

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

**Appeal No. AT005000000053653/2022  
In  
Complaint No. CC005000000033545**

**Ms. Ashwini Subhash Kulkarni**

Age-Adult Occu- Service  
Residing at: - 2/4, Ambekar Nagar,  
Sion- Chunabhatti, Mumbai-400022

**... Appellant**

**Versus**

**Darode Jog Homes Pvt. Ltd.**

Through its Director

1. Mr. Sudhir Chandrakant Darode
2. Mr. Anand Dhundiraj Darode

Having its Office at: Darode Jog House,  
1212, Apte Road, Pune-411004

**... Respondent**

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*Adv. Nilesh Borate for Appellant*

*Adv. Chintamani Mane Deshmukh for Respondent*

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

**DATE : 9<sup>th</sup> October 2024**

**(THROUGH VIDEO CONFERENCING)**

**JUDGMENT**

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

1. Being dissatisfied with order dated 02.09.2021 passed by learned Chairperson MahaRERA (for short "Authority") in complaint No. CC005000000033545, the complainant, who is an Allottee, has preferred instant appeal to raise grievance

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that the learned Authority has not granted satisfactory relief sought in the complaint.

2. Brief facts, which are necessary for disposal of appeal, are that the Respondent/Promoter has launched a project under the name and style as PADMANABH situated at Gat Nos. 176, 177 and 178 at village Dudulgaon, Haveli, Pune. Complainant was looking for a suitable flat in Pune. She came to know about the scheme of the Respondent somewhere in the year 2016. The complainant booked a flat bearing No.402 admeasuring 58.06 sq. mtrs. carpet area on 4<sup>th</sup> floor in wing-A2 in the subject project along with open car parking space No. A2-402 for a total consideration of Rs.36,07,500/-. The complainant and Respondent entered into an agreement for sale on 02.07.2016. The complainant has paid an amount of Rs.17,75,743/- to Promoter towards part consideration from time to time till date. As per the terms and conditions of agreement for sale, the Promoter was supposed to handover the possession of the subject flat to Allottee/Complainant by December 2018 or within 2.5 years from the date of the agreement whichever is later. The Respondent failed to adhere to its commitment in handing over the possession of

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the subject flat to Allottee on the date specified in the agreement for sale. Therefore, Complainant/Allottee has decided to exit from the project. The Complainant has filed complaint and sought relief of refund of the entire consideration amount of Rs.17,75,743/- with interest at the rate of 12% per annum from the date of receipt of the payment till realization of the amount on account of delay in delivering possession of the flat.

3. The Respondent has appeared in the complaint and remonstrated the complaint by filing reply contending therein that the complaint is misconceived and not maintainable. The Respondent has denied the allegations made in the complaint in toto. However, the Respondent has admitted that Complainant has booked the subject flat in the project after entire information of the project was communicated to her. The stamp duty and registration charges are paid to the government. The Respondent has not received any amount from it. The possession of the flat was to be handed over as per the agreement or within 2.5 years of the date of agreement whichever is later along with a grace period of 6 months. The project could not be completed due to the

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recession in the year 2015-16 causing lot of problems to the Respondent. Because of this mitigating circumstance, Respondent could not handover the possession of the flat to Allottee.

4. The Respondent has further contended that as per the agreement, if the Respondent failed to handover possession within the stipulated time, the Complainant could seek refund along with 12% interest from the date of payment till entire refund. However, such amount was to be paid at the time of execution of deed of cancellation. Alternatively, the Respondent was liable to pay interest for delay @ Rs. 5,000/- per month, if the Complainant wished to continue in the project. The Complainant has not yet entered into a cancellation deed and hence, the refund cannot be processed. The Complainant has also received the compensation from the Respondent and hence Complainant has waived the right to cancel the agreement for sale and to have refund of the amount. The amount received from the Complainant towards part consideration has been invested in the completion of the project and therefore the refund cannot be processed at this stage. Besides, the Respondent has borrowed loan to

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complete the project. The filing of complaint would cause hardship in completion of the project and would cause huge monetary loss to the Respondent. With these contentions, the Respondent has prayed for dismissal of the complaint with cost.

5. After hearing the parties, the learned Authority was pleased to direct the Respondent to refund the entire amount paid by the Complainant with interest from 31.01.2019 upon execution of the cancellation deed by the Complainant. However, at the same time the learned Authority has deferred the refund of amount to Complainant till completion of the project. This impugned order redounded the Complainant to file instant appeal. We have heard learned counsel appearing for respective parties. The submissions advanced by learned counsel appearing for respective parties are nothing but reiteration of the contents of appeal memo and written submission.
6. On examination of pleadings of the parties, impugned order and material on record only point that arises for our consideration is whether impugned order warrants

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interference in this appeal? To which our answer is in the affirmative for the reasons to follow:

### **REASONS**

7. On ensembling the pleadings of the parties as above reveals that by virtue of agreement for sale, the Respondent has committed to handover the possession of the subject flat to Allottee on or before 31.07.2018 or within a period of 2.5 years whichever is later. After computing the said period of 2.5 years, the Promoter was liable to handover possession of the subject flat to Allottee on or before 31.01.2019. Clause 13 of agreement for sale further provides that the Respondent was also entitled to seek 6 months' grace period for handing over possession of the subject flat to Allottee.
8. It is not in dispute that the Promoter has miserably failed to adhere to its commitment. Apart from this, the Promoter has also failed to handover the possession of the subject flat to Allottee within the grace period of 6 months as stipulated in the agreement for sale. Thus, we are of the view that the Promoter is not entitled to seek relief of 6 months grace period as provided under the agreement for sale. It is significant to note that the learned Authority has categorically

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observed that the Promoter has failed to handover the possession of the subject flat on the date specified in the agreement for sale. It is pertinent to note that the Respondent has not challenged the impugned order. It means the findings recorded by learned Authority in the impugned order have not been challenged by the Promoter and therefore we are of the view that the said findings have attained the finality.

9. It is specific contention of Promoter that because of recession in the year 2015-16 which caused a lot of problem to the Respondent, Respondent could not handover the possession of the flat to Allottee. The *force majeure* factor as demonstrated by the Promoter does not fall within the ambit and explanation of Section 6 of RERA Act, 2016, which clearly clarifies that "force majeure" shall mean a case of war, flood, draught, fire, cyclone, earthquake or any other calamity caused by nature, affecting the regular development of the Real Estate project. None of the grounds demonstrated by the Promoter fall within the scope of explanation to Section 6 of RERA Act, 2016 which could have justified the reason. Thus, we have no hesitation to conclude that the reason of

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recession put forth by Promoter cannot be construed as a *force majeure*.

10. Allottee has very limited liability of discharging his own obligations as per the terms of agreement for sale *inter alia* relating to primary to make payments from time to time so that the project is not starved of funds to cause delay in completion. If the Allottee is not responsible for delay, he is entitled to reliefs under Section 18 of RERA Act, 2016. It has been held by the Hon'ble Apex Court in **M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.** [ in Civil Appeal No. 3581-3590 of 2020] is that-

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

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*the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."*

11. It is not the case of Respondent that because of delayed payments on the part of Allottee, the Respondent was not in a position to complete the project. Under circumstances, we are of the view that Allottee is not responsible for delay in completing the project.

12. While explaining the scope of Section 18 of RERA Act, 2016 the Hon'ble Supreme Court in **M/s Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [ 2021 SCC Online 1044] dated 11 November, 2021 Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021] 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*

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*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.*

13. It is therefore clear that there are no shackles or limitations on the exercise of right of Allottee to seek refund of amount with interest once there is delay in possession. The indefeasible right of Allottee to claim refund with interest cannot be defeated by any mitigating circumstances as demonstrated by Respondent. The Respondent is liable to pay interest on the paid amount from the date of payments and not from the date of possession. However, the learned Authority has directed the Respondent to refund the entire amount paid by Complainant/Allottee with interest from 31.01.2019. The learned Authority instead of awarding interest on the paid amount from the dates of payment awarded interest from 31.01.2019 which is contrary to the provisions of RERA Act, 2016 and settled position of law. Thus, the impugned order warrants interference in this appeal. It is significant to note that the learned Authority has also deferred the refund of amount with interest to Allottee by Promoter till the completion of the project. This signifies that the impugned order is not sustainable in the eyes of law and

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warrants interference in this appeal. Therefore, for the foregoing reasons, we have come to the conclusion that the impugned order is liable to be set aside. Consequently, we proceed to pass following order:

**ORDER**

- i) Appeal No. AT005000000053653 of 2022 is allowed.
- ii) The impugned order dated 02.09.2021 passed by learned Authority in complaint No. CC005000000033545 stands set aside.
- iii) The Respondent/Promoter is directed to refund the entire amount excluding stamp duty and registration charges to appellant with interest as per SBI highest Marginal Cost Lending Rate (MCLR) plus 2% from the dates of payments of the amount till the entire realization of the amount.
- iv) The Respondent is directed to execute deed of cancellation within the period of two months from today so as to enable the Allottee to get refund of the stamp duty charges failing which the Respondent shall pay the stamp duty charges to Allottee within one month failing which the Respondent shall refund the

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said stamp duty charges with interest till realization of the amount.

- v) The Respondent shall cooperate the Allottee in getting the stamp duty charges from the concerned Authority.
- vi) Parties shall bear their own costs.
- vii) Copy of this Order be communicated to learned Authority and the respective parties as per Section 44(4) of RERA Act, 2016.

**(SHRIKANT M. DESHPANDE)**

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