

Real Estate (Regulation and Development) Act, 2016 (RERA,2016)

Case law study

Sushant Karkera V/s Conoor Builders Pvt Ltd.

This article attempts to discuss the liability of the land owner being a co-promoter to pay the interest for delay in possession of flat by promoter.

Issues:

Whether it is compulsory to make co-promoter i.e Land Owner as a party to the complaint?

Whether the complaint is maintainable due to non-joinder of necessary party as a respondent?

Whether land owner being a co-promoter is liable to pay interest for delayed possession?

Provisions:

Section 2(zk) Promoter means:

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

Section 18: Return of amount and Compensation

18(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.

Fact of the Case:

The complainant booked the flat no 73 in the project known as "The Gateway" in Andheri (W) Mumbai for a consideration of Rs 2,18,89,000/-. As per registered agreement to sale dated 26.11.2014, possession of flat was to be given on or before 31.12.2016.

Due to failure on part of promoter to deliver the possession on time, the allottee sent a legal notice to the promoter. In turn promoter in his reply stated that flat could not be delivered on time as the land owner is obliged to arrange for various specifications required to obtain Occupancy Certificate. The promoter raised the objection with respect to maintainability of the complaint on the ground of non-joinder of land owner as a party in this case, further it is stated that development permission is also received in the name of land owner so land owner should be the party to be made as Respondent in this case. However, the allottee claimed that he is entitled for interest from the promoter as there is no privity of contract between the allottee and landowner and entire money was paid to promoter only .

The doctrine of privity of contract is a common law principle which provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. The premise is that only parties to contracts should be able to sue to enforce their rights or claim damages as such.

In this case the contract for sale or purchase was made between the allottee and promoter therefore land owner is not liable to pay interest and therefore it is not necessary to make the landowner as a party in the case.

Further, allottee has placed the reliance on the judgement of apex court in the matter of Vaidehi Akash Housing Pvt Ltd and Goregaon Pearl CHS and stated that the owner is not liable to pay interest for the delayed possession since he has no privity of contract with the allottee.

MahaRERA Order:

MahaRERA Authority has ordered the promoter to pay the interest to the allottee for every month till the date of occupancy certificate on the actual amount paid by the complainant at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of The Real Estate (Regulation and Development) Act, 2016 and the Rules made there under .

While deciding the present matter MahaRERA Authority has considered the following points:-

- a. There is no privity of contract between the complainant and the said Land Owner as it is not party to the registered agreement for sale dated 26-11-2014 executed between the complainant and the respondent. Moreover, admittedly, the complainant has paid entire money to the respondent. Hence, by accepting the same, the respondent cannot shift its statutory liability being the developer promoter of the project to the owner.
- b. As a promoter, having sound knowledge in the real estate sector, the respondent was fully aware of the market risks when he launched the project and signed the agreement with the home buyers. Moreover, if the owner was delaying the permissions, in that event they could have approached the competent forums including the court of law for expediting the required permissions for completion of this project. However, no such step seems to have been taken by the respondent.
- c. If the project was getting delayed due to the aforesaid reasons cited by the respondent, then the respondent should have informed the same to the complainant and should have revised the date of possession in the agreement at that relevant time by executing the rectification deed with the complainant or should have offered refund of the amount to the complainant, if the said delay was not acceptable to him.
- d. Agreement was executed between the parties when the provision of MOFA were in force. As per the MOFA, the promoters were entitled to seek an extension of 6 months for any force majeure reasons. Likewise, in this case even if the justifications cited by the respondent is accepted, it is entitled to seek only 6 months extension as per the provisions of MOFA in the date of possession mentioned in the agreement for sale from 31-12-2016 till 30-06-2017.

Conclusion:

When there is no privity of contract between the land owner and the allottee, hence land owner is not liable to pay the interest for delay in handing over the possession of flat.