

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

Appeal No. AT00600000052402/20

In

Complaint No. CC006000000079514/19

M/s. Spenta Builders Pvt. Ltd.

Company incorporated under the Companies Act, 1956

Office Address:

3-A/B, Raja Bahudur Mansion,
1st Floor, 20, Ambalal Doshi Marg,
Opposite Bombay Stock Exchange, Fort.
Mumbai-400 023

... Appellant

Versus

Mr. Ashlesh Gosain

Address:

51, Kalpataru Society,
Hari Om Nagar, Mulund East,
Mumbai-400 081

... Respondent

Alongwith

Appeal No. AT00600000052942/21

In

Complaint No. CC006000000079514/19

Mr. Ashlesh Gosain

Address:

51, Kamdhenu Society,
Hari Om Nagar, Mulund East,
Mumbai-400 080

... Appellant

Versus

M/s. Spenta Builders Pvt. Ltd.

3-A/B, Raja Bahudur Mansion,
1st Floor, 20, Ambalal Doshi Marg,
Opposite Bombay Stock Exchange, Fort.
Mumbai-400 023

... Respondent

Adv. Ms. Sana Khan for Promoter

Adv. Mr. Nilesh R. Motwani for Allottee

hntc

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
SHRIKANT M. DESHPANDE, MEMBER (A)**

DATE : 21st August, 2024

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

[PER : SHRIKANT M. DESHPANDE, MEMBER (A)]

1] The captioned Appeals emanate from Order dated 03.09.2020 passed by the learned Member I, MahaRERA (for short the Authority) in Complaint No.CC006000000079514 whereby the learned Authority directed the Appellant/Promoter to pay interest to Respondent/Allottee from 01.07.2017 till the date of actual possession.

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

3] Brief facts, culled out from the pleadings, documents on record and impugned Order are that the Allottee has purchased a flat bearing no.202 in 'A' Wing admeasuring 649.50 sq. ft. carpet area in the Promoter's project "**Palazzio**" situated at Mohili village, Mohili, Kurla Andheri Road, Mumbai 400 072 (said Flat) bearing MahaRERA project registration no. P51800002414 (said Project).

The parties executed and registered the agreement for sale dated 15.07.2014 (said Agreement) for a total consideration of Rs.97,22,000/- out of which Allottee paid Rs.87,49,800/- to Promoter. As per the agreement for sale, the Promoter was liable to handover possession of the subject flat to Allottee on or before 31.12.2015. The Promoter obtained Occupation Certificate for the said project covering the subject flat on 14.07.2020 and subsequently handed over possession to Allottee on 31.07.2020. Thus, the Promoter failed to handover possession of the subject flat by the date specified in the said agreement for sale. Therefore, Allottee filed the captioned Complaint before the Authority and sought relief of interest on delayed possession and compensation under section 18 of RERA Act, 2016 (for short RERA).

4] The Promoter appeared in the Complaint and remonstrated the Complaint by filing reply. The Promoter contended that the said project is completed in all respects for the purpose of obtaining Occupation Certificate. Further, the application has also been submitted to the competent authority for grant of Occupation Certificate.

5] The Promoter further submitted that the Allottee had agreed to the revised date of possession being July, 2017, which

hnt

also reflect in the minutes of the meeting dated 15.04.2017 circulated by the Promoter by an email dated 19.04.2017. Further, the Allottee did not raise any objection to the revised date of possession. The Promoter also submitted that Clause 12 of the agreement for sale states that the Promoter shall endeavor to deliver possession of the said flat on or before December, 2015 with an additional grace period of 3 months subject to *force majeure* or such other factors as laid down in Clause 12 of the agreement. The Promoter also submitted that certain events that caused delay in completion of the said project have occurred, which were beyond the control of the Promoter. These included delay in NOC from Airport Authority of India, delay in Environmental Clearance, ban on sand mining by mechanical equipment, etc. which caused delay in completion of the project. The Promoter also submitted that since there is no intentional delay on the part of the Promoter in completing the said project, the project got delayed for the reasons mentioned above which are beyond the control of the Promoter.

6] In light of above submissions, the Promoter prayed for dismissal of the Complaint.

hwt

7] After hearing the parties, the Authority passed the Order dated 13.11.2019. While passing the said Order, the Authority took into consideration the facts and circumstances in earlier similar Complaints of flat owners in the same project for which Orders were passed on 16.03.2018 (in Complaint no. CC006000000012618) and 06.08.2019 (in Complaint no. CC006000000057334) whereby the Promoter was directed to pay interest to Allottees from 01.07.2017 till the actual date of possession. Further, the Authority observed that Order dated 16.03.2018 passed by the Authority has been confirmed by MahaREAT in its Order dated 08.05.2018 in Appeal No.AT006000000000240. On the similar lines, the Authority granted relief of interest and directed the Promoter to pay interest from 01.07.2017 till the date of Occupation Certificate obtained by Promoter for the project i.e. 28.02.2019 at the rate of Marginal Cost Lending Rate of SBI plus 2% as prescribed under provisions of Section 18 of RERA. The Authority further directed the Promoter to handover possession to the Allottee forthwith. It also directed that since the project is nearing completion, the actual amount payable to the Allottee towards the interest shall be adjusted with

hwt

the amount payable by the Allottee and the balance, if any, shall be paid to the other party at the time of possession.

8] Allottee thereafter filed the Application dated 13.01.2020 for rectification of Order of the Authority dated 13.11.2019. The Allottee submitted that the subject flat has not received Occupation Certificate till date and therefore prayed for rectification to the extent that the interest should be till the possession is handed over to Allottee and not restricted to the date 28.02.2019 mentioned in the Order dated 13.11.2019. Further, Allottee submitted that he is entitled to seek relief of interest for the delayed possession from 31.12.2015, which was the agreed date of possession as per the said agreement, and not from 01.07.2017 as mentioned in the Order dated 13.11.2019. The Authority heard both the parties. The Authority observed that since Occupation Certificate was not obtained by the Promoter for the subject flat, reference to Occupation Certificate dated 28.02.2019 in the said Order to be deleted. However, other relief sought by Allottee regarding interest from 31.12.2015 instead of 01.07.2017 was not accepted by the Authority. Accordingly, the Authority passed the impugned Order dated 03.09.2020.

hnt

9] Aggrieved by the said Order of the Authority dated 03.09.2020, Allottee filed the Appeal No.AT00600000052942 on the following grounds:

(i) the impugned Order is erroneous on the face of it and has caused grave miscarriage of justice.

(ii) the learned Authority failed to take into account the facts specific to this case of the Allottee and passed the Order which is factually incorrect and unreasoned.

(iii) the learned Authority failed to take into consideration the fact that the promised date of possession as mentioned in the agreement for sale is 31.12.2015. Further, the learned Authority granted interest to Allottee from 01.07.2017 instead of 31.12.2015 and while passing the Order did not give any reasons for the said decision.

(iv) the learned Authority failed to appreciate that the facts in the cases referred to by the Authority of other allottees in the same project, on which basis the Authority determined the date from which date interest is awarded in its Order dated 3.09.2019, were different from the facts of the case of the Allottee, particularly with reference to date of possession.

h h t

10] On these grounds, the Allottee sought relief of interest from 31.12.2015, which is promised date of possession as per the agreement for sale, till obtaining the Occupation Certificate and handing over of possession of the said flat to the Allottee and prayed for allowing his appeal and dismissing the appeal filed by the Promoter.

11] Aggrieved by the said Order dated 03.09.2020, the Promoter also filed the Appeal No.AT006000000052402 on the following grounds:

(i) the impugned Order has been passed in contravention of Sections 31, 71 of RERA. In terms of the said Sections, the Complaint made under Sections 12, 14, 18 and 19 of RERA mandatorily required to be heard and dealt with by the Adjudicating Officer and not the Authority. As such the Authority does not have the powers to hear the Complaint made under Sections 12, 14, 18 and 19 of RERA. Therefore, the impugned Order having been passed by the Authority, without referring it to the Adjudicating Officer, is without jurisdiction and as such is a nullity and is required to be set aside.

(ii) The Allotted in its complaint had prayed for:

hwt

(a) payment of interest on the consideration amount of Rs.87,49,800/- from 31.12.2015 till obtaining of Occupation Certificate and subsequent handover of possession of the subject flat (b) compensation on account of loss of rental income due to delay in handing over of possession by the Promoter in terms of Sections 12 and 18 of RERA. (c) the payment of the amount of Rs.2,50,000/- as compensation towards mental agony and harassment in terms of Sections 12 and 18 of the Act.

Thus, in addition to payment of interest, the Allottee has claimed compensation under Sections 12 and 18 of the Act and as such compensation and interest could not have been granted to Allottee by the Authority in light of Section 71 of the Act and therefore the impugned Order is liable to be set aside.

(iii) the impugned Order neither records the arguments and submissions made by the Promoter nor does it deal with the same. Therefore, the impugned Order has been passed without application of mind and ought to be quashed and set aside. The fact that the Promoter had sought the transfer of the Complaint to the Adjudicating Officer was neither recorded nor dealt with

hmt

by the Authority. Therefore, the impugned Order has been passed without application of mind.

(iv) The Authority erred in law by seeking Allottee's consent for transferring the Complaint to the Adjudicating Officer and upon Allottee's refusal to consent, continued to deal with the Complaint. Sections 31 and 71 of the Act read with Rules 6 and 7 of the Rules make it clear that any Complaint filed under Sections 12 and 18 of the Act should be adjudicated upon by the Adjudicating Officer and not the Authority.

(v) The impugned Order has not been passed on the facts of the case and but merely on the basis of Orders passed by the Authority in different Complaints by other allottees having different facts.

(vi) The learned Authority failed to appreciate the provisions in Clause 12 of the agreement which provides for a grace period of 3 months over and above the agreed date of possession i.e. 31.12.2015 to handover possession of the said flat to Allottee.

(vii) The Authority failed to appreciate that the Promoter during construction of the project suffered delays which are beyond its control. Such delays included changes in the sanctioned plan, changes in Environmental Impact Assessment, delays in

hct

obtaining Environmental Clearance from State Level Environmental Impact Assessment Committee, etc. The construction of project came to a halt due to non-availability of Environmental Clearance which caused significant delay in completion of the project.

12] On the grounds mentioned above, the Promoter has filed the Appeal No.AT00600000052402 and sought relief of setting aside the impugned Order dated 03.09.2020 and prayed for allowing his appeal and dismissal of appeal filed by the Allottee.

13] We have heard learned Advocate Mr. Nilesh R. Motwani for Allottee and Advocate Ms. Sana Khan for Promoter.

14] The submissions advanced by learned Advocates for respective parties are nothing but reiteration of contents of memorandums of appeals and written submissions. However, in addition, the learned Advocate for Promoter has submitted that as per terms of the agreement for sale, the said flat was to be handed over to Allottee by 31.12.2015. However, in the event the Promoter is unable to complete the construction of the project by the agreed date of 31.12.2015 for reasons beyond its control, the agreement provided for an extension of 3 months to handover possession of the subject flat to Allottee. The Promoter submitted that the said

hrt

delays which were on account of various factors which included delays in seeking permissions, Environmental Clearance, NOC from Airport Authority of India, Occupation Certificate, etc. should be exempted from calculating the date of handing over of possession. The Promoter submitted that the flat owners including the Allottee were made aware of the intervening circumstances from time to time. Subsequent to the execution of the agreement, a meeting was held on 15.04.2017 between the representatives of the Promoter and various flat purchasers wherein it was *inter alia* discussed, and the flat purchasers were informed that the possession of the subject flat would be delivered to them after 30.06.2017. Learned Advocate further submitted that the Allottee and other flat owners were informed that the application for Occupation Certificate for the project was made in mid-May, 2017 and the Occupation Certificate was expected by 30.06.2017.

15] Learned Advocate further submitted that various flat purchasers including the Allottee agreed and consented to possession date being extended to July, 2017. As such, Clause 12 of the agreement stands amended and the possession date stands extended to July, 2017. Learned Advocate further submitted that Promoter has completed the said project for the purpose of

hwt

obtaining Occupation Certificate on 26.05.2017 and accordingly made the application to competent Authority for grant of Occupation Certificate. Learned Advocate further submitted that the Promoter was not able to obtain the Occupation Certificate for the Building which covers the subject flat due to reasons beyond its control. Further, flat owners including the Allottee in these Appeals were informed about the issues faced by the Promoter in obtaining Occupation Certificate. Learned Advocate further submitted that the Orders of the Authority dated 13.10.2017 and 16.03.2018 related to Complaints filed by other flat purchasers of the same project had been challenged by the Promoter in Hon'ble High Court in second Appeal No.677 of 2018 and 31357 of 2018 respectively which have been stayed by the Hon'ble Bombay High Court.

16] Learned Advocate for Appellant submitted that the Promoter received Occupation Certificate for the project and invited the Allottee to take possession of the subject flat vide an email dated 15.07.2020. Thereafter, the Promoter completed the formality of handing over possession by completing the payment of outstanding amount by Allottee and handed over possession to the Allottee on 31.07.2020. Learned Advocate further submitted

h
h
h

that the Allottee has also signed the possession letter accepting the possession of the said flat without any complaints or issues.

17] Learned Advocate submitted that the Promoter has fulfilled its duties and obligations towards the Allottee. The Promoter has obtained all necessary approvals, permissions and certification from the relevant authorities. The Promoter has already handed over possession of the subject flat and fulfilled all the terms of the agreement for sale between the parties. The Promoter has also formed the society of flat-owners post receipt of Occupation Certificate and Registration Certificate for the said Society has already been received. In light of above, learned Advocate for Promoter submitted that nothing in the Appeal survives and therefore prayed for dismissal of the Appeal filed by Allottee and allow the Appeal filed by the Promoter.

18] Learned Advocate for Allottee has submitted that the Authority has wrongly awarded the interest from the date of 01.07.2017 even though the agreement for sale clearly states that possession of the said flat will be handed over to the Allottee by 31.12.2015. Learned Advocate further submitted that the Authority has failed to give any justification for the arbitrary start date of interest of 01.07.2017. Learned Advocate submitted that the

hnt

Authority has rejected the prayer of Allottee on the ground that in similar matters by other allottees of the said project, the relief of interest was granted from 01.07.2017. However, the Authority has failed to appreciate that the agreement signed and executed by the Allottee had promised the possession at much earlier date than in other matters, which the Authority has relied upon. Further, in other matters, the Authority granted the relief of interest from the date in accordance with the promised date of possession in their respective agreements for sale. Therefore, the impugned Order is without application of mind on the part of the Authority.

19] With these submissions, the learned Advocate for Allottee prayed for relief of interest from 01.01.2016 till the date of handing over of the possession by the Promoter to Allottee and further prayed for dismissal of the Appeal filed by the Promoter.

20] Having considered the detailed and comprehensive submissions of the respective parties, supported by various documents, the points that arise for our consideration and findings thereon for the reasons to follow are as under:

Sr. No.	Points	Findings
1.	Whether impugned Order dated 03.09.2020 warrants interference in the Appeal?	In the affirmative

hnt

2.	What Order?	As per final Order
----	-------------	--------------------

REASONS

21] On ensemble of facts as submitted above by the parties, it is not in dispute that the Allottee has purchased flat bearing no.202 in 'A' Wing admeasuring 649.50 sq. ft. carpet area in the said project of the Promoter. It is not in dispute that parties executed and registered the agreement for sale dated 15.07.2014 for a total consideration of Rs.97,22,000/- out of which the Allottee paid Rs.87,49,000/- to the Promoter. It is not in dispute that as per the said agreement for sale, the Promoter was liable to hand over possession of the subject flat to Allottee on or before 31.12.2015. It is also not in dispute that the Promoter obtained Occupation Certificate for the said project, covering the subject flat on 14.07.2020. It is also not in dispute that the Promoter offered the Allottee to take possession of the said flat on 15.07.2020 and Allottee took possession of the said flat on 31.07.2020 after payment of outstanding balance amount. Therefore these admitted facts reveal the Promoter has failed to handover the possession of the subject flat to Allottee by the date specified in the agreement for sale.

hnt

22] The Promoter has challenged the impugned Order dated 03.09.2020 on the ground that the same has been passed in contravention of Sections 31, 71 of RERA. The Promoter has contended that in terms of the said Sections, a Complaint which is made under Sections 12, 14, 18 and 19 of RERA is mandatorily required to be heard and dealt with by the Adjudicating Officer and not the Authority. As such the Authority does not have the power to hear the Complaint made under Sections 12, 14, 18 and 19 of the Act and therefore, the impugned Order having been passed by the Authority without having made reference to Adjudicating Officer is without jurisdiction and as such is a nullity.

23] Before examining the merits of the case, we first address the submissions made above by learned Advocate for Promoter that learned Authority has no jurisdiction to hear and decide the captioned Complaint as the powers to determine the quantum of compensation and interest vest with the Adjudicating Officer appointed by the Authority in accordance with Sections 71 and 72 of RERA and therefore the impugned Order is liable to be quashed on this ground.


24] It appears that the Promoter's understanding and interpretation of Section 18 of RERA is that any claim under Section

hnc

18 of RERA, including the interest of delayed possession, has to be necessarily dealt with by the Adjudicating Officer appointed under Section 71(1) of RERA and not by the Authority. Section 71 of RERA provides that appointment of the Adjudicating Officer is for the purpose of adjudicating of compensation under Sections, 12, 14, 18 and 19 of the Act. This signifies that the Adjudicating Officer is to adjudge the element of compensation and while doing so he will have due regards to various factors outlined under Section 72 of the Act. Adjudging compensation will require deeper inquires and investigations to determine the quantum of compensation. However, no such provision of any such factors or reasons as contemplated under Section 72 of the Act is required for determining interest of delayed possession under Section 18 of the Act. For awarding such relief under Section 18 of the Act, it would be sufficient if there is element or ingredient of delay in handing over possession within the period agreed in the agreement for sale. Once the delay is made out from the facts of the case, pressing the claim of interest on the paid amount by Allottee is a simple exercise of calculation of interest at the rate prescribed under the Act. In the present Appeal, the Allottee has claimed interest on delayed possession and compensation under section 12 and 18 of RERA.



However, the Authority while passing the impugned Order has granted relief only of interest on the delayed possession and rejected the claim of compensation under Section 18 of the Act since the Allottee chose to continue in the project instead of withdrawing from the project. If the Allottee chooses to continue in the project, he is entitled only interest on delayed possession and not compensation. Therefore, in this Appeal, the Authority has considered his claim limited to interest on delayed possession, therefore, no adjudication in nature of decree is involved to attract the jurisdiction of the Adjudicating Officer. Therefore, the claim of interest under Section 18 of the Act for delayed possession is not in the nature of a compensation which requires deeper inquiry and adjudication by the Adjudicating Officer as provided under Section 72 of the Act. Therefore, under Section 71 of the Act, the Adjudicating Officer primarily has jurisdiction to decide the case where the adjudication is required for awarding compensation and/or interest where the interest being sought *qua* compensation falls under the sway of compensation. Where interest is sought as interest simpliciter and not by way of compensation per say, the Authority has necessary jurisdiction to deal with such claim under Section 18 of the Act. Such a claim of interest for delayed



possession is not in the nature of compensation. Therefore, we do not find any merit in the submissions of the Promoter and hold that the Authority has necessary jurisdiction to decide and award the interest on delayed possession under Section 18 of the Act.

25] As discussed above, the due date of possession as per the agreement is 31.12.2015 whereas the Promoter offered the possession to Allottee after obtaining Occupation Certificate on 15.07.2020. This clearly establishes that the Promoter failed to handover the possession of the said flat to Allottee and therefore the Allottee is entitled to seek relief of interest under Section 18 of RERA.

26] It is specific contention of the Promoter that as per provisions of the said agreement, the Promoter was supposed to handover the possession of the subject flat on or before 31.12.2015. However, the provisions in Clause 12 of the agreement provides that the Promoter is entitled additional grace period of 3 months over and above the agreed date of possession. Further, the Promoter during the construction of the project suffered delays which were beyond its control. Such delays included changes in the sanctioned plan, changes in Environmental Impact Assessment, delay in obtaining Environmental Clearance from the State Level

hnt

Environmental Impact Assessment Committee, etc. The Promoter has also submitted that the project has significantly delayed because delays in getting NOC from the Airport Authority of India, getting the Occupation Certificate from the competent Authority, etc. The Promoter submitted that these reasons for delay were beyond its control and are covered under the clause of *force majeure*.

27] The Hon'ble Bombay High Court, in the case of **Neelkamal Realtors Suburban Pvt. & Anr. Vs. Union of India & Ors.** [(2017) SCC Online Bom 9302] in para 119 has 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...*". 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 expert and considering likely time to be consumed by various activities and approvals, Promoter is the best judge to estimate the likely timeline for completion of the project. On the contrary, the purchasers have no domain knowledge, neither

h/t

aware nor expected to be aware of the nature of mitigating factors which may delay the project. The Allottee executed the agreement for sale based on the commitment given by the Promoter to hand over possession by a certain date as specified in the agreement for sale.

28] Careful examination of agreement for sale reveals that certain eventualities that might cause delays as provided in Clause 12 of the agreement are routinely provided in agreements and thus cannot be considered relating specifically to this project. The Clause 12 of the agreement for sale provides for a grace period of 3 months over and above the due date mentioned in the agreement for handing over possession. It further provides that the Promoter is entitled for the extension of 3 months on account of the factors which included non-availability of building materials, water or electricity supply; war, civil commotion or act of God; any notice, order, rule, notification of the Government and/ or competent authority; any other causes beyond the control of the Promoter. It however cannot be construed that by signing the agreement for sale, the Allottee has consented to wait infinitely for completion and possession concerning all these factors that would delay the completion of the said project.



29] 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 case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of real estate project. None of the grounds as demonstrated by the Promoter fall within the scope of explanation to Section 6 of RERA Act, which could have justified the delay. Therefore, we are of the considered view that delay in granting permissions/ sanctions from various competent authorities, etc. as contended by the Promoter cannot be construed as "*force majeure*". The Promoter can neither expect Allottee to be aware of the likely delay nor can make Allottee bear the brunt of the failure on the part of Promoter to act professionally by assessing the requisite date for possession.

30] Considering the liability of promoter to assess the likely date of completion of the project, allottees have very limited liability of discharging their own obligations as per the terms of the agreement for sale *inter alia* relating of primarily to make payments from time to time so that the project is not starved of funds to cause delay in completion. It is not in dispute that the Allottee has made a substantial payment out of the total consideration to the

hgt

Promoter and paid all outstanding amount at the time of taking possession. Allottee can be held responsible only if failure to discharge its obligation as per the agreement for sale has caused delay in completion of the project. If the Allottee is not responsible for the reasons for the delay, he is entitled to relief under Section 18 of RERA and cannot be saddled with consequences for delay in completing the project. The language employed in Section 18(1)(a) makes it clear that the Promoter is obligated to handover the possession of flat as per the agreement for sale by the date specified therein. The ratio laid down by the Hon'ble Supreme Court in **M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.** [in Civil Appeal No.3581-3590 of 2020] is that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is

hct

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)."

31] Even if, *force majeure* factors as demonstrated by the 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 Allottee nor is the case of the Promoter that the Allottee in any way has caused delay in possession. Therefore, the submission of the Promoter that he is entitled to the extension on account of grace period on account of delays due to factors beyond its control as per the clause 12 of the agreement for sale is not tenable. 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;

"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.

32] It is therefore clear that there are no shackles or limitation on exercise of right by Allottee to seek interest once there is delay in possession. However, as per the agreement for sale the Promoter has committed possession due on or before 31.12.2015. Further, it is seen from the replies filed by the Promoter that the Promoter has obtained Occupation Certificate on 14.07.2020. This clearly indicates that the said flat was not ready in all respects for handing over the possession of the same to the Allottee on 31.12.2015. This signifies that the Promoter has failed to adhere to his obligation to handover the possession of the subject flat to Allottee by specified date.

33] The Promoter has also contended that the flat owners including the Allottee were made aware of the intervening circumstances from time to time. Promoter further contended that

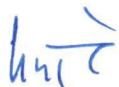
h47

a meeting was held on 15.04.2017 between the representatives of the Promoter and various flat purchasers wherein it was *inter alia* discussed, and flat purchasers were informed that the possession of the subject flat would be delivered to them after 30.06.2017. Promoter further contended that various flat purchasers including the Allottee agreed and consented to the possession date being extended to July, 2017 and therefore Clause 12 of the agreement stipulating the possession date stands amended to that effect. However, the Allottee has denied having agreed to the extension of the date of possession as submitted by the Promoter. There is no evidence on record to suggest a consent by the Allottee to extension of date of possession as contended by the Promoter. It is pertinent to note that the date of possession as stipulated in the agreement can only be amended by consent/agreement of both the parties. Therefore, the claim of the Promoter that the date of possession stands amended to July, 2017 cannot be accepted.

34] While passing the Order dated 13.11.2019 (which was subsequently rectified by its Order dated 03.09.2020), the Authority observed that it has taken into consideration the facts and circumstances in earlier similar Complaints of flat owners in the same project for which Orders were passed on 16.03.2018 and



06.08.2019 whereby the Promoter was directed to pay interest to allottees from 01.07.2017 till actual date of possession. Closer examination of the said Orders reveals that the facts in above cases are different with reference to the date of possession in their respective agreements for sale and therefore mechanically applying the effective date for interest from those Orders does not reflect application of mind on the part of the Authority to the specific facts and circumstances in the Complaint of the allottee. In the present case, the due date of possession is 31.12.2015 and therefore the default of failure to handover possession of the subject flat by the Promoter to Allottee starts from 01.01.2016. Therefore, the effective date of awarding interest as determined by the Authority has no basis. It is therefore evident that the Authority has adopted a casual, non-serious approach contrary to the provisions of RERA while adjudicating the controversy raised in the Complaint. The impugned Order holds the view contrary to the aforesaid provisions of RERA, the same is found unsustainable in the eyes of the law and hence calls for interference in the Appeal filed by the Allottee. We accordingly answer the issue in the affirmative.



35] With discussions and observations recorded hereinabove, as Allottee is not found responsible for the delay in completion of the project, the Allottee is entitled to interest for delay in possession under section 18 of RERA. Consequently, we proceed to pass the following Order:

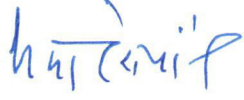
ORDER

1. Appeal No.AT00600000052402/20 is dismissed.
2. Appeal No.AT00600000052942/21 is allowed with the following directions:

- (i) In modification of direction given in para 10 of the impugned Order dated 03.09.2020 relating to grant of interest for delay in possession, the Promoter is directed to pay interest to Allottee, on the amount received by the Promoter from Allottee towards consideration of the subject flat prior to handing over of the subject flat, at the rate of SBI's highest Marginal Cost Lending Rate (MCLR) plus 2% with effect from 01.01.2016 till the date on which the Promoter offered possession of the subject flat to Allottee i.e.15.07.2020. The Promoter shall pay the interest amount within 30 days of this order.



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



(SHRIKANT M. DESHPANDE)



(SHRIRAM R. JAGTAP)

MBT/