

Jan 15 0531 hrs

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

APPEAL NO. AT006000000053109

WITH

MISC. APPLICATION NO. 731 OF 2021

IN

Complaint No: CC006000000182103

Sanvo Resorts Pvt.Ltd.

702, Marathon Max,

Mulund Goregaon Link Road, Mulund (W)

Mumbai 400 080.

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... Appellant

~versus~

Shri. Hirman Valkya Chimane

House No. 316, Near Samaj Mandir,

At- Jui Kamothe, Panvel, Navi Mumbai – 410 206.]

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... Respondent

Mr. Prasanna Tare, Advocate for Appellant.

Mr. Sagar Bhandare, Advocate for Respondent.

CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 15th JANUARY, 2024

(THROUGH VIDEO CONFERENCE)

JUDGEMENT

[PER: Dr. K. SHIVAJI, MEMBER (A)]

Present appeal has been preferred under Section 44 of Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short 'the



Act'), seeking various reliefs *inter alia* to set aside the order dated 19th January 2021 passed by learned Member, Maharashtra Real Estate Regulatory Authority, ('MahaRERA' in short) in Complaint No. CC 006000000182103, wherein respondent has sought several reliefs *inter alia* direction to appellant to handover possession of the booked flat as well as to pay interest for delay in delivery of possession.

2. Appellant is the developer, who is developing a duly registered real estate project namely "**Marathon Nexzone Aura - II**" (the said project) located at village Kolkhe, Taluka- Panvel, New Mumbai, District- Raigad. Respondent is flat purchaser in the said project and is complainant before MahaRERA. For convenience, appellant and respondent will be addressed hereinafter as promoter and complainant respectively in their original status as referred before MahaRERA.

3. FACTUAL MATRIX:

- a) Complainant booked flat No. 2708, on 27th floor in the building no. S2- in "C" wing of the building known as "Aura-II" in respondent's said project, for total consideration of ₹ 73,73,955/-. Agreement for sale was also executed on 02nd December 2016 and was registered on 21st December 2016, wherein, clause 15.1 of the agreement stipulates for delivery of possession of the subject flat after obtaining occupation certificate by December 2017 subject to certain reasonable extension of 6 months beyond the said due date, aggregating to 9 months based on factors mentioned in the agreement for sale and upon payment of all dues to promoter.
- b) Claiming delay in delivery of possession of the subject flat beyond agreed timeline, respondent filed the captioned complaint before MahaRERA



seeking reliefs *inter alia* direction to promoter to hand over possession of the flat and interest for delay in delivery of possession under the Act.

- c) Promoter appeared before MahaRERA and refuted the claims made by complainant by filing reply, denied contents of the complaint and submitted *inter alia* that agreement for sale itself provides for extension of time on account of factors beyond the control of the promoter.
- d) Upon hearing the parties, MahaRERA passed impugned order dated 19th January 2021, directing promoter *inter alia* to pay interest to complainant for the stated delay in delivery of possession, from 1st October 2018 till the date of actual possession on the paid amount at the rate of the marginal cost of lending rate plus 2% as prescribed under the provisions of Section 18 of the Act.
- e) Aggrieved by this order of MahaRERA, promoter has filed the present appeal seeking various reliefs including to set aside the impugned order dated 19th January 2021 on grounds enumerated in the appeal memo.

4. Heard learned counsel for parties in extenso.

5. Promoter submits that; -

- a. District Collector of Raigad sanctioned the plan for the development of the said project on 20th October 2012. However, on 10th January 2013, a Special Planning Authority, namely "The Navi Mumbai Airport Influence Notified Area" (CIDCO- NAINA) was constituted for that area encompassing the said project land as well. The said CIDCO – NAINA, became operational and started functioning only in January 2014. Whereas only on 7th May 2014, the newly established planning authority granted commencement certificate for the said project building with the direction that proposal for the amended plan be submitted before the



Statutory Planning Authority. However, MMRDA suggested that layout is required to be revised/ amended.

- b. Promoter had applied for the National Highway Authority of India (NHAI) for access permission to lay water supply pipeline on highway on 10th January 2008. However, NHAI granted said NOC only on 11th March 2016. Promoter received the further National Highway crossing permissions of NH-4B and other National Highways only on 17th June 2016.
- c. There was huge delay in getting relevant approvals from various authorities, despite the directives of Government of Maharashtra *inter alia* to all the Planning Authorities on 11th July 2017, mandating maximum time limits of 45 days to grant construction permits including for all required approvals. Despite rigorous and regular follow ups with the Statutory Planning Authority with regard to the application filed by the appellant promoter on 17th May 2014, approval of the proposed revised layout plan and the building plan was received only on 9th January 2018. Application filed on 15th April 2021 for the occupation certificate of said building containing the subject flat to the planning authority, was sanctioned on 08th September 2022.
- d. Application filed before the Chief Fire Officer, CIDCO to grant NOC for applying the occupation certificate up to 20th floor on 28th November 2019, was granted only on 22nd January 2020. Another application before the Chief Fire Officer, CIDCO on 09th February 2021 for issuance of NOC for occupation certificate, was granted on 14th May 2021.
- e. At the time of booking of the said flat and also at the time of execution/ registration of the agreement for sale, Promoter had disclosed to complainant that the said project building, which was initially sanctioned up to 27th floor, is proposed to be constructed up to 33 floors.



- f. In view of the aforesaid reasons, there has been huge delay in getting the permissions from different authorities including the delay in getting highway access permission (from 10th January 2008 to 11th March 2016), delay in pipe laying (14th November 2016 to 29th May 2017) and NH crossing permission, delay in sanction of the amended plans up to 33rd floors (from 17th May 2014 to 09th January 2018), delay in getting NOC from Chief Fire Officer (from 28th November 2019 to 22nd January 2020) and also the delay in granting the occupation certificate up to 20th floor by the planning authority (from 30th January 2020 to June 2020), and for the full building (from 15th April 2021 to 08th September 2022). Accordingly, these huge delay in getting the permissions were beyond the control of the appellant promoter and are not attributable to promoter.
- g. Appellant promoter could not have foreseen the said change of Planning Authority for the concerned project and to notify new special planning authority (CIDCO-NAINA), who took more than three and half years to approve the amended plan proposal despite government directives to approve such plans in time-bound manner. Therefore, the date of handing over of the possession of the flat be consequently got extended to this extent for the loss of time as mentioned in terms of the agreement for sale more particularly in its clause No.15.
- h. Agreement expressly provides for the extension of possession delivery date in case of any such events beyond reasonable control of the promoter. MahaRERA has failed to comprehend the true understanding between the parties as set out in clause 15.1 of the agreement, which allows extension of time in delivering possession due to force majeure and due to reasons beyond the control of promoter. MahaRERA erred in not holding that time prescribed in delivery possession could be extended in



case of the force majeure circumstances and/ or for unforeseeable reasons beyond the control of the promoter.

- i. MahaRERA has further failed to appreciate that Hon'ble Bombay High Court in its judgment dated 06th December 2017 in the case of **Neelkamal Realtors Suburban Pvt. Ltd and Ors. V/s. Union of India & Ors. [(2017) SCC Online Bom 9302]** has observed that a balanced approach is required to be adopted in view of the object and intent of the Act.
 - j. MahaRERA has further erred by concluding that change of the planning authority was prior to the execution of the agreement, resulting in inordinate delay and this cannot be a ground for extension of date of delivery of possession despite delay was due to various unforeseeable events beyond the control of promoter.
 - k. Thus, the impugned order suffers from non-application of mind, is bad in law and illegal. Consequently, it is perverse. Accordingly, appellant urged to set aside the impugned order dated 19th January 2021, awarding interest for delayed possession, and further pleaded to dismiss the complaint by allowing the instant appeal.
- 6. Per Contra, Complainant submits that; -**
- a. Complainant has paid a substantial amount of ₹ 61,64,192/- in installments diligently on time without any delay as per the agreed terms of the agreement, is always ready and willing to pay the balance amount on delivery of possession.
 - b. Delay in getting permissions from NHAI, water supply, delay in pipe laying permissions including other required approvals do not justify because,



promoter was well aware of these factors before signing of the agreement for sale.

- c. Moreover, the reasons pleaded by promoter for delay are absolutely false, baseless, illegal and are unjustified. Causes of delay in getting the commencement certificate, occupation certificate, fire NOC certificate etc. as claimed by promoter are absolutely unfounded and have no merits. Rather, Promoter has intentionally and arbitrarily delayed the possession actually to get permissions for extending floors further up to 33rd floor.
- d. Even after adding the maximum grace period of nine months in terms of clause 15 of the agreement for sale, promoter is under obligation to hand over possession of the said flat on or before September 2018. Whereas promoter has obtained the occupation certificate only on 08th September 2022. Therefore, promoter has delayed the possession without any justified reasons, thereby, has violated the terms of the agreement and provisions of the Act. These have been rightly dealt with by MahaRERA in the impugned order and has directed promoter to pay compensation by way of interest for delay with effect from 01st October 2018 till the actual possession is handed over.
- e. In similar appeals filed by other home buyers against the same promoter connected to the same project in the same tower including in the case of Ms. Neha Samir Bagve and Ors., Promoter has been directed to pay compensation till the date of actual possession and the appeal filed by the promoter has been dismissed by the Appellate Tribunal.
- f. In view of above, promoter be directed to handover possession and pay compensation by way of interest for delay in possession from 01st October 2018 at prescribed rate on the actual paid amount of ₹ 61,64,192/- till the



actual delivery of possession of the subject flat besides costs of litigation.
Accordingly, Appeal be dismissed with exemplary costs.

7. From the pleadings, rival submissions and documents relied upon by the parties, following points arise for our determination in this appeal and we record our findings against each of them for the reasons to follow:

POINTS FOR DETERMINATION

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether promoter establishes that due to reasons beyond its control, possession of flat could not be delivered as per agreement?	In the negative
2. (a) Whether complainant is entitled for interest as claimed under Section 18 of the Act of 2016?	In the affirmative.
(b) If yes, for what period?	As per the order.
3. Whether impugned order is sustainable in law?	As per the order.
4. Whether impugned order calls for interference in this appeal?	As per the order.

REASONS

POINTS 1, 2 (a) and (b)

8. These points are interlinked and therefore, have been considered together as hereunder. It is not in dispute that appellant is promoter and respondent herein, is an allottee under the provisions of the Act. The principal controversy between the parties revolves around the provisions of Section 18 of the Act. Therefore, the same is being reproduced here as follows: -

"18. Return of amount and compensation



(1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building—*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided *that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

9. On meticulous examination of Section 18, it can be seen that under Proviso to Sub section (1) of Section 18, if promoter fails to complete the project or is unable to deliver possession of apartment, plot or building, and allottee does not intend to withdraw from the project, promoter shall pay interest for the period of delay in handing over possession to allottee at such rate as may be prescribed.

10. The prime grievance of appellant is that the authority has failed to consider the justifiable reasons for delay in: -

- a. Highway Access Permission.
- b. Grant of NOC from Chief Fire Officer, CIDCO.
- c. Pipe laying Crossing and water supply permission.
- d. Granting commencement certificate above plinth and sanction to revised plans in view of change in Planning Authority.
- e. Grant of Occupation Certificate.



- 11.** Explaining these causes for delay in completion of project, learned counsel for appellant submits that within three months of commencement certificate granted by erstwhile Planning Authority i.e., District Collector, Raigad on 20.10.2012, new Planning Authority namely, the Navi Mumbai Airport Influence Notified Area (NAINA) under CIDCO was set up vide Notification dated 10.01.2013. Whereas NAINA took almost a year to become fully functional and granted commencement certificate for construction on 7.5.2014. Revised proposal was submitted to NAINA promptly but was approved after 3 ½ years on 09.01.2018. These have caused enormous delays in completing the project. Learned counsel further submitted that there were huge delays in getting the NOC from Chief Fire Officer, CIDCO despite having been applied in time, to obtain part Occupation Certificate up to 24th floor on 17th March 2018.
- 12.** Relying upon sub-clauses 15.1.3 and 15.1.6 of clause 15.1 of agreement for sale, appellant submitted that complainant was aware that construction of building was proposed up to 33 floors and appellant made the proposed amendment in sanctioned lay out and building plans, as initial proposal was for construction of 33 floors. It is submitted that these periods are covered by clause 15.1 of the agreement and are, therefore required to be excluded from the period of alleged delay computed by complainant. It is contended that if the said period is excluded and grace period of 9 months in terms of clause 15 and be taken into consideration, then, there is no delay. Learned counsel urged to consider these multiple factors, which contributed to delay and urged to dismiss the complaint by setting aside impugned order.



- 13.** Per Contra, complainant submits that promoter has wrongly promised for the project completion date and extended it just to buy time. In addition, complainant placed reliance on the following decisions in support of his case.
- i. Sanvo Resorts Private Limited -vs- Mrs. Shital Nilesh Deshmukh and Anr. [Appeal No.AT00600000031751 dated 02nd March 2022 by co-ordinate Bench of this Tribunal] and**
 - ii. Sanvo Resorts Private Limited -vs- Mrs. Shital Nilesh Deshmukh and Anr. in Second Appeal No. 512 of 2022 dated 05th August 2023 passed by the Hon'ble Bombay High Court.**
- 14.** Upon consideration of the above, the moot question thus arises for our consideration is whether there was delay in handing over possession of flat to complainant as envisaged under Section 18 of the Act of 2016.
- 15.** Learned counsel for the promoter himself submits that the full occupation certificate has been obtained on 08th September 2022 and the possession of the subject flat was offered to the complainant after the receipt of the occupation certificate on 8th September 2022 by its letter dated 12th September 2022. However, even after adding the maximum grace period of 9 months from the date of delivery of the possession of the subject flat by December 2017, promoter is liable to handover possession of the subject flat by September 2018 itself. But promoter has failed to hand over possession before September 2018.
- 16.** To explain the delay, appellant has come with a case that reasons were beyond its control and therefore, delay in possession is covered as per agreement mainly on the followings.
- i. The main grievance of appellant is regarding delay in granting commencement certificate above plinth level, sanction to revised plans

and grant of occupation certificate owing to *inter alia* change of Planning Authority.

- ii. The second reason assigned to is regarding delay at the level of National Highway Authority of India (NHAI) in granting access permission on 11.3.2016 though applied on 10.1.2008.
 - iii. Third in the line is regarding water pipeline permission applied on 1.11.2008 and received on 17.6.2016.
 - iv. Learned counsel has placed reliance on the government directives to Planning Authorities for time bound approvals.
- 17.** However, the contentions of the promoter are legally not sustainable on account of the followings; -
- a. Appellant stated that NAINA under CIDCO was set up vide Notification dated 10.1.2013. Undisputedly, the said agreement for sale was executed between appellant and respondent on 02nd December 2016 and was registered on 21st December 2016. Therefore, it is clear that said reasons for the delay are much prior to the booking of the subject flat and much before the agreed date for possession. Which means, many months after the establishment of NAINA. As the change in Planning Authority and other required approvals preceded the date of the agreement for sale, Promoter was fully aware of these events at the time of executing the agreement for sale. Therefore, it is clear that only after considering all these factors, promoter has agreed for the said agreed date of possession. Thus, it was naturally expected on the part of promoter to assess the material date of possession properly and meticulously after considering these past events *inter alia* establishment of NAINA under CIDCO and others. Promoter, despite



knowing these changes, promised the said agreed date of completion of project and for delivery of possession. Thus, promoter cannot seek benefits of its own faults more particularly in view of the judgement of The Hon'ble Supreme Court in the case of ***Kusheshwar Prasad Singh Vs. State of Bihar and Ors. [Supreme Court] Civil Appeal No. 7351 of 2000***. ***Where in, it has been held that - "It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong.***

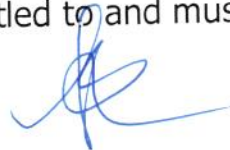
- b. So far as the grant of other permissions by Authorities, NHA, and Chief Fire Officer, are concerned, it can be seen from series of correspondence, that permissions were processed subsequent to the compliances made by promoter. It is evident from the NOC received from NHA dated 11th March 2016 that NOC is received based on the letter dated 3rd November 2015 and 26th February 2016 and not as per the reference letter dated 10th January 2008. Further, the permission received by the promoter from NHA dated 17th June 2016 reveals that this permission has been issued based on the proposals submitted by appellant vide its letter dated 19th February 2016, 21st April 2016 and 09th June 2016. Thus, appellant has failed to demonstrate its stated contentions of delay on the part of other authorities and the other causes and therefore, grounds raised by appellant lack substance, devoid of merits and are also not acceptable.



c. Additionally, The Hon'ble Supreme Court in para nos. 25 and 78 of its judgment in the case of **M/s. Newtech Promoters and Developers Pvt. Ltd vs. State of Uttar Pradesh & Ors. [2021 SCC Online 1044]** dated 11th November 2021 has clarified that if Promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement, then, Allottee's right under the Act to seek refund/ claim interest for delay is unconditional & absolute, regardless of unforeseen events or stay orders of the Court/Tribunal. Relevant abstract is being reproduced below for ready reference.

"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."

In para 78 of this Judgment- ".....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)....."

- d. Accordingly, it has been held that the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including any other reasons even factors beyond the control of the Promoter.
- e. The Hon'ble Bombay High Court, in the case of (Promoter company itself) **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302]** in para 119, further held that "While the proposal is submitted, the Promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the Promoter is expected to have a fair assessment of the time required for completing the project....".
- f. Accordingly, it is evident that Promoter is inherently better equipped about market/project related relevant information and is structurally at advantageous position in as much as the information about the said project updates are concerned. Therefore, Promoter is liable to provide unambiguous and expressed/ definite information about project completion date / possession delivery date at the time of booking itself.
- g. Moreover, these delays in project completion and consequent delay in delivery of possession of the subject flat are not attributable to allottee and delivery of possession in timely manner is the contractual commitment given by promoter under the agreements for sale. Therefore, promoter is legally liable to pay interest at prescribed rate



for the period of delay in delivery of procession under the section 18 of the Act.

- h. It is significant to note here that in similar set of facts and identical situation, co-ordinate Bench of this Tribunal in **Sanvo Resorts Private Limited –vs- Ranveer Sharma and another** in Appeal No. AT 006000000010751 vide order dated 31st January 2020 and in **Sanvo Resorts Private Limited vs. Rahul Ghole** in Appeal No.0060000000010658 vide order dated 31st January 2020 has dealt with the identical issue of delay in completion of project. The only distinguishing factor in the present appeal and appeals before the co-ordinate Bench is that in those appeals, complainants claimed withdrawal from project, refund and interest, whereas, in appeal on hand, complainants claimed interest on delayed possession, as they have to stay with the project.
- i. As such, another appeal No.0060000000021475, having similar set of facts and identical situation in case of **Sanvo Resorts Private Limited –vs- Mrs. Neha Samir Bagwe and Ors.**, was also dismissed by this Tribunal vide Judgement dated 3rd February 2022.
- j. In view of above and the said delay, being attributable to Promoter itself, it cannot deny the accrued rights under Section 18 of the Act to Allottees, especially because the rights so accrued to allottees under Section 18 are unconditional, unqualified and absolute.
- 18.** In view of the foregoing discussions, it is crystal clear that the promoter has failed to deliver possession of the flat as per the contractual commitments stipulated in the agreement for sale despite being responsible for timely delivery of possession of the booked flat. Therefore,

promoter has violated the statutory provisions under Sections 18 of the Act on this count.

- 19.** It is also important to note that the project has been registered under the Real Estate (Regulation & Development) Act, 2016 ("the Act"), which provides several welfare provisions including for greater accountability towards consumers to protect consumers as contemplated in the statement of Objects and Reasons of the Act. Whereas it is distressing to note that there is an undue and inordinate delay in delivery of the possession of the subject flats despite payment of substantial amounts by the complainant. As a result of this, complainant continues to be deprived of his legitimate entitlement to get the possession of the flats in time.
- 20.** Regulation 39 of Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 further stipulates inherent powers of the Authority. It reads as under; -
- "Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority."
- 21.** Similarly, Regulation 25 of Maharashtra Real Estate Appellate Tribunal, 2019 speaks about saving of inherent powers of the Tribunal; -
- "25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal."



It means the Regulatory Authority as well as the Appellate Tribunal has inherent powers under the Regulations framed under RERA Act, 2016 to pass appropriate Orders, which are necessary to meet the ends of justice.

- 22.** In view of the foregoing and upon considerations of findings herein above and after considering overall facts, circumstances, and context of the case more particularly in view of deficiencies and the non-compliances including the statutory breaches on the part of the promoter under Section 18 of the Act, complainant is entitled for interest at prescribed rate for the delay in delivery of the possession of the subject flat from 1st October 2018 onwards. Accordingly, we answer **POINTS 1, 2 (a) and (b)** as above.

POINTS 3 AND 4:

- 23.** Promoter has offered to handover possession of the subject flat after securing occupation certificate, by its letter dated 12th September 2022 by asking the complainant to clear the outstanding dues as sought in accordance with the demand notice dated 11th September 2022. Whereas learned counsel for the complainant submits that the outstanding dues as mentioned in demand notice dated 11th September 2022, has not been paid till date and possession of the subject flat has also not been taken due to the present pending appeal. However, learned counsel for complainant pressed for the interest in delay in delivery of the possession ought to be considered from 01st October 2018 till the date of actual possession. But, learned counsel for the promoter vehemently opposed it by submitting that after the receipt of the full occupation certificate on 08th September 2022, complainant has already been offered to take the legal possession by clearing the outstanding dues by sending a possession



offer letter dated 12th September 2022. Therefore, complainant in any case is a defaulter of the outstanding dues and delay after the possession offer on 12th September 2022, is solely on account of the complainant, not by promoter. Therefore, complainant cannot in any case, demand interest for the period after 12th September 2022 in the name of delay in the legal possession.

- 24.** In view of the forgoing, it is crystal clear that delay beyond 12th September 2022 is entirely on account of complainant himself. Therefore, promoter is liable to pay interest at prescribed rate for the delay in delivery of the possession from agreed date of 01st October 2018 till 12th September 2022 only and not till the actual date of possession as directed by MahaRERA vide its impugned order dated 19th January 2021 on the actual paid amount. Thus, the impugned order is not in accordance with the provisions of the Act, is not sustainable and is liable to be interfered with in this appeal. Hence, it needs to be modified to this extent. Accordingly, we answer points 3 and 4 as above and proceed to pass order as follows: -

ORDER

- a.** The captioned Appeal No. AT0060000000 53109 is partly allowed.
- b.** The Impugned order dated 19th January 2021 passed in Complainant no. CC 006 000000 182103 stands modified as hereunder: -
 - i. The respondent is directed to pay interest to the complainant from 01st October 2018 for every month **till 12th September 2022** on the actual amount paid by the complainant towards the cost of the said flat at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of Section 18 of the Maharashtra Real*



Estate (Regulation and Development) Act, 2016 and the Rules made thereunder.

- c.** Parties to bear their own costs.
- d.** In view of the disposal of the appeal as above, pending Misc. Application No. 731 of 2021 will not survive. Hence, stands disposed of.
- e.** In view of the provisions of Section 44(4) of the Act of 2016, a copy of the Judgment be sent to the parties and MahaRERA.


(Dr. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)