

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

Miscellaneous Application No. 157 of 2020 (Stay)

With

Appeal No. AT005000000052960 of 2021

In

Complaint no. CC005000000043746

1. M/s. Drushti Developers

A registered Partnership Firm through its Partners
Address: S. No. 29, Mauli Nagar,
Nr. Utkarash Society, Katraj-Kondhwa
Road, Katraj, Pune-411046

2. Mr. Sagar Vitthal Shinde

Address: 1031, Bhawani Peth,
Pune-411042

3. Mr. Milind Vitthal Shinde

Address: Plot No. 1, Bramhachaitanya
Husing Society, Warje, Pune-411058

4. Mr. Pradeep Babanrao Jagtap

Address: 1122, Nana Peth,
Nr. Hamal Talim, Pune-411002

5. Mr. Ajay Ramling Umbardand

Address: Plot No. 5, Sairam Agency,
Warje, Pune-411058

6. Mrs. Deepali Sachin Jagtap

Address: Plot No. 32/2, Bramhachaitanya
Housing Society, Warje, Pune-411058

7. Mrs. Deepmala Mukund Pawar

Address: Flat No. 302/303, Venkateshpuram
Housing Society, Shivne, Pune-411023

8. Mrs. Rupali Atul Shinde

Address: Plot No. 1, Bramhachaitanya
Housing Society, Warje, Pune-411058

S. Jagtap

9. Mr. Vijay Balasaheb Khopde

Address: S. No. 29, Mauli Nagar, Katraj-
Kondhwa Road, Nr. Mauli Garden
Karyalaya Katraj, Pune-411046

...Appellants

Versus

1. Mr. Rajesh Vijaykrishnan Nair

Address: Flat No. A/9, Plot No. 6/25,
Abhijit Apartments, Chintamani Society,
Nav Sahyadri, Karve Road,
Pune-411052

...Respondent

Adv. Mr. Sachin Kulkarni for Appellant.

Mr. Rajesh Vijaykrishnan Nair (Respondent in Person)

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

DATE : 13th March, 2024

(THROUGH VIDEO CONFERENCING)

JUDGMENT

[PER : SHRIRAM R. JAGTAP (J)]

- 1) Feeling aggrieved by the order dated 11th December, 2020 passed by Ld. Authority in Complaint No. CC005000000043746 filed by one of the allottees, promoters have filed the captioned appeal to raise grievance that the Ld. Authority has not extended opportunity of being heard to appellants.

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- 2) For the sake of convenience, parties to the appeal hereinafter will be referred as "Promoters" and "Complainant".
- 3) The factual matrix of the matter is that the promoters have launched a project known as "Gloria" at Katraj, Pune. Somewhere in the year 2013, complainant and his wife were searching a residential flat. They came to know about the subject project from their friend. They visited site office of the subject project and decided to purchase a flat in the subject project. They booked a flat No. 505 admeasuring 39.10 sq. mtrs. on fifth floor with an adjacent terrace admeasuring 6.88 sq. mtrs. along with one semi-covered car parking space admeasuring 9.23 sq. mtrs. in the subject project for a total consideration of Rs.30,00,000/-. Pursuant thereto, the promoters have executed an agreement for sale dated 27.12.2017 in favour of allottees whereby, the promoters have committed to hand over the possession of the subject flat to allottees by 31.12.2018. Clause 13(a) of agreement for sale stipulates that the allottees shall pay Rs.1,350/- per month towards maintenance charges after

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taking possession of the subject flat. Clause 13(d) of the agreement for sale further stipulates that the allottees shall pay Rs.1,50,000/- towards electrical and other charges. Clause 14(C) of agreement for sale casts obligation on the allottees to bear charges towards stamp duty and registration fees whereas VAT, service tax, and GST will be borne and paid by developers/promoters.

- 4) Allottees have claimed to have paid Rs.25,60,000/- to promoters towards part consideration. However, the promoters have failed and neglected to hand over possession of the subject flat to allottees on the specified date. Therefore, the complainant has issued notice dated 18.11.2019 through his advocate to promoters contending therein that he is ready and willing to pay the balance amount i.e. Rs.5,50,000/- out of consideration and an amount of Rs.1,00,000/- towards MSEB and society formation charges, only after receipt of the possession of the subject flat. The complainant has called upon promoters to hand over the possession of the subject flat within 15 days from the date of receipt of the notice. The promoters,



by their reply dated 15.12.2019 to the notice denied the allegations made in the notice in toto and further contended that the allottees have utterly failed to make timely payments and allottees are liable to pay outstanding amount of Rs.10,32,400/- towards balance consideration. Because of this conduct of the promoters, Mr. Rajesh Vijaykrishnan Nair one of the allottees has filed complaint and sought directions from MahaRERA to promoters to hand over the possession of the subject flat and also claimed the relief of interest as provided under Section 18 of RERA Act, 2016.

- 5) The promoters did not file reply to the complaint as a result thereof the Ld. Authority after hearing the complainant, disposed of the complaint against the promoters whereby, the Ld. Authority has directed the promoters to hand over the possession of the subject flat to complainant by obtaining the occupancy certificate at the earliest as per the revised complaint date mentioned on MahaRERA website. The Ld. Authority has further awarded interest to complainant on account of delayed possession from 1st January, 2019 till the actual date of possession and further

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issued directions that the complainant has to make the balance payment to the respondent as per the payment schedule mentioned in the registered agreement for sale and the said balance amount would be adjusted with the interest amount payable by the respondent and same would be paid at the time of possession.

6) The promoters have assailed the impugned order on the grounds enumerated in the memorandum of appeal. The promoters have contended that the allottees have booked subject flat for total consideration of Rs.33,92,400/- (excluding service tax, VAT, or GST). The complainant has paid Rs.23,60,000/- to promoters out of the total consideration. The allottees are liable to pay outstanding amount of Rs.10,32,400/- to promoters.

7) The promoters have further contended that the promoters could not deliver the possession of the subject flat on the agreed date i.e. on 05.12.2018 because of force majeure factors. The complainant has issued a notice dated 18.11.2019 through his advocate and the same has been replied by promoters on 07.12.2019. However, the



complainant has suppressed this material fact from the Ld. Authority. By reply, the promoters have requested the complainant to make immediate payment of the balance consideration. The allottees have not made payments as per schedule. Time is an essence of the contract. The allottees have made delayed payment and therefore, promoters are entitled to claim interest on unpaid amount as compensation from the allottees for delayed payment. The Ld. Authority did not extend an opportunity of being heard to promoters and thereby violated the principle of natural justice. With these contentions, the promoters have prayed to set aside the impugned order and dismiss the complaint with cost.

- 8) We have heard Ld. Adv. Mr. Sachin Kulkarni for promoters and Mr. Rajesh Vijaykrishnan Nair, the complainant in person. The submissions advanced by Adv. Sachin Kulkarni for promoters and the complainant are nothing but reiteration of the contents of appeal memo and complaint. After considering the submissions advanced by parties to the appeal, pleadings of the parties, impugned order, and material on record following points arise for our



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

Sr. No.	Points for consideration	Findings
1.	Whether impugned order dated 11 th December, 2020 passed by Ld. Authority warrant interference in this appeal?	In the Negative
2.	What order?	As per final order

9) On examination of the pleadings of the parties, impugned order and material on record reveal that it is not in dispute that the allottees have booked subject flat in the project of the promoters for a total consideration of Rs.30,00,000/- excluding charges towards stamp duty, registration fees, maintenance, MSEB and society formation. By virtue of agreement for sale, the promoters have committed to hand over the possession of the subject flat on 31.12.2018. The date so specified in agreement or in any other manner for delivery of the possession of unit to allottee is sacrosanct.

10) It is not in dispute that the promoters have failed to hand over the possession of the subject flat to allottees on the agreed date. According to promoters, there were some



genuine reasons, which caused delay in handing over the possession of the subject flat. However, the promoters have not given the detailed account of the force majeure factors which caused delay in completion of the project. It is worthy to note that 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 up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."



11) Even if force majeure factors as alleged by promoters are given some consideration, we are of the view that the promoters are not entitled to get benefit of the same for the reasons that the same are not attributable to the allottees nor is the case of the promoters that allottees in any way caused delay in possession. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in **M/s Newtech Promoters 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] has held in paragraph 25 as under-

*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*

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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.

- 12) In view of ratio and dictum laid down by the Hon'ble Supreme Court, in case of failure of developer to give possession on specified date regardless of "unforeseen events" or stay orders of court which is in either way not attributable to allottee, the promoter is liable to pay interest on the paid amount to allottee. Section 18 of RERA confers qualified rights upon the allottee to get interest on amount deposited with developer at the prescribed rate if developer fails to complete the project or is unable to give possession of subject unit as per agreed date. We would like to reiterate that by executing agreement for sale, the promoters have committed to hand over possession of the subject flat by 31.12.2018. However, it is not in dispute that the promoters have failed to hand over the possession of the subject flat to allottees on agreed date. Therefore, we are of the view that the Ld. Authority has committed no wrong in granting interest to allottees.



13) On examination of pleadings of the parties and submissions advanced by Ld. Adv. Sachin Kulkarni for promoters and the complainant reveal that there is a controversy between the parties on the point of payments made by allottees to promoter. According to allottees, they have paid Rs.25,60,000/- to promoters from time to time whereas, it is specific case of promoters that they have received Rs.23,60,000/- from allottees and allottees are liable to pay outstanding amount of Rs.10,32,400/-. It is to be noted that allottees are ready and willing to pay the balance amount to promoters. The promoters are also ready to hand over the possession of the subject flat to allottees subject to payment of Rs.10,32,400/- by allottees.

14) It is specific contention of allottees that they have paid Rs.2,00,000/- in cash to promoters at the time of booking of the flat. Accordingly, they have paid total amount of Rs.25,60,000/- to promoters towards part payment of consideration. The complainant has invited our attention to receipt dated 17.09.2013 and submitted that the promoters have not disputed the issuance of this receipt by them, therefore, it is crystal clear that the promoters have received



Rs.2,00,000/- in cash from the allottees at the time of booking of the flat. Per contra, Ld. Adv. Sachin Kulkarni has submitted that initially, the allottees had booked flat No. **"504"** in the proposed residential building named **"Gloria"** and paid Rs.2,00,000/- in cash. Subsequently, the allottees had cancelled the said flat and agreed to purchase flat no. 505 for total consideration of Rs.33,92,400/-. Therefore, the promoters had refunded the cash amount Rs.2,00,000/- to allottees but they did not feel necessary to get acknowledgement of the same from allottees. The allottees taking advantage of the same are now claiming that they paid Rs.2,00,000/- in cash to promoters. Ld. Adv. Sachin Kulkarni has further submitted that there is no mention of payment of cash Rs.2,00,000/- by allottees with regard to the subject flat bearing no. 505 in notice dated 18.11.2019 issued by allottees and also in the agreement for sale. Therefore, these two documents are sufficient to dislodge the claim of allottees that they have paid Rs.2,00,000/- in cash to promoters for booking of flat no. 505. We do find substance in the submissions of the Ld. Adv. Sachin Kulkarni for promoters.



- 15) On careful examination of receipt (page no. 143) reveals that on 17.09.2013, complainant had paid Rs.2,00,000/- in cash to promoters for booking of flat no. **"504"**. It is not in dispute that by virtue of agreement for sale, the allottees have agreed to perhaps flat no. 505 in the subject project for consideration Rs.30,00,000/- excluding the charges towards stamp duty, registration, MSEB, and society formation and society maintenance. Agreement for sale stipulates that charges towards stamp duty registration fees, MSEB, and maintenance shall be borne by allottees. Whereas VAT, service tax, and GST will be borne and paid by promoters.
- 16) On examination of agreement for sale reveals that allottees have paid charges towards stamp duty Rs.1,80,000/- and towards registration fees Rs.30,000/- i.e. total Rs.2,10,000/-.
- 17) It is significant to note that it is not in dispute that the allottees have issued notice dated 18.11.2019 to promoters as promoters have failed to hand over the possession of the subject flat to allottees on agreed date. On scanning notice dated 18.11.2019 reveals that there is no mention that the allottees have paid Rs.2,00,000/- in cash to promoters for booking of flat no. **"505"**. Apart from this agreement for sale

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is also silent on this point. Under the circumstances, we are of the view that these two documents dislodged the claim of allottees that they have paid cash Rs.2,00,000/- to promoters for booking of flat no. **"505"**.

18) It is significant to note that the complainant has filed details of payments made by him to promoters which reveal that (page no. 145) the allottees have paid Rs.25,60,000/- including cash Rs.2,00,000/- to promoters till 13.11.2018. However, the notice dated 18.11.2019 issued by allottees to promoters discloses (para no. 4 of notice) that the allottees have paid Rs.24,50,000/- to promoters. Complainant has failed to clarify this discrepancy therefore; it is difficult to digest that the allottees have paid Rs.2,00,000/- in cash to promoters.

19) Record reveals that the promoters have given their calculations at Annexure 'D' (page no. 37). The position regarding flat value and other charges payable by allottees as per agreement for sale are shown in the table below-

Flat Number-505	
Agreement Value	30,00,000
Stamp duty	1,80,000

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Registration	30,000
M.S.E.B + Soc. Formation	1,50,000
Society Maintenance	32,400
Total payable amount	33,92,400

If we deduct Rs.2,00,000/- from 25,60,000/- then it come to Rs.23,60,000/-. This figure Rs.23,60,000/- matches to the calculations submitted by promotes at Annexure 'D'. We would like to reiterate that the promoters have categorically admitted that they have received Rs.23,60,000/- from the allottees. Therefore, for the foregoing discussions we have come to the conclusion that the allottees have paid total amount of Rs.23,60,000/- to promoters.

- 20) Ongoing through the calculation details submitted by the parties reveal that the allottees have paid Rs.2,10,000/- to promoters on 15.12.2017. Agreement for sale came to be executed and registered between the parties on 26.12.2017. It means, the allottees have paid Rs.2,10,000/- to promoters towards stamp duty Rs.1,80,000/- and registration fees Rs.30,000/-. If we deduct Rs.23,60,000/- from Rs.33,92,400/-

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it comes to Rs.10,32,400/-, it means allottees are liable to pay balance consideration amount of Rs.10,32,400/- to promoters.

21) It is specific contention of promoters that the allottees have made delayed payments and therefore, they are entitled to charge interest on the unpaid amount. We do not find substance in the said contention of the promoters. It is not in dispute that the promoters have replied the notice of allottees. Promoters have produced copy of reply dated 05.12.2019 on record at Annexure 'B' (page no. 31).

22) Ongoing through reply reveals that in para no. III, promoters have not disputed the factum of receipt of payments from allottees. The promoters have specifically contended in Para No. III of their reply dated 05.12.2019 that **"till by date you have made the part payments towards the agreed consideration at your own desire and sweet will, so far as payments made by you, my client never demanded any payment excluding booking amount from you"**.

This signifies that there was no delayed payment on the part of allottees. The allottees have made payment to promoters as per agreement for sale. Under the circumstances, we are of the view that the reply dated 05.12.2019 to notice of the

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allottees falsified the contentions of promoters that allottees have made delayed payments.

- 23) It is not in dispute that the project is complete, the promoters have received occupancy certificate. Only controversy between the parties is that according to allottees they are liable to pay Rs.5,50,000/- out of consideration and amount of Rs.1,00,000/- towards MSEB and society formation charges whereas, according to promoters, allottees are liable to pay Rs.10,32,400/-. We have already observed that allottees are liable to pay Rs.10,32,400/- to promoters. Therefore, we are of the view that if promoters are directed to hand over the possession of the subject flat by adjusting interest amount payable to allottees/complainant against the balance consideration of Rs.10,32,400/- a very purpose will suffice. Consequently, we proceed to pass following order.

ORDER

- a) Appeal No. AT005000000052960 is partly allowed.
- b) The impugned order dated 11th December, 2020 passed in compliant no. CC005000000043746 by Ld. Authority is confirmed and upheld with following modifications-

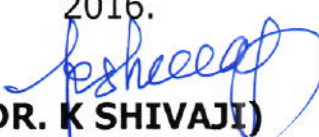
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- I. The promoters shall hand over the possession of the subject flat to allottees/complainant within a period of 4 weeks from the date of this order by adjusting interest amount at the rate of MCLR of SBI plus 2% from 1st January, 2019 till the date of possession on the paid amount of Rs.23,60,000/- payable to allottees/complainant against the balance consideration of Rs.10,32,400/- (including all charges) paid by allottees/complainant as per sale agreement (AFS). Surplus amount if any, after adjusting the amount in the aforesaid manner shall be paid by the respective party to the other party.
- II. In the event the allottees/complainant are found liable to pay further amount after adjusting the amount of interest payable by promoters as directed hereinabove, the promoters shall inform the same to allottees/complainant within 15 days from the date of this order. In such case, the possession shall be handed over within 2 weeks from the date of receipt of payment from the

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allottees/complainant. After receipt of such information from the promoters, the allottees/complainant shall pay such amount to promoters within 2 weeks, failing which such amount shall be liable to pay interest at the rate prescribed in the impugned order from the next day of 2 weeks till the date of actual payment.

- c) Failure to hand over possession in the above manner, the promoters shall be liable to pay further interest at the rate prescribed in the impugned order on the amount of interest payable by promoters to allottees/complainant up to the date of this order. The interest shall be payable on the net amount with effect from 14.04.2024 till the date of actual possession.
- d) Pending Misc. Applications, if any stand disposed of.
- e) Parties shall bear their own costs.
- f) Copy of this order be communicated to the Authority and the respective parties as per Section 44(4) of RERA,

2016.

(DR. K SHIVAJI)
Ajit


(SHRIRAM R. JAGTAP)