COURT NO-2

THE UTTAR PRADESH REAL ESTATE APPELLATE TRIBUNAL,
AT
LUCKNOW.
Appeal No.408/2022

Pawan Kumar **…Appellant.**

Vs

Yamuna Expressway Industrial Development Authority. **…Respondent.**

Hon'ble Mr. Sanjai Khare, Judicial Member.
Hon'ble Mr. Rameshwar Singh, Administrative Member.

1. Heard Sri Amit Yadav, learned counsel for the appellant and Sri Ankit Raj Chaudhary, learned counsel for the respondent.

2. This appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act, 2016') by Pawan Kumar (hereinafter referred to 'as the appellant') against the order dated 29.05.2019 passed by the U.P. Real Estate Regulatory Authority Gautam Budh Nagar (hereinafter referred to as 'the Regulatory Authority') in complaint No-9201818093 (Pawan Kumar Vs. Yamuna Expressway Industrial Development Authority) by which learned regulatory authority has granted delay interest to allottee @ 6 % from November 2013 to 30.04.2016 and MCLR +1 % from 01.05.2016 till offer of possession.

3. **Brief facts of the case are:**

3.1 Present appeal has been filed assailing the order dated 29.05.2019 passed by the U.P. Real Estate Regulatory Authority, Gautam Budh Nagar (hereinafter referred to as 'the Regulatory Authority') in complaint No. 9201818093.

3.2 The respondent floated a scheme named Yamuna Expressway Authority Residential Scheme 2009(1) in which appellant booked a residential plot measuring 300 Sq.m vide application form @ Rs.4750/- per Sq.m and deposited earnest money of Rs. 1,00,000/- by obtaining loan from Axis Bank.

3.3 The scheme has been allotted to the appellant vide Allotment Cum-Application letter dated 20.11.2009 of Plot No-334(300 Sqm) in Pocket 5-D, Sector 18 with allotment no-YEA006447 and was further directed to deposit the allotment money of Rs. 5,84,000/- within two months and balance payment in 16 half yearly instalments along with 12% interest.

3.4 The appellant deposited one full time and final payment amounting to Rs.17,73,587/- towards the original cost of the said plot.

3.5 The respondent misled the appellant that the Hon'ble Allahabad High Court has issued directions to the prospective buyers of plots of the Yamuna Expressway Authority Residential Scheme 2009(1) to pay enhanced charges @ Rs.1330/-per Sq.m which was Rs.3,99,000/- and same was paid on 27.04.2018.Thus,the total amount paid/expense occurred towards the original cost and enhanced cost of the said plot is Rs.21,72,587/-(300 Sq.m @Rs.4750/- per Sq.m).

3.6 The respondent failed to deliver possession of the plot even after lapse of more than 10 years, however, the appellant has performed his part of the contract and deposited the full amount of the said plot, but the plot is not handed yet.

3.7 The Learned UP RERA Gautam Budh Nagar passed the order directing the respondent to handover the possession of plot within 60 days and to ensure to pay the interest as per clause of brochure @ 6 % p.a. from November 2013 to 30.04.2016 and pay the interest @ MCLR+1 % from the date of notification of RERA i.e., 01.05.2016 till the date of handing over the possession to the complainant.

3.8 The appellant has pressed only following grounds of appeal to challenge the impugned order dated 29.05.2019, passed by the learned Regulatory Authority: -

A. The Hon'ble Member of RERA failed to consider the rate of Interest @ 14% p.a. on account of compensation for delay period as compared to the respondent charged from the appellant @ 14% p.a. compounded half yearly on the outstanding amount on account of delay in depositing the amount.

B. The Hon'ble Member of RERA failed to consider the award of Interest from the date of Deposit of the amount i.e. from 2009 to October 2013.

C. The Hon'ble Member of RERA also not considered compensation on account of mental agony harassment and legal expenses due to delay in physical possession of the plot.

4. On the basis of the above grounds the appellant has pressed only following reliefs to: -

(i) the interest on account of compensation due to delay in handing over the possession of plot, be awarded from the date of deposit of payments with the respondent i.e. from 2009 till the actual date of handing over the physical possession to the appellant;

(ii) the rate of interest on account of compensation due to delay in handing over the possession of plot, be awarded @14% p.a. for the whole period from the date of deposit of payments with the respondent i.e. from 2009 till the actual date of handing over the possession to the appellant.

(iii) compensation on account of mental agony & harassment due to delay in physical possession of the plot as well as legal and travel expenses be awarded;

5. Respondent has filed objections to the appeal which are as under:-

5.1 The appellant has not approached the Hon'ble Tribunal with clean hands and has suppressed material facts from Hon’ble court and has thus disentitled himself from any relief.

5.2 The appellant was called vide letter dated 29.11.2019 to take possession and execute the registered deed within 180 days from the date of issuance of letter to which appellant has not complied.

5.3 The delay in delivering the possession of the plot has occurred on account of Force Majeure reasons.

5.4 The respondent authority was directed to pay the enhanced compensation to the farmers and recover the same from the allottee in compliance of the said order passed by the Hon’ble High Court; a government order no.1015/77-3-14-6C/12 dated 29.08.2014 due to which cost of entire project was increased by 64.7%.

6. The appellant filed rejoinder denying the averments made by the respondent and reiterated the averments made by the appellant in the appeal.

7. On examining the pleadings and submissions of learned counsel for the parties, we deem it proper to frame following issues:

(i). Whether the allottee/appellant is entitled to interest for delay in completion of project and delivery of unit, to be paid by the promoter under the scheme of the Act 2016. If yes, for which period and at what rate of interest?

(ii) Whether there is any illegality and perversity in the impugned order dated 29.05.2019?

8. **Answer to Issue No. (i**) relates to whether the allottee/appellant is entitled to interest for delay in completion of the Project and delivery of unit, to be paid by the promoter under the scheme of Act, 2016. If yes, for which period and at what rate of interest?

8.1 In the present appeal Appellant is seeking for delay interest: (a)- from the date of deposit of amount till the date of delivery of possession,(b)-at the rate of 14%(for the whole period) along with the compensation for mental agony and harassment for delay in possession.

8.2 Section 18 (1) of the Act clearly provides that if an Allottee wishes to withdraw from the Project on the ground that the Promoter is unable to give possession in accordance with the Agreement for Sale within the date specified therein, then the Promoter shall return the amount received from the Allottee in respect of that property with interest including compensation, on the Allottee’s demand. If allottee wishes to remain in the delayed project, then promoter will have to pay the interest for delay in handing over the possession for delay period at the prescribed rate of interest. The power of exercising the option of either staying in the Project or for withdrawing from it lies only with the Allottee under the provisions of Section 18 (1) of the Act.

8.3 The Hon’ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. And others Vs. Union of India (2018)1 Bom R 558 observed as under:-

> *"Section 18(1)(b) lays down that if the promoter fails to complete or is unable to give possession of an apartment due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act or for any other reason, he is liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice in this behalf including compensation. If the allottee does not intend to withdraw from the project he shall be paid by the promoter interest for every month's delay till handing over of the possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee who has paid for his apartment but has not received possession of it. The obligation imposed on the promoter to pay interest till such time as the apartment is handed over to him is not unreasonable. The interest is merely compensation for use of money".*

8.4 Subsequently, in ***Wg. Cdr. Arifur Rahman Khan & Others Vs. DLF Southern Homes Pvt. Ltd., reported in (2020) SCC Online 667*** affirming the view taken in the Judgment in Pioneer’s case (Supra) the Hon’ble Supreme Court held that the term of the agreement authored by the Developer does not maintain a level platform between the Developer and the plot purchaser. The stringent terms imposed on the plot purchaser are not in consonance with the obligation of the Developer to meet the timelines for construction and handing over possession, and do not reflect an even bargain. The failure of the Developer to comply with the contractual obligation to provide the plot within the contractually stipulated period, would amount to a deficiency of service. Given the one-sided nature of the Apartment Buyer’s Agreement, the consumer fora had the jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.

8.5 Recently the Hon’ble Supreme Court, while dealing with the provisions of Section 18 of the Act, 2016, in the case of ***M/S Imperia Structures Ltd. Vs. Anil Patni and another, Civil Appeal Nos. 3581-3590 of 2020***, decided on 02.11.2020, vide para 23, was pleased to observe that 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 and 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 the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1).

8.6 U.P. Government framed "Uttar Pradesh Real Estate (Regulation and Development) (Agreement for Sale/Lease) Rules, 2018" (hereinafter referred to as Rules, 2018), wherein under Rule 9.2(ii) and 9.3(i), the rate of interest payable by the promoter or by the allottee respectively are defined in case of default by either of the party. These Rules are extracted below:-

"*Rule 9.2(ii)*

The Allottee shall have the option of terminating the Agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules, within forty-five days of receiving the termination notice:

Provided that where an Allottee does not intend to withdraw from the Project or terminate the Agreement, he shall be paid, by the Promoter, interest at the rate prescribed in the Rules, for every month of delay till the handing over of the possession of the Apartment/Plot, which shall be paid by the Promoter to the Allottee within forty-five days of it becoming due.

Rule 9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

Rule 9.3(i) In case the Allottee fails to make payments for 2(two) consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the Allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate equal to MCLR (Marginal Cost of Lending Rate) on home loan of State Bank of India + 1% unless provided otherwise under the Rules. The Promoter must not be in default to take this benefit."

8.7 On examination, we find that these Rules-2018 notified by U.P. Government are in consonance with the definition of interest as provided in Section 2(za) of the Act, in as much as that the interest chargeable from the allottee by the promoter, in case of default in payment as per demand, is equal to the rate of interest which the promoter is liable to pay to the allottee, in case of default/delayed possession on the part of promoter.

8.8 It is important to mention herein that the **Hon'ble Supreme Court in Civil Appeal No. 4910-4941/2019** ***DLF Homes Panchkula Pvt. Ltd. Versus D. S. Dhanda*** etc. etc. while examining the issue of compensation, was pleased to observe as under;-

"If compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handling over possession to the actual date of handling over possession, and, (ii) lump sum amount, we find nothing wrong in it. We do not agree with the builder co.'s contentions that interest on the deposited amount should not be provided since it is not a case of refund but a case of delay in possession. The interest on the deposited amount has to be viewed in the light of the purpose for which it is intended. It is but a way of computing compensation for delay in possession that is commensurate with the amount deposited by the complainant, and here it has been computed after adopting a milestone date as per the builder co.'s own (unfair and deceptive) letter of 05.06.2013. There can be and is no question of not agreeing to an endorsing the award of interest from the said milestone date. Here we may however add that the rate of interest also cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity has to be minimized, and a logical correlation has to be established. Albeit detailed arithmetic or algebra is not required. Logical (to the extent feasible) objective parameters should be adopted. Rounding off simplification etc. to make the computation doable could be adopted. We feel it appropriate that, considering that the subject units in question are dwelling units, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and, if 'floating'/varying/different rates of interest were/are prescribed, the higher rate of interest should be taken for this instant computation."

8.9 Further, an allottee deposits amount under the hope and trust that he/she will get the plot within the time schedule advertised at the initial stage. There may be certain cases where allottee might be residing in rented houses and they might have managed their financial position in such a manner that after deposit of amount, they will get plots of their own and thereafter they will be free from payment of rent as then they will shift from rented houses to allotted plots but on account of inordinate delay in delivery of possession of allotted plots, their financial calculations and legitimate expectations stand frustrated causing various types of financial losses to them. On the other hand once the promoter/builder made offers and same are accepted by the allottee with legitimate expectation, the obligation cast upon the promoter/builder is to complete the same within the time schedule mentioned in the offer and if they fail to discharge the same the affected allottee is entitled to the interest for delayed delivery of possession, as the allottee have parted with money which was earning interest, If an allottee chooses to remain in the project. If, the allottee seeks refund then he is entitled for interest on the deposited amount including compensation in accordance with the provisions of the Act 2016, and the same will be in accordance with the principles of equity as well.

It is our considered view that drawing light from the Rules of 2018, and the fact that often an allottee/buyer has to supplement his savings by taking loan on interest, the rate of interest at MCLR+1% balances the equities and is in line with the word and spirit of the Act and can be taken as "interest at such rate as may be prescribed" as mentioned in Sections 12,18 and 19 of the Act, till the rate of interest for the purpose is notified by the State Government. Thus, we uphold the MCLR+1% rate of interest for delayed period.

8.10 Now the question is as to what should be the period or starting point for grant of interest for the delay in this appeal of allottee. As per terms and conditions of the allotment letter/brochure, the possession of the allotted plot was required to be given after 4 years of the issuance of the allotment letter i.e. on or before 20/11/2013. The Regulatory Authority, after examining the issue in depth granted 6% simple annual interest to the allottee from November 2013 to 30.04.2016 and thereafter from 01.05.2016 till the date of offer of possession, at the rate of MCLR+1%.Vide clause 18(v) of the

Brochure, if due to any force majeure or any circumstances beyond the control of the Promoter/YEIDA, the Promoter/YEIDA is unable to make allotment or handover the possession of the allotted plot, the entire deposited amount will be refunded along with simple interest of 4% per annum. The rate of interest was subsequently raised to 6% per annum. Thus, there is no rate of interest provided either in the Brochure or in the allotment letter for the delay in possession.

8.11 As stated hereinabove, the Promoter/YEIDA is liable to pay interest as per the provisions of Section 18 of the Act 2016 for every month of delay till handing over the possession at such rate as may be prescribed (i.e. MCLR+1% per annum). The Hon'ble Supreme Court in ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others (Civil Appeal Nos. 6745-6749 of 2021)*** vide para 53 was pleased to hold that the provisions of the Act and Rules 2016 and the Regulations framed thereunder will prevail over the terms and conditions of the Brochure/Allotment Letter/Agreement and hence, in our considered view, the Regulatory Authority misread the statutory provisions and the provisions of the Brochure***as well as *** Allotment Letter while granting interest of 6% from November 2013 to 30.04.2016 and after enforcement of the provisions of the Act (i.e. from 01.05.2016) delay interest at the rate of MCLR+1%. Learned Regulatory Authority has already granted delay interest to allottee @ MCLR+1% from 01.05.2016 till the date of offer of possession/obtaining of OC/CC, whichever is later. No appeal has been filed by the promoter against the impugned order of the Regulatory Authority and appellant allottee has only challenged the impugned order for the rate of interest for delay granted by learned regulatory authority from the date of assured possession till the date of offer of possession/obtaining OC/CC. It is clarified that interest on deposited amount is allowed from the date of deposit till payment when allottee wishes to withdraw from the delayed project and demands for refund of deposited amount with interest including compensation. If allottee wishes to remain in the delayed project, in such circumstances, Allottee is entitled for delay interest from the next day of the date of assured possession till the date of offer of possession/obtaining of OC/CC. In such circumstances delay interest shall not be computed from the date of deposited amount in this present matter. Further delay interest can be granted @ MCLR+1% from the date of delay till offer of possession/obtaining OC/CC. Delay interest can not be granted @ of 14%(as proposed by Appellant) because promoter has not charged any interest for delayed payment @14%.We are of the considered view that the allottee is entitled for the same rate of interest i.e. MCLR+1% p.a. after expiry of four years, from November 2013(assured date of possession) till offer of possession/obtaining OC/CC, whichever is later.

8.12 On the basis of aforesaid analysis the issue no. (i) is answered in affirmative in favour of allottee/complainant.

9. **Answer to Issue No. (ii**)

9.1 Answer to the issue no (i) makes it clear that Appellant allottee is entitled for delay interest @MCLR+1% from the date of delay till the date of offer of possession/obtaining OC/CC whichever is later. Therefore, the part of the relief granted by the regulatory authority in the impugned order suffers from illegality and perversity which grant delay interest @6% p.a. while the rate of interest shall be @MCLR+1% from the date of delay till offer of possession/obtaining OC/CC whichever is later. An allottee, who wishes to remain in delayed project is entitled to get interest for delayed period at the rate as prescribed. There is no provision for granting compensation along with the delayed interest to allottee in such circumstances u/s 18(1) proviso of Act 2016.

9.2 Issue No.(ii) is answered accordingly.

10. On the basis of above analysis of fact and law, we are of the considered view that present appeal is liable be allowed partly as discussed and answered in Issue No (i) and (ii) and impugned order of regulatory authority is liable to be modified to such extent.

11. Appeal is partly allowed and the impugned order of the Regulatory Authority is modified as below: -

“Promoter is directed to pay the delay interest @ MCLR+1% from the date of delay, i.e., 22.11.2013 till offer of possession/obtaining of OC/CC whichever is later.”

12. No order as to the costs.

Dated: 11.07.2025 **(Rameshwar Singh)** **(Sanjai Khare)**
M.Singh/Bhavesh