

Misc. Application No. 13/22 (Waiver)
In
Appeal No. AT00600000053301 of 2021
In
Complaint No. CC006000000056240/18

**Lokhandwala Kataria Construction
Pvt. Ltd.**

Address :

72, Gandhi Nagar,
Dainik Shivner Road, Worli,
Mumbai-400 018

... Appellant

Versus

1. Moneyam Natesan

Address :

803-C Wing,
Lokhandwala Residency Towers CHSL,
L. R. Papan Marg,
Off Dr. E Moses Road, Worli,
Mumbai-400 018

2. Lakshmi Natesan

Address :

Shri Santoshi Apartment New 26 (old 14 A),
Flat No.5, Rangarajapuram, Kodambakkan,
Chennai-600 024, Tamil nadu

... Respondents

Adv. Ms. Rama Subramanian for Allottees

Adv. Mr. Nimay Dave for Promoter



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

DATE : 19th January, 2024

(THROUGH VIDEO CONFERENCING)

COMMON JUDGEMENT

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

The captioned Appeals emanate from Order dated 19th December, 2019 passed by the learned Member I, MahaRERA (for short the Authority) in Complaint No.CC006000000056240, whereby the learned Authority has awarded interest to Allottees from 01.04.2019 till handing over of the possession of the subject flat to Allottees.

2] For the sake of convenience parties to the Appeals hereinafter will be referred to as "Allottees" and "Promoter". Since captioned Appeals are arising out of the same Order and parties are same, therefore, both the Appeals are being disposed of by a common judgment.

3] Brief facts, which are necessary for disposal of Appeals, are that the Allottees have purchased flat bearing no.3003 on the 30th floor, admeasuring 1247 sq. ft. (carpet area), of wing 'A' in the project of Promoter known as "**Minerva**" situated at Lower Parel, Mumbai for a total consideration of Rs.4,96,85,000/- in July, 2010 and made a initial payment of Rs.11,00,000/- on 14.07.2010. The Allottees have paid an amount of Rs.4,12,47,400/- excluding

S. Jagtap

taxes and registration charges to the Promoter from time to time. Allottees have also paid Rs.13,77,392/- towards service tax, Rs.4,96,850/- towards VAT and Rs.24,84,390/- towards stamp duty and registration charges. This is a Slum Rehabilitation Project. The project consisted of rehabilitation component and sale component. The Agreement for Sale (AFS) came to be executed by and between Allottees and Promoter on 19.09.2013, whereby as per Clause 9, Promoter committed to handover the possession of the subject flat to Allottees on or before 31.12.2016 with a grace period of 6 months i.e. latest by 30.06.2017. While registering the project with MahaRERA, the Promoter has extended the date of possession to 31.12.2022. Promoter failed to deliver the possession of the subject flat to Allottees in accordance with the terms and conditions of the AFS, as a result thereof Allottees have filed Complaint bearing No.CC006000000056240 and sought relief of interest on account of delayed possession under Section 18 of RERA Act, 2016 and also sought relief of compensation.

4] The Promoter appeared in the Complaint and remonstrated the Complaint by filing reply. The case of Promoter which emerges from the impugned Order and material on record is that the project consisted of 90 floors out of which the Promoter

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has completed 66 floors. The Promoter has completed more than 70% of the work and the balance work is going on at a high pace. The Promoter is willing to complete the project at the earliest and hence any order awarding the payment of interest for the delayed possession to the Allottees would jeopardize the project. The Promoter has further contended that all the Allottees of the subject project were apprised about the delay caused in the progress of the project which was due to the issue of getting various permissions from the concerned competent authorities. The Allottees/ Complainants were informed by the Promoter about the delay in the project and also the revised payment schedule for the balance amount. The Allottees by accepting the said revised payment schedule have paid an amount of Rs.19,00,000/- to Promoter. Besides the Allottees have defaulted in making timely payments as per the terms and conditions of the AFS.

5] The Promoter has further contended 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 granting approvals to the proposal, plan, etc. constrained the Promoter to file Writ Petition (L) No.2699 of 2014

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before the Hon'ble High Court of Bombay. By the Order dated 07.01.2015 the Hon'ble High Court of Bombay has directed the government authorities to grant all the permissions to the Promoter which were not granted even after continuous follow up, which led to the delay in the project. Thereafter, the Slum Rehabilitation Authority (SRA) granted the additional FSI to the Promoter in compliance to the Order of the Hon'ble High Court of Bombay even after lapse of almost 10 months. The Promoter later received the Commencement Certificate till 77th floor on 07.03.2017 on the basis of MoEF approvals dated 09.12.2016 granted by MoEF.

6] The Promoter has further contended that the Promoter would endeavour to complete the subject project and handover the possession of the flat to Complainants/ Allottees on or before 31.03.2019 as per the revised schedule alongwith part-Occupancy Certificate upto 50th floor and the Promoter shall complete the said project by 31.12.2020. The Promoter has specifically contended that the reasons for the said delay were beyond the control of the Promoter and the same are covered under *force majeure* clauses cited in the AFS. The date of possession was subject to extension on the ground of *force majeure* and several mitigating circumstances beyond the control of the Promoter. With these

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contentions the Promoter had prayed for dismissal of the Complaint.

7] After hearing the parties learned Authority passed the impugned Order and awarded interest to Allottees with effect from 01.04.2019 till the date of delivery of possession of the subject flat to Allottees. The learned Authority has deferred the payment of interest by observing that the project is near completion, the payment of interest at this juncture can adversely impact the construction work and jeopardize the project and at the same time liberty has been granted to Promoter to make the payment of interest at the time of possession of the apartment after adjusting the outstanding dues of the Complainants against the interest payable to Complainants.

8] Aggrieved by the fact that the relief of interest with effect from 01.07.2017 is not awarded as desired and further extended the liberty to Promoter to make the payment of interest at the time of possession of the apartment after adjusting the outstanding dues of the Complainants against the interest payable to Complainants, one of the Complainants has filed Appeal No.AT006000000052359 and sought the relief of direction to the Promoter to pay interest from 01.07.2017 till the Promoter

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handover the possession of the subject flat to the Complainants/ Allottees as per Section 18 of RERA.

9] Feeling aggrieved by the impugned Order which awards interest to Allottees, the Promoter has also challenged the impugned Order on the grounds such as;

(a) The project has faced enormous difficulties due to implementation of demonetization which had a detrimental impact on the Real Estate Sector;

(b) During the said period the Promoter was facing insolvency proceedings, the National Company Law Tribunal (NCLT), Mumbai by its Order dated 19.09.2019 approved the insolvency process against the Promoter. The same significantly impacted on the internal working of the Promoter and caused resultant delay;

(c) Covid-19 pandemic and resultant lockdown imposed by the Government seriously affected the project. The second wave of Covid-19 has severally jeopardized the project. There was shortage of workers and staff due to nation-wide migrant crises. There were restrictions which had affected the continuity of the project. Covid-19 pandemic was beyond the control of the Promoter, the delay of minimum period of 24 months ought to have



been added and the timelines ought to have been extended as per the terms of agreement;

(d) While registering the project the Promoter revised the date of completion of project as 31.12.2022. This date was accepted by the learned Authority and the Allottees. The Allottees did not raise any grievance or challenged this date. Therefore, the Allottees/ Complainants are now estopped from raising any grievance with regard to the purported delay in handing over the possession of the flat and thus there is no question of any interest leviable on account of purported delayed possession;

(e) After considering the *force majeure* factors, MahaRERA was pleased to extend the period of date of possession mentioned in the registered AFS by six months and therefore the possession of the flat as on date is to be handed over by 30.06.2023. The Promoter has not committed any breach of the provisions of RERA;

(f) The learned Authority ought to have considered the terms and conditions of the AFS. The AFS still binds the parties. The events which have occurred as above are stated in the AFS. Parties to the AFS have agreed that the possession date was to be extended if any of these events occur and lead to a delay. AFS provides exclusion of the said period. The learned Authority ought



to have computed the date of possession as per the terms and conditions of the AFS;

(g) The learned Authority ought to have considered the conduct and efforts taken by the Promoter to complete the project. The alleged delay has not been on account of the acts of the Promoter. It is only due to circumstances beyond the control of the Promoter like Stop Work Notices, external causes, changes in the Development Rules, obstacles, non-compliances of Order passed by the Hon'ble High Court, administrative urgency, introduction of fungible FSI, departmental bottleneck and *force majeure*. Despite these difficulties the project is still in progress and the Promoter endeavors to complete the project at the earliest possible subject to the relaxation in the Covid-19 restrictions imposed by the government;

(h) The learned Authority ought to have appreciated that the Project comprises of 90 floors. The Promoter has completed construction till 77 floors. The Promoter has further completed the construction of 10 rehab buildings and has obtained the Occupancy Certificate for four such rehab buildings. The Promoter is working at a fast pace even during current pandemic to ensure that the project is to be completed as early as possible. In spite of no fault

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of the Promoter, which is evident from the documents placed on record, the learned Authority has directed the Promoter to pay interest from 01.04.2019 till the date of handing over possession of the flat and the impugned Order has an effect of creating hardship to the Promoter.

10] In view of the above grounds the Promoter has preferred Appeal No.AT006000000053301 and challenged the impugned Order and sought relief of setting aside the impugned Order.

11] We have heard learned Advocate Ms. Rama Subramaniam for Allottees/ Complainants and Advocate Mr. Nimay Dave for Promoter. Learned Advocate Ms. Rama Subramaniam for Allottees has submitted that the written submissions filed by the Allottees to be considered as oral submissions of Allottees and she does not want to make oral submissions. Learned Advocate has placed her reliance on the decision passed by this Tribunal in **Appeal No. AT006000000052177/2020 of Sanjay Kumar R. Ghaghda Vs. Lokhandwala K. Construction Pvt. Ltd.**

12] The submissions advanced by the learned Advocate Mr. Nimay Dave for Promoter is nothing but reiteration of contents of Appeal memo. However, in addition to that the learned Advocate has further argued that the Appeal filed by Allottees is barred by

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delay of one day and therefore, the Appeal filed by the Allottees is liable to be dismissed in limine. The material produced on record by Promoter clearly indicates that the subject project has faced enormous difficulties. It is not in dispute that the plan in respect of "**Minerva**" project was amended, and the amended plan was sanctioned by the competent Authority upto 39 floors. The subject project received No Object Certificate (NOC) from High Rise Committee on 03.02.2012. However, by Order dated 15.02.2013, Urban Development Department (UDD) had called reports of MCGM and SRA in respect of the scheme. The said letter was responded by SRA. Besides SRA had placed on record that all the conditions of the scheme were complied with and there was no objection for grant of 4 FSI for the project to be constructed on the property. On 19.11.2013, the SRA had approved revised lay out as per the Development Control Rules.

13] Learned Advocate Mr. Nimay Dave has further poignantly submitted that on 04.12.2013 the Government of Maharashtra had issued Resolution by which the Standing Committee had to clear all the proposals which were submitted for the construction of high-rise buildings around Arthur Road jail. In connection with the said Government Notification, Writ Petitions were filed by the

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Developers before the Hon'ble High Court, Bombay. The Hon'ble Bombay High Court held that the decision taken by the Government vide Notification dated 04.12.2013 was to be applied prospectively and allowed the CIDCO and the Appellant to continue with the construction of structure covered under the project/ schemes sanctioned by CIDCO. In spite of the above verdict of the Hon'ble Bombay High Court, the recommendations of SRA and incessant requests of the Appellant, Urban Development Department (UDD) did not issue NOC for 4 FSI on the said plot. On 24.05.2014, Airport Authority of India (AAI) revised height clearance certificate subject to additional terms and conditions. However, because of lackadaisical approach of the government officials the Appellant was constrained to file Writ Petition before the Hon'ble Bombay High Court. By the Order dated 07.01.2015 the Hon'ble Bombay High Court had directed the Urban Development Department to process the Application of the Appellant without applying conditions imposed under Government Resolution dated 04.12.2013 and pass appropriate Orders within eight weeks thereon. After the period of 10 months from the aforesaid Order of the Hon'ble Bombay High Court the direction in the Order were complied with by the authorities. Despite these difficulties the

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project is under progress and the Promoter endeavours to complete the project at the earliest possible. The Promoter has completed construction till 77 floors. The Promoter has succeeded in getting part-Occupancy Certificate dated 06.01.2023 from SRA. Therefore, by any stretch of imagination it cannot be said that the Promoter is responsible for delay in completing the project. In spite of no fault of the Promoter which is evident from the documents placed on record, the learned Authority has directed the Promoter to pay interest from 01.04.2019. Advocate for Promoter has placed reliance on the following citation.

(i) **Laabh Buildwell Vs. Sanket Yadav** (Appeal No.AT006000000031609);

(ii) **Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd.** (2000 2 SCC 734)

(iii) **Mahesh Sikotra Vs. Propel Developers Pvt. Ltd.** (Appeal No.AT006000000010740)

(iv) **M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021;

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With these contentions learned Advocate Mr. Nimay Dave has prayed for dismissal of Appeal filed by Allottees and further prayed to allow the Appeal filed by Promoter with costs.

14] Having considered the detailed and comprehensive submissions of the respective parties supported by plethora of documents, the controversy in these Appeals appears to be very limited in scope. The points that arise for our consideration and findings thereon for the reasons to be followed are as under:

Sr. No.	Points	Findings
1	Whether impugned Order dated 19.12.2019 warrants interference?	In the affirmative
2	Whether Allottees are entitled to possession of the subject flat?	In the affirmative
2	What order?	As per final order

REASONS

15] On ensembling the facts as submitted above by the parties, it is not in dispute that the Promoter is executing the slum rehabilitation project. It is not in dispute that as per Clause 9 of the AFS executed by and between the parties, the Promoter had committed to handover the possession of the subject flat to

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Allottees on or before 31.12.2016 with a grace period of 6 months i.e. latest by 30.06.2017. However, the Promoter has miserably failed to handover the possession of the subject flat to Allottees as per the date specified in the AFS. The contentions of the Promoter that after being made aware that the project being a slum project is likely to be delayed, the Allottees agreed in the AFS for extension in the possession date and therefore, they are estopped from raising the grievance of delay in possession, is strongly denied by the allottees.

16] It is the specific contention of the 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 granting approvals to the proposal, plan, etc. constrained the Promoter to file Writ Petition before the Hon'ble High Court of Bombay and despite Order of the Hon'ble Bombay High Court, the SRA accorded the additional FSI to the Promoter after lapse of almost 10 months. However, material produced on record by the parties and the pleadings of the parties falsify the contention of the Promoter that because of lackadaisical approach of the concerned authorities in granting approvals to the proposal,

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plan, etc. the project has been delayed. It is not in dispute that the Promoter had procured;

(i) LoI on 16.04.2005; (ii) Environmental Clearance on 13.04.2007; (iii) Revised LoI on 17.12.2009; (iv) IOD on 07.05.2010; (v) CC up to plinth level on 15.10.2010; (vi) Approval of amended plan on 21.10.2011; (vii) CC extension up to 24th floor on 22.08.2012 and (viii) CC extension up to 30th floor on 13.12.2013.

17] It is not in dispute that flat of Allottees is on 30th floor. It means the Promoter had all permissions and approvals on 13.12.2013 itself with regard to the subject flat, despite this the Promoter failed to complete the construction. The specie of the slum project is typically prone to numerous complications arising from non-vacation of structures by slum dwellers, grant of approvals to plan by the concerned authorities, etc to cause inordinate delay in completion of the project. As an experienced Promoter in the market, it is the Promoter who is well aware of the factors that may endanger the prospects of timely completion of the project. So being domain experts and considering likely time to be consumed by various activities, Promoter is the best judge to estimate the likely timelines for completion of the slum project. On the contrary, the purchasers having no domain knowledge are

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neither aware nor are expected to be aware of the nature of mitigating factors which may delay the project. The purchasers execute the AFS based on the trust and the commitment given by the Promoter to handover possession by a certain date.

18] On careful examination of AFS reveals that only a routine and usual reference or mention of slum project is seen to have been made while giving description of the project, which is normally found in respect of all agreements executed in all types of projects. Certain eventualities that may cause delay as provided in Clause 9 of the AFS are also routinely provided in all agreements and thus cannot be considered relating specifically to slum projects only. It is therefore cannot be construed that by signing the AFS the Allottees have consented to wait infinitely for completion and possession considering the factors that would delay completion of slum project. Therefore, we find no merits and substance in the contention of Promoter as Allottees never agreed to any indefinite or tentative date of possession merely for the reasons that they were made aware of the factors that would delay completion of slum project.

19] It transpires from the pleadings of the parties and material on record that subsequent to revised Development Control

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Regulations, amendment sought in the plans in the year 2016 was also for availing more FSI and for enhancing profit, which was nothing to do with the construction up to 30th floors. It is not the case of Promoter that Promoter could not construct up to the 30th floors due to non-availability of additional FSI. On the contrary, as indicated above, Promoter had all required approvals till 13.12.2013 for construction up to 30th floors.

20] The force majeure factors as demonstrated by the Promoter do not fall within the ambit of explanation to Section 6 of RERA which clearly clarifies that "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of the real estate project. None of the grounds as demonstrated by the Promoter fall within the scope of explanation to Section 6 of RERA which could have justified the delay. As indicated above, approvals for amended plans were sought for enhancing the profit and commencement certificates were sought in stages and there was no Court Order staying the completion of the project. Therefore, we are of the considered view that delay in granting of approvals/ sanction cannot be construed as a "force majeure".

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21] We have considered the grounds put forth by Promoter which allegedly caused delay. As observed above, slum development project, as is the case under consideration, in all likelihood encounter delay due to policy paralysis of the competent authority and other government statutory officers. Therefore, such hurdles are neither unknown nor unanticipated but are very much foreseeable and expected to arise during execution of the slum projects. Therefore, every developer having sufficient experience in the market is expected to be prepared beforehand for not only to deal with such eventualities but also to act professionally by assessing the time by which the promoter, after overcoming likely mitigating factors, would be able to complete the project. The Promoter accordingly, has to commit the reasonable date of possession while executing the agreements. However, it is often seen that instead of acting professionally, there is a tendency that promoter indicates an early date to induce buyers to purchase real estate and bind them to face consequences of the delay by making allottees to sign the agreement for sale containing vague and general terms for extension of possession period to wriggle out of their own liabilities for delay in possession. In our considered view, it is the Promoter who had the liability to assess the likely date of

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completion/ possession of slum project considering all likely factors that could delay the project. The Promoter can neither expect Allottees to be aware of the likely delay nor can make Allottees to bear the brunt of its own failure to act professionally by assessing the reasonable date for possession.

22] Considering the liability of 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 AFS inter alia relating to primarily to make payments from time to time so that the project is not starved of funds to cause delay in completion. Allottees can be held responsible only if failure to discharge their obligation as per AFS has caused delay in completion of project. 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 and RERA does not rewrite the same. The ratio laid down by the Hon'ble Supreme Court in

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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). "

23] Even if force majeure factors as demonstrated by Promoter are given some consideration, we are of the view that the Promoter is 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 Promoter 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 Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021 held; that

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"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".

24] It is therefore clear that there are no shackles or limitation on 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 merely because the project is near completion, payment of interest at this juncture may adversely impact the construction work and jeopardize the project.

25] On going through the affidavit in reply filed by Promoter in Complaint before the learned Authority reveals that the Promoter has admitted that the revised date of possession was March, 2019, the construction was nearing completion, the subject flat has already been constructed by utilising sanctioned FSI and the

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possession will be given on or before 31.03.2019. However, it is seen from additional affidavit filed by Promoter that Promoter has obtained part-Occupancy Certificate on 06.01.2023. This clearly indicates that the subject unit was not ready in all respects for handing over the possession of the same to Allottees on 31.03.2019. This signifies that Promoter had miserably failed to adhere to his obligation to handover possession of the subject flat to Allottees by specified date.

26] Next contention of the Promoter is that due to surge of pandemic Covid-19, Nation-wide lockdown was imposed by the Government, as a result thereof, the project was materially affected and thus, caused delay. This factor was beyond control of the Promoter. We are of the view that this contention of Promoter appears to be far-fetched, considering that the possession was to be handed over by 31.12.2016 with a grace period of 6 months i.e. 30.06.2017 as agreed, was long over when the pandemic Covid-19 broke out in 2020. Apart from this, as indicated above the Promoter in his affidavit in reply filed in the Complaint before the learned Authority has categorically submitted that the construction was near in completion and the possession would be given on or before 31.03.2019. Therefore, the ground of Covid-19 is also not

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sustainable as the same happened after the expiry of the agreed dates of possession. We, therefore, give no weightage to this contention of Promoter.

27] Nothing is brought on record to show that Allottees in these Appeals in any manner have caused delay in completion of the project. On the contrary, Allottees have claimed that they have discharged their obligations having paid 90% amount whereas the possession has not been offered by the Promoter though the Promoter has obtained part-Occupancy Certificate. There is no sound and effective challenge by Promoter to the said claim. Facts on record thus reveal that delay is evidently not attributable to Allottees and as per ratio laid down in M/s. **Newtech**, allottees have unqualified right to entitlement of interest for delay in possession under Section 18 of RERA. Also, as held in M/s. **Newtech**, the litigations, Govt. orders, the delay occurred in issuing permissions by various authorities, etc, with reference to Clause 9 of the AFS will not come to the rescue of Promoter for seeking extension in the possession date as specified in the AFS. Accordingly, Promoter is obligated to deliver possession as per the AFS or else to pay interest under Section 18 of RERA.

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28] Aims and objects of the RERA are heavily titled in favour of allottees. However, contrary to the said objects the impugned Order is seen to be titled only in favour of the Promoter. It is worthy to note that despite all relevant and sufficient facts placed before it, the learned Authority, instead of taking the adjudication of the Complaint to its logical end by determining there and then the entitlement of allottees inter alia to interest under Section 18 of RERA for every months' delay in giving possession, has unnecessarily and unjustifiably observed that the project is in near completion, payment of interest at this juncture can adversely impact the construction work and jeopardize the project and at the same time extended the liberty to Promoter to make the payment of the interest at the time of possession of the apartment after adjusting outstanding dues of the Complainants against the interest payable to Complainants. Besides, learned Authority instead of awarding interest with effect from 01.07.2017 has awarded interest from 01.04.2019. This approach of learned Authority is contrary to the effective grievance redressal mechanism as envisaged under RERA. Such an approach defeats the very purpose of RERA and hence cannot be accepted. Therefore, we are of the view that impugned Order warrants

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interference in the Appeal filed by the one of the Allottees. For the foregoing discussion, we have come to the conclusion that Allottees are entitled to interest on the amount paid by them to Promoter with effect from 01.07.2017 instead of 01.04.2019 till the delivery of actual possession of the subject flat by Promoter.

29] It is specific contention of Promoter that there is delay of one day in filing Appeal filed by one of the Allottees and therefore Appeal is liable to be dismissed with cost. We do not find substance in the said contention of the Promoter. On going through the Appeal filed by Allottee, reveals that the Appeal came to be filed on 02.03.2020. As per Section 44(2) of RERA, the limitation to file Appeal against the impugned Order is 60 days. Perusal of certified copy of impugned Order would show that the Allottee had applied for certified copy of impugned Order on 26.12.2020 (date 26.12.2020 ought to have been 26.12.2019). It further transpires that the certified copy of the impugned Order was ready on 28.02.2020 and delivered the same to Allottees on the same day. Clause 2 of Section 12 of Limitation Act, 1963 speaks about the computation of period of limitation, it lays down that

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" In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite

for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded."

If we exclude the time required for obtaining the copy of the impugned Order then it can be said that the Appeal is within limitation. Therefore, we are of the view that the Appeal filed by Allottees is well within limitation.

30] It is not in dispute that during the pendency of the captioned Appeals, the Promoter has received part-Occupancy Certificate with respect to the subject flat on 06.01.2023. Inspite of this, the Promoter has not offered possession of the subject flat to the Allottees. It is not in dispute that out of the total consideration of Rs.4,96,85,000/-, Allottees have paid an amount of Rs.4,12,47,400/- excluding taxes and registration charges to the Promoter from time to time. It means Allottees are liable to pay an amount of Rs.84,37,600/- to Promoter towards consideration. However, the same is opposed by the Promoter primarily on the ground that huge amount is due and payable by the Allottees. According to Promoter Rs.1,49,00,000/- are outstanding against the Allottees (vide roznama dated 07.09.2023 in Appeal filed by Allottees). However, the Promoter has not given particulars as to how the Allottees are liable to pay Rs.1,49,00,000/- to Promoter.

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31] It is made clear that possession is a natural, ultimate and unavoidable consequence of any transaction relating to the real estate and the Promoter is duty bound to handover the same to the purchasers in case the purchasers do not suffer from any disqualification. Allottees have substantial right to possession and thus not obligated to demand the same. RERA casts an obligation on Promoter to offer possession and the Allottees have to accept the same within a period of two months failing which to face the consequences. Therefore, there is no bar under any provision of RERA to seek possession even if the said relief was not sought before the trial forum subject however to the condition that the allottees ought to be otherwise eligible and entitled to such possession. As observed hereinabove, Allottees are found to be entitled to flat as they suffer from no disability of default and hence their rightful claim to possession cannot be denied or defeated. Apart from this, as the Occupancy Certificate is already received, Promoter ought to have no problem in handing over the possession of flat to Allottees. We accordingly answer the point.

32] It is evident from Order that Authority adopted casual, non-serious approach contrary to the provision of RERA while adjudicating controversy raised in the Complaint. Impugned Order

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records that Promoter admitted in affidavit in reply that the Promoter will handover the possession of the subject flat by 31.03.2019. The said claim is contrary to the consistent view held by various Higher Courts in plethora of cases including **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302]** that the date of possession specified in the agreement cannot be overridden by the date given at the time of registration of the project under RERA and in our view the Authority ought not to be oblivious of the said view. Yet, from the observations made in the impugned Order, it appears that the Authority accepted the said erroneous plea of Promoter and further accepted the contention of Promoter that Promoter cannot complete the project because of force majeure factors is against the aims and objects of the RERA.

33] With the discussion and observations recorded hereinabove, as the Allottees are not found responsible for delay in completion of the project, they are entitled not only to interest for delay in possession but also to possession after adjustment of the interest amount against the balance consideration of Rs.84,37,600/-. As the impugned Order holds the view contrary to the aforesaid and the provisions of RERA, the same is found



unsustainable in the eyes of law and hence calls for interference in the Appeal filed by one of the allottees. Consequently, we proceed to pass the following Order.

ORDER

1. Appeal No.AT0060000000533301/2021 is dismissed.
2. Appeal No.AT006000000052359/2020 is allowed with the following directions:

(i) In modification of directions given in para 15 of the impugned Order relating to grant of interest for delay in possession, the Respondent/ Promoter is directed to pay interest to Allottees/ Complainants at the rate SBI's highest Marginal Cost Lending Rate (MCLR) plus 2% with effect from 01.07.2017 till the date of actual possession.

(ii) The Respondent/ Promoter shall handover the possession of the subject flat to Allottees/ Complainants within a period of four weeks from the date of this Order by adjusting interest amount payable to Allottees/ Complainants against the balance consideration (Rs.84,37,600/-) and other charges, if any, payable by Allottees/ Complainants

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as per the 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.

- (iii) In the event the Allottees/ Complainants are found liable to pay further amount after adjusting the amount of interest payable by Respondent/ Promoter as directed hereinabove, the Respondent/ Promoter shall inform the same to Allottees/ Complainants within 15 days from the date of this Order. In such case, the possession shall be handed over within two weeks from the date of receipt of payment from the Allottees/ Complainants. After receipt of such information from the Respondent/ Promoter, the Complainants/ Allottees shall pay such amount to Promoter/ Respondent within two weeks, failing which such amount shall be liable to pay interest at the rate prescribed as above from the next day of 2 weeks till the date of actual payment.

- (iv) Failure to handover possession in the above manner, the Promoter/ Respondent shall be liable to pay



further interest at the rate prescribed as above on the amount of interest payable by Respondent/ Promoter to Allottees/ Complainants up to the date of this Order. The interest shall be payable on the net amount with effect from 17.02.2024 till the date of actual possession.

- (v) Respondent/ Promoter shall pay cost of Rs25,000/- to the Allottees.
- (vi) Misc. Application No.598/2022 also stands disposed of accordingly.
- (vii) Misc. Application No.13/2022 also stands disposed of accordingly.

3. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

MBT/