is absolutely not sustainable in the eyes of law.

14) It is not in dispute that soon after receipt of legal notice dated 15.05.2017, the allottees had filed complaints before the Ld. Authority and sought reliefs therein as above without challenging the termination of agreement for sale. It is also not in dispute that the allottees did not reply the notice dated 15.05.2017. Therefore, we have to consider whether this

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conduct of allottees would cause maleficent to the reliefs sought in the complaints.

15) Learned Adv. Ms. Namrata Solanki for allottees has poignantly submitted that clause 2 of the agreement for sale clearly indicates that purchasers shall pay amount of installment within 8 days of the receipt of such intimation from the developers. However, the developer did not raise any valid legal demand prior to issuance of notice dated 15.05.2017 and therefore, the termination of agreement for sale without giving any opportunity to allottees is per se illegal. We do find substance in the said contention of the Ld. Adv. Ms. Namrata Solanki.

16) We would like to reiterate that it is specific contention of the developer/promoter that allottees did not make further payments and thereby, they have violated the terms of the agreement for sale. There is no merit in this contention of the promoter. Clause 2 of agreement for sale provides schedule of payment. It further provides that "the purchasers shall pay the amounts as aforesaid on the due dates without fail and without any delay or default as time in respect of the said developers having carried out the aforesaid work at the

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address given by the premises purchasers in this agreement and the **premises purchasers shall pay amount of installments within 8 days of the receipt of such intimation from the developers**". In the instant case, there is nothing on record to show that the promoter had made such demands prior to issuance of legal notice dated 15.05.2017. It is the case of the promoter that he was making oral demands but the allottees did not make further payments as per terms of agreement for sale. It is significant to note that the allottees have denied that the promoter was making oral demands for further payments. Under circumstances, it was expected of promoter to produce cogent material on record to show that there were oral demands on the part of the promoter and those were not satisfied by the allottees. In the absence of cogent evidence, it is difficult to digest that the promoter was making oral demands as alleged by him.

- 17) According to promoter, the allottees were supposed to make balance payment within 12 months from the date of execution of the agreement for sale. Admittedly, agreements for sale came to be executed in December, 2009. It means the allottees were supposed to pay entire consideration on or

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before December, 2010. We would like to reiterate that there is no material on record to show that the promoter was asking the allottees to make further payments. Under such circumstances, it was expected of promoter to take action against the allottees immediately after default on the part of allottees, but promoter did not take action till issuance of legal notice dated 15.05.2017 and had remained as silent spectator till that date.

18) Clause 6 of agreement for sale empowers the promoter to charge interest at the rate of 21% per annum on the unpaid amounts if the allottees commit default in paying the installments. However, there is nothing on record to show that the promoter had apprised the allottees in writing that he is charging interest on the unpaid amounts from the date of default of payment of installments. The promoter has not offered explanation for not charging interest on the unpaid amount. This signifies that there is no merit in the contention of promoter that he was orally asking the allottees to pay balance amount or installments as per terms of agreement.

19) The clause 6 of the agreement for sale further provides that the power of termination hereinabove contained shall not be



exercised by the developer unless and until the developer shall have given the premises purchaser 15 days prior notice in writing of their intention to terminate the agreement and of specific breach or breaches of terms and conditions in respect of which it is intend to terminate this agreement and default shall have been made by the premises purchaser in remedying such breach or breaches within reasonable time after giving such notice. It means this clause gives an opportunity to allottees to make payments after receipt of notice from the promoter with regard to default in making payment of any of the installments or amounts. It is not the case of promoter that he had given such notice in writing to allottees prior to issuance of legal notice dated 15.05.2017. It means no opportunity of making payment of the installments or amounts was extended to the allottees by promoter. This signifies that the promoter himself has violated or breached the clause 6 of agreement for sale.

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- 20) It is worthy to note that it is not in dispute that by notice dated 15.05.2017, promoter has terminated the agreement for sale. Clause 6 of agreement for sale further provides that upon termination of agreement for sale, the developer shall refund

to the premises purchaser the installments of sale price of the subject premises which may till then have been paid by the premises purchaser to the developers. Under the circumstances, it was expected of promoter to immediately refund entire amount to allottees. However, the promoter did not refund the amount paid by allottees till date. Therefore, for the foregoing reasons we have come to the conclusion that the promoter has violated the terms of agreement for sale. The promoter had neither raised demands in writing to allottees, nor given notice by extending 15 days' opportunity to allottees to make the payment of installments or amounts. Besides after termination of agreement for sale, the promoter has not refunded the amount paid by the allottees as contemplated under the clause 6 of agreement for sale. Therefore, we do not find merit in the contention of the promoter that he has validly terminated the agreement for sale. The Ld. Authority did not consider these relevant clauses of the agreement for sale and arrived at a wrong conclusion that the matter is subjudice before the Civil Court and therefore, complaints are not maintainable.





21) It is worthy to note that it is not in dispute that the promoter has failed to hand over the possession of the subject flat on the specified date to allottees. There is no material on record to show that the allottees are responsible for delay in completing the project. The developer has failed to complete the project within time framed. Despite this, the Ld. Chairperson has failed to grant relief of interest to allottees on their investment. Section 18(1) of the RERA Act, 2016 spells out the consequences that, if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by date specified therein for any reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf. The allottee, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every month's delay in handing over possession at such rate as may be prescribed. Promoter is thus under obligation to pay interest at the prescribed rate for the period of delay till hand over possession. The ratio laid down by the Hon'ble Supreme Court in **M/s. Imperia Structures Ltd.**

Vs. Anil Patni & Ors. [in Civil Appeal No. 3581-3590 of 2020] is that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. 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 upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

22) While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in **M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021 Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021]-

"Para 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.*

23) It is therefore clear that there are no shackles or limitation on the exercise of their rights by allottees to seek interest once there is delay in possession. The indefeasible right of allottees to claim interest cannot be defeated by any reason. It is evident from common impugned order that the Ld. Authority adopted casual, non-serious approach contrary to the provisions of RERA Act, 2016 while adjudicating controversy raised in the complaints.

24) Therefore, for the foregoing reasons, we have come to the conclusion that the impugned order forced the view contrary to the provisions of RERA Act, 2016. Thus, the same is found

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unsustainable in the eyes of law and hence calls for interference in these appeals. Consequently, we proceed to pass the following order.

ORDER

- a) Appeal No. AT00600000010708/2019 and Appeal No. AT00600000010729/2019 are partly allowed.
- b) The respondent/promoter is directed to pay interest to allottees/complainants on the amount paid by them as per SBI highest Marginal Cost Lending Rate (MCLR) plus 2% from 01.01.2013 till the date of actual possession.
- c) The amount of interest payable to allottees shall be adjusted at the time of possession against the balance amount payable by allottees as per the original agreement.
- d) After adjustment as above, the deficit or surplus if any, shall be paid by respective party to the other party at the time of possession failing which such amount shall be liable to interest at the same rate as directed at (b) above from the next day of actual possession till the date of actual payment.
- e) Pending Misc. applications, if any, stand disposed of.



- f) Parties shall bear their own costs.
- g) Copy of this order be communicated to the Authority and respective party as per Section 44(4) of RERA Act, 2016.


(DR. K SHIVAJI)
Ajit


(SHRIRAM R. JAGTAP)