

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-318/2024

LUCKNOW DEVELOPMENT AUTHORITY

.....Appellant

Versus

MAHENDER PRATAP SINGH

.....Respondent

Counsel for Appellant
ABHISHEK KHARE

Counsel for Respondent
SUYASH GUPTA

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Devindar Singh Chaudhry, Technical Member

1. Heard Sri Abhishek Khare, learned counsel for appellant/promoter and Sri Suyash Bajpai, learned counsel for respondent/allottee.
2. The appeal is directed against the order dated 15.09.2022, passed by the learned RERA Authority in Complaint No. ADJ/LKO162/04/92621/2022, whereby, the interest for the delayed project was granted to the respondent/allottee w.e.f. 31.08.2015 to 31.07.2019.
3. Learned counsel for appellant/promoter, at the outset, submits that in view of the decision rendered by the Hon'ble Supreme Court in the case of *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others, 2021 SCC Online SC, 1044*, the Adjudicating Officer would lack inherent jurisdiction in granting interest for a delayed project. He further submits that the forum for seeking the relief was before the Regulatory Authority. He, however, admits that the project was delayed by four years.

4. Main question involved in this appeal is whether the impugned order dated 15.09.2022, passed by the learned Adjudicating Officer, Lucknow, is without jurisdiction, and/or, whether in the given facts allottee/respondent is entitled for delay interest under proviso to Section 18(1) of the Act, despite possession/execution of sale deed of the unit.
5. In view of Newtech (supra) the proposition of law enunciated therein, the Adjudicating Officer would lack inherent jurisdiction to award interest for the delay till handing over possession of the unit. The jurisdiction would vest exclusively with the Regulatory Authority.
6. It is, however, not being disputed by the appellant, in the memo of appeal, that the project was inordinately delayed beyond the promised date, accordingly, the respondent would be entitled to delay interest on the deposit in terms of proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (for short 'Act, 2016'). He, however, submits that since possession of the unit and execution of the sale deed of the unit was made, in the circumstances, the appellant has waived his right to interest for the delay. The possession of the unit was accepted without any protest.
7. The facts inter se parties are not in dispute. The appellant/promoter launched a project in the name, 'PANCHSHEEL MULTISTORY in Vikalp Khand-3, Gomti Nagar, Near Kathauta Lake, Lucknow. Unit No. PS-5/807/A-1, apartment came to be allotted to the respondent/allottee vide allotment letter dated 31.08.2012. The sale consideration of the unit was at Rs.25,70,000/-, and the respondent/allottee has opted cash down payment mode. It is not in dispute that payments were made. The project was to be completed within two years i.e. on or before 31.08.2014,

however, the project was inordinately delayed, the sale deed of the unit was executed on 10.01.2020, but the allottee has not taken possession. In this backdrop the respondent/allottee claims interest on their deposit till the date of possession in view of the mandate provided in proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 (for short, 'Act 2016).

8. The argument that is being pressed and advanced by learned counsel for appellant is misconceived in view of the mandate of Section 18 of the Act, 2016. The proviso clearly provides that the promoter shall pay interest at the prescribed rate in the event the allottee makes a choice to continue in a delayed project. in other words, the legislature has not conferred any discretion upon the promoter to withhold the interest, rather, by employing the expression 'shall' in the proviso to Section 18(1), it becomes mandatory. The allottee is entitled to the interest in a delayed project without even raising a deemed, meaning thereby, on the date of possession the appellant/promoter shall have to compute the interest on deposit and pay to the allottee.
9. In the given facts, we are required to consider as to whether the appellant/promoter is not liable for paying delay interest in terms of proviso to Section 18(1) of the Act, 2016. Section 18 of the Act, 2016 is extracted :

“(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.”

10. In the given admitted facts, the respondent-allottee had not withdrawn from the project and continued with the project, which admittedly, was delayed. In terms of proviso to Section 18(1) of the Act 2016, promoter was liable to pay interest for delay till handing over possession of the unit. Legislature has imposed positive and mandatory obligation upon the promoter to pay the delay interest without the allottee having to raise a demand to that effect. The proviso to Section 18(1), inter alia, confers an absolute right on an allottee to receive delay interest from the promoter. The right cannot be waived/taken away by the promoter, nor, the promoter can insist that the allottee should in the first instance file a complaint for delay interest. The allottee on taking possession of the unit would not waive his statutory right to interest or the obligation of the appellant-promoter to pay interest to the allottee. The argument of the learned counsel for the appellant, if accepted, in that event every promoter instead of honouring his obligation to pay the interest would insist on possession/execution of sale deed of the unit to deprive the allottee of his right to interest. The expression ‘shall be paid, by the promoter’, makes the proviso to Section 18(1) mandatory. The provision under Section 18 does not mandate that the allottee is required to lodge a protest upon taking possession/execution of the sale deed of the unit, whereas, on the contrary the law mandates that the interest is required to be computed by the promoter on the date of offer of possession and the amount paid to the allottee, or the amount so computed is to be deducted and adjusted

against the sale consideration. In the circumstances, the allottee cannot be relegated to claim interest till handing over possession of the unit on the plea that the appellant-promoter denies to commit itself to fulfill its obligation to pay interest which is not being disputed.

11. Since the period of delay in completing the project and offer of possession of the unit is not under dispute, accordingly, no occasion arises in relegating the parties to the appropriate forum for delay interest for the very same period in view of Sub section (6) of Section 44, read with, Sub section (1) of Section 53 of the Act. The relevant provisions are extracted :

“Section 44. Application for settlement of disputes and appeals to Appellate Tribunal.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to **deposing of such appeal and make such orders as it thinks fit.”**

“Section 53 – Powers of Tribunal.—(1) The Appellate Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice...”

Accordingly, the question is answered.

12. The **appeal is being disposed of** on admitted facts by passing the following orders :

- (i) The respondent/allottee shall be paid interest by the appellant/promoter at the rate MCLR+1% w.e.f. 31.08.2015 to 31.07.2019. The interest to be computed and paid within 45 days from the date of uploading this order

on the portal, failing which respondent would be entitled to interest at the same rate on the computed amount till the date of payment.

(ii) The impugned order dated 15.09.2022 shall stand modified to the extent herein above.

(iii) No order as to costs.

(Devindar Singh Chaudhry)

(Suneet Kumar)

Dated: 11.03.2025
PRADEEPKUMAR