

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI****APPEAL NO. AT0060000000 134137****IN****COMPLAINT No. CC0050000000 53845****Madhuri Satheesh**306, Silver Spring Apartments,  
Nagala Park, Near Mahavir College,  
Kasaba Karveer, Kolhapur – 416 011.

... Appellant

versus**M/s. Ganraj Homes LLP  
(Formerly known as Ganraj  
Homes Private Limited)**Office No.6, 2<sup>nd</sup> floor, San Mahu Complex,  
5 Bund Garden Road, Opp. Poona Club,  
Pune, 411 001.

... Respondent

*Mr. Ashish Gupta, Advocate for Appellants.**None for Respondent- Ex-parte.***CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J) &  
DR. K. SHIVAJI, MEMBER (A)****DATE : 22<sup>nd</sup> AUGUST 2023***(THROUGH VIDEO CONFERENCE)***JUDGEMENT [PER: DR. K. SHIVAJI, MEMBER (A)]**

Present appeal has been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, "the Act") seeking *inter alia* interest for delay in delivery of possession from 1<sup>st</sup> January 2019 till the date of actual possession and to set aside the order dated 22<sup>nd</sup> March 2022 passed by learned Member, Maharashtra Real Estate Regulatory Authority, (MahaRERA) in the application filed for execution of the order dated 23<sup>rd</sup> March 2021 passed in Complaint No. CC 0050000000 53845.



2. Appellant is Complainant before MahaRERA and flat purchaser in a duly registered project, which is being constructed by Respondent namely "Ganga Acropolis" located at Mulshi Taluka in Pune district, in short "the said project". For convenience, Appellant and Respondent will be addressed hereinafter as Complainant and Promoter respectively in their original status before MahaRERA.
3. Brief background giving rise to the instant appeal is as under; -
- i. **Complainant's case:** - It is the case of complainant that she purchased flat number 803 in the promoter's said project by executing a registered agreement for sale dated 6<sup>th</sup> March 2016 for total consideration of ₹1,02,79,340/- and out of which she has paid cumulatively of ₹80,58,324 including taxes. According to Clause 5 (b) of the said agreement for sale, promoter had agreed to handover possession of the said flat to her on or before December 2018. However, on account of non-delivery of the possession of the said flat to her within agreed timeline, captioned complaint came to be filed on 6<sup>th</sup> January 2020, seeking *inter alia* direction to Respondent for delivery of the possession of the flat together with interest for the delay in delivery of the possession from the agreed delivery date till actual possession.
- ii. Promoter filed its objections to the complaint before MahaRERA on 6<sup>th</sup> November 2020 by raising certain technical issues that the present complaint is not filed in the proper format. Thereafter, Complainant has uploaded details of her claims along with relevant documentary proofs before MahaRERA. However, promoter thereafter failed to file its detailed reply in response to the claims raised by the complainant before MahaRERA. Eventually the complaint proceeding before MahaRERA proceeded *ex-parte* against promoter.





- iii. Upon hearing the complainant, learned Member, MahaRERA passed an order dated 23<sup>rd</sup> March 2021 by directing promoter *inter alia* to hand over possession and to pay interest for the delay in delivery of possession, from 1<sup>st</sup> January 2019 for every month **till the actual date of possession** on the amounts paid by complainant at prescribed interest rate under Section 18 of the Act and Rules made there under.
- iv. However, instead of complying the said order of MahaRERA dated 23<sup>rd</sup> March 2021, promoter sent email dated 9<sup>th</sup> July 2021 demanding complainant to pay ₹40,15,950 without appropriating/ adjusting the interest amounts, which were due and payable by promoter to complainant in accordance with the very same order dated 23<sup>rd</sup> March 2021. In response thereto, complainant sent email reply on the same day calling upon promoter to adjust the accrued and payable interest amounts in terms of the very same order against the demand notice and to provide the revised adjusted demand notice as well as she conveyed her willingness/ readiness to pay the net outstanding amount towards the total consideration of the said flat and to take possession.
- v. On account of non-compliance of the said order of MahaRERA dated 23<sup>rd</sup> March 2021 despite follow ups, complainant filed non-execution application on 20<sup>th</sup> September 2021 before MahaRERA. After hearing the parties, MahaRERA passed the impugned order dated 22<sup>nd</sup> March 2022, whereby, MahaRERA *inter alia* concluded that despite receipt of part occupancy certificate on 18<sup>th</sup> June 2021, promoter has failed and neglected to handover possession of the said flat to complainant. Therefore, promoter was directed therein *inter alia* to handover possession of the said flat to complainant within 30 days and to pay interest for the delayed possession to complainant **till the date of occupancy certificate i.e., 18<sup>th</sup> June 2021**, failing which, warrants



would be issued against promoter for recovery of the interest payable to complainant through the Secretary of MahaRERA as per the MahaRERA's order dated 15<sup>th</sup> November 2020.

- vi. Dissatisfied and aggrieved by this order of MahaRERA, Complainant has preferred the instant appeal seeking various reliefs including to quash and set aside the impugned order dated 22<sup>nd</sup> March 2022 as well as to direct promoter to pay interest at prescribed from 1<sup>st</sup> January 2019 till the date of actual possession for delayed possession of the said flat besides costs.
4. Learned counsel for complainant has filed an affidavit along with tangible supporting documents confirming the proper service to Respondent promoter and has also informed the scheduled hearing date of 5<sup>th</sup> June 2023 in the appeal proceedings.
5. Despite the above good service and intimation of scheduled hearing date, Respondent Promoter failed to appear in the instant appeal proceeding. Therefore, appeal has proceeded *ex-parte* against Respondent. Complainant has filed another *ex-parte* affidavit.
6. Heard learned counsel for Complainant.
7. Complainant submits that the impugned order has been passed by the learned Authority without application of rational and judicial mind, has failed to provide any plausible reasons or grounds for **modifying its own order dated 23<sup>rd</sup> March 2021 and has erred in limiting the interest period only till the date of occupation certificate i.e. 18<sup>th</sup> June 2021 instead of interest payment till the possession** and in supports, made multifarious submissions as follows: -
  - a. Despite observing in the impugned order that promoter disobeyed, failed and neglected to comply with the order dated 23<sup>rd</sup> March 2021, MahaRERA has failed to impose penalty under Section 63 of the Act and





Rules made thereunder, and instead, thereof, modified the impugned order itself by curtailing the legitimate entitlement of complainant as had already been crystallised in its own earlier order dated 23<sup>rd</sup> March 2021, which is under execution for payment of interest up to the date of actual possession and not only up to the date of occupation certificate.

- b.** MahaRERA has also appreciated that promoter has never offered complainant, the physical possession of the said flat even after obtaining occupation certificate.
- c.** Complainant has never abandoned nor waived her rights to claim interest from the agreed date till the actual possession of the said flat.
- d.** The impugned order has erroneously modified the earlier original order, dated 23<sup>rd</sup> March 2021, which is under execution and therefore, it is *ex-facie* bad in law and deserves to be set aside.
- e.** In support of above contentions, Complainant has referred and relied upon following judgements.
  - i. M/s. Newtech Promoters and Developers Pvt. Ltd and State of Uttar Pradesh [2021 SCC Online 1044] dated 11<sup>th</sup> November 2021.*
  - ii. Imperia Structures Ltd. Vs. Anil Patni and Anr. [5 2020(10) SCC 783].*
  - iii. Judgment dated 31<sup>st</sup> January 2023 of this Tribunal in Appeal No. AT006000000052847 in the case of Ashley Neil Serrao vs. Propel Developers Pvt. Ltd.*
- f.** As a result of non-fulfilment of contractual commitments by promoter to deliver possession of the subject flat as per agreed timeline in terms of the duly executed agreement for sale, complainant is entitled for interest under Section 18 of the Act, on account of delay in delivery of possession until the date of actual possession and not only up to the occupation certificate.



- g. Therefore, order dated 22<sup>nd</sup> March 2022 is not sustainable, bad in law, and is required to be set aside.
8. Upon hearing the learned counsel for the Appellant, perusal of material on record, solitary point that arises for our determination is whether, impugned order dated 22<sup>nd</sup> March 2022, passed by MahaRERA calls for interference in this appeal as prayed for by Complainant and to this our finding is in the affirmative for the reasons to follow; -

### REASONS

9. It is not in dispute that Complainant has booked the subject flat in the Promoter's said project by executing agreement for sale dated 16<sup>th</sup> March 2016 and as per clause 5 of the agreement, the possession of the said flat was stipulated to be delivered on/ or before December 2018 and whereas, the project has received occupation certificate on 18<sup>th</sup> June 2021. MahaRERA has passed the impugned order dated 23<sup>rd</sup> March 2021 directing promoter *inter alia* to pay interest at prescribed rate under the Act for the delay in delivery of possession from 01<sup>st</sup> January 2019 till the actual date of delivery of possession.
10. MahaRERA has subsequently passed order dated 22<sup>nd</sup> March 2022 on the application for execution of the said order dated 23<sup>rd</sup> March 2021, wherein, the interest to be paid by Promoter for delayed possession has been curtailed from 01<sup>st</sup> January 2019 only till the date of occupation certificate i.e, 18<sup>th</sup> June 2021 by modifying its own earlier original order dated 23<sup>rd</sup> March 2021, wherein, this time period for payment of interest was till the date of actual possession. This modification in the order order dated 22<sup>nd</sup> March 2022 passed by MahaRERA is legally not sustainable in view of the followings; -





- i. The Hon'ble Supreme Court in para 15 of its judgment in *civil appeal NO(S). 1312-1313 OF 2023 [ @ SPECIAL LEAVE PETITION (CIVIL) NOS. 13478-13479 OF 2022]* in the case of *Sanwarlal Agrawal & Ors. versus Ashok kumar Kothari & Ors.* [2023(1) ARC 342] has laid down as hereunder; -

*"15. This Court has time and again cautioned against the Execution Court adopting such an approach. In Topanmal Chhotamal v. Kundomal Gangaram, a three-judge bench held as follows:*

*"It is a well-settled principle that a Court executing a decree **cannot go behind the decree**: it must **take the decree as it stands, for the decree is binding and conclusive** between the parties to the suit".*

*Yet again, in Meenakshi Saxena (supra), it was reiterated that:*

*"The **whole purpose of execution proceedings** is to **enforce the verdict** of the court. Executing court while executing the decree is **only concerned with the execution part** of it but nothing else. The court has to **take the judgment in its face value**. It is settled law that executing court **cannot go beyond the decree**. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it **cannot draw a new decree**. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree."*

*16. As is commonly known, the **stream cannot rise above its source**. "*

- ii. While passing an order in the application for execution of its own earlier original order, the learned Authority being a court/ an authority executing the order passed in complaint cannot change, modify nor alter the original order under execution and cannot go behind the original order under execution.
- iii. MahaRERA, in para 5 of the impugned dated 22<sup>nd</sup> March 2022 has made certain concluding observations as "*.....during the course of their hearing, the respondent though appeared, has not cited any valid reasons for non-compliance of these two orders passed by MahaRERA.*"

- iv. In Paras 6, has further observed that "*.....However, in this case, the respondent, even after obtaining the part occupancy certificate has failed and neglected to handover possession of the said flat to the complainants*".
- v. And in para 8, "*..... the respondent is also directed to pay interest for the delayed possession to the complainants till the date of the occupancy certificate i.e., 18<sup>th</sup> June 2021, failing which, warrants would be issued against the respondent for recovery of the interest amount payable to the complainants through the Secretary, MahaRERA as per MahaRERA order dated 15<sup>th</sup> November 2020.*"
- vi. Appeal has proceeded *ex-parte* against Respondent promoter and therefore, the contentions of the Appellant complainant have remained uncontroverted. By filing affidavit, the Appellant has testified the contents of appeal memo and in view of the forgoing, it is established that learned Authority has committed patent illegality in passing impugned order, which needs interference in this appeal.
- vii. For the foregoing reasons and in view of the ratio and dictum laid down by **The Hon'ble Supreme Court in the case of *Sanwarlal Agrawal & Ors. versus Ashok kumar Kothari & Ors. (supra)***, MahaRERA, in capacity of an Executing Authority cannot go behind the original order dated 23<sup>rd</sup> March 2021, which is under execution, and cannot modify nor amend its own earlier order under execution. Therefore, the entitlements of complainant, which have already been conclusively determined, cannot be amended/ altered nor be changed nor modified in the Execution proceeding. Any such modifications in the original order dated 23<sup>rd</sup> March 2021 by MahaRERA during execution stage is contrary to the settled position of law.





**11.** Since, the impugned order suffers from infirmities and is legally not sustainable, warrants interference in this appeal and the present appeal deserves to be partly allowed by setting aside the impugned order. Accordingly, we answer the solitary point in the affirmative and proceed to pass the order as follows: -

### **ORDER**

- a) Captioned Appeal is partly allowed.
- b) Impugned order dated 22<sup>nd</sup> March 2022 passed by MahaRERA in the application filed for execution of the order dated 23<sup>rd</sup> March 2021, in Complaint No. CC 005000000 53845 is set aside.
- c) Appellant is entitled for interest at prescribed rate for delay in delivery of possession from 1<sup>st</sup> January 2019 till the date of actual possession.
- d) Parties to bear their own costs.
- e) In view of the provisions of Section 44(4) of the Act of 2016, copy of this order shall be sent to the parties and to the learned Chairman, MahaRERA.

  
(DR. K. SHIVAJI)

  
(SHRIRAM R. JAGTAP, J.)