

MAHARERA CA. Mahadev Birla CA. Sumit Kapure	
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Bijon Dharendra Talukdar and Ors vs. Dhruva Woolen Mills Pvt Ltd

Appeal No. AT00600000053405

This article attempts to discuss the issues in respect of liability of the promoter for delay in possession or right of allottee if promoter skip Possession date.

Issues:

Can complaint, for seeking the relief under Section 18, be filed after receipt of Completion certificate or Occupancy certificate?

Whether grant of Occupancy certificate will affect the right of allottee under Section 18 of RERA Act, 2016.

Provisions:

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.

Analysis: provision of Section 18(1) says that if there is delay in possession of an apartment by the promoter as agreed in agreement to sale then promoter is liable to refund the amount along with interest or interest for delay possession. in another word we can say that allottee will have two options

- To withdraw from project and take the refund along with the interest and compensation.
- To continue with the project and claim the interest for every month of delay till the possession is given.

Fact of the Case:

In the present case complainant filed the complaint before MahaRERA Authority seeking the refund of amount along with the interest under Section 18 of RERA Act, 2016. The complainant booked the unit in the project called "Athena" under the Scheme 9:91 and paid the amount of Rs 9.44 Lacs equivalent to 9% of the sale price and balance amount was payable at the time of possession. In confirmation of the booking the promoter issued allotment letter, however in the said allotment letter the date of possession was not mentioned. However, the email communication exchanged between the parties mentioned the date of possession as June, 2020.

Due to failure on part of the promoter to give the possession by June, 2020, allottee sent an legal notice seeking refund along with the interest, however, promoter refused to refund the amount and sought allottee to take possession as OC was received. Later on allottee filed the complaint before MahaRERA Authority for seeking refund along with the interest however, MahaRERA Authority rejected the complaint on the ground that project was complete with the OC as on date of filing of complaint and therefore there is no case of violation of Section 18 of RERA.

Aggrieved with the order of MahaRERA Authority, allottee filed an appeal before the MahaRERA Appellate Tribunal

While deciding the matter in the appeal, MahaRERA Appellate tribunal considered that even though the allotment letter does not contain the date of possession but the email communication exchanged between the parties shows that allottee has accepted the date of possession as June, 2020 which includes the grace period of 6 Months.

Further, while deciding the question regarding the delay in possession and right of allottee to seek the refund after receipt of OC, the MahaRERA Appellate tribunal observed that regardless of 'unforeseen events or stay order of the Court/tribunal, which is in either way not attributable to the allottee , the promoter is liable to refund the amount on demand with interest.

While considering or taking the note of above observation. the MahaRERA Appellate tribunal considered the position of law as laid down by the Hon'ble Supreme court in the matter of Newtech (supra).

Hon'ble Supreme Court observed in para 25 as follows:

"Para 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, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

Further, while deciding the issue in respect of right of allottee to seek refund along with the interest after receipt of OC, the MahaRERA Appellate Tribunal Observed that Section 18 (1) of RERA Act does not stipulate any time limit for taking steps to take refund and other relief. The Section 18(1) of RERA Act cast the obligation upon the promoter that in case of delay in possession *"he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project"*. Therefore, denial of refund the amount by the promoter is not tenable in the eyes of law. Further, the MahaRERA Appellate tribunal drawn the attention on the view take by Hon'ble Supreme court in the matter of *Imperia Structures Ltd. vs. Anil Patni (2020 10 SC 783)* that **"Allottees have' unqualified right under Section 18"**.

Order by MahaRERA Appellate Tribunal

In light of the above observations MahaRERA Appellate Tribunal allowed the appeal and directed the promoter to refund the amount along with the interest.

Conclusion:

Provision of Section 18 does not stipulate the time line for taking the steps to seek the refund and there are no shackles or limitation on exercise of their right by Allottees to seek refund once there is delay in possession particularly when the same is not attributable to Allottees.

Therefore, receipt of OC does not bare the allottee to seek the refund once the date of possession is skipped by the promoter as promised.