

HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of decision 29.07.2019.

Appeal No.55 of 2018

1. M/s Selene Construction Ltd. through its Authorized Signatory Mr. Sanjeev Kumar son of Shri Sham Lal, registered office at M-62 & 63, First Floor, Connaught Place, New Delhi-110001, Corporate office at Indiabulls House 448-451, Udyog Vihar, Phase-V, Gurugram, Haryana 110066.

...Appellant.

Versus

- Mr. Tarun Aggarwal, resident of house no.518, 1st floor, Sector-5, Gurugram-122001.

....Respondent.

Appeal No.56 of 2018

2. M/s Selene Construction Ltd. through its Authorized Signatory Mr. Sanjeev Kumar son of Shri Sham Lal, registered office at M-62 & 63, First Floor, Connaught Place, New Delhi-110001, Corporate office at Indiabulls House 448-451, Udyog Vihar, Phase-V, Gurugram, Haryana 110066.

...Appellant.

Versus

- Mr. Ishwar Chand Garg, resident of A-602, Spring Valley Apartments, Plot 3C, Sector-11, Dwarka, New Delhi-110075.

....Respondent.

Appeal No.57 of 2018

3. M/s Selene Construction Ltd. through its Authorized Signatory Mr. Sanjeev Kumar son of Shri Sham Lal, registered office at M-62 & 63, First Floor, Connaught Place, New Delhi-110001, Corporate office at Indiabulls House 448-451, Udyog Vihar, Phase-V, Gurugram, Haryana 110066.

...Appellant.

Versus

- Mr. Rajpal Dahiya, resident of house no.2102, Sector-03, Rohtak Haryana 124001.

....Respondent.

Coram:

**Justice Darshan Singh (Retd), Chairman
Sh Inderjeet Mehta, Member(Judicial)
Sh Anil Kumar Gupta, Member(Technical)**

Argued by: Shri Rajeev Anand, Ld. counsel for the appellants in all the appeals.

Ms Srishti, Advocate, Ld. counsel for the respondent in appeal no.55 of 2018.

Sh. Anand Dabas, Advocate, Ld. counsel for the respondent in appeals no. 56 of 2018 and 57 of 2018.

JUDGMENT :

1. Vide this judgement we are going to dispose of all the three appeals mentioned above, wherein the common question of law facts are involved. These appeals have been preferred against the orders dated 10.07.2018 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called the authority).
2. For the purpose of convenience we are referring the brief facts of the lead appeal titled as M/s Selene Construction Ltd. V/s Tarun Aggarwal (appeal no. 55 of 2018). In that case respondent/allottee/complainant filed the complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter called the Rules) against the appellant/promoter on the allegations that the respondent had booked a unit with the appellant/promoter in tower 'B' in the project "Indiabulls Centrum Park". The builder buyer agreement was executed on 12.09.2010 but the appellant/promoter has not delivered the possession of the unit by the due date i.e. within three years from the date of execution of the agreement. The respondent allottee has sought the relief for refund of the full amount deposited by him with the appellant/promoter, to provide interest as per clause 5.2 of the agreement on the amount deposited by the respondent/allottee and to compensate the expenses incurred on



rent amounting to Rs.8,42,000/- and for the interest of Rs.17,94,866.72/- paid to the State Bank of India on account of the home loan. He has also sought the compensation for delay in delivery as stipulated in clause 10.2 of the agreement as well as the compensation/damages for loss and mental agony.

3. In appeal no.56 of 2018 titled as M/s Selene Construction Ltd. Vs. Ishwar Chand Garg almost on the similar pleadings the respondent/allottee has only sought the direction to the appellant/promoter for giving compensation for the delayed period from the date of booking till flat becomes in liveable condition after the receipt of the occupation certificate at the rate of 18% per annum on the deposited amount. He has also prayed for declaring the demand for VAT unjustified. He has also raised the dispute regarding the area of the plot as per provisional booking and builder buyer agreement.

4. In appeal no.57 of 2018 titled as M/s Selene Construction Ltd. Vs. Rajpal Dahiya almost on the similar pleadings the respondent/allottee has sought the payment of Rs.11,00,000/- towards the rent for the rented accommodation, which was hired by the allottee due to delay in delivery in possession, Rs.10 lakh as a compensation for mental agony and harassment. Refund of Rs.55,53,616/- and interest at the rate of 12% per annum from the date of the making respective payments till date at the last.

5. The appellant/promoter contested all the complaints filed by the respondent/allottee in all the three cases by filing the detailed reply.

End

6. The Ld Authority vide impugned order disposed of the complaints filed by the respondent/allottee by awarding interest at the prescribed rate for every month of delay from the due date of possession on the amount deposited by the respondent/allottee. Till the delivery of the actual possession. It was further directed that possession be given on the date committed. It was further directed that if the possession is not given on the next date committed by the appellant/promoter, the penal consequences will follow. The demand of VAT raised by the appellant/promoter in appeal no.56 of 2018 was held to be unjustified.

7. Feeling aggrieved with the aforesaid orders/directions issued by the Ld Authority, the present appeals have been preferred.

8. We have heard Ld counsel for the parties. Ld counsel for the appellant has also filed the written arguments. We have also meticulously examined the record of the case.

9. Initiating the arguments Shri Rajeev Anand, Advocate Ld counsel for the appellant contended that the complaints filed by the respondent pertain to the compensation and interest under sections 12, 14, 18 and 19 of the Act. These complaints were required to be filed before the Adjudicating Officer under rule 29 of the Rules. He contended that as per section 31 of the Act the aggrieved person may file the complaint before the Authority or the Adjudicating Officer as the case may be for any violation and contravention of the provisions of the Act or the Rules and Regulations made thereunder. He contended that the above provisions show that the Authority and Adjudicating Officer have their own separate scope as prescribed in the Act and the Rules. The Adjudicating Officer is empowered to adjudicate the compensation under section 12, 14, 18 and 19 of the



Act, which is to be determined as per the factors provided in section 72 of the Act.

10. He further contended that the separate rules have been framed i.e. rules 28 and 29 of the Rules for filing the complaint before the Authority and the Adjudicating Officer. Rule 28 bars the filing of the complaint before the Authority, which are to be taken cognizance of by the Adjudicating Officer. Rule 29 of the Rules provides that it is only the Adjudicating Officer, who is competent to entertain the complaint for grant of interest and compensation. Thus, he contended that the Ld Authority has no jurisdiction to adjudicate upon the complaints for grant of interest and compensation under Section 18 of the Act. He relied upon cases Appeal no. 53 of 2018 Sandeep Mann Vs. Real estate Regulatory Authority Punjab and another decided on 27.02.2019 by Real Estate Appellate Authority Punjab and Lavasa Corporation Ltd. Vs. Jitendra Jagdish Tulsiani, 2018 SCC Online Bombay 2074 by the Bombay High Court. He further contended that the role, powers and functions of the Ld Authority and the Adjudicating Officer are well defined under the Act and the Rules. The Authority has been established for regulation and promotion of the real estate sector whereas the adjudicating mechanism for redressal of dispute has been left to the Adjudicating Officer. The Ld Authority is to deal with the penalties provided in sections 59 to 63, 65 and 67 of the Act whereas the Adjudicating Officer has been invested with the powers to adjudicate the interest and compensation as per sections 71 & 72 of the Act. He further contended that the section 37 of the Act does not empower the Ld Authority to usurp the powers of the Adjudicating Officer.



11. He further contended that the impugned orders passed by the Ld Authority are nullity as it had no jurisdiction over the matter. To support his contentions, he relied upon cases **Gurudevdatra Vksss Maryadit v. State of Maharashtra [(2001) 4 SCC 534]** and **Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. & anr., AIR 2005 SC 4446.**
12. He further contended that even the procedure adopted by the Ld Authority is defective. The Ld Authority has not framed the issues as required under regulation 18(4) of the Haryana real Estate Regulatory Authority, Gurugram (Adjudication of Complaints) Regulation, 2018 (hereinafter called the regulations) framed by Ld. Authority, Gurugram nor the issue wise findings have been given.
13. He further contended that provisions of section 11(4)(a) and section 34(f) are the general provisions of the Act and do not deal with any specific instance whereas the Adjudicating Officer has been given the specific role by adopting the specific procedure in respect of sections 12, 14, 18 and 19 of the Act. He also contended that it is settled principle of the interpretation of statute that specific provisions will prevail over the general provisions. To support his contentions, he relied upon cases **J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. (1961) 3 SCR 185**, **Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 (SCR) 209** and **Union of India v. India Fisheries (P) Ltd., AIR 1966 SC 35.**
14. He further contended that the question of jurisdiction is not to be seen from the relief granted to the appellant but the claim made in the pleadings. He further contended that as per the provisions of the Act and the Rules, Authority can only deal with the violation of the Act, Rules and Regulations framed thereunder. It



cannot deal with violation of the terms and conditions of the agreement. He contended that the main function of the Ld Authority is regulatory in nature to supervise the development of the real estate project. To adjudicate the individual disputes is the functions of Adjudicating Officer. In order to buttress his contentions, he has drawn our attention to rules 28 & 29 of the Rules and Form "CAO" provided in the Rules. He further contended that even the interest awarded on account of delay in delivering the possession is compensatory in nature and can only be awarded by the Adjudicating Officer. To support his contentions, he has relied upon the case **Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs. Union of India and ors.2017 SCC online Bom.9302.**

15. He further contended that the interest, which can be awarded under section 18, is the interest at the prescribed rate whereas the interest mentioned in section 38 of the Act is only the interest. The interest at the prescribed rate cannot be awarded by the Authority under any provision of the Act and the same can only be awarded by the Adjudicating Officer. He also contended that even this Tribunal in case titled as Sameer Mahawar Vs. MG Housing Pvt Ltd. appeal no.6 of 2018 decided on 02.05.2019 has held in para no.25 of the judgment that it is only the Adjudicating Officer, who has power to award compensation and/or interest whereas the authority has the specific powers to levy penalties and to set-aside the order cancelling the allotment and the Authority is not empowered to award any relief enumerated in sections 12, 14, 18 and 19 of the Act, which are within the purview of the Adjudicating Officer. He has further drawn our attention to para no.42 of the case titled as Sameer Mahawar Vs. MG Housing Pvt. Ltd. appeal no.6 of 2018 decided on 02.05.2019 by this Tribunal.



16. Finally, he contended that the defect of jurisdiction cannot be cured even by the consent or waiver and judgment without jurisdiction will be nullity. To support his contentions he relied upon cases Sushil Kumar Mehta Vs. Gobind Ram Bohra (dead) through his LRs. (1990) 1 SCC 193, Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (dead) Through LRs. And others (2004) 8 SCC 706 and Zauri Cement Limited Vs. Regional Director, employees' State Insurance Corporation, Hyderabad and others (2015) 7 SCC 690.

17. To controvert the aforesaid contentions Ld counsel for the respondents/allottees pleaded that section 11(4)(a) casts obligations/responsibility on the promoter to perform the functions under the provisions of the Act or the Rules and Regulations made thereunder or to the allottee as per agreement for sale. Ld counsel for the respondent further contended that promoter is liable for all the functions, obligations to the allottee as per agreement of sale. It is further contended that section 18(1) starts with negative clause 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 he will be liable for the consequences provided therein. It shows that there is obligation of the promoter to complete the project within the specified period and to handover the possession of the unit to the allottee.

18. It is further contended that the Ld Authority has power to grant interest in case of any contravention made by the promoter as per the provisions of section 38 of the Act. The interest provided in section 18 is different than the interest provided in sections 71 and 72 of the Act. Ld counsel for the respondent further contended that



the legislature has very wisely used two terminologies with respect to the interest in various provisions of the Act. One is the interest prescribed and second is only the interest. The interest-prescribed will automatically flow in case of delay. They contended that in sections 71 & 72 of the Act, the interest at prescribed rate is nowhere provided and the said interest is to be adjudicated upon as per the factors provided in section 72 of the Act and is an alternative to the compensation.

19. Ld counsel for the respondent further contended that the sole purpose of the appointment of the Adjudicating Officer under section 71(1) is to adjudicate the compensation and not beyond that. So the question of adjudicating interest by the Adjudicating Officer does not arise. The interest mentioned in section 71(3) is in the form of compensation. The Adjudicating Officer can also award one time compensation or in the alternative can grant interest.

20. They further contended that the jurisdiction of the Authority can be stated to be barred only with respect to those claims, which are specifically barred in rule 29 of the Rules. They contended that in rule 29 the Adjudicating Officer has been empowered to adjudicate the interest and compensation. They contended that the interest and compensation mentioned in this provision cannot be read separately. This rule will be applicable where the compensation has been sought alongwith interest. Whereas proviso to section 18(1) deals with the grant of interest alone on account of delay in delivery of possession, which has not been specifically barred under rule 29 or any provision of the Act. So, they contended that the Ld Authority had complete jurisdiction to deal



with the claim of interest for delayed possession and to grant such relief.

21. Thus they contended that the respondents/allottees have been rightly awarded interest by the Ld Authority for the delayed possession and the appeals filed by the appellant/promoter are without any substance.

22. We have duly considered the aforesaid contentions. The main thrust of the contentions raised by Ld counsel for the appellant/promoter revolves around the question of jurisdiction, he has vehemently contended that the Ld Authority had no jurisdiction to entertain the complaint as it cannot grant the relief of refund and even the interest.

23. There is no dispute with the proposition of law that the jurisdiction of the Court/Tribunal is to be determined keeping in view the contents of the plaint/complaint and not from the (from the relief) granted.

24. In Appeal no.56 of 2019 the respondent/allottee has only sought the compensation for delayed period alongwith interest. He has also sought the relief that the demand of VAT is unjustified and area of the flat should be as per provisional booking. So, in this case there is no prayer of the respondent/allottee for grant of the refund rather in the impugned order it is categorically mentioned that the respondent does not intend to withdraw from the project. Moreover it is evident from para no.9 of the impugned order that the respondent/allottee had reserved his right to seek compensation from the promoter by moving the separate application to the Adjudicating



Officer. So, he was not claiming the relief of compensation in the present complaint.

25. In Appeal no.57 of 2019 it is evident from the impugned order that the respondent had agreed that he does not want to withdraw from the project instead he intends to take the possession of the flat. Meaning thereby that in this case also the respondent has not sought any refund or compensation.

26. In Appeal no.55 of 2018 during the pendency of this appeal Ld counsel for the respondent/allottee has made the following statement :-

“That the respondent/allottee does not claim the relief of refund and compensation in this case and only pursues the relief regarding interest. The remaining relief sought in the complaint may be deemed to have been given up.”

27. It is settled principle of law that appeal is the continuation of the suit. To support this view reference can be made to the cases Ramakutty Gupta Vs. Avara AIR 1994 SC 1699 and D. Purushotama Reddy & Anr. Vs. K. Sateesh 2008(4) RCR (Civil) 616. In view of the ratio of law laid down by the Hon'ble Supreme Court in the cases referred above the statement made by Ld counsel for respondent in appeal no.55 of 2018 during the pendency of the present appeal will relate back to the very institution of the complaint, whereby the respondent/allottee has given up the relief of refund and compensation and he is pursuing the case only for grant of interest for the delayed possession.



28. Word compensation mentioned in the relief clause in appeal no.56/2018 is also infact the interest sought for delayed possession. Thus in all the three cases the respondents/allottees were not claiming the refund or compensation in strict sense. The only relief being claimed by them in all the three cases is the grant of interest for delay in the delivery of possession and they have intended not to withdraw from the project rather they are interested to seek the delivery of the possession.
29. Now the question of determination before this Tribunal is as to whether the Ld Authority was competent to grant the interest for delayed possession or not?
30. There is no dispute that as per the scheme of the Act, the main role of the Ld Authority is regulatory for the development of the project. But at the same time, the Ld Authority is invested with various adjudicatory functions. Chapter-VIII of the Act provides the offences, penalties and adjudication. As per sections 59 to 63 the Authority is empowered to impose the penalties for violation of the provision of the Act and the rules made thereunder. Rule 28 of the Rules provides the complete procedure for the imposition of penalties after due inquiry and adjudication. So, it cannot be stated that the Authority had no adjudicatory role.
31. It is further the settled principle of law that exclusion of the jurisdiction is to be strictly construed. As per the provision of rule 28 of the Rules the Authority is debarred to deal with the matters, which have been specifically provided in the rule 29 of the Rules to be dealt with by the Adjudicating Officer.
32. Section 71(1) of the Act reads as under:-



“Power to adjudicate.-

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under section 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.”

33. Section 71(1) provides for the appointment of the Adjudicating Officer for adjudging the compensation under section 12, 14, 18 & 19 of the Act. Word interest does not figure in Section 71(1). Interest only figures in section 71(3), which provides that the Adjudicating Officer may direct to pay such compensation or interest **as the case may be.** It signifies that the interest mentioned in section 71(3) is an alternative to the lump sum 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. Whereas the interest payable under proviso to section 18(1) is interest simplicitor on the prescribed rate for delay in delivery of the possession where the allottee intends to remain in the project. Said



interest automatically flows from the terms of the agreement and does not involve intricate adjudication.

34. Rules 28(1) and 29 reads as under:-

28. Filing of complaint with the Authority.

[Section 31].--(1) Any aggrieved person may file a complaint with the Authority for any violation of the provisions of the Act or the rules and regulations made thereunder, save as those provided to be adjudicated by the adjudicating officer, in Form 'CRA', in triplicate, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft of a bankers cheque drawn on a Scheduled bank in favour of "Haryana real Estate Regulatory Authority".

29. Filing of complaint and inquiry by adjudicating officer. Sections 12, 14, 18 and 19.

(1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'CAO', in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.

(2) The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely:-

(a) upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;

(b) the respondent against whom such notice is issued under clause (a) of sub-rule (2) may file his

reply in respect of the complaint within the period as specified in the notice;

(c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;

(d) on the date so fixed, the adjudicating officer shall explain to the respondent about the contravention alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent,

(i) pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he deems fit, as the case may be, in accordance with the provisions 21 of the Act or the rules and regulations, made thereunder;

(ii) does not plead guilty and contests the complaint, the adjudicating officer shall demand and explanation from the respondent;

(e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, he may dismiss the complaint;

(f) in case the adjudicating officer is satisfied on the basis of the submissions made that there is a need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;

(g) the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;

(h) the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents



which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence.

(i) on the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the respondent is,-

(i) liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 14 and such compensation as he deems fit.

(ii) not liable to any interest or compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;

(j) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.

(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.

35. In rule 29(1) it is provided that any aggrieved person may file a complaint with the Adjudicating Officer for interest and



compensation as provided under sections 12, 14, 18 and 19. Sub rule 2 provides the procedure to be followed for adjudging the interest and compensation. The words mentioned in rule 29 are the interest and compensation which cannot be segregated and the only possible interpretation is the compensation alongwith interest or interest in lieu of compensation. Thus in view of the scheme of the Act and the rules, rule 29 deals with the grant of compensation alongwith interest or the interest in lieu of compensation.

36. Section 72 of the Act reads as under:-

72. Factor to be taken into account by the adjudicating officer.-

While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

37. Section 72 of the Act makes implicit the factors to be taken into account by the Adjudicating Officer in order to adjudge the quantum of compensation or interest. It shows that the interest mentioned in section 71 is not the interest at the prescribed rate. Rather it has to be determined keeping in view the factors mentioned in section 72 of the Act. Thus it cannot be concluded that section 71



of the Act or rule 29 also covers the interest simplicitor claimed by the allottee for causing delay in the delivery of possession. Consequently there is no specific bar to the Authority to deal with the cases seeking the direction for the delivery of possession and interest simplicitor for delayed possession.

38. On the strength of the observations of Hon'ble Bombay High Court Neelkamal's Case (supra) it was argued that the interest provided in proviso to section 18(1) of the Act is compensatory in nature and has to be dealt with by the Adjudicating Officer. This Authority is of no help to Ld counsel for the appellants on this issue as the subject matter in that case was the vires of the provision of the Act. The point for consideration before the Hon'ble Bombay High Court was not the inter-se dispute of jurisdiction between the Authority and the Adjudicating Officer. So, in that case the Hon'ble Bombay High Court has no occasion to determine as to which of the forum will entertain the complaint wherein the relief claimed is the grant of interest for delay in delivery of possession in Lavasa Corporation Ltd's Case (supra) was also the dispute was not to determine the issue mentioned above. Ld counsel for the appellant has also relied upon the case Lavasa Corporation Ltd. Vs. Jitendra Jagdish Tulsiani, 2018 SCC Online Bombay 2074 by the Bombay High Court. But in that case also there was no issue before the Hon'ble Bombay High Court to determine as to which form was competent to grant the interest for delayed possession.

39. 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

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

40. 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 damaged may receive equal value for the loss or in respect of injury suffered by him.

41. 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. So, the interest provided in section 18(1) is a interest simplicitor which is available to an allottee who does not intend to withdraw from the project as a return for his money used by the promoter for causing delay in the delivery of the possession. The Hon'ble Bombay High Court in case **Neelkamal (supra)** has simply mentioned that the interest under section 18(1) is also compensatory in nature. But it cannot be construed to be the compensation in strict sense to fall

within the purview of sections 71 and 72 of the Act read with rule 29 of the rules.

42. Section 11 of the Act reads as under:-

11. Functions and duties of promoter:-

(1).....

(2).....

(3).....

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder of allottees as per the agreement for sale, or to the association of allottees, as the case may be till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

43. Section 11(4)(a) of the Act provides that the promoter

shall be responsible to fulfil the obligation towards the allottee as per

the terms and conditions of the agreement for sale. Once this

obligation has been incorporated in the substantive provision of the

Act, its non compliance may invite the violation of the provision of the

Act. As per section 34(f) the Authority is competent to ensure the

compliance of the obligations casted upon the promoter under this

Act and the Rules and Regulations made thereunder. As per section



11(4)(a) it is the statutory obligation of the promoter to fulfil his obligations and responsibilities towards allottee as per agreement for sale. So, the Ld Authority can enforce the compliance of said obligations under section 34(f), which are not expressly prohibited to be taken cognizance of by the Authority under the Act and rules made thereunder. There is no dispute with the proposition of law that rules are the subordinate legislation but there is a vacuum in the Act the rules supply the gap. The rules framed by the Government regarding inter-se jurisdiction of the Authority and the Adjudicating Officer are not contradictory to the Act. Thus for awarding the interest under section 18(1) of the Act due to non-fulfilment of the obligations/responsibilities as per the terms and conditions of the agreement by the promoter, the Authority will be competent to award interest simplicitor by taking the aid of the provision of section 11(4)(a), 34(f) and 37 of the Act.

44. Section 38 of the Act reads as under:-

"38. Powers of Authority. -

(1) *The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and regulations made thereunder.*

(2) *The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.*



(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may suomotu, make reference in respect of such issue to the Competition Commission of India.”

45. The aforesaid provision of law also empowers the Authority to impose penalty or interest in respect of any contravention of obligations casted upon the promoter, allottee and real estate agent under this Act and Rules and Regulation made thereunder. As already discussed the obligations/responsibilities of the promoter towards the allottee as per the terms and conditions of the agreement are also the statutory obligation in view of section 11(4)(a). The Hon'ble Bombay High Court in Neelkamal's Case (supra) has laid down as under:-

“Insofar as Section 38 is concerned, the Authority is empowered to impose penalty or interest in respect of contravention of obligations cast upon the promoter/allottees under the Act or the Rules and the Regulations made thereunder. Thus, the Authority can also impose penalty or interest on the allottees for contravention of the obligations cast upon them. At the same time, the Authority can impose penalty or interest on the promoter on account of contravention of obligations cast upon him.”

Even, in view of the aforesaid observations of Hon'ble Bombay High Court in Neelkamal's case (supra), the Authority is empowered



to impose interest for non-compliance thereof by virtue of section 38 of the Act.

46. There is no dispute with the proposition of law that specific provisions will override the general provisions, but this principle is applicable only where there is inconsistency in the said provisions. But here in this case the Adjudicating Officer is competent to deal with the cases where there is claim for grant of refund, compensation alongwith interest. There is absolutely no prohibition to the Authority to deal with the cases where the claim is for delivery of possession and interest simplicitor for delay in possession. Thus cases J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. (supra), Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd. (supra) and Union of India v. India Fisheries (P) Ltd. (supra) relied upon by Ld counsel for the appellant are quite distinguishable on facts. Ld counsel for the appellant has also drawn our attention to some of our observations in Sameer Mahawar Vs. MG Housing Pvt Ltd. appeal no.6 of 2018 decided on 02.05.2019 by this Tribunal. He contended that this Tribunal in its judgment dated 02.05.2019 in bunch of appeals lead case being Sameer Mahawar Vs. M.G. Housing Pvt. Ltd. Appeal No.6 of 2018 by referring section 38 of the Act had concluded that it is only the Adjudicating Officer who is competent to grant the interest at the prescribed rate. He contended that in proviso to Section 18 (1) also the interest payable is at the prescribed rate, which can only be awarded by the Adjudicating Officer and not the Authority.

47. We have duly considered these contentions but we are unable to persuade ourselves to accept the same. The proviso to Section 18(1) only comes into play where the allottee does not intend



to withdraw from project. Meaning thereby he wishes to remain associated with the project with a hope to obtain the possession of the apartment, plot or building. As per Section 34 of the Act it is the function of the authority to regulate the real estate projects. Once the allottee chooses to continue with the project the role of the authority to regulate the project and to ensure the delivery of possession within the stipulated period assumes significance. No doubt in the proviso to Section 18(1) of the Act the interest payable for delay in handing over the possession is at such rate as may be prescribed but that will not oust the jurisdiction of the authority to award interest to the allottee in case there is delay in handing over the possession. There cannot be two separate forums i.e. one for regulating the development of real estate project and another forum to award interest for delayed possession as both these aspects are closely interlinked and interwoven. The regulation of the real estate project and ensure the delivery of the possession within stipulated time remains the primary factor once the allottee chooses to continue with the project and this function can only be performed by the authority under Section 34 of the Act. So, consequential event i.e. payment of interest in case of delayed delivery of possession should also be dealt with by the authority.

48. The aforesaid view taken by us may appear in somewhat divergent to the observations in **Sameer Mahawar Vs. M.G. Housing Pvt. Ltd.(supra)** but such minor variations are unavoidable as the Act and the Rules are loosely drafted. Moreover in Sameer Mahawar Vs. M.G. Housing Pvt. Ltd.'s case we were dealing the question as to which forum whether the authority or the adjudicating officer will be competent to entertain and grant the claim of refund alongwith interest. In that context by referring the provision of Section 38 of the



Act and Rule 15 of the rules it was mentioned that as only the Adjudicating Officer is competent to grant the interest at the prescribed rate, so only he can deal with the cases where the claim is for refund and compensation. So those observations were keeping in mind the competency of the forum to deal with and grant the relief of refund and compensation alongwith interest. The question of grant of interest simplicitor for delayed possession was not the matter in issue in that cases.

49. Ld counsel for the appellant has himself relied upon case

Sandeep Maan Vs. Real Estate Regulatory Authority, Punjab appeal no.53 of 2018 decided by the Hon'ble Appellate Tribunal Punjab on 27.02.2019. Even in this judgment at page no.44 in para no.2 it was held that the matter arising under proviso to section 18(1) cannot be placed before the Adjudicating Officer but the same shall be placed entirely before the Authority. So, this authority relied upon by Ld counsel for the appellant rather goes against his contentions.


50. Thus, keeping in view our discussion we are of the considered view that the Ld Authority is competent to deal with the complaints where the relief of 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 Ld Authority has 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.


51. No other point was raised before us at the time of arguments.



52. Consequently the present appeals are without any merit and the same are hereby dismissed.
53. The copy of this order be placed on record of the appeals no. 56/2018 and 57/2018.
53. File be consigned to record.


(Justice Darshan Singh (Retd))
Chairman, HREAT
29.07.2019


(Underjeet Mehta)
Member(Judicial)
29.07.2019


(Anil Kumar Gupta)
Member(Technical)
29.07.2019

ORDER-HARYANA STATE APPELLATE TRIBUNAL