

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

**APPEAL NO. AT006000000063844**  
**(Complaint No. CC006000000079055)**

- |   |   |                      |
|---|---|----------------------|
| <b>1. Hemal Pradip Mehta,</b>                     | ] |                      |
| <b>2. Shibani Hemal Mehta</b>                     | ] |                      |
| 29/C, 14 <sup>th</sup> Floor, New Usha Kiran CHS, | ] |                      |
| 15 M.L., Dahanukar Marg, Mumbai – 400 026.        | ] | <i>...Appellants</i> |

*~ versus ~*

- |  |   |                              |
|--|---|------------------------------|
| <b>1. Ekta Parksville Homes Pvt. Ltd.</b>    | ] |                              |
| Ekta World, Ekta Parksville Homes Pvt. Ltd., | ] |                              |
| 401, Hallmark Business Plaza, Kalanagar,     | ] |                              |
| Bandar East, Mumbai – 400 051.               | ] | <i>... Respondent. No. 1</i> |
| <br><b>2. HDFC Bank Ltd.</b>                 | ] |                              |
| Ramon House, 169, Backbay Reclamation,       | ] |                              |
| Mumbai – 400 020.                            | ] | <i>...Respondent No.2</i>    |

Appellant(s) :	Adv. Mr. Manish Gala.
Respondent(s) :	Adv. Ms. Sharmila Adyanthaya h/f. Mr. Abir Patel, (for Respondent no. 1.)
	Adv. Ms. Pratiksha Udeshi h/f. Adv. Sana Khan, Advocate (for Respondent no. 2.)

**CORAM : SHRI. SHRIRAM R. JAGTAP, MEMBER (J)**  
**& DR. K. SHIVAJI, MEMBER (A)**

**DATE : 17<sup>th</sup> FEBRUARY 2025**

**(THROUGH VIDEO CONFERENCE)**

**JUDGEMENT**

**[PER: DR. K. SHIVAJI, MEMBER (A)]**

Present appeal has been preferred under Section 44 of The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short "the Act") against the order dated 9<sup>th</sup> August 2021 passed by the Maharashtra Real Estate Regulatory Authority ("MahaRERA"), seeking



various reliefs *inter alia* to quash and set aside the impugned order dated 9<sup>th</sup> August 2021 including for refund of the entire paid amounts together with grant of interest from the date of receipts of the respective payments till its realization as well as for refund of taxes and other statutory payments, for the refund of the pre-EMI paid to HDFC and other incidental charges incurred including for compensations, by filing Complaint No. CC 0060000000 79055 before MahaRERA.

2. Appellants are flat purchasers and Complainants before MahaRERA. Respondent no. 1 is Promoter, who is developing project, namely the "Ekta Parksville", located at Vasai, (in short, "said project"). Respondent no. 2 is a financial institution, (in short "HDFC"), who has been providing financial assistance for the said sale transaction of the subject flat. For convenience, appellants and respondent no.1 will be addressed hereinafter as Complainants and Promoter respectively.

### 3. Brief backgrounds giving rise to the appeal: -

- a. **Complainants case**: Complainants booked flat no. 304 in Promoter's said project for total consideration of ₹ 32,17,400/- besides other charges. Agreement For Sale was also executed on 2<sup>nd</sup> December 2014, wherein, clause 12.1 stipulates that Promoter will deliver possession of the said flat on or before December 2016 subject to reasonable extension of 6 months and further extension on account of certain force majeure events as set out in the agreement for sale.
- b. Complainants claim to have made cumulative payments of ₹ 11,00,298 /- and HDFC has disbursed housing loan of ₹23,80,876/-, totalling to ₹34,81,174/- towards the purchase considerations of the subject flat.
- c. On account of alleged failure of Promoter to deliver possession of the flat within the agreed timeline, captioned complaint came to be filed before MahaRERA by Appellants/ Allottees seeking direction to Promoter *inter*



*alia* to refund the entire paid amounts along with interest and refund of other statutory payments and other incidental charges by withdrawing from the project including for the compensations and for costs.

- d. Respondent/ Promoter appeared before MahaRERA and resisted complaint by filing reply before MahaRERA, wherein, it submitted that complainants have opted for a subvention scheme, and they have actually paid only ₹8,43,480 and promoter has requested complainants to take fit-out possession of the said flat on 28<sup>th</sup> February 2019 itself.
- e. Respondent no.2, HDFC submitted that loan of ₹ 27,50,000/- was sanctioned to complainants, vide loan sanction letter dated 3<sup>rd</sup> September 2014 and ₹ 23,80,876 has been disbursed to the promoter at the request of the complainants towards the purchase of the subject flat. Therefore, complainants and promoter be directed to pay the outstanding dues of HDFC together with interest till the actual date of payment.
- f. Upon hearing the parties, learned Chairperson, MahaRERA, passed the said impugned order dated 9<sup>th</sup> August 2021, *inter alia* directing Respondent/ Promoter to refund the paid amount to Complainants along with interest from 1<sup>st</sup> January 2017 up to the date of realization of the total refund amount with interest at prescribed rate.
- g. Aggrieved by this order, Complainants have preferred the instant appeal seeking various reliefs *inter alia* to quash and set aside the impugned order dated 9<sup>th</sup> August 2021, to grant refund of the total paid amounts including the EMI paid to HDFC (but not reimbursed by the promoter) together with stamp duty, registration fee, brokerage and other expenses towards the approval of loan for the subject flat, as well as the interest thereon at prescribed rate from the date of respective payments till its realization as elaborated herein.





4. Heard learned counsel for parties in *extenso*.

5. Complainants sought aforesaid reliefs by submitting that,

- a. The total consideration for the subject flat was ₹ 32,17,400/- besides other charges including stamp duty of ₹1,93,400/-, registration fee of ₹30,000/-, MVAT ₹33,024/-, charges on possession of ₹1,69,000, aggregating to ₹ 36,42,824/-.
- b. HDFC has sanctioned financial loan under the 20:80 subvention scheme for which, tripartite agreement has also been executed among complainants, promoter and HDFC. Whereby, pre-EMI was undertaken to be borne by the promoter till the date of delivery of possession. Complainants have paid an aggregate amount of ₹ 11,00,298/-, HDFC has disbursed housing loan of ₹23,80,876 (total paid amounts of ₹ 34,81,174/-) and the balance amount was to be paid on possession. Complainants have also paid 6 months of pre-EMI interest, but the promoter has defaulted in reimbursing these amounts.
- c. As per clause 12.1 of the agreement for sale executed between the complainants and promoter, promoter was obligated to deliver possession of the subject flat on or before December 2016 with a further extension for a period of 6 months, i. e. on or before June 2017. However, promoter has failed to comply with its contractual commitments even after cumulative payments of more than 95% of the total consideration of the subject flat. Therefore, complainants are entitled to get the refund of the entire paid amounts together with interest and refund of other payments as elaborated herein. However, the impugned order passed by MahaRERA is contrary to the provisions of the Act and the settled position of law. Impugned order traverses beyond the complaint and has issued directions not even sought for by complainants, whereby, it has inflicted grave prejudices against the complainants. Accordingly, complainants are



entitled to withdraw from the said project and to get refund of the entire paid amounts together with interest thereon together with refund of the pre-EMI and other incidental charges under the provisions of the Act, because, complainants have unqualified and absolute rights to seek refund together with interest on the entire paid amounts under Section 18 of the Act. He referred and relied upon the following compilation of judgements. (i) Judgment dated 2<sup>nd</sup> November 2020 of the Hon'ble Supreme Court India in case of Imperia Structures versus Anil Patni & Ors. **[(2020) 10 SCC 783]**. (ii) Judgement of the Hon'ble Supreme Court in the case of M/s. Newtech Promoters and Developers Pvt. Ltd. vs, State of Uttar Pradesh & Ors. (iii) Judgment of the Hon'ble Bombay High Court in the Writ Petition No. 2737 of 2017 in the case of Neelkamal Realtors Suburban Private Ltd. & Anr. vs. Union of India dated 6<sup>th</sup> December 2017, (iv) Judgements of this Tribunal in the case of Ashok Narang vs. Bombay Dyeing in Appeal nos. AT 006000000011040 and in AT 006000000056243 in the case of Ms. Mugdha Sahal Vs. Wadhwa Residency Pvt Ltd. dated 22<sup>nd</sup> April 2022, also the order of this Tribunal in the matter of Ketan Kataria vs. Wadhwa Residency Pvt Ltd. dated 28<sup>th</sup> February 2022.

6. Per Contra Promoter refuted the contentions of the complainants by submitting as under; -
  - a. Claims made by the complainants for refund of the paid amounts, which have been disbursed to the promoter by HDFC are contrary to the contractual stipulations as per the clause 9 of the Tripartite agreement dated 05<sup>th</sup> December 2014, executed among complainants, promoter and HDFC, wherein complainants have subrogated their rights to refund to HDFC.
  - b. Complainants have actually paid only an amount of Rs. 8,43,480/- from their pockets and the rest of the amounts have been disbursed by HDFC.



- c. Claims of the complainants for refund of taxes and other statutory payments and incidental charges are contrary to the provisions of law wherein, the refund with interest were not argued before the RERA Authority below. Therefore, what was not argued before MahaRERA cannot be brought up in appeal.
- d. Clause 12.1 of the agreement for sale dated 02<sup>nd</sup> December 2014 provides for agreed date of delivery of possession of December 2016 with a further grace period of six months and is further subject to mitigating events as specifically elaborated in clause 12.1 of the agreement for sale.
- e. The alleged delay in delivery of possession is on account of factors beyond the control of the promoter and therefore, the contentions of the complainant for the alleged delay are legally not tenable. This is particularly in view of the provisions as set out in the agreement itself. As such, the alleged delay in project completion and consequent delay in delivery of possession of the subject flat was on account of delay by HDIL in completing the sub divisions of the larger lay outs of the project lands, development of roads, reservations, internal infrastructure. Delay was also due to stop work notice issued by the Municipal Corporation and certain court orders, delay in getting project related approvals from various Regulatory Authorities including by Pollution Control Board, and due to Covid-19 Lock downs. Therefore, there was no delay in delivery of possession as per the provisions of the agreement because, the possession date stated therein, was subject to the occurrence of mitigating circumstances as set out more specifically in the clause 12.1 of the agreement. Besides that, grace period of six months has also been provided therein. Thus, Promoter is not at fault and has not breeched any of the provisions of the Act.
- f. Promoter was to pay EMI interest only till the handover of the possession of the subject flat, for which, fit out possession has already been offered on 28<sup>th</sup> February 2019 itself.



- g. There was no default by promoter, and promoter has not breached any of the terms of the agreement. Thus, complainants have failed to show any violation by promoter and are simply misusing the provisions of law.
- h. Complainants were always kept informed about the development of the subject project and after registration of the project, these details are publicly available on the RERA Website. Therefore, the claims by complainants for reimbursement of pre-EMI and interest thereon, under provisions of RERA are legally not maintainable.
- i. Promotor has already completed the construction of the subject project and has also obtained the Occupation Certificate dated 27<sup>th</sup> July 2023 and the contentions of the complainants are legally not tenable more particularly because, complainants are pure investors and not genuine allottees. Accordingly, urged that captioned appeal be dismissed with costs by the relying on the following compilation of judgments, (i) judgment of this Tribunal in the case of Vinay Singh Vs Kapstone Constructions Pvt. Ltd., in Appeal No. AT10870 dated 10<sup>th</sup> August 2022 and the judgment of the Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India (supra).

**7. Ld. Counsel for the HDFC submits as under: -**

- a. Out of the sanctioned loan of Rs. 27,50,000/- to complainants for the said subject flat, Rs. 23,80,876/- was disbursed at the request of the complainants in accordance with the loan agreement.
- b. However, Adv. Sana Khan, Ld. Counsel appearing for the HDFC further submits that the entire outstanding dues of the HDFC have already been repaid, now, no amount is due, and nothing is outstanding to be repaid against the said loan amounts advanced by HDFC towards purchasing of the subject flat and has also confirmed it by filing a no dues certificate.





8. From the rival pleadings, submissions and documents relied upon by parties, the following points arise for our determination, and we have recorded our findings against each of them for the reasons to follow: -

POINT(S)		FINDING(S)
1.	Whether Complainants are entitled for the refund of the entire paid amounts under Section 18?	In the affirmative
2.	Whether Complainants are entitled for interests on the refund of paid amount from the date of respective payments under Section 18?	In the affirmative.
3.	Whether Complainants are entitled for refund of total payments including the payments made towards stamp duties, registration charges and other statutory payments including the incidental expenses with interest there on as prayed for?	As per the order.
4.	Whether impugned order is sustainable in law?	In the negative.
5.	Whether impugned order calls for interference in this appeal?	In the affirmative.

### R E A S O N S

#### **Point 1: Refund entitlement of the complainants:**

#### **Possession delivery status:**

9. It is not in dispute that Complainants have booked the subject flat in the said Promoter's project, which is duly registered with MahaRERA under the provisions of the Act. Agreement for Sale was also executed between the parties on 02<sup>nd</sup> December 2014, wherein, clause 12.1 stipulates that Promoter will deliver possession of the subject flat on or before December 2016 subject to further reasonable extension of six months (i.e. June 2017) and further extensions on account of certain force majeure events as set out in the agreement. However, it is evident that the possession of the



subject flat was not delivered within the agreed timeline as stipulated in the Agreement for Sale on account of the followings; -

- a. Perusal of the record reveals that promoter has intimated complainants by its email dated 28<sup>th</sup> February 2019 that *"We shall process your outstanding pre EMI interest reimbursement for the month of December 2018 until February 2019 on or before 15<sup>th</sup> March 2019 and would also like to apprise you that we have paid pre-EMI interest for the period of Jan-2015 until May-2015 to the bank directly and accordingly have demanded for further disbursements from the bank based on completion of work at site. The same can be cross checked from your end as well."*

Perusal of the above E-mail dated 28<sup>th</sup> February 2019 of the promoter shows that, promoter itself has admitted that the legal possession of the subject flat along with the occupation certificate has not been delivered on or before the agreed timeline of June 2017.

- b. MahaRERA has framed the issue in para 7(a). of the impugned order as *"a. whether the complainant is entitled to seek refund of the amount paid with interest."*

Pursuant there to, MahaRERA has also concluded in para 10 of the impugned order dated 09<sup>th</sup> August 2021 *inter alia* that *".....It is also pertinent to note that since the said project is an ongoing project and that the agreement for sale was executed prior to the RERA coming into force, the date of possession as per the agreement for sale shall prevail over the completion date of RERA. Thus, the issue no. "a." is answered in affirmative."*

- c. Moreover, even though, promoter contended that promoter is entitled for the grace period of 6 months and further reasonable extensions based on certain force majeure events provided in the agreement. But promoter has failed to invoke these provisions of the agreement for claiming the said extension of project completion by sending written notice to complainants enabling complainants to respond thereon, in this regard.

d. Learned counsel for Promoter further submits that fit out possession of the subject flat has been offered to complainants on 28<sup>th</sup> February 2019. But the fit-out possession is not a legal possession as it is not contemplated under the provisions of the Act. Therefore, we find that even the fit-out possession was not delivered by promoter before the agreed timeline. As such the legal possession of the subject flat is possible only after the receipt of the occupation certificate under the provisions of the Act. Whereas admittedly, the project has formally got the occupancy certificate from Vasai Virar Municipal Corporation only on 27<sup>th</sup> July 2023. This demonstrates that the handing over of the legal possession of the subject flat as contemplated under the Act is possible only after the receipt of the occupancy certificate and therefore, the legal possession was not possible to be handed over on or before 27<sup>th</sup> July 2023. Whereas the agreed timeline stipulated in the agreement is much before this date.

10. In view of above, it is crystal clear that the possession of the subject flat was not delivered within the agreed timeline as stipulated in the Agreement for Sale. Hence, Section 18 of the Act will be attracted.

**Rights under Section 18 are absolute.**

11. However, learned counsel for Promoter submits that the alleged delay in project completion and consequent delay in delivery of possession of the subject flat was on account of factors beyond the control of Promoter, more particularly due to delay by HDIL in completing the sub divisions of the larger lay outs of the project lands, development roads, reservations, internal infrastructure, stop work notice issued by the Municipal Corporation and certain court orders, delay in getting project related approvals from various Regulatory Authorities including by Pollution Control Board, and due to Covid-19 Lock downs. Therefore, Promoter is not at fault and it has not breached any of the provisions of the Act.





12. However, these contentions of the promoter are legally not tenable on account of the followings; -

- a. Section 18 of the Act specifically delineates the importance of the Agreement for Sale for the purpose of assessing the delay in handing over possession, which may be due to discontinuation of business as developer or for any other reasons. On perusal of Section 18, it can be seen from the Proviso to its Sub Section (1) that if, Promoter fails to complete the project or is unable to deliver possession of apartment, plot or building by agreed time and allottees intend to withdraw from the project then, Promoter shall refund the paid amounts together with interest to Allottee at such rate as may be prescribed.
- b. The Hon'ble Supreme Court in para nos. 25 and 78 of its judgment dated November 11, 2021, in the case of **M/s Newtech Promoters and Developers Pvt. Ltd and State of Uttar Pradesh [2021 SCC Online 1044]** dated 11<sup>th</sup> November 2021 and also in case of Imperia Structures versus Anil Patni & Ors. **[(2020) 10 SCC 783]**, it has been clarified that "*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,.....*"

As determined here in above, the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including any other reasons, even factors beyond control of the Promoter.

- c. The Hon'ble Bombay High Court, in the case of **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302]** in para 119, further 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....***".

- d. Accordingly, it is evident that Promoter is inherently better equipped about market related information and is structurally at advantageous position in as much as the information about the said project updates are concerned. Therefore, in consonance with the provisions under Sections 11 (3) and 19(2) of the Act, Promoter is liable to provide unambiguous and expressed/ definite information about project completion date / possession delivery date at the time of booking and the change in the possession date can be possible only with the prior consents/agreements of all the parties. Whereas the citations referred by Promoter are not applicable to the facts of the present case. It is because the facts of the present case are different.
- e. It is pertinent to note that it is the promoter, who is responsible for timely delivery of possession of the booked flat but has failed by not delivering possession of the subject flat within the agreed timelines as per the agreement. Therefore, promoter has violated the statutory provisions under Sections 18 of the Act on this count.
- f. **Party in breach, cannot take advantage of its own wrong:** The said delay, being attributable to Promoter itself, cannot deny the accrued rights under Section 18 of the Act to Allottees on the very same ground for which, Promoter himself is responsible for delay, especially because the rights so accrued to allottees under Section 18 are unconditional, unqualified, and absolute. Promoter is seeking adjustment/ extension/ condonation of delay in delivery of possession of the subject flat on account of its own deficiencies/ non-performance and despite being party in breach. This is legally not permissible because, he himself cannot take advantage of its own wrong in view of the judgement of The Hon'ble Supreme Court in the case of *Kusheshwar Prasad Singh Vs. State of Bihar and Ors. [Supreme Court] Civil Appeal No. 7351 of 2000*". Where in, it has



**been held that** -*"It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he, who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong.*

- g. It is also important to note that the project has been registered under the Real Estate (Regulation & Development) Act, 2016 ("the Act), which provides several welfare provisions including for greater accountability towards consumers to protect real estate consumers as contemplated in the statement of Objects and Reasons of the Act. Whereas it is distressing to note that, there is undue and inordinate delay in delivery of the possession of the subject flat. As a result of this, complainants continue to be deprived of their legitimate entitlements of getting possession of flat in time.
- h. Whereas, the Regulation 39 of Maharashtra Real Estate Regulatory Authority (General) Regulation, 2017 stipulates inherent powers of the Authority. It reads as under: -  
*"Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority."*
- i. Similarly, Regulation 25 of Maharashtra Real Estate Appellate Tribunal, 2019 casts similar inherent powers on the Tribunal as *"25(1) Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Tribunal."*
- j. It means the Regulatory Authority and the Appellate Tribunal have inherent powers under the Regulations framed under RERA Act, 2016 to pass appropriate Orders, which are necessary to meet the ends of justice.

13. In view of above, it has been held that the rights of Allottees under Section 18 of the Act are unconditional and absolute, regardless of unforeseen events including stay orders of the Court/Tribunal, any other reasons even if these factors are beyond control of the Promoter and it is the allottees, who have sole discretions to proceed either under Section 18 (1) or under the proviso to the Section 18 (1). Thus, the said delay in project completion and consequent delay in delivery of possession of the subject flat is not attributable to allottees. Delivery of timely possession is the contractual commitments given by promoter under the agreements for sale and promoter continues to be legally liable under Section 18 of the Act to refund the entire paid amounts together with the interest at prescribed rate under the Act and we answer point 1 in the affirmative.

**Point 2: Whether interest to be paid from date of payment?**

14. MahaRERA has directed promoter in the impugned order to refund of the amount paid with interest from 01<sup>st</sup> January 2017. Whereas, Complainants have sought to modify the said impugned order for grant of interest from the date of respective payments till its complete realizations for which, we find that the claims of complainants are legally maintainable for the reasons to follows; -

- a. The Hon'ble Supreme Court has clarified in para 21 and 22 of its judgement in the case of **Experian Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor [(2022) SCC Online SC 416]** as follows:

*"21. On the other hand, the Appellant-Developer submitted that (i) period for interest should be linked to the estimated date of possession and not the date of payments and (ii) the rate of interest must be the rate provided in the Interest Act, 1978."*

*"22.1. We are of the opinion that for the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. **We find that this does not amount to***



**restitution.** Following the decision in *DLF Homes Panchkula Pvt Ltd v. DS Dhanda* and in modification of the direction issued by the Commission, we direct that the **interest on the refund shall be payable from the dates of deposits.** Therefore, the appeal filed by the purchaser deserves to be partly allowed. The interests shall be payable from the dates of such deposits."

- b. Moreover, the explanation (ii) of Section 2(za) of the Act (being reproduced below for ready reference) has expressly clarified the period for which, the interest needs to be paid by Promoter to Allottees by clearly specifying as hereunder.

"2. (za) "interest" means the rates of interest payable by the Promoter or the allottee, as the case may be.

*Explanation. —For the purpose of this clause—*

*(ii) the **interest payable by the Promoter to the allottee shall be from the date the Promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the Promoter shall be from the date the allottee defaults in payment to the Promoter till the date it is paid;***"

- c. Additionally, as per settled position of law, payment of such interest is **not a penalty** more particularly in view of the landmark decision of *the Hon'ble Bombay High Court in paras 257 and 258 of its judgment in case of Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. (supra)*, wherein it is held *inter alia* that.

"257. 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 to any other remedy available, to return the amount received by him in respect of that apartment with interest at such rate as may be prescribed 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.*

258. In paragraph-9 of **Alok Shanker Pandey v. Union of India, (2007) 3 SCC 545**, the Apex Court has held that "There is misconception about interest. **Interest is not a penalty or punishment at all**, but it is the normal accretion on capital. ...."

".....**The object of Section 18 is to recompense an allottee for depriving him of the use of the funds paid by him. The Promoter who has received money from the allottee but has failed to adhere to his contractual or statutory obligations, cannot claim that he is entitled to utilize the monies without paying any interest with respect thereto to the allottee.**"

- d. Besides the above, the promoter has been utilizing these amounts received from Allottees for its own commercial gains right from the date on which Promoter has received these payments. Accordingly, it will be just and fair to refund the paid amount along with interest at prescribed to complainants right from the date of receipts of such amounts and not from any other date whatsoever.

- 15.** Considering above, more particularly in the light of the statutory provisions mentioned in Explanation (ii) of Section 2(z), wherein there is express clarification already provided in the statute itself leaving no discretion whatsoever and based on above discussions, it is crystal clear that the interest payable for refunds of the entire paid amounts by Promoter to Allottees/ Complainants, has to be from the date on which these amounts have been paid by Allottees till the date the total paid amounts are actually refunded.. Accordingly, we answer **point 2** in the affirmative and therefore, the impugned order is liable to be corrected and modified to this extent.

**Points 3, 4 and 5: Refund of stamp duties, registration fees etc.**



16. These points are interconnected and interrelated. Hence, have been taken up together.
17. Complainants in the instant appeal have prayed for refund of the entire paid amounts together with EMI of six months paid by them to HDFC (but not reimbursed by the promoter until the date of possession), refund of stamp duties, registration fees, brokerage including the refund of MVAT paid by them for the purchase of subject flat and other expenses incurred towards the approval of said loan for the financing the subject flat together with interest thereon from the date of respective payments together with interest amount paid to HDFC for the repayment and settlement of the loan availed under subvention scheme for the purchase of the subject flat.
18. Learned counsel for the promoter vehemently opposed these by submitting that all the taxes and other statutory payments have been made to third parties and have not been received by the promoter, claims for refund of taxes and other statutory payments and incidental charges are contrary to the provisions of law wherein, the refund with interest were not argued before the RERA Authority below. Therefore, what was not argued before MahaRERA cannot be brought up in appeal. He further submits that claims for reimbursement of pre-EMIs and interest thereon, under provisions of RERA are not legally maintainable.
19. As determined above, complainants are entitled to get the refund of the paid amounts together with interest and compensation on account of the failure on the part of the promoter to fulfill its contractual obligations as stipulated in the agreement for sale. The said delay in delivery of the possession of the subject flat was entirely on account of the faults of the promoter. Therefore, complainants were forced to file the captioned complaint seeking withdrawal from the project, praying for the refund of the entire paid amount including that of the other associated payments made and expenditures incurred in the process of purchasing the subject flat. Complainants had to incur these expenses towards payments of stamp



duties, registration fees, brokerage and other expenses as well as for the MVAT and other statutory payments. It is also to note that complainants have availed of the subvention scheme floated for financing the subject flat, and the promoter was to pay pre-EMI till legal possession of the subject flat. However, promoter has failed to pay the pre-EMIs to HDFC for the loan availed towards the financing of the subject flat. Accordingly, complainants were forced to pay pre-EMI directly to HDFC, which have not been reimbursed by the promoter. In this background, complainants had to settle the said loan account availed from HDFC as per the tri-party agreement. Thus, complainants cannot be made to suffer these expenses without any of their faults. In addition, payment of interest is not a penalty and is only compensation. Moreover, Section 18 of the Act stipulates that complainants are entitled to the refund of the amounts paid together with compensation without prejudice to any other remedy available.

- 20.** Learned counsel for the promoter contended that claims for the reimbursement of pre-EMI are legally not permissible under the provisions of the Act by relying on the judgement of this tribunal in appeal no. AT. 006 0000000 10870 dated 10<sup>th</sup> August 2022. But, it is to note that the referred judgement of this tribunal dated 10<sup>th</sup> August 2022 relied by the promoter, was relating to the claim for the pre-EMI up to the date of the delivery of possession of the subject flat and in that case of the matter, the promoter had already paid these pre-EMI up to the date of delivery of the possession of the subject flat. Whereas in the instant case under consideration, promoter has not paid its committed pre-EMI until the date of the delivery of the possession. Therefore, the facts of the present case are quite distinguishable from the judgment referred and relied upon by the promoter. Thus, the said judgment referred to by the promoter is not applicable in the instant case. Other judgements referred and relied upon by the learned counsel for promoter are also not applicable herein.





- 21.** Considering the judgements of this Tribunal in Appeal Nos. AT006 000000041990 dated 7<sup>th</sup> April 2022, in Appeal No. AT006 000000011100 dated 22<sup>nd</sup> April 2022, and in view of the findings herein above, more particularly because agreement for sale was executed way back in December 2014 and because the stamp duties spent thereon cannot be reimbursed to complainants by the government even after cancellation of the agreement of sale under the provisions of Maharashtra Stamp Act as well as in view of the facts that complainants have been constrained to seek refund of payments made along with the expenses actually incurred by complainants by withdrawing from the project entirely on account of the faults of the promoter as well as in view of the fact that, the Act of 2016 is a Social Legislation with primary purpose/ objective to safeguard the interest of the Allottees of the real estate consumers (Complainants in the instant case), the rights of Allottees cannot be taken away for no faults on the part of the Allottees and without following the due process of law.
- 22.** Accordingly, we are of the considered view that, it is just and proper to direct promoter to refund of the entire amounts paid by complainants and also to reimburse the actual amounts spent by the complainants towards Stamp Duties, Registration Fee, MVAT including other taxes/statutory payments together with the incidental expenses as well as to reimburse the actual expenses incurred toward pre-EMIs and other loan settlement amounts paid to HDFC towards the purchase of the subject flat. Promoter is also liable to pay interest from the date of receipt of the payments at prescribed rates except on the amounts paid towards stamp duties, registration charges, statutory charges till the date of realization.
- 23.** Therefore, MahaRERA is not justified in denying the valuable rights accrued to complainants as conferred to allottees under Section 18 of the Act. Thus, the impugned order suffers from infirmities and is liable to be corrected to these extents. Accordingly, we answer the points nos. 2, 3 along with 4 as above and proceed to pass order as follow:



**ORDER**

- a) Appeal is partly allowed.
- b) Respondent Promoter is directed to refund the entire amounts paid by complainants and also to reimburse the actual amount spent by the complainants towards Stamp Duties, Registration Fee, MVAT including other taxes/statutory payments and will also reimburse the actual incidental expenses incurred for paying the pre-EMI, which have not been reimbursed by the promoter and also loan settlement amounts paid to HDFC towards the purchase of the subject flat.
- c) Promoter is further directed to pay within 41 days, the interest @ 2 percent above the highest MCLR rate of SBI from the date of receipts of these payments made to promoter towards purchase of the flat, incidental expenses actually incurred for the payments of pre-EMI but not reimbursed to complainants including the settlement amounts paid to HDFC except that no interest is payable on the amounts paid towards stamp duties, registration charges and other statutory charges.
- d) In case of failure to comply with the above directions, promoter shall pay interest at this specified rate as above on the total amount due and payable from 1<sup>st</sup> April 2025 till the complete realization of these amounts.
- e) Promoter shall also pay the cost of ₹ 15,000/- (Fifteen Thousand) to Appellants in addition to bear its own costs.
- f) As far as other compensations are concerned, appellants complainants are at liberty to take recourse to appropriate proceedings before the competent forum in accordance with the law.
- g) In view of the provisions of Section 44(4) of the Act of 2016, a copy of this order shall be sent to the parties and to MahaRERA.

  
(Dr. K. SHIVAJI)

  
(S. R. JAGTAP, J.)