

Nalawade

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

**APPEAL NO. AT006000000052508 OF 2020  
IN  
COMPLAINT NO. CC006000000089647**

<b>Smt. Malti Pradeep Kumar Gupta</b>	}	
Residing at- House No.246,	}	
Gopal Ganj, Orai – 285001,	}	
District Jalaun, Uttar Pradesh.	}	... <i>Appellant</i>

~ *VERSUS* ~

1. <b>M/s. Siroya FM Constructions Pvt. Ltd.</b>	}	
2. <b>Mr. Fatesh Mirchandani</b>	}	
808, Raheja Chambers,	}	
Nariman Point, Mumbai – 400 021.	}	... <i>Respondents</i>

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*Mr. Rizwan Ahmed i/b. Amar Legal, Advocate for Appellant.  
None for Respondents.*

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

**DATE : 30<sup>th</sup> NOVEMBER 2023**  
(THROUGH VIDEO CONFERENCE)

**JUDGEMENT**

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

Present appeal has been preferred under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "the Act") seeking various reliefs *inter alia* to pay interest on the entire paid amounts for the delayed possession from 1<sup>st</sup> January 2012 by challenging the order dated 6<sup>th</sup> March 2020 passed by learned Member, Maharashtra Real Estate Regulatory Authority, ('MahaRERA'), wherein the captioned Complaint No. CC 006 0000000 89647 was disposed of by directing Respondents



Promoters *inter alia* to pay interest from 01<sup>st</sup> May 2015 till the actual date of possession on the amounts paid by her at prescribed rate under the Act/ Rules made thereunder and with a condition that since the project is nearing completion, Respondents promoters were further directed that actual amounts payable to appellant towards the interest shall be adjusted with balance amounts payable by complainant, if any and the same will be paid at the time of possession.

2. Appellant is flat purchaser and Complainant before MahaRERA. Respondent no. 1 is developer company, who is developing a project known as "Deshabhimani" located at Goregaon (West), Mumbai, hereinafter to be referred to as ('said project'). Respondent No. 2 is the Director and Partner of Respondent No. 1 company. For convenience, Appellant and Respondents (Respondent no. 1 and 2 collectively) will be addressed hereinafter as Complainant and Promoters respectively in their original status before MahaRERA.
3. Brief background giving rise to the present appeal is as under; -
  - a) **Complainant's case:** Complainant booked flat no. 1303, in the promoter's said project by executing registered Agreement for Sale dated 13<sup>th</sup> July 2011 for total consideration, as claimed by appellant is of ₹ 1,85,00,000/- and paid the entire amount. However, the agreement for sale shows consideration of ₹ 1,18,40,000/- only. As per Clause 10 of this agreement for sale, Promoters have agreed to handover possession of the subject flat on or before 30<sup>th</sup> September 2011 along a grace period of 3 months subject to reasonable extension based on certain conditions as set out in the agreement.
  - b) On account of failure to construct the project in time and consequent delay in delivery of the possession of the subject flat within the agreed timeline, captioned complaint came to be filed by appellant/ allottee before MahaRERA seeking *inter alia* for refund of the paid amounts

including miscellaneous expenses together with interest or in the alternative, to handover the possession of an alternate premises/ flat residential or commercial of equivalent value & area in any of the projects of the promoters along with interest from the date of default in delivery of possession under Section 18 of the Act.

- c) Promoters resisted complaint before MahaRERA and denied the contentions of the Complainant by filing their written submissions contending that the captioned complaint is untenable and without any merits. As such, MCGM stopped granting permissions due to new fungible FSI policy introduced in 2011. Therefore, promoters had to go to the Court to expedite the requisite permission from the Authorities. Even the project completion date in the RERA website at the time of registration of the project is 31<sup>st</sup> December 2020. Therefore, prayed for dismissal of captioned complaint.
  - d) Upon hearing the parties, MahaRERA disposed of the captioned complaint by directing promoters *inter alia* to pay interest from 1<sup>st</sup> May 2015 till the actual date of possession at prescribed rate as elaborated herein above.
  - e) Aggrieved by the order of MahaRERA, complainant has preferred the captioned appeal, seeking reliefs *inter alia* for direction to promoters to hand over possession of the said flat and to pay interest at prescribed rate on the entire paid amounts aggregating to ₹2,11,04,000/- for delay in delivery of the possession of the flat from the date of violation for non-delivery of timely possession i.e., from 1<sup>st</sup> January 2012 until the actual delivery of possession besides compensations of ₹ 10 lakhs and legal cost of ₹ 2 lakhs.
4. Respondents promoters have failed to appear in the appeal proceeding before the Tribunal despite having been duly served. Therefore, the appeal has proceeded ex-parte against both the Respondents.





5. Heard Adv. Rizwan Ahmed, learned counsel for Appellant *in extenso*.
6. Complainant has sought for the aforesaid various reliefs on following grounds; -
  - a. Appellant Allottee has paid ₹ 1,18,40,000/- by cheques withdrawn on HDFC Bank. In addition to these, further amount of ₹ 19,24,000/- was also paid in cash towards floor rise charges besides, ₹ 5,75,000/- towards stamp duty charges, ₹ 30,000/- towards the registration charges of the agreement, ₹ 30,000 towards electricity meter deposit and incidental expenses and another ₹ 30,000/- towards water meter deposit including Rs. 15,000 towards the legal cost of the said agreement for sale. Accordingly, all the payments are aggregating to ₹ 2,11,04,000/-.
  - b. Clause 10 and 11 of the said agreement dated 13<sup>th</sup> July 2011, stipulates for peaceful delivery of possession of the subject flat on or before 30<sup>th</sup> September 2011 and with maximum grace period of 3 months.
  - c. MCGM issued notice under Section 354 (A) of the Mumbai Corporation Act, 1808 against Promoters to stop the work, vide letter dated 30<sup>th</sup> September 2011 apparently due to the constructions undertaken by promoters were stated to have been not as per the approved commencement certificate dated 06<sup>th</sup> February 2009.
  - d. However, Appellant was informed by the office of the Promoters that certain favourable court order has been obtained in this regard. Therefore, construction beyond 4<sup>th</sup> floor will be regularised by the concerned authorities after payment of certain penalty. Accordingly, Appellant allottee continued to wait for years based on the aforesaid assurances in the hope of getting possession of the subject flat.
  - e. However, promoters miserably failed and neglected to observe, perform, and comply with the terms and conditions of the agreement dated 13<sup>th</sup> July 2011. Thereby, promoters have violated the agreed





terms and conditions of the said binding agreement for sale more particularly have failed to handover possession of the subject flat within the agreed timeline even after receipt of substantial amounts.

- f. Promoters have registered the project under the Act, wherein the proposed date of possession is 31<sup>st</sup> December 2019. However, this has unilaterally been extended to 31<sup>st</sup> December 2020 and in view of the out-break of covid-19, it has again been extended to 31<sup>st</sup> March 2021. It appears that promoters have no intention to complete the project because, there is no progress in the construction works and as such, the construction on the work site is completely stopped. No step has been taken by promoters to get the construction beyond 4<sup>th</sup> floor regularized by paying the penalty/ fine/ premium etc.
- g. MahaRERA, being dissatisfied with the contentions of the respondents, has passed the impugned order awarding interest for the delayed possession from 01<sup>st</sup> May 2015, which in fact should have been from March 2011, since the entire payments were made on that date itself or at the most from 1<sup>st</sup> January 2012 onwards and also because the agreed date to handover the possession of the subject flat is 31<sup>st</sup> December 2011 even after adding the maximum grace period.
- h. MahaRERA has not even considered to grant of remaining reliefs prayed for in the captioned complaint including the reliefs of monetary compensations and costs.
- i. MahaRERA has observed/ determined in para 7 of the impugned order as under: -

*"In view of the aforesaid facts, the MahaRERA feels that the reasons stated by the respondent cannot be accepted at this stage, as they are not covered under the force majeure clause. There is no fault on the part of the complainant, who has put her hard-earned money for booking of the said flat in the respondents' project. The MahaRERA*



*therefore feels that respondents have not given any plausible explanation for delay as the same are lame excuses, hence cannot be accepted".*

- j. MahaRERA is convinced with the case of the appellant allottee, which is more than evident from the observations/ directions in para 10 of the impugned order as follows; -

*"In view of above facts and discussion, the respondents are directed to pay interest to the complainant from 1<sup>st</sup> May 2015 till the actual date of possession on the actual amount paid by her at the rate of Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the RERA and the relevant Rules made thereunder. Since the project is nearing completion the MahaRERA directs that the actual amount payable to the complainant towards the interest shall be adjusted with the balance amount payable by the complainant, if any and same shall be paid at the time of possession."*

- k. In view of the observations and findings recorded by MahaRERA as above in the impugned order, respondents promoters should have been directed in the impugned order to pay interest for delayed possession of the subject flat from the date of default in delivery of its possession i.e., from 01<sup>st</sup> January 2012 till the date of actual handover of the possession.

- l. MahaRERA has further observed in para 5 of the impugned order as follows; -

*"The MahaRERA has examined the arguments advanced by both the parties as well as the record. The complainant has filed this complaint seeking refund along with interest and compensation or for the payment of the interest for the delayed possession under section 18 of the RERA, as the agreed date of possession mentioned in the registered agreements for sale dated 31-12-2011 has lapsed. The complainant*



*has purchased the said flat in this project by executing the said agreement for sale dated 13-7-2011. According to the same, the respondents were liable to hand over possession of the said flats to the complainants on or before 30-09-2011 with grace period of 3 months i.e., 31-12-2011, and till date the possession is not given to the complainant, even though substantial amount has been paid by her. The respondents have also admitted the substantial payment made by the complainant. Prima facie, it shows that the respondents have violated the provisions of section 18 of the RERA Act, 2016 and the rules made thereunder”.*

- m. Findings of MahaRERA in para 9 of the impugned order also supports the complainant’s case as hereunder; -

*“In the present case, the MahaRERA has observed that the complainant is seeking either both the reliefs under section 18 of the RERA due to delay i.e., for refund or to have interest for the delayed possession. The present project is nearing completion as the respondents have mentioned the revised completion date of this project as 31-12-2020. If the complainant is allowed to withdraw from the project at this stage, it will amount to diversion of project money towards the refund, which ultimately will impact the timely completion of the project. Hence the MahaRERA accepts the prayer of the complainant for interest for the delayed possession under section 18 of the RERA, which is allowed”.*

- n. It appears that promoters have misled the learned Authority as till date, possession is not given, nor any assurance is given by promoters for delivery of the possession of the subject flat. As such, promoters have failed to appear before the Tribunal despite proper services. Accordingly, promoters be directed to pay compensations for the mental agony for waiting for all these years for possession of subject flat besides costs as prayed for in appeal in addition to the claims



already made by allottee complainant for the interest for delayed possession in the complaint.

7. Upon hearing the learned counsel for complainant, perusal of material on record, following points arise for our determination in this appeal and we have recorded our findings against each of them for reasons to follow: -

	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether complainant is entitled for delayed interest from date of default in timely delivery possession under Section 18 of the Act as prayed in the Appeal?	In the affirmative
2.	Whether complainant is entitled for payments of delay interest <i>without waiting for adjustments of balance amount payable by the complainant if any, at the time of possession?</i>	In the affirmative
3.	Whether impugned order calls for interference in this appeal?	In the affirmative
4.	What order?	As per final order.

### **REASONS**

#### **Point Nos. 1, 2, 3 and 4:**

8. These points are interlinked, hence, have been considered together for determination as follows.
9. It is not in dispute that the complainant has booked the subject flat in the Promoter's said project by executing and registering an agreement for sale. Moreover, the project is duly registered with MahaRERA. Accordingly, the provisions of Act are applicable in the instant case. Thus, appellant and respondents are Allottee and Promoters respectively under the provisions of the Act.



**10. Possession delivery status:** The clause 10 of this agreement for sale stipulates that possession of the subject flat will be handed over on or before 30<sup>th</sup> September 2011 with grace period of 3 months subject to certain reasonable extension based on certain conditions as set out in the agreement. Therefore, even after adding the stated full grace period of 3 months, possession of the subject flat is required to be handed over at the latest by 31<sup>st</sup> December 2011. Therefore, promoter has agreed to deliver possession of the subject flat by 31<sup>st</sup> December 2011, but the project is still not complete, and has not received occupancy certificate yet. Hence, Promoter has failed to hand over possession of the subject flat on or before the agreed timeline as stipulated in the agreement. Thus, Section 18 of the Act is attracted, and appellant has opted during the hearing to continue in the project.

**11.** Whereas, Section 18 of The Maharashtra Real Estate (Regulation and Development) Act, 2016 ('the Act'), stipulates that in case of failure/delay in delivery of possession and if, allottee does not intend to withdraw from the project, then he shall be paid by the promoter, delayed interest for every month of delay from the date of default till the handing over of the possession, at such rate as may be prescribed in the Act/rule(s). Relevant abstract is being reproduced for ready reference.

**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. "*

12. Accordingly, Promoters are duty bound to pay to complainant allottee on her demand without any delay, the **interest for every month of delay (i.e. from the date of default and not from any other date whatsoever) , till the handing over of the possession from the date of default in delivery of the possession of the subject flat at the end of every month and not at the time of handing over the possession** on the money paid by her together with interest thereon at prescribed rate under Section 18 of the Act.
13. However, MahaRERA has disposed of the captioned complaint by directing promoters *inter alia* by passing the final directions in para 10 of the impugned order as follows; -
  - A. *In view of above facts and discussion, the respondents are directed to pay interest to the complainant from **1<sup>st</sup> May 2015** till the actual date of possession on the actual amount paid by her at the rate of Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the RERA and the relevant Rules made thereunder.*
  - B. *Since the project is nearing completion the MahaRERA directs that the actual amount payable to the complainant towards the interest shall be **adjusted with the balance amount payable** by the complainant if any, and same **shall be paid at the time of possession.**"*
14. But, both the aforesaid two final concluding directions are legally not tenable more particularly in the absence of the explicit/ express prior consents of parties in writing, on account of the followings: -



- a. MahaRERA, itself has arrived at unequivocal and clear findings vide para nos. 5, 7 and 9 of the impugned order *inter alia* that promoters have violated and breached the written contractual commitments made in the registered agreement for sale more particularly in terms of the timely delivery of the possession of the subject flat within the agreed timeline and consequently have violated the statutory mandatory provisions of the *inter alia* Sections 18 of the Act. Therefore, as determined herein before, these directions are also not in consonance with the provisions of the Act including Section 18 of the Act.
- b. 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 11<sup>th</sup> November 2021 has clarified that *if the 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** including due to any other reasons even factors beyond control of the Promoter, **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**". Moreover, it is up to the Allottee to proceed either under Section 18(1) or under proviso to Section 18(1) and has complete discretion of the allottee to seek refund or otherwise opt for possession of the subject flat.*



- c. 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 the factors beyond control of the Promoters and "***It is up to the Allottees to proceed either under Section 18(1) or under proviso to Section 18(1).***"
- d. Careful perusal of the provisions of the Section 18 of the Act further reveals that; - promoter "*.....he shall be liable **on demand** to the allottees, in case the allottee wishes to withdraw from the project or wish to continue in the project.....*"
- e. It further been clarified that "*It appears that the legislature has consciously provided this right of refund/delay interest **on demand** as an unconditional absolute right to the Allottee*". Hence as, determined here in above, complainant has complete discretions to opt either for refund by withdrawing from the project or may choose to continue with the project and if demanded for delay interest by allottee then, promoters are liable to pay delay interest from the date of the default in delivery of the possession of the subject flat with respect to its agreed timeline for every month of delay without any conditions whatsoever including without waiting for adjustments etc., at the time of possession.
- f. Therefore, Promoters have no option but to pay interest for the said delay **from the date of the default** on the paid amounts **immediately on demand** made by allottee and there is no such discretion / option, nor any choice conferred on promoters to make any delay at all for effecting such payments of interest for delay or for refunds to allottees together with interest ". Accordingly, promoters are duty bound by statute and it is incumbent upon the promoters to comply with it, without any delay whatsoever.
- g. It is pertinent to note that in the instant case, even now the project completion is fraught with uncertainties resultantly delivery of





possession is also still uncertain. In this background, it will be unfair for the allottee to continue to wait for uncertain times for possession of the subject flat and continue to be deprived of her entitlement for getting delay interest and the possession of the subject flat despite substantial payments.

- h. 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....*". Accordingly, it is evident that Promoter is inherently better equipped about market related information and is structurally at advantageous position in so far as the information about the said project updates are concerned to ensure that possession of the subject flat is handed over in pre-agreed timelines.
- i. Timely completion of the project and consequent timely delivery of possession of the subject flat is the contractual commitments and statutory obligation of the promoters but they have failed to fulfil it.
- j. **Party in breach, cannot take advantage of its own wrong:** It is pertinent to note in the instant case that promoters have violated the statutory provisions of Section 18 of the Act by not delivering the possession of the subject flat within the agreed timelines as per the agreement. The said delay is attributable to Promoters. The accrued rights under Section 18 of the Act to Allottee cannot be denied by promoters for delayed payment of interest on the very same ground for which, Promoters themselves are responsible for, more specifically because the rights so accrued to allottee under Section 18 are





unconditional, unqualified and absolute. Promoters themselves, therefore, cannot take advantage of their own deficiencies/ non-performances and despite being parties in breach, more specifically 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.

- k. Provisions of the Act and law will prevail over the terms and conditions of the agreement for sale. Therefore, the terms and conditions mentioned in the agreement will not supersede the provisions of Act/law, which clearly provides for absolute unqualified rights to allottee as has already been determined herein above in the instant case for the entitlement of interest for the delay in delivery of possession from the date of default and such delay interest become due for payments at the end of every month itself and not on any other subsequent date at the time of possession, whatsoever.

**15.** In the Judgment of the Hon'ble Supreme Court of India in the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. versus State of U.P & Ors (supra)*., it has been observed with regard to some of the relevant statement of objects and reasons as mentioned in para 11 that "11. Some of the relevant Statement of Objects and Reasons are extracted as under: "

4...(f) the functions of the Authority shall, inter alia, include –  
 (iii) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the proposed legislation.

- 16.** It is also important to note that the project has been registered under the Real Estate (Regulation & Development) Act, 2016, which provides several welfare provisions to protect interests of consumers including for greater accountability towards consumers to inject greater efficiency, transparency and accountability as contemplated in the statement of Objects and Reasons of the Act. 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."*

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.

- 17.** Whereas it is distressing to note that, there is undue and inordinate delay in delivery of the possession of the subject flats despite payment of substantial amounts by complainant. As a result of this, complainant continues to be deprived of her legitimate entitlements for the possession of the flat even after substantial payments. Therefore, promoters are directed to hand over possession of the subject flat after receipt of the occupation certificate of the project at an early date.
- 18. Accordingly, promoters are directed to pay to the allottee interest on the paid amounts for every month of delay from the**



**date of default till the handing over of the possession. Whereas in the present case,** the date of actual default in delivery of possession **starts from 1<sup>st</sup> January 2012** itself. Therefore, allottee appellant in the instant case is entitled for possession and is also entitled for delay interest from 1<sup>st</sup> January 2012 itself and not from 1<sup>st</sup> May 2015 as decided in the impugned order till the actual date of the possession of the subject flat and its payments of delay interest by Promoters shall be at the end of every month itself and not at the time of handing over the possession.

**19.** Allottee has claimed to have paid Amounts of ₹ 1,18,40,000/- by cheques withdrawn on HDFC Bank and it has been acknowledged by promoters. In addition to these, further amount of ₹ 19,24,000/- was also stated to have been paid in cash towards floor rise charges besides, ₹ 5,75,000/- towards stamp duty charges, ₹ 30,000/- towards the registration charges of the agreement, ₹ 30,000 towards electricity meter deposit and incidental expenses and another 30,000/- towards water meter deposit including Rs. 15,000 towards the legal cost of the said agreement for sale. Accordingly, all the payments are stated to be aggregating to ₹ 2,11,04,000/-. However, no proof for cash payments have been placed on record. Hence, the cash payments can't be accepted for the purpose of calculation of the paid amounts. Payment of stamp duty and registration fees are compulsorily to be made as per the statute. Therefore, these payments are compulsory/statutory in nature, and these must be paid at the time of such transactions for taking possession. Accordingly, these payments for stamp duty, registration fee including the payment towards the electricity and water and other incidental charges are not admissible for the purpose of calculation of the interest amount for the delay in delivery of the subject flat.

**20.** It is also the settled position of law that jurisdiction to consider prayers for compensations lies within the purview of the Adjudicating Officer,



whereas the impugned order has been passed by the Member, MahaRERA.

- 21.** Thus, eligible amount for calculation of the delay interest to be paid by the promoters at the end of every month of delay will be on the amount of ₹ 1,18,40,000 only from 1<sup>st</sup> January 2012 as prescribed under Section 18 of the Act and to be paid at every month and not at the time of handing over the possession of the subject flat more particularly because, this has already been demanded by the allottee. Therefore, considering the findings herein above, more specifically in view of deficiencies and non-compliances including the contractual and statutory breaches on the part of the promoters under Section 18 of the Act, the direction to promoters in para 10 of the impugned order for payment of delayed interest from 1<sup>st</sup> May 2015 and payments of these payable amounts at the time possession after adjustment or otherwise are not sustainable in the eyes of law and is legally not sustainable. In view of the above, the impugned order dated 6<sup>th</sup> March 2020 passed by MahaRERA suffers from infirmities to this extent and calls for interference in this appeal to the extent as determined herein above. Accordingly, we answer point nos. 1, 2, 3 and 4 as above and proceed to pass order as follows; -


### **ORDER**

- a) Appeal is partly allowed.
- b) Impugned order dated 6<sup>th</sup> March 2020 passed in Complaint No. CC006000000089647 is modified as hereunder.
- c) Respondent promoter is directed to hand over possession of the subject flat after receipt of the occupation certificate of the project at an early date.
- d) Respondent promoter is further directed to pay interest for the delay in delivery of the possession of the subject flat to allottee from 1<sup>st</sup>



January 2012 for every month of delay along with its delayed interest arrears of the past within 30 days from the date of the order and continue to pay delayed interest, till the handing over of the possession of subject flat with occupation certificate on the paid amounts of ₹ 1,18,40,000/- without any adjustment of payable amounts by respective parties at the time of possession at the rate of highest marginal cost of lending rate of State Bank of India plus 2%.

- e) Liberty to Appellant complainant to take appropriate recourse to get its grievances regarding compensations redressed as per law.
- f) No order as to costs.
- g) In view of the provisions of Section 44(4) of the Act of 2016, a copy of this order shall be sent to the parties and to MahaRERA.

  
(Dr. K. SHIVAJI)

  
(SHRIRAM. R. JAGTAP, J.)