

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL**Date of Order: 29.07.2019****Appeal No.173 of 2019**

Magic Eye Developers Pvt. Ltd., GF-09, Plaza M-6, Jasola District Centre, Jasola, New Delhi-110025.

Appellant

Versus

Ishwer Singh Dahiya s/o Sh. Jage Ram Dahiya, Resident of House No.801, Arzoo CGHS, Plot No.5, Sector 51, Gurgaon, Haryana-122003.

Respondent**Appeal No.208 of 2019**

Magic Eye Developers Pvt. Ltd., GF-09, Plaza M-6, Jasola District Centre, Jasola, New Delhi-110025.

Appellant

Versus

Rajneesh Arora Resident of Villa No.4494, Archivers Status Enclave, Kalindi Hills, Sector-49, Badkhal Sohna Road, Faridabad.

Respondent**CORAM:**

Justice Darshan Singh (Retd.) Chairman
Shri Inderjeet Mehta Member (Judicial)
Shri Anil Kumar Gupta Member (Technical)

Argued by: Shri Tarun Singla, Advocate, learned counsel for the appellant in both the appeals.

Shri Sandeep Sharma, Advocate, learned counsel for the respondent in Appeal No.173 of 2019.

Shri Shubhnit Hans, Advocate, learned counsel for the respondent in Appeal No.208 of 2019.

ORDER:

This order of ours shall dispose of preliminary issue regarding jurisdiction of the learned Real Estate Regulatory Authority (hereinafter called as 'the authority') to deal with the complaints and to grant relief of interest for delayed possession. Both these appeals are taken up jointly as the common question of law and facts are involved to adjudicate the preliminary issue of jurisdiction.



2. In Appeal No.173 of 2019, respondent Ishwer Singh Dahiya has filed the complaint for grant of compensatory interest @ 24% per annum as per section 18(b) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called as 'the Act') for delay in delivery of the possession alongwith certain other reliefs. But it is pertinent to mention that he has not sought any relief for refund of the amount deposited by him with the appellant-promoter and for grant of compensation, rather he has sought the delivery of possession, compensation, rather he has sought the delivery of possession.
3. The said complaint was contested by the appellant-promoter and ultimately the learned authority directed the appellant to pay delayed possession charges @ 10.75% per annum on the amount deposited by the respondent-allottee for the period mentioned in the relevant clause till handing over of the possession.
4. In Appeal No.208 of 2019, the respondent Rajneesh Arora has also filed the complaint against the appellant-promoter for directing the appellant to refund the entire principal amount alongwith interest @ 18% per annum from the date it was deposited, primarily on the ground that the appellant-promoter had not delivered the possession of the unit within the stipulated period as per the agreement for sale.
5. The said complaint was also contested by the appellant promoter. Ultimately, the learned authority vide impugned order dated January 31st, 2019 directed the appellant-promoter to pay the delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f. August 24th, 2016 till the offer of possession.
6. As already mentioned in the case culminated in appeal No.173 of 2019, no relief for refund and compensation has been sought.
7. In appeal No.208 of 2019, learned counsel for the respondent has made the statement that the respondent-allottee does not claim the



relief of refund and compensation in this case and only pursue the relief regarding interest. The remaining relief sought in the complaint may be deemed to have been given up.

8. It is settled principle of law that the appeal is continuation of the suit. The statement made by the learned counsel for the respondent in appeal No.208 of 2019 giving up the relief of refund will relate back to be the very institution of the complaint. So, the complaint will be deemed to be only for grant of interest simplicitor on account of delay in delivery of possession. Thus, in both the cases there is no claim for refund/compensation.

9. Though the learned authority has used the terminology as delayed charges but the same has been awarded at the rate of interest prescribed in rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called as 'the rules'), the same shall be deemed to be the interest awarded by the learned authority for delayed possession as provided in proviso to section 18(1) of the Act.

10. Learned counsel for the appellant contended that as per section 71 sub-section 3 of the Act, it is only the Adjudicating Officer who is competent to grant interest. He further contended that even the remedy to file complaint for grant of interest has been provided in rule 29 of the Rules before the Adjudicating Officer. He further contended that as per rule 28 the learned authority is debarred to entertain the matters which are to be taken cognizance of by the Adjudicating Officer provided in rule 29 of the Rules.

11. He further contended that it has been specifically provided in section 71 of the Act and rule 29 that the interest under sections 12, 14, 18 and 19 of the Act shall be awarded by the Adjudicating Officer.



The interest for delayed possession also falls in section 18(1) of the Act and can only be awarded by the Adjudicating Officer.

12. He further contended that the interest awarded for the delayed possession is also a compensation and as per section 71 of the Act, it can only be awarded by the Adjudicating Officer. Therefore, he contended that the Learned Authority had no jurisdiction to entertain the complaint and grant the relief of even interest.

13. On the other hand, learned counsel for the respondent contended that the respondent intended to remain in project. The appellant-promoter has violated the terms and conditions of the agreement. The possession of the unit was not delivered to the respondent-allottee within the stipulated period. They contended that section 11(4)(a) of the Act cast obligation on the promoter to perform the functions as per the agreement for sale. The said obligations can be got enforced by the learned authority as per section 34(f) of the Act by giving direction under section 37 of the Act. They further contended that section 38 of the Act clearly stipulates that the authority is competent to award interest.

14. They further contended that the interest provided in section 18 is different than the interest provided in section 71 of the Act. The interest provided in section 71 of the Act is to be adjudicated as per factors mentioned in section 72 of the Act whereas the interest under Section 18(1) is to be granted on the prescribed rate as per rule 15 of the Rules. They contended that the jurisdiction of the authority can be stated to be barred only with respect to those claims which are specifically provided in rule 29 of the Rules. The interest mentioned in rule 29 is in fact the interest alongwith the compensation which is not the interest simplicitor. Thus, they contended that the learned



authority had jurisdiction to entertain the complaint and grant the relief of interest in the form of delayed charges.

15. We have duly considered the aforesaid contentions.

16. In view of the factual position discussed above, the question before this Tribunal is as to whether the Ld. Authority had jurisdiction to grant relief of interest for delayed possession or not.

17. Section 71(1) of the Act provides the appointment of the Adjudicating Officer for adjudging the compensation u/s 12, 14, 18 & 19 of the Act. The word 'interest' does not figure in section 71(1). 'Interest' only figures in section 71(3) of the Act which provides that Adjudicating Officer may direct to pay such compensation or interest '**as the case may be**'. User of phrase 'as the case may' signifies that the interest mentioned in section 71(3) is an alternative to the lumpsum compensation. In fact, the interest mentioned in section 71(3) is to be awarded in lieu of the compensation as per the discretion of the Adjudicating Officer. Moreover, the said interest is to be adjudged as per the factors enumerated in section 72 of the Act whereas the interest payable under proviso to section 18(1) is the interest simplicitor on the prescribed rate for delay in the delivery of possession where the allottee intends to remain in the project.

18. As per rule 28 of the Rules, the jurisdiction of the Ld. Authority is barred only with respect to the matters which are specifically to be dealt with by the Ld. Adjudicating Officer provided in rule 29 of the Rules. Rule 29(1) provides that any aggrieved person may file a complaint with the Adjudicating Officer for interest and compensation as provided u/s 12, 14, 18 & 19 of the Act. Sub rule (2) of rule 29 provides procedure to be followed for adjudging the interest and compensation. The words mentioned in rule 29 are 'interest and

Ld.

compensation' which cannot be segregated and the only possible interpretation is that the interest and compensation mentioned in rule 29 is compensation with interest or interest in lieu of the compensation. Thus, the interest simplicitor for delay in delivery of possession provided in section 18(1) is not covered by the provisions of section 71 of the Act and rule 29 of the Rules.

19. The interest provided in proviso to section 18(1) of the Act may be compensatory in nature but that is not the compensation in strict sense.

20. There is marked distinction between compensation and interest. The dictionary meaning of the word 'compensation' is as under: -

Black's Law dictionary	-money given to compensate loss or injury.
Webster's Third New International Dictionary	-The act or action of making up, making good or counter balancing, rendering equal.
Law Lexicon by P. Ramanatha Aiyer	-something given or obtained as an equivalent, an equivalent given for property taken or for any injury done to another.

21. As is evident from the above definitions of the compensation, the compensation in fact is indemnification that is the payment of the damages which is necessary to restore an injured party to his former position the courts are granting the compensation to be paid by a person whose acts or omission has caused, loss or injury to another, in order that thereby the person indemnified may receive equal value for the loss or in respect of injury suffered by him.

22. On the other hand, the interest is a premium paid for the use of money. Ordinarily a person who is deprived of his money to which he

is legitimately entitled as of right is entitled to for interest for the period his money is used by the other person. In general terms the interest is the return for the use or retention by one person of a sum or money belonging to or owned by other. Thus, there is a clear distinction between compensation and interest simplicitor.

23. Section 38 of the Act also empowers the Ld. Authority to impose penalty or interest in respect of any contraventions of the obligations casted upon the promoter, allottee and real estate agent under this Act, Rules & Regulations made thereunder. The obligations/responsibilities casted upon the promoter as per the provisions of section 11(4)(a) of the Act are statutory in nature. The violations of said obligations will amount to contravention of provisions of the Act and Rules made thereunder. So even under Section 38 of the Act Ld. Authority is competent to grant interest simplicitor.

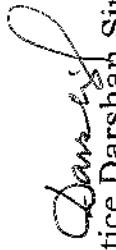
24. Thus, keeping in view our aforesaid discussions, we are of the considered view that the Ld. Authority is competent to deal with the complaints where the claim is only for grant of interest simplicitor due to delay in delivery of possession. There is no express or implied prohibition to the Authority to entertain such matters. Thus, there is no reason to conclude that the impugned orders passed by the Ld Authority are without jurisdiction rather the Learned Authority had every jurisdiction to entertain the complaint for grant of the relief of interest simplicitor for delayed possession filed by the allottees and to grant interest if the allottee is so entitled on the merits of the case.

25. Consequently, the preliminary issue regarding jurisdiction of the Ld. Authority to deal with the complaint and grant the relief of interest for delayed possession is answered against the appellant.




26. Now the case to come up on 27.08.2019 for arguments on the remaining issues.

27. Copy of this order be also placed on the record of the Appeal No.208 of 2019.


Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh
29.07.2019


Inderjeet Mehta
Member (Judicial)
29.07.2019


Arun Kumar Gupta
Member (Technical)
29.07.2019

RECORDED
STAMPED
HARYANA REAL ESTATE APPELLATE TRIBUNAL - CHANDIGARH