BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

------ Member (J)

Hon'ble Mr. Rajeev Gupta

------- Member (A)

Appeal No. 02 of 2020

Squadron Leader Bhumika Sharma, daughter of Late Sri Yogesh Sharma, resident of 15, Mahatma Gandhi Nagar DCM Ajmer Road, Jaipur, Rajasthan.

.....Appellant

versus

Air Force Naval Housing Board New Delhi, Air Force Station, Race Course, New Delhi.

.....Respondent

Present: Sri Eshwarya Bangwal, Advocate, for the Appellant
Sri S.K. Mittal, Advocate, for the Respondent

JUDGEMENT

Dated: 20th July, 2022

Per: Mr. Rajeev Gupta, Member (A)

This appeal has been filed against the order dated 15.11.2019, passed by Real Estate Regulatory Authority (for short, 'RERA'), Dehradun, in complaint no. 113/2019, Bhumika Sharma vs. Air Force Naval Housing Board.

2. The appeal briefly states the following:

2.1 The appellant had applied for a dwelling unit flat A2 category in 2015 at Jaipur Phase II of Air Force Naval Housing Board (AFNHB)

project. It was intimated to the appellant vide letter dated 18.10.2016 that the project has received a notice of 'stop work' from Jaipur Development Authority stating that the Army Unit nearby has raised objection to the height of Jaipur Phase II project of AFNHB. The appellant requested the respondent for the refund of the initial paid amount of Rs. 14,30,000/- (Fourteen lakhs thirty thousand only). However, the respondent refused to refund the amount and instead asked the appellant to shift from Jaipur Phase II project of AFNHB to some other project of the respondent. In November, 2016, the appellant through e-mail requested the respondent for changing from allocation of Jaipur Phase II project of AFNHB to Dehradun Phase II project of the respondent, which was accepted by the respondent.

2.2 The respondent vide its allotment letter dated 07.03.2017 duly approved the allotment of the flat to the appellant in Dehradun Phase II scheme and as such the new registration No. DUC0461 was given to the appellant. The sale consideration for the allotted flat of the A-2 category of super area 1917 sq.ft. was fixed at Rs. 35,10,000/- and the amount of Rs, 14,30,000/- already paid by the appellant for the Jaipur Phase II scheme was adjusted in the Dehradun Phase II for A-2 category and as such the remaining due amount of Rs. 16,50,000/- was fixed to be paid on or before 13.04.2017 failing which the equalization charges would be paid by the appellant. The last installment of Rs. 4,60,000/- was payable on 14.04.2017. That as per allotment letter dated 07.03.2017 no other charges or amount was fixed by the respondent.

2.3 The respondent vide letter dated 09.06.2017 forced the appellant to pay an additional sum of Rs. 14,22,000/- and as such increased the sale consideration to Rs. 48,82,000/-. The appellant was shocked to face such arbitrary demand of Rs. 14,22,000/- made by the respondent. The appellant requested the respondent, not to make such arbitrary demand as the appellant has paid all the installments in time as and when demanded by the AFNHB/ respondent. It is to be further

noted that this is a transfer case not by choice but due to extreme compassionate ground and compulsion created by the respondent.

2.4 The appellant having no other choice as she was in need of a house and had already taken a home loan for the same was compelled to take personal loan at the interest of 12 % p.a. to make the payment of additional Rs. 8,76,753/- enforced by the respondent. The respondent claims the project to be a part of 'no profit no loss' scheme but at the same time has taken an additional sum of Rs. 8,76,753/- as the sale consideration than the actual circle rate value of the residential dwelling unit from the appellant.

2.5 The respondent in 2009 had initially fixed Rs. 22,30,000/- as the sale consideration of A-2 category. But later in 2016 the respondent had increased the sale consideration of the flat to Rs. 35,10,000/-. And at the same time respondent had fixed an additional sum of Rs. 8,76,753/- as the sale consideration for the appellant than what has been fixed for other allottees. The appellant is not liable for any equalization charges as there has never been delay in payment by the appellant. Also this transfer in project is not by choice but because of the deficiency in service by the respondent. The flat N-003 was handed over to the appellant in March, 2018 in defective condition with seepage in the walls, without completion of common facilities including STP, and other common areas. Due to the non completion of common areas, the Resident Society formed on direction of AFNHB/ respondent had not taken over the common areas.

2.6 The learned Authority while passing the impugned judgement has considered the delay for handing over the project only till March, 2018 irrespective of the fact that the common area of the tower N of the appellant's flat was incomplete even on 20.08.2018 as stated by the respondent in its web update dated 20.08.2018. The learned Authority in awarding interest for delay of handing over possession only till March, 2018 has failed to consider the condition mentioned in the clause 1 of

the Completion Certificate dated 25.04.2018 issued by MDDA, that the Residential Dwelling Units shall only be occupied by the allottees after the respondent has handed over the possession of the common area and amenities to the Jal Vayu Tower Residential Society. Respondent in its written statement has annexed the receipts of handing over possession of the common areas and amenities including STP to the Jal Vayu Tower Residential Society till mid of year 2019. The learned Authority in awarding interest for delay of handing over possession only till March, 2018 has also failed to consider the fact that the Conditional Completion Certificate was issued by MDDA on 25.04.2018, which is one month after the month of March, 2018.

2.7 The learned Authority while awarding the interest for delay in handing over possession only till March, 2018 has erred in fact in not considering the web update dated 12.08.2019 of the respondent which clearly states that the project was still not complete on 12.08.2019. The learned Authority has committed perversity in awarding the interest for delay of handing over possession only till March, 2018 as the keys of the flat N-003 were handed over to the respondent for fixing the defects of the flat. But in spite of submitting the grievances on various occasions to the respondent, the respondent has failed to resolve the defects of the dwelling unit, as such the appellant is not able to use the flat. The appellant was compelled to take the possession of the flat in defective conditions and to also execute the sub-lease deed as the respondent had imposed the penalty of Rs. 10,000/- per month, for not taking possession of the flat, thereby compelling the appellant and other allottees to take their flats in defective conditions.

2.8 The learned Authority has not taken into consideration the fact that the sale consideration mentioned in the allotment letter dated 06.03.2017 was Rs. 35,10,000/- and in addition to the sale consideration LTMF, VAT, Service Tax, Parking Area, Equalization charges for delayed payment, cost of any additional area shall be paid by the appellant and as such no other charges were mentioned along with the sale

consideration of the flat. The learned Authority while passing the judgement has committed perversity in completely misreading the conditions mentioned in clause 11 of the allotment letter dated 06.03.2017 as the clause 11 of the allotment letter only states about equalization charges to be paid by the late entrants and this was not a case of late entrant rather it was a transfer case due to the deficiency of service on account of the respondent.

2.9 The learned Authority has not taken into consideration that it was for the first time vide letter dated 09.06.2017 that the respondent had made arbitrary demand of Rs. 8,76,753/- as equalization charges from the appellant. The learned Authority has erred in law and fact while passing the judgement as the respondent had not mentioned about the amount of Rs. 8,76,753/- at the time of allotment vide allotment letter dated 06.03.2017.

2.10 The learned Authority has not taken into consideration that the respondent has not been transparent with the calculation of equalization charges and also the document stating the amounts of equalization charges charged per annum from the appellant submitted by the respondent before the authority does not have any calculation or the rate of interest at which the equalization charges had been charged by the respondent. The learned Authority has committed perversity in misreading the clause 11 of the allotment letter of 2009 in which the respondent states to charge equalization charges on the late entrants to equalize the sale consideration with the current circle rate as the allotment is part of the self-financed scheme. The sale consideration of the flat in the year 2009 was fixed at Rs. 22,30,000/- whereas the appellant had paid the sale consideration of Rs. 43,86,753/- for the same flat which is Rs. 8,76,753/- more than the circle rate value of the flat.

2.11 Prayer has been made that the interest on the amount of sale consideration be awarded for delay in handing over possession till June,

2019, and to refund the sum of Rs. 8,76,753/- inappropriately charged as equalization charges by the respondent and provide the defect liability of promoter for a period of 05 years from the date of handing over actual possession of the flat to the appellant.

3. The appeal was admitted and photocopy/ scanned copy of the RERA file was summoned.

4. We have heard learned Counsel for the parties and perused the record.

5. Relevant facts of the pleadings made before the learned Authority below and its order dated 15.11.2019 are as below:

5.1 According to the complaint filed before the learned Authority below, the complainant (appellant herein) had booked a flat in Jaipur project of AFNHB in 2015 and paid booking amount of Rs. 1,01,000/- and further two installments of Rs. 7,30,000/- and Rs. 6,00,000/-. The Jaipur Development Authority issued notice to the AFNHB to stop the work of the project, which was informed to the complainant in October, 2016. The complainant requested the respondent (respondent herein) to return the total amount of Rs. 14,30,000/- to her but the respondent refused to return the money and said that the complainant may seek change from the Jaipur project to some other project of the respondent. The complainant requested for change to Dehradun Phase-II project, which was accepted by the respondent and vide allotment letter dated 07.03.2017, the complainant was allotted as new registration no. DUC 0461, flat category A-2 of super area 1917 sq.ft. and cost Rs. 35,10,000/- . According to this allotment letter dated 07.03.2017, the complainant requested for home loan and contacted the AFNHB office for tripartite contract. Vide letter dated 09.06.2017, the complainant was forced to pay Rs. 14,22,000/- extra by increase in the cost to Rs. 48.82 lakhs, for which the complainant had to take personal loan of additional Rs. 10,00,000/- with 12 % interest. Respondent had initially fixed the sale price of A-2 category flat as Rs. 22,00,000/-, which was increased to Rs. 35,00,000/- in 2016. No equalization charges are due on the

complainant as she has never delayed the payment and changed to Dehradun project, which is not as per the will of the complainant but because of deficiency of the service of the respondent. In March, 2018, the flat no. N-003 was handed over to the complainant in defective condition having seepage in the walls and common facilities including STP and common areas were incomplete due to which the Residents' Association formed by AFNHB did not take possession of the common areas. The project is not yet complete and work of more than two towers is incomplete. According to Real Estate (Regulation and Development) Act, 2016, (hereinafter referred as 'the Act'), the promoter should inform the carpet area; the railing of the staircases is unsafe; the petitioner had no option but to take the possession of the house as she had paid for the same after taking loan; the complainant made the complaint of seepage to the respondent but he did not take any action; respondent has not stated in which *khasra* no. the flat N-003 allotted to the complainant is constructed; the complainant has suffered great financial loss in the past four years in paying the installments of the loan and in addition, she is paying rent of Rs. 9,500/- per month for the past four years and paying interest of Rs. 1,15,000/- per annum against the home loan. As relief, the complainant has demanded that the respondent be directed to return the additional amount of Rs. 10,00,000/- taken as equalization charges, to pay interest on the sale price for more than two years of delay in handing over possession, to rectify the defect of seepage, to execute conveyance deed in favour of the complainant, to keep Defect Liability Period for five years for promoter, to put a ban on the sale of open space for parking and to direct the promoter to ensure compliance of the Act.

5.2 In his written reply dated 23.08.2019 to the complaint, the respondent/ promoter has stated that the AFNHB is a registered housing society working on the basis of 'No profit No loss' and that the allotment letter shows that, in addition to the basic cost, LTMF, VAT, service tax, parking area, equalization charges, cost of additional area shall be taken;

the cost escalation will also be payable and no compensation will be payable to the allottee for delay in the project; the complainant has taken possession on 08.03.2018, after paying her dues; the respondent is only a facilitator between the contractor and allottees; despite the efforts of the respondent, the contractor could not complete the project within the time limit of the contract; the contractors of the project, M/s N.G. Construction and M/s Umaxe Projects are necessary parties because the construction was to be done by them and for the delay in the completion of the project, according to the contract agreement, suitable penalty shall be imposed on the contractors. The complainant has never requested for return of money; the return of money is governed by master brochure and the conditions of the allotment, in which interest is not payable and deduction of cancellation charges is provided; the complainant herself requested for change from Jaipur Phase-2 project to Dehradun Phase-2 project vide her letter dated 01.11.2016, which was accepted vide e-mail dated 23.12.2016, in which it was clarified that according to master brochure, the cancellation with equalization charges are due and the complainant's consent was sought on the same; the complainant after considering the option and conditions conveyed her consent of the change vide e-mail dated 18.01.2017, on which respondent vide letter dated 07.03.2017 informed her about the balance amount and the next due installment and also the information about equalization charges as calculated; after fixing equalization charges, allotment letter dated 09.06.2017 was sent to the complainant along with information for balance amount; the complainant vide letter dated 14.07.2017 requested for extension of time for making the balance payment; complainant vide her letter dated 30.08.2017 requested that equalization charges may not be calculated on the amount paid earlier and requested for recalculation of the equalization charges with the request for exemption; considering her request, the respondent recalculated the equalization charges, which were conveyed vide the final demand letter dated 11.12.2017; the occupancy certificate has been received on 25.04.2018 and the allottees

after taking possession and registry, have starting living in their flats; the common areas and facilities of all blocks have been handed over; according to clause 17 of the allotment letter for delay in completion of the project, no interest and/ or compensation is payable; in view of project being self financed, if any compensation or charges are declared that shall be borne by the allottees of the project because the respondent is working on the basis of 'No profit No loss'; the contract agreement of the contractor has been signed in 2010 much before the coming of RERA, in which the Defect Liability period (DLP) was one year which cannot be increased to five years on the demand of the complainant.

5.3 The complainant has filed her rejoinder to the written reply of the respondent stating that AFNHB being non profit welfare organization has no meaning in this matter and the project is governed by the provisions of the Act; the allotment letter is one sided; the complainant was forced to take possession of the flat in incomplete condition (incomplete common facilities and STP) because for not taking possession, the burden of Rs. 1,000/- would have come on her and the respondent had imposed a fine of Rs. 10,000/- per month for not taking possession; the contractor is not the promoter of the project and the complainant/ allottee is not the consumer of the contractor and the allotment of the dwelling unit has been done by the respondent and the deficiency in service has been by the respondent; the complainant is not a party to the contract and the complainant has not started any suit against the contractor; the respondent has violated the provisions of the Act by enhancing the cost and delaying the possession; the complainant requested the respondent many times for returning the money deposited in Jaipur project (as the respondent failed to complete the Jaipur project) but instead of returning the money, the respondent directed her to give application for change of project; the Master Brochure, 2012, was never given to the complainant by the respondent; on being asked vide e-mail dated 23.12.2016, the respondent had

assured that equalization charges will not be imposed on her as they are for new allotment and not for transferred cases; in the allotment letter dated 07.03.2017, there is no mention of equalization charges to be due in the cases of transfer; the respondent has never been transparent in imposing equalization charges; in the tripartite agreement also, the sale price is Rs. 35,10,000/- and the same equalization charges are being taken from the new allottees and the complainant; the completion certificate is conditional; due to deficiency in essential services, part possession has been taken and the Residents' Association is waiting for the rectification of the deficiencies; the possession of flat was handed over to the complainant in defective condition and the mention of the deficiency is recorded in the register kept by the respondent; the key of the flat no. N-003 was given to the respondent on 19.05.2019 for rectification of deficiency but respondent has failed to rectify the deficiency; the allottee is not sure in which *khasra* number her flat is situated; sub lease deed has been done in the favour of the complainant, which does not provide the right of ownership; in the lease given by Uttarakhand Govt., the right to sub lease has not been given and by making sub lease in favour of the complainant, deceit has been made.

6. Regarding the issue of contractors to be the necessary parties, learned Authority below has held that in Section 2(zk) of the Act, the promoter has been defined and in Section 11, work and duties of the promoter have been mentioned. In other provisions of the Act especially in Section 14, 17, 18 and 19, the responsibilities of the promoter have been mentioned. Respondent itself has got the registration of the project in RERA in the form of promoter as is provided under Section 3 of the Act. On the basis of the promoter getting the construction and other works of the project done by the contractor, the work, duties and responsibilities relating to the promoter, mentioned in the Act, cannot be transferred on the contractor. The complainant has mentioned in her rejoinder that the contractor is not the promoter of the project and the

complainant/ allottee is not the consumer of the contractor and that the allotment of the dwelling unit has been done by the respondent and that the deficiency of service is of the respondent and the complainant is not a party in the contract. These points have been held to be justified by the learned Authority below. It has consequently been held that the contractor is not necessary party for taking decision on the points mentioned in the complaint and the total responsibility in the form of promoter is on the respondent only.

7. Regarding the delay in handing over the possession, learned Authority below has held that allotment letter dated 06.03.2017 and 09.06.2017 were issued to the complainant for the allotted flat in the Dehradun project, in which the tentative time of handing over of possession is stated as 'mid 2017', while the possession of the flat has been handed over to the complainant on 26.03.2018. Therefore, it is clear that there is delay in handing over the possession of the allotted flat to the complainant.

8. On the issue whether the respondent/ promoter has taken more money from the complainant against the flat, the learned Authority below has observed the following:

8.1 The amount of Rs. 14,30,000/- paid for the Jaipur project has been adjusted against the unit allotted to the complainant in the Dehradun project according to letter dated 07.03.2017 of the respondent and according to letter dated 09.06.2017 of the respondent, an amount of Rs. 14,15,000/- has been informed to be adjusted against the cost of Dehradun flat. Regarding equalization charges, the respondent has recalculated them and the final demand letter dated 11.12.2017 has been sent by the respondent according to which the cost of the flat is Rs. 32.80 lakhs, cost of parking is Rs. 2,00,000/-, LTMF is Rs. 30,000/- and equalization charges are Rs. 8,76,753/-. Thus, total due amount for the housing project has been informed as Rs. 43,86,753/-, out of which Rs. 41,07,300/- has been shown as received and balance

demand of Rs. 2,79,453/- has been informed. The transfer document has been executed in favour of the complainant on 18.06.2018, in which the cost of the flat has been shown as 34.80 lakhs, which is less than Rs. 35.10 lakhs as mentioned in the allotment letter dated 06.03.2017. According to para 3 of the allotment letter, LTMF/ equalization charges, tax etc. have to be paid extra. In these circumstances, taking extra money for the cost of the flat is not proved. In para 11 of the allotment letter dated 06.03.2017, the provision about equalization charges have been mentioned and the allotment letter has not been denied by the complainant. Therefore, *prima facie*, it cannot be accepted that equalization charges were not payable by the complainant. During the arguments before the learned Authority below, the Advocate of the complainant stated that the equalization charges are for the delayed payments and the complainant was allottee of the Jaipur project from where she has been transferred to Dehradun project and therefore, she cannot be deemed to have been included late in the Dehradun project. On the date of arguments, the detail of calculation of equalization charges was produced on behalf of the respondent before the learned Authority below clarifying the calculations in this regard on which no objection has been presented on behalf of the complainant. In her correspondence with AFNHB, the complainant has said that she should be deemed to be allottee of 2015. In 2015, cost of dwelling unit was Rs. 25 lakhs and the complainant had paid Rs. 14.30 lakhs (against the Jaipur project) therefore, from 2009, equalization charges, if they are taken, should be imposed on the balance amount of Rs. 10.30 lakhs. AFNHB, vide letter dated 11.12.2017, has sent the final demand letter for flat no. N-003, according to which, with the equalization charges of Rs. 8,76,753/- the total cost of Rs. 43,86,753/- has been informed. The complainant got the possession of the allotted unit on 26.03.2018. It can be presumed that she was satisfied with the recalculation of the equalization charges and in that sequence only, she deposited the balance amount and got possession. Thus, it has been held that the

complaint regarding extra money having been charged from the complainant by the respondent/ promoter is not sustainable.

9. Regarding the defect in the flat allotted and handed over to the complainant, the learned Authority below has held that in the certificate of taking over possession of the flat, there is no mention by the complainant about poor quality of the flat, the flat being in defective condition, seepage in the walls and incomplete facilities. The complainant has not produced any proof/ documentary evidence about this complaint. The respondent has filed the completion certificate issued in respect of the project vide letter dated 25.04.2018. Learned Authority below has observed that the defect in the flat can appear even after the taking over of possession and therefore, the responsibility to rectify the defect is of the promoter upto five years of handing over possession under Section 14(3) of the Act. Therefore, if the defect has been noticed subsequently, it cannot be ignored on this basis that it was not mentioned while taking over the possession. Learned Authority below has further held the defect liability to be for five years on the promoter after the handing over of possession according to the Act. Section 2(zn) of the Act defines the Real Estate project and Section 2(zk) defines the promoter. According to the definition of the promoter, AFNHB is the promoter of the project related to this complaint and according to definition of the Real Estate project, the project related to the complaint is a Real Estate project. Respondent has got the project registered in Uttarakhand RERA whose registration number is UKREP 02180000163 and validity date is 30.04.2018. Section 14(3) of the Act clearly provides that in case any structural defect or any other defect in workmanship, quality or provision of services is brought to the notice of promoter within a period of five years by the allottee from the date of handing over of possession, it shall be the duty of the promoter to rectify such defects without further charges. Section 14(3) of the Act is applicable on the promoter of this project i.e. AFNHB and the

responsibility of the promoter does not get transferred to the contractor to whom contract has been given for construction.

10. Regarding the interest to be paid to the complainant for delay in handing over the possession of the flat, the learned Authority below has observed that no clear date or month for handing over possession of the flat has been indicated and in the allotment letter, handing over has been stated to be tentatively in the mid of 2017. The taking over of possession by the complainant on 26.03.2018 is proved. If the meaning of mid 2017 is taken to be the end of June, 2017, then there is delay of 09 months in handing over of possession. According to *proviso* to Sub-Section (1) of Section 18 of the Act, if the 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 possession, at such rate as may be prescribed. Regarding the interest rate, the same is, according to Rule 15 of the Uttarakhand Real Estate (Regulation and Development) (General) Rules, 2017, which provides the interest rate to be 2 % more than the highest cost of marginal lending rate of State Bank of India which works out to be 8.20%+ 2% i.e. 10.20%. Till 14.07.2017, the promoter had received Rs. 41,22,300/- and on 26.12.2017, he received further Rs. 2,79,453/- making the total amount of Rs. 44,01,753/-. The learned Authority below has held interest to be paid on Rs. 41,22,300/- for the period of 06 months from July, 2017, to December, 2017, and interest to be paid on Rs. 44,01,753/- for the two months of January, 2018, and February, 2018, @ 10.20 % per annum. It has also been ordered that the defect of seepage in the flat be also rectified by the respondent/ promoter without any extra charges.

11.1 Para 4 and para 5 of letter of AFNHB dated 07.03.2017 to the appellant are as below:

> "4. The amount already paid by you amounting to Rs. 14,30,000/- has been credited into your Dehradun Ph-II Scheme in A-II category DU account. The equalization charges on the same would be recalculated by the finance module and the same would be payable prior issue of letter of clearance for possession.

The difference in amount already paid for A-I category of Jaipur Ph-II Scheme and amount called for A-II category of Dehradun Ph-II Scheme as on 31 Dec 16 amounting to Rs. 16,50,000/- is to be paid by 13 Apr 17 after which the equalization charges would apply.

5. The next installment amounting to Rs. 4,60,000/- is payable on 14 Apr 17."

11.2 The above para 4 states that the equalization charges would be recalculated by the finance module and the same would be payable prior to issue of letter of clearance for possession. The next line of this para requires Rs. 16,50,000/- to be paid by 13.04.2017 after which the equalization charges would apply. It is clear from the above that the equalization charges are over and above the amounts mentioned in these paragraphs. The allotment letter dated 06.03.2017, which is enclosed with this letter of 07.03.2017, also mentioned in para 3(c) that equalization charges on delayed payments of installments due would be levied as per rules in force. The calculation of equalization charges as placed by the respondent before the learned Authority below shows that they have been calculated at the rate of interest 10 % and show these calculations as interest upto 23.02.2015 on installments whose due dates were from 15.01.2009 to 04.10.2013. There is another 120 days' delay in payment of the installment of Rs. 5,50,000 on 31.12.2016. The appellant made the payment of Rs. 14,30,000 to AFNHB for Jaipur Project in 2015 which has been deemed to be transferred to Dehradun Scheme at that time itself. Had the appellant joined the Dehradun project in 2009 and paid the requisite installments at the appropriate time, no equalization charges would have been charged from her.

12 The Tribunal observes the following:

12.1 As observed by the learned Authority below, the appellant has not objected to this calculation of equalization charges before the learned Authority below and after making the balance payment, she has gone ahead with the possession of the flat. Therefore, this Tribunal holds that the equalization charges were duly informed to the appellant

at the time of allotment in the Dehradun project and she was satisfied with the last calculations of equalization charges made by the respondent and that the equalization charges were part of the agreed cost of the flat allotted to the appellant in the Dehradun project and the appellant has no right to seek refund of the equalization charges.

12.2 The learned Authority below has correctly assumed the expected time of dwelling unit to be ready for possession by end of June 2017 on the basis of the allotment letters. The appellant has taken possession of the flat on 26.03.2018. According to her, she was forced to take the possession of the flat in defective condition as the respondent had imposed penalty of Rs. 10,000/- per month for not taking possession of the flat. The appellant further states that the possession of the common facilities/ areas was handed over to the Residents' Association much later in June 2019 and the respondent is liable to pay interest for delay in handing over possession till June 2019. The appellant also states that the possession was handed over under pressure on 26.03.2018 while the completion certificate for the project was issued by MDDA, later on 25.04.2018 and the certificate was conditional and clause 1 of this completion certificate stated that the residential dwelling units shall only be occupied by the allottees after respondent has handed over the possession of the common areas and amenities to the Jal Vayu Tower Residential Society.

12.3 The various clauses mentioned in the above referred completion certificate are as below:

(i) After transfer of all internal infrastructure facilities, in the project developed by AFNHB, in working and proper condition to J.V.T.R.W.A., the constructed buildings shall be occupied.

(ii) ……..

(iii) ……..

(iv) ……..

While it is common understanding that the possession of flat should be given after the completion certificate has been received from the MDDA, in the present case, the possession has been handed over to the appellant on 26.03.2018 while the completion certificate has been obtained on 25.04.2018. Section 18 of the Act reads as below:

> **"18. Return of amount and compensation**.—(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 subsection 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."

According to the *proviso* to Sub-Section (1) of Section 18 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. The handing over of the possession has been done on 26.03.2018. If the handing over of the possession had taken place on a subsequent date, then according to the above *proviso* of Section 18, the interest for delay upto that date would have been paid. If the flat had defects like seepage etc.; common areas and common amenities were incomplete and not handed over to the Residents' Association or the completion certificate had not been obtained, the appellant could have rightfully objected to taking over possession on 26.03.2018. However,

the appellant/ allottee has not raised any objection at that time and the learned Authority below has correctly held that in the certificate of taking over possession of the flat, there is no mention by the complainant (appellant) about poor quality of the flat, the flat being in defective condition, seepage in the walls and incomplete facilities. The fact that the appellant handed over the keys of the flat to the respondent subsequently, for fixing the defects of the flat but in spite of submitting the grievance on various occasions, the respondent has failed to resolve the defects of dwelling unit, also does not entitle the appellant to get interest beyond March, 2018 as the handing over of the possession has been done on 26.03.2018. However, under Section 18(3) of the Act, she can claim compensation from the respondent-promoter for his failure to discharge other obligations imposed on him under this Act or the rules or regulation made thereunder or in accordance with the terms and conditions of the agreement for sale.

12.4 Learned Authority below has rightly held that the defect liability period according to Section 14(3) of the Act shall be for the period of five years from the date of handing over of the possession. Section 14(3) of the Act reads as below:

> "14(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

According to the above Section 14(3), it is the duty of the promoter to rectify such defects as mentioned in the above Section 14(3) without further charge within 30 days and in the event of promoter's failure to rectify such defects within such time, the aggrieved

allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

13. In view of the above, this Tribunal finds no reason to interfere with the impugned order dated 15.11.2019 of the learned Authority below. If the appellant wants to claim compensation under Section 18(3) or Section 14(3) of the Act, she can approach the adjudicating officer (to be) appointed under Section 71(1) of the Act.

14. With the above observations, the appeal is dismissed. No order as to costs.

15. 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.

(RAJENDRA SINGH)
MEMBER (J)

(RAJEEV GUPTA)
MEMBER (A)

DATE: 20th July, 2022
DEHRADUN
RS