

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

APPEAL-468/2023

MR. RIZWAN AHMAD AND ANR.

.....Appellant

Versus

M/S SHALIMAR CORP LTD.

.....Respondent

Counsel for Appellant

SAURABH MISRA

GAUTAM JOHRI

Counsel for Respondent

ANURAG SINGH

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Rameshwar Singh, Administrative Member

Heard Sri Gautam Johri, learned counsel for appellant and Sri Anurag Singh, learned counsel for respondent.

Order on IA N. 1884 of 2023 (Application for Condonation of Delay)

1. By the instant application, the applicant seeks condonation of delay of 29 day's in instituting the present appeal beyond the period of limitation. Learned counsel for the applicant, submits that the impugned order was passed on 09.01.2023 and the same was uploaded on the website of RERA Portal on 12.01.2023. The appeal was filed on 11.04.2023 with the delay of 29 days. The learned counsel for the applicant submits that applicant was pre occupied in professional and social duties, therefore, could not consult with his counsel. He further, submits that the delay in instituting the appeal is not willful and deliberate.
2. Cause shown is good and sufficient, the application (IA No. 1884 of 2023) is **allowed** and the delay in filing the appeal is hereby condoned.

Order on Appeal

3. Heard learned counsel for parties at length. The dispute inter-se parties is primarily confined to settlement of account. The rival parties had filed separate complaints. The appellant allottee is seeking possession along

with delay interest, whereas, the respondent promoter, in their complaint, sought a direction to the allottee to take possession of the unit.

4. Learned Regulatory Authority by the impugned order has allowed the complaint of the allottee, directing the respondent promoter to hand over possession of the unit along with delay interest with effect from 23.08.2019 to 17.03.2021.
5. Learned counsel for appellant-allottee submits that as per the declaration made by the promoter, the date of construction, as notified on RERA website, commenced on 01.11.2015, accordingly, as per clause E-11 of the builder buyer agreement (BBA), the project was to be completed within thirty-six months plus six months i.e. within forty-two months from the date of commencement of construction. The date of completion, accordingly, would fall on or before 01.05.2019.
6. It is not in dispute that the Occupancy/Completion Certificate (OC/CC) of 'Block-B', wherein, the unit of the allottee is situated, came to be received by the respondent on 14.08.2020. However, offer of possession of the unit came to be made belatedly by the promotor on 17.03.2021. In view thereof, the appellant allottee is seeking delay interest w.e.f., 01.05.2019 to 17.03.2021. It is not in dispute that the sale consideration of the unit stands satisfied.
7. It is further, submitted that the respondent cannot charge for car parking, which admittedly has been allotted in the stilt area of the project.
8. It is submitted that as per the terms and conditions of the builder buyer agreement (BBA) i.e., Clause C-2, stilt/parking area would fall within the ambit of common area. It is further, submitted that covered parking in stilt area does not conform to the definition of 'garage' as contemplated under

Section 2 (y) of the Real Estate (Regulation and Development) Act, 2016 (for short, 'Act, 2016')

9. Further, reliance has been placed by the learned counsel for the appellant on the decision rendered by the Hon'ble Supreme Court in, '*Nahalchand Laloochand Private Limited Vs. Panchali Co-operative Housing Society Limited*', [AIR 2010 SC 3607] wherein, Hon'ble Supreme Court held that parking in the stilt area would not fall within the definition of garage and covered car parking.
10. While considered the definition of 'garage' provided in Section 2 (a-1) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short 'MOFA'), The court held that the word 'garage' may not have uniform connotation but definitely every space for parking motor vehicles is not a garage. The garage is a place having roof and walls on three sides. It does not include an unenclosed or uncovered parking space.
11. In paragraph 36, the Court considered as to whether the stilted portion or stilt area of a building is a garage under 'MOFA'. The court answered the question holding that the term 'garage' must be considered as would be understood by a flat purchaser and such person would contemplate garage, which has a roof and wall on three sides. In other words, the Court concluded that stilt parking space is part of common area accordingly, answered the question.
12. Section 2 (y) of Act, 2016 defines 'garage' meaning a place within the project having roof and wall on three sides for parking any vehicle.

Section 2 (y) is extracted:

“garage” means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

13. Further, Section 2 (n) defines ‘common area’, sub-Clause (iii) clearly provides that ‘open parking area’ would fall within the common area. In other words, the expression covered parking area, must conform to the definition ‘garage’, and merely a roof with all side open is not sufficient to constitute covered parking.
14. The learned counsel for respondent promoter, on being confronted, submits that a fresh demand notice would be drawn after making necessary adjustments, including, delay interest in terms of Section 18(1) of Act, 2016.
15. List for further hearing on **24.11.2025**.
16. In the meantime, it will be open for the appellant to take possession of the unit subject to outcome of the appeal.

(Rameshwar Singh)

(Suneet Kumar)

Dated: 03.11.2025
RANJEETSINGH