

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

**Misc. Application No. 299 of 2021 (Stay)
With
Appeal No. AT00600000053057/2021
In
Complaint No. CC006000000192121**

Rajyog Enterprise

Having existing office at,
Shop No. 7-8, Rajyog Residency,
Dr. Rahendra Prasad Road,
Mulund-West, Mumbai-400080.

... Appellant

Versus

BabuBhaskaran

Flat No. 202, Building No. 3,
Jaishankar Yagnik Marg, Sion,
Koliwada, Antop Hill,
Mumbai-400 037

... Respondent

**Along with
Misc. Application No. 524 of 2022 (Stay)
With
Appeal No. AT006000000063852/2022**

BabuBhaskaran

Flat No. 202, Building No. 3,
Jaishankar Yagnik Marg, Sion,
Koliwada, Antop Hill,
Mumbai-400 037

... Appellant

Versus

Rajyog Enterprise

Having existing office at,
Shop No. 7-8, Rajyog Residency,
Dr. Rahendra Prasad Road,
Mulund-West, Mumbai-400080.

... Respondent

S. J. J. J.

Adv. Mr. Krishna Agarwal for Co-promoter (the Allottee in Appeal No. AT006000000053057/2021)

Adv. Mr. Dilip P. Devadiga for Complainant/Allottee.

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

DATE : 18th March, 2024

(THROUGH VIDEO CONFERENCING)

COMMON JUDGEMENT

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

- 1) The captioned appeals arise out of order dated 21st December, 2020 passed by the Learned Member I, MahaRERA (for short "Authority") in the complaint filed by allottee seeking inter alia compensation for delay in possession of the flat and directions to promoter to hand over the possession of the subject flat.
- 2) For the sake of convenience, parties to the appeals hereinafter will be referred to as "Allottee" and "Co-Promoter". Since, captioned appeals arise out of the same order and parties are same, thus, both the appeals are being disposed of by a common judgment.
- 3) Brief facts, which are necessary for disposal of the captioned appeals, are that the appellant in appeal no. AT006000000053057 is a co-promoter. "Vital Developers Pvt. Ltd." and "Rajyog Enterprises" (the appellant herein) have

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jointly agreed to develop a property bearing CTS No. 343 (part) situated at Laldongar, M/West Ward, Sion Trombay Road, Village-Chembur Tq. Kurla under a slum rehabilitation scheme, which consists of Rehab Component and Sale Component. The Rehab Component is comprised of ground plus 14 upper floors for rehabilitating 241 slum occupants. Sale Component is comprised of stilt plus podium plus 16 upper floors. The name of project of Sale Component is "**Odina**", which consists of 103 flats. Pursuant to joint development agreement dated 20 December, 2010 and deed of rectification dated 13th September, 2012 executed between M/s. Vital Developers and M/s. Rajyog Enterprises (Co-promoter), the co-promoter is entitled to sale 50% of the constructed area of the sale component.

- 4) Allottee has purchased a flat bearing no. A-204 on the 2nd floor in the subject project for total consideration of Rs.1,09,53,504/-. On 05.09.2015, the co-promoter has executed an agreement for sale in favour of allottee and committed to hand over the possession of the subject flat on or before 30th June, 2017. However, the co-promoter has failed and neglected to hand over the possession of the

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subject flat to allottee on the specified date. The allottee has paid an amount of Rs.83,21,119/- to co-promoter from time to time till date. By virtue of demand letter dated 15.12.2018, the co-promoter has asked the allottee to make further payment. Co-promoter has obtained part occupancy certificate on 12.06.2020. Though, the co-promoter has obtained part occupancy certificate, the building is still incomplete as there is no water connection for the said building and even no proper access is provided for wing A. Besides, there is reported fire safety hazards in the building of the subject project. Because of delay caused by co-promoter, allottee has to live on a rental premises for such long period for which he has paid an amount of Rs.12,00,000/- towards the license fees. Since, the co-promoter has failed and neglected to hand over the possession of the subject flat on agreed date, the allottee has filed complaint and sought reliefs of compensation and direction to promoter to hand over the possession of the subject flat.

- 5) The co-promoter (Appellant) put its appearance in the complaint and remonstrated the complaint by filing reply contending



therein that the allottee has approached MahaRERA with unclean hands just to extort money from it and to harass it. Therefore, the complaint is liable to be dismissed in limini. The date of possession was 30.06.2017 subject to terms and conditions mentioned in clause No. 21 of the agreement for sale. The subject flat was ready in the month of February, 2020. Co-promoter has applied for part occupancy certificate to competent authority on 20.04.2020 and succeeded in getting part occupancy certificate on 12.06.2020. On receipt of part occupancy certificate, vide letter dated 19.08.2020, the co-promoter has raised final demand to allottee and asked the allottee to make balance payment and to take possession of the subject flat. However, allottee has failed and neglected to pay the outstanding dues and also to take possession of the subject flat.

- 6) The co-promoter has further contended that the project got delayed due to lackadaisical approach of Government Officials. The co-promoter did not get "No Objection Certificate" from Civil Aviation Authority nearly for 24 months. It has undertaken the slum rehabilitation scheme of Chembur Laldongar CHS Ltd by virtue of development agreement dated 22.07.2005 granted by

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the said society. Thereafter, it has executed a joint venture agreement for joint development of the said project with one M/s. Vital Developers Pvt. Ltd. on 28.12.2010 with further rectification deed dated 13.09.2012. As per joint venture agreement both of them have equal stakes in the sale building. Therefore, M/s. Vital Developers Pvt. Ltd. is a necessary party to the complaint. Besides, M/s. Vital Developer has failed to obtain necessary permissions on time hence, the project got delayed. Time and again, the co-promoter requested M/s. Vital Developers Pvt. Ltd. to expedite permissions. However, M/s. Vital Developers Pvt. Ltd. did not take any action due to which co-promoter has suffered from huge financial loss of Rs.15.20 Crores. After several correspondence with M/s. Vital Developers, finally the issue got resolved on 16.07.2019, by way of MOU executed between M/s. Vital Developers Pvt. Ltd. and M/s. Rajyog, the co-promoter on certain terms and conditions enumerated therein. The obligation to complete the Sale Component was entirely depended upon the rehab building which was part of obligation to be fulfilled by M/s. Vital Developers Pvt. Ltd. and hence, M/s. Vital Developers Pvt. Ltd.

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is responsible for the delay. With these contentions, the co-promoter has prayed for dismissal of the complaint.

- 7) After hearing the parties, the Ld. Authority has disposed of the complaint by his order dated 21st December, 2020, whereby, the Ld. Authority has directed co-promoter to pay interest to complainant (Allottee) from 1st July, 2017 for every month till the date of part occupancy certificate on the actual amount paid by the allottee at the rate of MCLR of SBI plus 2% as prescribed under the provisions of Section 18 of RERA Act, 2016 and further directed that the amount of interest payable by the respondent/co-promoter be adjusted with the outstanding dues payable by the complainant/allottee. The Ld. Authority has further ordered that on payment of balance outstanding dues if any, the possession of the subject flat be handed over to the complainant/allottee forthwith. While disposing of the complaint as above, the Ld. Authority has observed that with regard to the issue raised by the co-promoter/respondent for non-payment of outstanding dues by the complainant/allottee, the MahaRERA clarifies that as per the provisions of RERA Act, 2016, in case of any delay on the part of either promoter to hand over possession of the apartment/unit to the allottee or the allottee



in making the payment as per the payment schedule in the agreement for sale, the defaulting party is liable to pay interest for such period of delay at the rate prescribed under RERA Act, 2016 and rules made thereunder.

- 8) We have heard Ld. Adv. Krishna Agarwal for co-promoter (the Appellant in Appeal No. AT006000000053057/2021) and Ld. Adv. Dilip P. Devadiga for complainant/allottee.
- 9) An abridgment of argument of Adv. Krishna Agarwal for co-promoter (Rajyog Enterprises) is that by virtue of agreement for sale dated 05.09.2015, the co-promoter had committed to complete the project and hand over possession of the subject flat to allottee by 30.06.2017. However, the co-promoter could not adhere to its commitment due to unavoidable circumstances which were beyond the control of the co-promoter. The project got delayed due to lackadaisical approach of Government Officials viz. the co-promoter did not get "No Objection Certificate" from Civil Aviation Authority nearly for 24 months.
- 10) It is not in dispute that M/s. Vital Developers Pvt. Ltd. and co-promoter jointly agreed to develop a property bearing CTS no. 343 under a slum rehabilitation scheme. However, M/s. Vital Developers Pvt. Ltd. did not obtain necessary permissions from

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competent authority on time. Time and again, the co-promoter had requested M/s. Vital Developers Pvt. Ltd. to expedite permissions, but M/s. Vital Developers Pvt. Ltd. did not take any action as a result thereof, co-promoter has suffered huge financial loss of Rs.15.20 Crores. After several correspondence with M/s. Vital Developers Pvt. Ltd. finally the issue got resolved and MOU came to be executed between M/s. Vital Developers Pvt. Ltd. and co-promoter. The obligation to complete Sale Component was entirely depending upon the rehab building, which was part of obligation to be fulfilled by M/s. Vital Developers Pvt. Ltd. Therefore, it is crystal clear that M/s. Vital Developers Pvt. Ltd. is responsible for the delay.

- 11) Learned Adv. Krishna Agarwal has further poignantly submitted that one Yashwant Shenoy had filed Public Interest Litigation no. 86 of 2014 in the Hon'ble High Court and the Hon'ble High Court was pleased to pass status quo order on 1st September, 2016, which came to be vacated on 5th April, 2018. During this period injunction was running against Civil Aviation Authority. This circumstance was not considered by the Learned Authority. However, it cannot be ignored that the Ld. Authority in another matter and for the same project observed that the mitigating

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circumstance i.e. status quo order dated 1st September, 2016 passed in PIL No. 86 of 2014 is justified in delay caused in completing the project. In the said matter the Ld. Authority was pleased to extend the date of completion of the project till April, 2018 during which the status quo order was in operation. The Ld. Authority grossly ignored the view taken by him in the said matter and arrived at a wrong conclusion that the status quo was granted for construction for additional one floor i.e. 16th and thus, it could have taken part occupancy certificate from the corporate authority for the subject flat which is located on the 2nd floor. Thus, the Ld. Authority has taken contrary view in the present matter without any justifiable reasons. Soon after order dated 5th and 6th April, 2018, the co-promoter and joint venture partner immediately made application to Airport Authority for NOC. Accordingly, on 27th July, 2018, Airport Authority of India has issued "No Objection Certificate" i.e. after almost 4 months. Thereafter upon completing all formalities M/s. Vital Developers Pvt. Ltd. and co-promoter applied for further commencement certificate on 11.09.2018 for completion of building. Said application was processed and it was finally allowed by SRA on 11.03.2019. Co-promoter and M/s. Vital

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Developers Pvt. Ltd. have completed the balance construction work and completed the building up to 15 floor by obtaining part occupancy certificate. Thus, even after disposal of PIL no. 86 of 2014, the Airport Authority of India and Slum Rehabilitation Authority took unreasonable time for issuing the balance construction permission. The co-promoter required reasonable time for completion of the project. Ld. Authority has totally ignored aforesaid circumstances, which were unavoidable and beyond the control of co-promoter. This period is required to be excluded while computing the period for completion of the project. Therefore, it is crystal clear that the co-promoter is entitled to extension of approximately 30 months, thus it can be said that there is no delay on the part of the co-promoter in completing the project. Failure to complete the project by 30th June, 2017 was not attributable to any default or delay on the part of the co-promoter.

- 12) Learned Adv. Krishna Agarwal has strenuously submitted that out of total consideration amount, a sum of Rs.35,59,889/- towards balance consideration plus Rs.4,13,847/- towards GST plus Rs.2,04,966 towards other charges plus Rs.1,00,032/- towards advance maintenance charges are still due and payable



by allottee to co-promoter as on 19th August, 2020. Clauses 6 and 9 of agreement for sale clearly provide that liability of GST shall be borne by allottee. However, the allottee has failed to make further payments to co-promoter on time.

- 13) Learned Adv. Krishna Agarwal has further submitted that while passing impugned order Ld. Authority has clarified that as per the provisions of RERA Act, 2016, in case of any delay on the part of either promoter or allottee in handing over possession or making payment as per the payment schedule, the defaulting party is liable to pay interest for such period of delay at the rate prescribed under RERA Act, 2016 and Rules made thereunder. Since, there is no default on the part of co-promoter, the co-promoter is not in violation of the provisions of RERA Act, 2016. However, the allottee is in violation of provisions of Section 19 (6), Section 19(7) and Section 19(10) of RERA Act, 2016. The allottee by refusing to clear the outstanding dues as per the agreement for sale, is in breach of not only the agreement for sale but also his duties/obligations under Section 19 of RERA Act, 2016. Thus allottee is liable to pay interest on the unpaid amount to co-promoter.



14) Learned Adv. Krishna Agarwal has further submitted that the GST regime includes the concept of "an ongoing project", the criteria for which is satisfied by co-promoter whereby, tax liability under the GST regime may arise. Co-promoter has not received any tax benefit or relief for the same. Conduct of the allottee discloses that allottee is willfully deferring in taking the possession of the subject flat. Besides, allottee has not offered plausible explanation for not taking the possession of the subject flat and therefore, the allottee is not entitled to interest on paid amount from 19.08.2020. With these contentions, Ld. Adv. Krishna Agarwal for co-promoter has submitted that the appeal filed by allottee be dismissed with cost and appeal filed by co-promoter be allowed with cost.

15) Succinct of argument of Ld. Adv. Dilip P. Devadiga for allottee is that it is not in dispute that by virtue of agreement for sale, the co-promoter was supposed to hand over the possession of the subject flat to allottee by 30th June, 2017. The co-promoter has failed and neglected to hand over the possession of the subject flat on agreed date and thereby, violated the provisions of Section 18 of RERA Act, 2016. The material produced on record reveals that allottee has made payments on time.

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Allottee is only obligated to pay when the co-promoter has complied with its part of the agreement. As per the Latin Maxim **"Nullus Commodum Capere Potest De Injuria Sua Propria"** the co-promoter cannot be allowed to take advantage of its own wrong. No doubt an intimation was given to allottee in the form of demand letter dated 19th August, 2020 but at the same time it cannot be ignored that exorbitant claims were made in the said letter by co-promoter. Since the matter was already subjudice before the Ld. Authority, the allottee pondered it fit to raise the said issue before the Ld. Authority. However, the Ld. Authority did not consider the same.

- 16) Ld. Adv. Dilip P. Devadiga has poignantly submitted that the material on record clearly indicate that allottee agreed to purchase the subject flat for total consideration of Rs.1,18,08,956/- inclusive of stamp duty, registration fees, advance maintenance and other charges. It is not in dispute that the allottee has paid Rs.83,21,119/- to co-promoter. Therefore, it can be said that the allottee is now liable to pay Rs.34,87,837/- to co-promoter and the same was not paid since the co-promoter did not adhere to the terms of agreement for sale. However, by virtue of letter dated 19.08.2020, the co-

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promoter made exorbitant claim of Rs.42,78,834/-. The co-promoter has failed to clarify till date as to how co-promoter has arrived at figures mentioned in letter dated 19.08.2020. GST was made applicable in the whole country with effect from 01.07.2017. While the possession of subject flat was supposed to be given by 30th June, 2017. Therefore, in no manner GST could have been demanded from the allottee though the co-promoter might or might not have paid the same since possession was to be given before 30th June, 2017 and therefore, it can be said that the GST is not applicable to the transaction in question. Therefore, allottee is not bound to pay GST amount to the co-promoter in view of clause 5(b) of schedule 2nd of GST Act, 2017. Since the matter was subjudice before Ld. Authority, allottee thought it fit to raise the issues before the Ld. Authority but the Ld. Authority failed to consider the issues in their right perspective and granted interest only till date of occupancy certificate instead of granting it till date of handing over possession. Besides, the Ld. Authority failed to consider that the offer of possession was beyond the terms of the agreement. The amount demanded was in excess of the terms of the agreement only to frustrate the claims of the



allottee. Apart from this, Ld. Authority made a totally uncalled observation in para 17 of the impugned order. Allottee did not commit any delay in making the payments as per schedule. Besides, the co-promoter did not file complaint before the Ld. Authority for so called default in making the payment by allottee. Therefore, it can be said that the allottees has not committed any default in making the payments to co-promoter.

17) Ld. Adv. Dilip P. Devadiga has further submitted that it is not the case of co-promoter that delay is caused because of allottee. Moreover, being co-promoter having sound knowledge of the market risk, the co-promoter was fully aware of the market risk when co-promoter and M/s. Vital Developers Pvt. Ltd. launched subject project and signed the agreement with allottee. RERA Act, 2016 contemplates that once delay is caused which cannot be attributable to the fault of the allottee then the co-promoter/promoter is bound to pay interest. All the payments due and demanded were made on time by allottee. The balance payment was kept in abeyance since the co-promoter was not in the position to comply with the terms of agreement for sale. Though the co-promoter claims to have completed the project up to 15 floors, co-promoter has not produced a single

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document to show that they had applied for occupancy certificate for the subject flat which is on the 2st floor considering that the certificate dated 12th June, 2020 is also a part occupancy certificate. Thus it is crystal clear that the offer of co-promoter by letter dated 19.08.2020 was not bonafide. With these contentions Ld. Adv. Dilip P. Devadiga for allottee has prayed to dismiss the appeal filed by co-promoter and appeal filed by allottee be allowed with cost.

- 18) We have given thoughtful consideration to the submissions advanced by learned advocates appearing for respective parties. After considering the submissions advanced by advocates appearing for respective parties, pleadings of the parties, material on record and impugned order following points arise for our determination and we have recorded our findings thereupon for the reasons to follow:

Sr. No.	Points for consideration	Findings
1.	Whether impugned order dated 21 st December, 2020 passed by Ld. Authority in complaint no. CC006000000192121 warrants interference in this appeal?	In the Affirmative
2.	What order?	As per final order

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REASONS

- 19) On ensembling the facts as submitted above by the parties reveals that the co-promoter and joint venture partner viz. M/s. Vital Developers Pvt. Ltd. are executing the slum rehabilitation project. Clause 21 of agreement for sale executed by and between allottee and co-promoter provides that the co-promoter and joint venture partner to the extent possible endeavor to offer the possession of the subject flat to allottee on or before June, 2017. However, the co-promoter has miserably failed to hand over the possession of the subject flat to allottee as per the date specified in the agreement for sale.
- 20) It is specific contention of the co-promoter that the delay in completion of the project has been caused by the policy paralysis of the competent authority and other government statutory authorities. The lackadaisical approach of the concerned authorities in according "No Objection Certificate" and in issuing commencement certificate caused the delay in completing the project. However, material on record and the pleadings of the parties falsified the contention of the co-promoter that because of lackadaisical approach of the concerned authorities in granting No Objection Certificate and



in issuing commencement certificate, the project has been delayed.

- 21) It is not in dispute that the subject flat is on the 2nd floor. It transpires from the pleadings of the co-promoter more particularly para no. 4.10 of appeal memo that co-promoter and joint venture partner have completed the construction of the sale building up to 15th floors by the end of August, 2016. This signifies that there is no substance in the contention of co-promoter that delay in granting No Objection Certificate by Airport Authority and further commencement certificate by SRA caused delay in completing the construction of subject flat.
- 22) The next contention of the co-promoter is that one Yashwant Shenoy had failed Public Interest Litigation No. 86 of 2014 in the Hon'ble High Court. The Hon'ble High Court was pleased to pass order directing the concerned authorities including Airport Authority of India to maintain status quo i.e. not to grant further No Objection Certificate to developers. The injunction was running against Airport Authority of India from 1st September, 2016 till 5th and 6th April, 2018. By the order dated 5th and 6th April, 2018, the Hon'ble High Court has vacated the order granting status quo. Therefore, co-promoter and joint venture



partner could not apply to Airport Authority of India for No Objection Certificate for constructing further floors on the sale building. This is one of the mitigating circumstance which was caused delay in completing the project. We do not find substance in the contention of the co-promoter.

23) It is significant to note that as indicated above, it is specific contention of the co-promoter and joint venture partner that they have completed the construction of sale building up to 15th floor by the end of August, 2016. Under the circumstances, it was expected of co-promoter and joint venture partner to apply to the concerned authority for part occupancy certificate for the subject flat which is admittedly on the 2nd floor considering that the certificate dated 12th June, 2020 is also a part occupancy certificate. Therefore, the mitigating circumstance as demonstrated by co-promoter cannot be said to be a cause for delay.

24) The force majeure factors as demonstrated by the co-promoter do not fall within the ambit of explanation to Section 6 of RERA Act, 2016, which clearly clarifies that "force majeure" shall mean a case of war, flood, draught, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular

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development of the real estate project. None of the grounds demonstrated by the co-promoter fall within the scope of explanation to Section 6 of RERA Act, 2016, which could have justified the delay. Therefore, we are of the view that the delay in granting No Objection Certificate and commencement certificate for construction of further floors cannot be construed as a force majeure. Moreover, the status quo order passed by Hon'ble High Court in PIL No. 86 of 2016 also cannot be construed as a force majeure or mitigating circumstance.

25) Considering the liability of co-promoter to assess the likely date of completion of project, allottees have very limited liability of discharging their own obligations as per the terms of agreement for sale inter alia relating to primary to make payments from time to time so that the project is not starved of funds to cause delay in completion. If the allottees are not responsible for the reasons for delay, they are entitled to reliefs under Section 18 of RERA and cannot be saddled with consequences for delay in completing project. The language employed in Section 18(1)(a) makes it clear that promoter is obligated to hand over possession of the unit as per agreement for sale by date specified therein. The date so specified in agreement or in any



other manner is sacrosanct. 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)."

26) We would like to reiterate that it is specific case of co-promoter that they have completed the construction of the sale building up to 15th floors by the end of August, 2016. It is not in dispute that agreement for sale came to be executed on 05.09.2015. By virtue of agreement for sale, the co-promoter and joint venture partner have committed to hand over the possession of the subject flat on or before June, 2017. It is further contention of

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the co-promoter that there is delay in making the payment by allottee. However, it is not in dispute that the allottee has paid Rs.83,21,119/- to co-promoter from time to time. There is no material on record to show that the co-promoter has asked the allottee in writing to make the payment as per schedule mentioned in AFS. The record reveals that for the first time by letter dated 19.08.2020, the co-promoter has asked allottee to make final payment. Under the circumstances, it is difficult to digest that the allottee had committed default in making the payments on time to co-promoter. It is not the case of co-promoter that because of default in making the payment by allottee, co-promoter and joint venture partner could not complete the project on time or such conduct of the allottee caused delay in completing the project. It is worthy to note that co-promoter has not filed complaint against allottee to Ld. Authority for delayed payment. Apart from this, there is nothing on record to show that co-promoter had issued notice to allottee prior to 19.08.2020 for delayed payment. Therefore, we are of the view that allottee is not responsible for delay in completing the project. The material on record clearly indicates that the co-promoter and joint venture partner are responsible for delay in



completing the project. In other words, co-promoter and joint venture partner are responsible in not handing over the possession of the subject flat to allottee on specified date.

- 27) While explaining the scope of Section 18 of RERA Act, 2016, 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.

28) It is therefore clear that there are no shackles or limitations on the exercise of right by allottee to seek interest once there is delay in possession. The indefeasible right of allottee to claim interest cannot be defeated by any mitigating circumstances as demonstrated by co-promoter. Therefore, we are of the view that the impugned order holding that the allottee is entitled to interest under Section 18 of RERA Act, 2016 is sustainable in law. However, at the same time it cannot be ignored that the Ld. Authority has awarded interest to allottee till the date of occupancy certificate only.

29) It is to be noted that it is not in dispute that co-promoter and joint venture partner have obtained part occupancy certificate on 12.06.2020. Despite having received part occupancy certificate on 12.06.2020, the co-promoter has offered possession of the subject flat to allottee by letter dated 19.08.2020. The co-promoter has not offered explanation for such delay in offering possession of the subject flat to allottee. Under circumstances, we are of the view that the Ld. Authority

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ought to have awarded interest to allottee till the date of offer of possession i.e. till 19.08.2020.

30) It is significant to note that during pendency of the complaint the possession was offered to allottee by co-promoter. Allottee did not take the possession of the subject flat on twofold grounds.

i) According to allottee, the amount demanded in letter dated 19.08.2020 was in excess of the terms of the agreement.

ii) Since the matter was already subjudice before the Ld. Authority, the allottee pondered it fit to raise the said issue before the Ld. Authority, but the Ld. Authority did not consider the same.

We do not find substance in the aforesaid contentions of appellant.

31) It is significant to note that there is nothing on record to show that the allottee had agitated before the Ld. Authority that amount demanded in letter dated 19.08.2020 is excessive and contrary to the agreement for sale. Moreover, impugned order is silent on this point. Besides, according to allottee he is not liable to pay GST for the simple reason that the co-promoter

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was supposed to hand over the possession by 30.06.2017 and GST came into force on 01.06.2017. We do not find substance in the said contention of the allottee.

- 32) A perusal of agreement for sale reveals that clause 6 of agreement for sale stipulates that the **“purchaser shall pay the aforesaid agreed consideration along with the service tax, VAT and any other tax applicable in respect of the said premises to the promoters”**. Under the circumstances, we are of the view that the allottee is bound to pay GST to promoter.
- 33) On examination of the pleadings of the parties reveals that there is a controversy between the parties on the point of balance amount and maintenance charges. It is not in dispute and also agreement for sale discloses that allottee has purchased subject flat for a consideration of Rs.1,09,53,504/-. Clause 36 of agreement for sale stipulates that the allottee is bound to pay charges towards legal, share money, application entrance fees of the society, betterment charges, electric meter and substation charges, water connection, society formation, generator and advance maintenance charges total Rs.2,73,732/-. The allottee is also bound to pay stamp duty and

registration charges amounting to Rs.5,81,720/-. It means the allottee has to pay total Rs.1,18,08,956/- to co-promoter. It is not in dispute that allottee has paid Rs.83,21,119/- to co-promoter. It means allottee has to pay balance amount of Rs.34,87,837/- to promoter with GST. A perusal of letter dated 19.08.2020 reveals that co-promoter has claimed following amounts from allottee.

1.	Balance amount towards agreement value.	35,59,889/-
2.	Balance amount towards service tax/GST/VAT tax.	4,13,847/-
3.	Other charges as mentioned in agreement for sale	2,04,966/- (including GST)
4.	Advance maintenance as mentioned in agreement for sale.	1,00,032/- (excluding GST)

34) We have already observed that allottee is liable to pay GST to promoter. On careful examination of agreement for sale reveals that charges as mentioned in clause no. 36(I to VII) of agreement for sale comes to Rs.1,73,600/- (excluding GST). On application of GST it comes to Rs.2,04,966/-. It means except

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the amount claimed towards agreement value, the rest amount claimed towards GST, other charges and advance maintenance charges cannot be said to be exorbitant or excessive. Therefore, for the foregoing reasons, we have come to the conclusion that the allottee is liable to pay outstanding dues towards subject flat to co-promoter as follows:

1.	Balance amount towards agreement value.	34,87,837/-
2.	Amount towards service tax/GST/VAT tax.	4,13,847/-
3.	Other charges as mentioned in clause 36 (I to VII) of agreement for sale.	2,04,966/- (including GST)
4.	Advance maintenance charges as mentioned in clause 36 (VIII) of agreement for sale.	1,00,032/- (excluding GST)
5.	Total	42,06,682/-

35) With the discussions and observations recorded hereinabove as the allottee is not found responsible for delay in completion of the project, he is entitled not only to interest for delay in

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possession till the date of offer of possession i.e. 19.08/2020 but also to possession of the subject flat after adjustment of the interest amount against the balance consideration of Rs.42,06,682/-. As the impugned order recorded that the allottee is entitled to interest up to the date of occupancy certificate is found unsustainable in the eyes of law and hence calls for interference in the appeal filed by the allottee. Consequently, we proceed to pass the following order.

ORDER

- a) Appeal No. AT006000000053057/2021 is dismissed with cost.
- b) Appeal no. AT006000000063852/2022 is partly allowed with the following directions.
 - I) The respondent/co-promoter is directed to pay interest to allottee/complainant on the amount paid by him as per SBI highest Marginal Cost Lending Rate (MCLR) plus 2% from 01.07.2017 till the date of offer of possession i.e. till 19.08.2020.
 - II) The amount of interest payable to allottee shall be adjusted at the time of possession against the

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balance amount of Rs.42,06,682/- payable by allottee.

- c) After adjustment as above, the deficit or surplus if any, shall be paid by respective parties 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(1) above from the next day of the date of actual possession till the date of actual payment.
- d) Respondent/co-promoter shall pay cost of Rs. 20,000/- to allottee.
- e) Miscellaneous applications, if any, stand disposed of.
- f) Copy of this order be communicated to the Authority and the respective parties as per Section 44(4) of RERA Act, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

Ajit