

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairperson
Hon'ble Mr. Rajeev Gupta
-----Member

APPEAL NO. 31OF 2019

Air Force Naval Housing Board.

..... Appellant

vs.

Sri R.K.Bansal

.....Respondent

Present: Sri Sudhir Kumar Mittal, Advocate for the appellant.
Sri B.B.Sharma, Advocate for the respondent.

JUDGMENT

DATED: 06 APRIL, 2021

Per: Justice U.C.Dhyani

Present appeal has been preferred by appellant-promoter being aggrieved against judgment and order dated 18.09.2019, passed by Real Estate Regulatory Authority (for short, RERA) in Complaint No. 209/2018(online), which was filed by complainant- allottee (respondent herein), against the appellant-promoter.

2. A complaint was filed by the allottee against the promoter before RERA for directing the promoter to pay 14% simple interest on Rs. 15,10,112-

00/-, a sum which was deposited by the allottee with the promoter for allotment of a house in *Jalvayu* Tower, Phase-II Scheme, Dehradun. He applied for a B-II type flat in January, 2009. When he did not get the possession of the flat, till the date as specified in the allotment letter, he withdrew from the project in October, 2016. The promoter returned a sum of Rs.8 lacs to the allottee on 31.08.2017. The balance amount of Rs.7,10,112-00/- was returned to him on 12.09.2019. The allottee, therefore, raised a demand for 14% interest on the money deposited by him with the promoter, from the date of deposit till the date of actual refund.

3. The promoter filed his replies before Ld. Authority below. According to the promoter, the Air Force Naval Housing Board is a Welfare Society, registered under the Society Registration Act, 1860. The Air Force Naval Housing Board runs on 'no profit no loss basis'. The allottee withdrew his name from the project on 17.10.2016 and the money deposited by him has been returned to him. R.A. was also filed by the allottee before Ld. Authority below, reasserting the facts contained in his complaint.

4. Ld. Counsel for the promoter submitted before this Tribunal that there was a stipulation in the allotment order dated 24.04.2009 that price of the B-II type flat, allotted to the allottee, may escalate. There was a stipulation in Para 17 of the allotment letter that the flat is likely to be completed by June, 2012, but there may be delay in completion of the project due to unavoidable circumstances and if there is delay in the project, the allottee will not be entitled to any interest or compensation. According to Ld. Counsel for the promoter, the allottee withdrew from the project on 17.10.2016 on his own volition. The allottee has also undertaken in Form Appendix-C that the allottee will get only 4% simple interest on the money deposited by him with the promoter.

5. It is submitted by Ld. Counsel for the allottee that when he applied for the flat, its cost was Rs.13.40 lacs. The promoter raised its cost by Rs.9.10 lacs in the year 2014. Thus, the increase in the cost was 65%. The possession of the flat was to be given in the year 2012 and the cost escalation is attributed to the delay in completion of the project.

6. Ld. Authority below ruled that the allottee was justified in withdrawing from the project and he was entitled to interest on the money deposited by him with the promoter. The promoter was, accordingly, directed to pay interest to the allottee on the money deposited by him with the promoter @ 10.35% simple interest. The allottee shall get the interest for the duration for which his money remained deposited with the promoter. The interest shall be calculated on monthly basis. If the promoter fails to pay the aforesaid amount to the allottee within 45 days, the same shall be realized from him under Section 40 of the Real Estate (Regulation & Development) Act, 2016 (for short, the Act), as arrears of land revenue.

7. The following points for determination are, therefore, formulated on the basis of rival pleadings and documents filed by the parties:

1. Whether the Act carves out any distinction between 'profit oriented builder' and 'self financed welfare housing project'?
2. Whether the allottee is entitled to get simple interest @ 10.35% on the money deposited by him for the duration it was deposited with the promoter?

No other point was pressed, nor arises, for adjudication of present appeal.

FINDINGS

8. The first point to be adjudicated is, whether the Act carves out any distinction between 'profit oriented builder' and 'self financed welfare housing project', as has been stated by the appellant-promoter in the instant case?

9. The word 'real estate project' has been defined in Section 2(zh) of the Act; the word 'promoter' has been defined in Section 2 (zk) of the Act; the word 'promoter' means, any Development Authority or any other public body [Section 2 (zk)(iii)] an apex State level Cooperative Housing Financed Society and a Primary Cooperative Housing Society, which constructs apartments or buildings for its members or in respect of the allottees of such apartments or building, among other things [Section 2 (zk)(iv)]. According to the appellant, it is a Welfare Society registered under the Society Registration Act, 1860, with the objective of providing residential houses to the serving Air Force and Naval Personnel, only on 'no profit no loss' basis, under Self Financed Welfare Housing Scheme. But the Act does not carve out distinction between such Self

Financed Welfare Housing Board or Development Authority or State Level Co-operative Finance Society or a person who constructs buildings or apartments. Each one of these is covered by the definition of the word 'promoter' under the Act. Each type of promoter has similar rights and liabilities under the Act. According to this Tribunal, the appellant-promoter has no separate legal identity of its own, as distinct from the identity of 'promoter' under the Act. It shall, therefore, be considered as 'promoter' under the Act, having no special privileges or rights, other than those which are statutorily fastened upon any body, by whatever name called, which constructs buildings. The appellant Board is, therefore, *at par* with other promoters, as defined in the Act.

The first point of determination, which relates to nature of promoter's project, is answered accordingly.

10. The next vital question for consideration of this Tribunal is, whether the allottee is entitled to interest from the promoter? If so, what will be the rate of interest ?

11. The reply to the above noted question may be found in Section 18 of the Act, which runs as below:

"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. (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force. (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, 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.

18 (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force

18(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act”

[Emphasis supplied]

12. Section 18 of the Act provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, the promoter shall be liable, on demand, to the allottee, 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.

13. It, therefore, follows that, (i) in the event of promoter’s failure to complete the apartment or building by the date specified in the agreement for sale, (ii) in case the allottee wishes to withdraw from the project, the promoter shall return the amount received by him in respect of that apartment, with interest, at such rate, as may be prescribed in this behalf.

14. The allottee has, therefore, option to withdraw from the project when the promoter fails to complete the building or is unable to give possession to the allottee by the date specified in the agreement. Furthermore, the expression “on demand” used in Sub Section (1) of Section 18 of the Act means a request from the allottee that he wishes to withdraw from the project and the amount paid by him should be returned to him with interest.

15. In the instant case, the promoter has failed to give possession of a flat to the allottee by the date, as specified in the allotment letter. The allottee withdrew from the project. The promoter permitted him to withdraw from the

project by returning the principal amount (which was deposited by him with the promoter). According to Section 18 (1) of the Act, the allottee is entitled to take refund of the amount received by him in respect of the flat (**which, in the instant case, has been returned to him by the promoter**) along with interest, at such rate, as may be prescribed in this behalf (**which interest has not been returned to him, despite demand**).

16. What will be the rate of interest payable by the promoter to the allottee, may be deciphered from Rule 15 of the Uttarakhand Real Estate (Regulation and Development) (General) Rules 2017, which reads as below:

“Rate of interest payable by the promoter and the allottee

15. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India’s highest Marginal cost of Lending Rate plus two percent.

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use, it would be replaced by such benchmark lending rate which the State Bank of India may fix from time to time for lending to the general public.”

[Emphasis supplied]

It will also be useful to read *Section 2(za) of the Act, which is extracted hereunder::*

“(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-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(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 of 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;”

[Emphasis supplied]

The interest shall, therefore, be State Bank of India's Highest Marginal Cost of Lending Rate plus two percent and 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 of amount or part thereof and interest thereon is refunded.

17. The language of Section 18 of the Act and Rule 15 of the Rules of 2017 is clear and unambiguous. Applying such provisions to the facts of present case, it will not be difficult to infer that the allottee is entitled to interest, which shall be, State Bank of India's Highest Marginal Cost of Lending Rate plus two percent. The interest shall be payable for the duration the money was kept deposited with the promoter. In the instant case, although the principal amount has been returned (to the allottee), but the promoter has yet to pay interest on the same to the allottee.

18. If there is anything contrary to the provisions of Section 18 of the Act in the agreement or allotment letter, it is the Act which will have overriding effect to the extent of inconsistency. Thus, the interest prescribed in Section 18 of the Act will prevail over any other rate of interest which might have been agreed between the parties.

19. Ld. Authority below has, therefore, rightly directed the promoter to pay the allottee interest @ 10.35%, which, according to RERA, was State Bank of India's Highest Marginal Cost of Lending Rate plus two percent, at the time when the order impugned was passed.

The second point for determination is, accordingly, decided against the appellant and in favour of the allottee.

20. No interference is called for in the order impugned dated 18.09.2019 passed by Ld. Authority below in complaint no. 209/2018 (online).

21. The net result would be that the appeal should be dismissed with costs.

22. The appeal, therefore, fails and is hereby dismissed with costs.

23. A sum of Rs.4,82,937/- has been deposited by the appellant on 11.12.2019, as per direction dated 13.11.2019 of the Tribunal. Such amount may be deemed to have been realized from promoter. Ld. Authority below may

direct adjustment of such amount in favour of the complainant/homebuyer, while securing compliance of the impugned order. The amount deposited by the promoter in compliance of interim order dated 13.11.2019, may, therefore, be remitted to RERA.

Let a copy of this order be sent to RERA for information and necessary action, in terms of *Sub Section (4) of Section 44* of the Act.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATED: 06 APRIL, 2021
DEHRADUN

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