

**IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL,
BENGALURU**

DATED THIS THE 6th DAY OF DECEMBER, 2022

PRESENT

HON'BLE SRI B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO. (K-REAT) 259/2020

BETWEEN:

Sobha Limited,
Sarjapur-Marathalli Outer Ring Road
Devarabisanahalli, Bellandur Post,
Bangalore – 560 103, Karnataka, India.

Represented by

Mr. Prasad M.S. authorized signatory

...APPELLANT

(By Sri. Adithya Sondhi, Senior Counsel along with Sri Ravishankar for
M/s Veeksha Law LLP, Advocate for Appellant)

AND

1. Karnataka Real Estate Regulatory Authority,
No.1/14, 2nd Floor, Silver Jubilee Block,
Unity Building, CSI compound,
Mission Road,
Bengaluru-560 027.

2. Mr. Sudhir Pillai,
Residing at 3037, Casa Paradiso,
Block-3, Sobha City,
Bengaluru – 560 064.

3. Mrs. Rama Pillai,
Residing at 3037, Casa Paradiso,
Block-3, Sobha City,
Bengaluru – 560 064.

..RESPONDENTS

(R-1-RERA –served and un-represented

By Sri Akash Raman Sinha for M/s Singhania & Co LLP, Advocates
for R-2 and 3)

This Appeal is filed under Section 44 (1) of the Real Estate (Regulation and Development) Act, 2016, praying to set aside the impugned order dated 16.03.2020 passed by the RERA, Bengaluru in compliant No. CMP/190112/0001852.

This appeal having been heard, reserved for judgment, coming for pronouncement of judgment this day, the Hon'ble Chairman delivered the following:

J U D G M E N T

The promoter of a real estate project known as "Sobha City Paradise Block-4" has preferred this appeal, challenging the impugned order dated 16.03.2020, passed by the Karnataka Real Estate Regulatory Authority, Bengaluru (hereinafter referred to as 'the Authority' for short) in complaint No. CMP/190112/0001852.

For the purpose of convenience, the appellant is hereinafter referred to as 'the promoter' and respondent Nos. 2 and 3 are referred to as 'the allottees'.

Brief facts leading to this appeal are:

2. The allottees who are husband and wife, entered into an 'agreement to sell' dated 21.07.2015 with the promoter to purchase an apartment bearing no. A2-4071, seventh floor, Block-16 of "Sobha City Casa Paradise Block-4" undertaken to be developed by the promoter for a sale consideration of Rs.1,40,60,180/- and on the same date, they entered into 'construction agreement' with the promoter; as per clause 5.1 of the construction agreement, the promoter was bound to complete the construction and deliver possession of the flat on 31.05.2018; Since the project was an ongoing project as on the date

of commencement of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act'), the promoter got the said real estate project registered with the RERA on 15.10.2017 under which, the date specified for completion of the project was 01.12.2018; according to the allottees, they paid an amount of Rs.1,40,77,294/- and addressed a letter through email dated 04.12.2018 to the promoter stating that as per the terms of the construction agreement, the agreed date for delivery of possession was expired on 31.05.2018 and that they are ready and willing to take possession of the flat only after receipt of occupancy certificate and requested the promoter to take steps for registration of the agreement; it is further averred in the complaint that the allottees, vide e-mail letter date 04.12.2018, conveyed to the promoter stating that since, the promoter not yet received the occupancy certificate, they do not intend to take possession of the flat without occupancy certificate; as, the promoter has failed to deliver possession of the flat within the date specified in the construction agreement, the allottees filed a complaint under section-31(1) of the RERA Act, before the RERA through online on 12.01.2019, seeking direction to the promoter to pay compensation towards the delay in delivery of possession of the flat with interest from May-2018. Subsequently, on 21.03.2019, the allottees filed a hard copy of the complaint before the Authority seeking the following reliefs:

- (i) To pass an order directing the Respondent to deliver the possession of the Premises with all legal and compliance

documents necessary for occupying the premises by the Petitioners'.

- (ii) To pass an order directing the Respondent to pay compensation towards the delay in delivery of possession of the premises at the interest rate as per Section-16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 and Section-18 of the Karnataka Real Estate (Regulation and Development) Act 2016 payable from May, 2018.
- (iii) To pass an order directing the Respondent to compensate for the rental payments being made by the Petitioners' May, 2018 till the date of delivery of possession of the Premises.
- (iv) To pass an order directing the Respondent to take the onus of responsibility of registering the Sale Agreement and the Construction Agreement, as required under the law, in the event the Respondent fails to deliver the possession of the Premises (along with the occupancy certificate and other legal and compliance documents) to the Petitioner within one month of the filing of this complaint".

3. After receipt of notice from RERA, the promoter appeared through their counsel and filed statement of objection, *inter alia* contending that since, the project was an ongoing project, the promoter got the project registered with the RERA on 30.07.2017 and the said registration certificate of the project was valid from 30.07.2017 to 01.12.2018; as per the terms of construction agreement, the promoter was required to complete the construction and hand over possession of the unit on 31.05.2018 and if grace period of six months is added, the date of delivery of possession would be on 01.11.2018; the promoter, after obtaining the completion certificate on 16.10.2018, applied to the BBMP for occupancy

certificate on 23.10.2018 and the occupancy certificate has been issued by the BBMP on 22/24.01.2020; it is contended that though the application for occupancy certificate was made on 23.10.2018, the same was granted on 22/24.01.2020, since the same has not been issued within a period of thirty days after filing of application, it should be construed that there was a deemed occupancy certificate issued on 22.11.2018 and, hence, the period of delay is required to be reckoned either from date of application i.e., 23.10.2018 or from 22.11.2018 (deemed occupancy certificate) and not from 01.06.2018; as per the ledger extract, the allottees have paid only Rs.1,35,77,304/- and that they did not pay the entire sale consideration amount and still there was an outstanding amount of Rs.10,34,496/- payable by the allottees. On the above grounds the promoter requested the Authority to dismiss the complaint.

4. After hearing both the parties and on perusal of the records, the Authority, by impugned order, allowed the complaint filed by the allottees in part. The operative portion of the impugned order reads thus:

"1. Registration of Sale Agreement: The promoter is directed to register the sale agreement forthwith at the cost of the promoter and no recovery shall be made from the allottees since the delay in registration of the sale agreement is entirely attributable to the promoter. Since this relief was sought in the initial stage of the hearing of the complaint, the same is allowed to recognize the right of an allottee to get the sale agreement registered even at a later date.

2. Handing over possession: Promoter is hereby directed to handover possession of the apartment to the allottees within two weeks from the date of this order, since the Occupancy Certificate is obtained.

3. Registration of the Apartment: Promoter is hereby directed to register the apartment in favour of the allottees within four weeks from the date of this order.

4. Compensation: i) The allottee/s has furnished a statement of computation of compensation on the basis of which it is evident that the allottee/s are entitled for compensation on the payments made by them, on account of the fact that the apartment was not delivered for possession for occupation as per the date committed by the promoter in the sale agreement which is 31st May 2018.

ii) The interest payable by promoter to the allottees/s is regulated in accordance with the Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017. The submission of the allottees/s that the respondent promoter has charged 11% interest on the final payment due from the allottees is found to be arbitrary. The allottees is liable to make the final payment only at the time of the delivery of possession for occupation and therefore any levy of interest and any deduction/recovery of any such amount from the compensation payable to the complainant allottees is not permissible. It is evident from the Memo submitted by the complainant allottees that the final payment of Rs.10,07,076/- has also been made by 1st February, 2020 itself without waiting for handing over possession of the apartment. Having regard to the facts and circumstances of the case, the promoter of the project is hereby ordered to pay compensation in accordance with Rule 16 of The Karnataka Real Estate (Regulation and Development) Rules, 2017. Accordingly, the respondent is directed to pay interest to the complainant-allottees @ State Bank of India highest marginal cost of lending rate plus two percent computed from 01.06.2018 till the date of handing over possession of the apartment. For the purpose of calculating the interest payable, the aggregate amount paid by the allottees up to 31.05.2018 shall be considered has the principal amount and the final payment of Rs.10,07,074/- paid on 1st February, 2020 shall be ordered to the principal amount, so as to consider the said amount also eligible for interest w.e.f. 2nd February, 2020.

5. Completion of all developments works and amenities: The respondent-promoter is further directed to ensure that all the pending development works are completed as per the specifications and representations made in the sale agreement; all the internal and external developmental works are completed in accordance with the approved plan of the project and all the requisite amenities are provided and are functioning satisfactorily.”

Being aggrieved by the above order, the promoter has preferred this appeal.

5. We have heard Sri. Adithya Sondhi, learned senior counsel along with Sri Ravishankar for M/s Veeksha Law LLP, Advocate for appellant and Sri Akash Raman Sinha for M/s Singhania & Co LLP, Advocates, learned counsel appearing for the allottees-respondents 2 and 3 and perused the records. The 1st respondent-RERA though served, remained un-represented.

6. Learned senior counsel appearing for the promoter submits that the Authority has no jurisdiction to pass the impugned order and issue directions contained in para-4 of the operative portion of the impugned order, inasmuch as, it is the Adjudicating Officer who has jurisdiction to entertain the complaint relating to delay compensation with interest, as per Rules-29 and 30 of the Karnataka Real Estate Regulation Rules, 2017 ('the Rules for short'); while passing the impugned order, the Authority has failed to afford sufficient opportunity for the promoter to put-forth their case and thereby, violated the principles of natural justice; solely on the basis of a memo dated 26.02.2020 filed by the complainants and without there being

any pleadings and without an application of mind, the Authority committed an error in considering the enhanced calculation of a wrong claim of Rs.54,60,543/-; the Authority grossly erred in computing the amount from 01.06.2018 by ignoring the terms contained in clause-5.5 of the construction agreement; though the impugned order was passed on 16.03.2020, the same was communicated to the appellant on 12.05.2020 and due to pandemic COVID-19, the appellant was not in a position to comply the impugned order by executing registered sale deed in favour of the allottees. Under the circumstances, the Authority should have excluded the said period by applying the principles of *force-majeure*; the Authority has failed to consider that the prayer made by the complainant was only for delay compensation and despite the fact that there was no specific prayer made in the complaint for payment of interest, the Authority has illegally granted payment of interest. Further, it is contended that subsequent to filing of the application dated 23.10.2018 for grant of occupancy certificate, the BBMP had issued demand notice dated 10.12.2019, demanding ground rent charges from the promoter and challenging the said notice, the promoter filed writ petition No.52682/2019 before the High Court of Karnataka where an order came to be passed on 20.12.2019 directing the BBMP to issue occupancy certificate in favour of the promoter and hence, the period spent during pendency of writ proceedings from 23.10.2018 to 20.12.2019 is to be excluded while computing the interest payable to the allottees.

7. It is contended by the learned senior counsel that after receipt of occupancy certificate on 22/24.01.2020, the appellant intimated the same to the allottees by E-mail dated 28.01.2020 attaching copy of the occupancy certificate and requested the allottees to make the balance payment to enable them to initiate process of handing over the unit and thereafter, the allottees paid the final payment of Rs.10,07,076/- on 01.02.2022 and get the sale deed registered on 23.06.2020 and took possession of the flat. That on 13.07.2022, the learned counsel for the appellant has filed additional written submissions. While reiterating the contentions urged earlier, *inter alia* it is contended that as per the agreement, any claim for delay compensation can only be from 01.12.2018 and for reasons otherwise than the one mentioned in clause-5.4 of the agreement and, therefore, the complainants are not entitled for any compensation irrespective of any reasons for the period from 01.06.2018 to 01.12.2018. Further, he contended that as per Section-18 of the Act, the allottees are entitled for interest on delayed possession only as per the terms of the agreement, as held by the Hon'ble Supreme Court in ***M/s Newtech Promoter and Developers Pvt. Ltd V/s State of UP & Ors (2021 SCC OnLine SC-1044)***.

8. The sum and substance of the arguments advanced by the learned senior counsel is that:

- (i) since the prayer in the complaint was for mere compensation, the Authority has no jurisdiction to pass the

impugned order and it is the Adjudicating Officer who has jurisdiction to entertain the complaint;

- (ii) though due date for delivery of possession of the flat including grace period was on 01.12.2018, since the promoter had obtained the completion certificate on 16.08.2018 itself, much prior to the date due for delivery of possession and applied for occupancy certificate on 23.10.2018, there was no delay at all on the part of the promoter in delivering possession of the flat and hence, the period for delay in delivering possession is required to be reckoned from the date of application for occupancy certificate i.e., from 23.10.2018 and not from 01.06.2018;
- (iii) The grace period from 01.06.2018 to 01.12.2018 and three months lockdown period from 22.03.2020 to 23.06.2020 lapsed on account of pandemic COVID-19 is required to be excluded while computing delay for payment of compensation;
- (iv) the rate of interest awarded by the Authority is exorbitant;

On these grounds, the learned senior counsel prays for modification of the impugned order. In support of his contentions he placed reliance on the following judgments:

- i) ***M/s Newtech Promoter and Developers Pvt. Ltd V/s State of UP & Ors (2021 SCC OnLine SC-1044);***
- ii) ***Brindavan Roller Flour Mills Pvt Ltd V/s Joint Commissioner of Commercial Taxes. (ILR 1994 KAR 2196);***
- iii) ***Suresh Babu V/s S.Susheela Thimmegowda. (ILR 1998 KAR 3885);***

- iv) ***R.K.Sabharwal and Ors. V/s State of Punjab and Ors. (AIR 1995 SC 1371);***
- v) ***Baburam V/s C.C. Jacob and Ors. (AIR 1999 SC1945);***

9. On the other hand, Sri Akash Raman Sinha, learned counsel for the allottees (respondents 2 and 3) submitted that since the claim made by the allottees in their complaint was for compensation for the delay in handing over possession, jurisdiction for adjudication of the complaint filed by the allottees vests with the Authority and the Authority indeed has jurisdiction to entertain the complaint filed by the allottees in exercise of its power under Section-18(3) of the Act; granting of interest for the delay in delivering possession is a consequential relief and hence, the prayer for delay compensation cannot be termed as the prayer for delay compensation without interest; though there was a clause/terms for grace period of six months, such grace period cannot be taken into account, while computing the interest for the period of delay in delivery of possession of the flat, inasmuch as, such grace period is not provided under any of the provisions of the RERA Act, and hence, the allottees are entitled to claim interest even for six months grace period; no where in the RERA Act, it is provided that the date of application for occupancy certificate is to be reckoned as the relevant date for calculating the interest payable to the allottees and the relevant date for calculating interest should be strictly in accordance with terms contained in the construction agreement as well as sub-section (1) and (3) of Section 18 of the RERA Act; as, all the Government Offices are working with

50% staff by following the guidelines of Standard Operating Procedure (SOP) of the State Government, there was no embargo for the promoter to execute the registered sale deed in favour of the allottees during COVID-19; the rate of interest awarded by the Authority is strictly, as per the proviso to sub-section (1) to section-18 of the Act and Rule-16 of the RERA Rules. Hence, the rate of interest awarded by the Authority cannot be termed as exorbitant. On these grounds, he prays for dismissal of the appeal filed by the appellant-promoter. In support of his contentions he placed reliance on the following judgments:

i) Pioneer Urban Land and Infrastructure Limited vs Govindan Raghavan (2019 (10) Scales-523;

ii) Bangalore Development Authority V/s Syndicate Bank: Supreme Court of India: Civil Appeal No.5462 of 2002 decided on 17.05.2007;

iii) Central Inland Water Transport Corporation Limited and Another V/s Brojo Nath Ganguly and Another: Supreme Court of India: Civil Appeal No.4412 of 1985 decided on 06.04.1986.

iv) Mrs Hardesh Mehta V/s Parkwood Developers Parkwood Developers Private Limited and Others: State Consumer Dispute Redressal Commission, Punjab, Chandigarh: Consumer Complaint No. 07 of 2021 decided on 17.05.2021.

v) T.G.Ashok Kumar V/s Govindammal and Another: Supreme Court of India: Civil Appeal No.10325 of 2021 decided on 08.10.2010.

vi) Mr. Suryakanth Yashwant Jadav V/s Bellissimo Hi-Rise Builders Pvt. Ltd. (Maharashtra Real Estate Appellate Tribunal, Mumbai) Appeal no.21407 and 21408).

10. After arguing for some time, the learned senior counsel appearing for the appellant fairly submits that since, subsequent to the impugned order, the promoter has already executed the registered sale deed on 23.06.2020 in favour of the allottees-respondents-2 & 3 and handed over the possession of the flat along with Occupancy Certificate and amenities, the reliefs granted at paras-1, 2, 3 & 5 of the operative portion of the impugned order have become infructuous and therefore, the appellant may be permitted to restrict the challenge made in the appeal only with regard to para-4 of the impugned order relating to grant of interest for every month's delay in handing over of the possession and the rate of interest awarded by the Authority. Similarly, the learned counsel appearing for the contesting respondents-2 and 3-allottees fairly submits that in view of the promoter executing registered sale deed and delivering the possession of the flat along with occupancy certificate and amenities, the reliefs granted at paragraphs 1,2,3 and 5 of the operative portion of the impugned order have become infructuous and that the allottees have no objection for the Tribunal to permit the appellant to restrict the challenge made in the appeal to the relief granted at para 4 of the operative portion of the impugned order.

11. The submissions made by the learned counsel appearing for the promoter and the allottees are placed on record. Accordingly, the appellant-promoter is permitted to restrict the prayer made in

the appeal only for challenging the relief granted at paragraph 4 of the impugned order.

12. In view of the above submissions of the learned counsel on both sides and permitting the appellant-promoter to restrict the challenge made in the appeal only to the relief granted by RERA at paragraph 4 of the operative portion of the impugned order relating to payment of compensation by way of interest and the rate of interest awarded by the Authority, the points that arise for consideration in this appeal are:

- (i) Whether the Authority has jurisdiction to pass the impugned order?
- (ii) Whether the Authority was justified in awarding interest for every month of delay in handing over of the possession with effect from 01.06.2018?
- (iii) Whether in the event of Authority holding there is delay in delivering possession could award interest at State Bank of India Highest Marginal Cost of Lending Rate plus two percent for every month of delay?
- (iv) What order?

Point No.(i):

13. In order to decide this issue, it is just and necessary for this Tribunal to refer to the law laid down by the Hon'ble Apex Court in the

case of ***M/S Newtech Promoters and Developers Pvt Ltd –vs- State of UP and others (2021 SCC OnLine SC-1044)***. In the said case, the Apex Court, while considering the issue as to whether the Authority has jurisdiction to direct return/refund of the amount to the allottees under Sections 12, 14, 18 and 19 of the Act, or the jurisdiction exclusively lies with the Adjudicating Officer under Section-71 of the Act, was pleased to held that **“refund and compensation”** are two distinct rights under the Act and they cannot be conflated/clubbed together and the manner in which the two are to be determined would require a different process and involve different consideration. The law laid down by the Hon’ble Supreme Court in paragraph-86 is relevant for the purpose of deciding the above issue which reads thus:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, **or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the power to examine and determine the outcome of a complaint.** At the same time, when it comes to a question of seeking the relief of adjudging

compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section-71 read with Section-72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016”

{emphasis supplied}

14. As could be seen from the prayer column (ii) and (iii) of the complaint and para-4 of the operative portion of the impugned order, though the allottees have sought for several reliefs including compensation towards the delay in delivering of possession of the flat, with interest at the rate specified under Rule-16 of the Rules, the Authority, except directing the promoter to pay interest to the complainant-allottees for every month of delay in handing over the possession of the flat, at the rate of State Bank of India highest marginal cost of lending rate plus two percent from 01.06.2018, has not granted any other reliefs including compensation and at the same time the allottees have not preferred appeal in not granting other reliefs sought by them. However, the promoter by misconstruing the word 'delay compensation' as 'compensation' has contended that the relief sought for by the allottees is not for the interest for every month

delay in handing over possession but their prayer was for 'compensation'. In the light of the specific relief of interest granted by the Authority for every month of delay in handing over of the possession, the said contention of the learned counsel for the promoter is not sustainable and the same is rejected.

15. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Newtech Promoters (supra)***, it is the Authority alone which has jurisdiction to entertain the complaint filed by the allottees seeking interest for every month of delay in delivering possession of the flat and the Adjudicating Officer has no jurisdiction to entertain the complaint for granting interest for the period of delay in delivery in possession. Hence, the submission made by the learned senior counsel appearing for the appellant that the Authority has no jurisdiction to entertain the complaint has no merit and cannot be sustained.

Accordingly, we answer point no.(i) in the affirmative holding that the Authority has jurisdiction to entertain the complaint filed by the allottees seeking the relief of interest for every month of delay in handing over possession of the flat as contemplated under proviso to Section-18 (1) (b) of the RERA Act.

Point No.(ii) :

16. With regard to this issue it is necessary to refer to the dates and events of the case on hand which are noted in the tabular below:

Dates	Events
24.08.2011	Appellant obtained the sanctioned plan from BBMP for construction of a real estate project known as 'Sobha city'
04.06.2013	Appellant obtained the modified plan which covers 'Sobha city' consisting of various phases, including 'Sobha City Casa Paradiso'.
13.07.2015	Respondents 2 and 3 who are husband and wife, jointly booked for a flat bearing No.A2-4071, 7 th floor, Block 4, in 'Sobha City Casa Paradiso' (Block No.16) in the composite development known as 'Sobha city'.
21.07.2015	Parties have entered into agreement for sale and construction agreement.
15.10.2017	Promoter registered the project with RERA which was valid from 30.07.2017 to 01.12.2018.
31.05.2018	Due date for delivery of possession of the flat.
01.06.2018	The Authority computed the payment of interest payable to the allottees for every month of delay in handing over the possession of the flat.
16.10.2018	Appellant obtained the completion certificate in respect of the project 'Sobha City Casa Paradiso'-Block 4 (Block-16) issued by the Registered Architect, certifying that the said project has been completed on 01.10.2018.
23.10.2018	Promoter applied for occupancy certificate.
22/24.01.2020	Promoter obtained the occupancy certificate.
28.01.2020	Promoter intimated to the allottees along with the occupancy certificate and requested the allottees to get the sale deed registered.
01.02.2020	The allottees paid final installment of Rs.10,07,076/-
23.03.2020 to end of May, 2020	Government imposed lockdown on account of COVID-19
23.06.2020	The promoter executed the registered sale deed in favour of the allottees and handed over the possession of the flat.

17. The facts which are not in dispute between the parties are stated as under:

(a) The appellant is a promoter of a real estate project and one such project undertaken to be developed by the appellant is 'Sobha City Casa Paradiso'-Block 4 (Block-16) and obtained the sanctioned plan on 24.08.2011 which was later modified on 4.06.2013. Respondents 2 and 3 jointly booked for a flat bearing No.A2-4071, 7th floor, Block 4, in 'Sobha City Casa Paradiso' (Block No.16) on 13.7.2015. Subsequently, on 21.7.2015, they entered into Agreement of sale and Construction agreement with the promoter to purchase the aforesaid flat for a sale consideration of Rs.1,40,60,180/-. As the project was an ongoing project as on the date of coming into force of the Act, promoter got the project registered with the RERA on 15.10.2017 which was valid from 30.7.2017 to 1.12.2018;

(b) The allottees filed a complaint before the Authority through online praying for a direction to the promoter to execute registered sale deed as per the agreement to sell entered into by the complainants with the promoter and deliver possession of the flat in their favour along with an interim prayer for a direction to the promoter for immediate registration of sale agreement and construction agreement;

(c) That subsequent to filing of online complaint, the allottees filed a hard copy of the complaint by elaborating their grievances and sought the reliefs as extracted in para 2 hereinabove;

(d) That after receipt of notice from RERA, the promoter appeared through their counsel and filed statement of objections which is extracted in brief at para 3 hereinabove.

18. It is the case of the promoter that there was no delay in delivering possession of the flat to the allottees as the project was complete in all respects as per the date agreed in the Construction agreement. The learned senior counsel referring to Annexure-G submits that the allottee has indirectly accepted the delivery of the possession after the expiry of grace period. He further submits that the promoter filed the application for obtaining OC on 15/23.10.2018 and it was acknowledged by the Town planning section of the BBMP on 23.10.2018. He further submits that since the OC has not been issued within a period of thirty days after filing of application, it should be construed that there was a deemed occupancy certificate in their favour as per Section 310(2)(b) of the Karnataka Municipal Corporations Act, 1976 and, hence, the period of delay is required to be reckoned either from date of application for obtaining O.C i.e., 23.10.2018 or from the date of deemed occupancy certificate i.e., 22.11.2018 and not from 01.06.2018 as alleged by the allottees .

19. Learned senior counsel for the promoter submits that the promoter filed a writ petition on 17.12.2019 in the Hon'ble High court of Karnataka and an order came to be passed on 20.12.2019 directing the BBMP to consider the case of the promoter for issuance of OC. Accordingly, OC was granted on 22/24.1.2020. He further submits that

the issue in the writ petition is with regard to exemption of GST in respect of the ground floor. The learned senior counsel further submits that only after the order passed by the Hon'ble High court in Writ petition No.52682/2019, the authority issued the Occupancy certificate without raising any objections. However, if there is any delay, it is only on account of the dispute regarding payment of GST.

20. Learned senior counsel submits that immediately after receipt of OC, the promoter intimated the allottees on 28.1.2020 and the allottees had two months time from the date of intimation to go for registration i.e., upto 28.3.2020. However, in the meanwhile, there was complete lockdown on account of pandemic-COVID 19 from 22.3.2020 to 23.6.2020, and the benefit of which the promoter is claiming for computing the delay for payment of compensation. The learned senior counsel further submits that the rate of interest awarded by the Authority is on the higher side.

21. Learned senior counsel appearing for the promoter further submits that after the conclusion of the arguments before the Authority, the complainants-allottees had filed three Memos by serving copies of the same on the promoter, but, however, no opportunity was given to the promoter to go through the said Memos and file objections and make submissions. Therefore, in view of non-consideration of all the above aspects by the authority and on account of violation of principles of natural justice, the directions at para (4)(i)& (ii) of the

impugned order are liable to be set aside and the matter is to be remitted to the Authority for fresh consideration.

22. Whereas, the learned counsel for the allottees contends that it was after the application filed by the promoter on 15/23.10.2018 for obtaining partial OC in respect of Blocks 12 and 16 an application for obtaining regular OC for Block 16 was filed for the first time on 25.10.2019 and it was acknowledged on 2.11.2019 by the Planning department, as could be seen from the documents produced along with the appeal memo by the appellant and this is also evident from the OC dated 22/24.01.2020 wherein reference has been made to the application dated 2.11.2019. It is the contention of the allottees that if the promoter had made the application on 15/23.10.2018 reference should have been made to that application. But, in the OC, reference has been made to the application dated 2.11.2019 for Block 16. Learned counsel for the allottees further submits that there is no provision for grace period either in the Act or in the Rules framed thereunder. With regard to the contention of the learned senior counsel for exclusion of lockdown period on account of pandemic Covid-19 for computing the delay, the learned counsel for the allottees submits that admittedly, the promoter intimated the allottees on 28.1.2020 that OC has been obtained and the allottees shall go for registration of the sale deed in respect of the flat allotted to them. The learned counsel submits that as per Section 19(10) of the Act, the allottees had two months time from the date of intimation of receipt of

OC, as they had to arrange for funds to go for registration. However, in the meanwhile complete lockdown on account of pandemic-COVID-19 was announced by the Union Government from 22.3.2020 and they had no other option, but to wait till the lockdown was relaxed and registration work was taken up in the Sub-Registrar's office. Hence, the delay cannot be solely attributed to the allottees and benefit of lockdown cannot be claimed by the promoter. The learned counsel further submits that having regard to the Objects and Reasons of the Act, interests of consumers are to be protected in an efficient and transparent manner. Therefore, the promoter is liable to pay interest to the allottees for the delay in handing over the possession of the flat, as per the impugned order.

23. The learned counsel for the allottees seriously disputes the date of application for obtaining O.C for Block No.16 and submits that if the records relating to submission of application by the promoter to the BBMP for obtaining O.C are summoned, it would disclose that the application for obtaining O.C for Block No.16 was not submitted on 15.10.2018 as contended by the promoter and it was submitted on 2.11.2019 and application filed on 15/23.10.2019 was for issuance of partial O.C in respect of Block Nos. 12 and 16 and in fact the allottees have made an application-I.A.III praying this Tribunal to direct the Joint Director, BBMP, Town Planning (North) to produce the application filed by the appellant bearing No. SL/LGL/659/2018 dated 15.10.2018 seeking issuance of Partial Occupancy Certificate in respect of Block-12

&16 for the residential project situated at Sy. No.7/1, 9/1 & 9/2 of Nagareshwara Nagenahalli, K.R.Puram Hobli, Bangalore East Taluk and 62/2 & 62/3 of Chokkanahalli Village, Yelahanka Hobli, Bangalore North Taluk along with all the enclosures.

24. The learned counsel for the promoter has contended that there is no delay in delivering possession of the flat by claiming deemed O.C and submits that the Authority has not considered as to whether there is deemed O.C. in favour of the promoter or not. Learned counsel submits that it is necessary because the claim of the allottees for payment of interest for every month of delay as contemplated under proviso to Section 18(2)(b) depends upon the date of completion of the project and delivery of possession along with O.C, and if the promoter has got O.C. within the date specified in the Construction agreement for delivery of possession, in such case, there will be no delay on the part of the promoter in delivering possession and promoter is not liable to pay interest for alleged delay.

25. The next contention of the learned counsel for the promoter is that as per clause 5.1 of the Construction Agreement the promoter is entitled for the grace period of six months and if that is taken into consideration, there will be no delay in delivering possession and question of directing the promoter to pay delay compensation for every month of delay does not arise. Whereas, the learned counsel for the allottees seriously disputes their contention and submits that there is no provision for grace period either in the Act or in the Rules and

further submits that the promoter is not entitled for inclusion of six months grace period as per clause 5.4 of the Construction Agreement.

26. That a plain reading of the impugned order would show that the Authority neither referred to the above rival contentions of the promoter and the allottees nor considered the same by formulating appropriate points for consideration of the above rival contentions with reference to pleadings and documents provided by the parties.

27. A perusal of the record would show that during the course of hearing, allottees have filed three memos by serving copies of the same on the promoter. However it is not clear from the order whether the promoter was given an opportunity to file objections to the said memos and make submissions on the same, which is violative of the principles of natural justice.

28. In view of the above, we hold that the Authority while awarding interest for every month of delay in handing over possession has not considered all the relevant material placed on record by the parties on the following rival contentions-

(i) when the promoter has made the application to the concerned authority for issuance of O.C-whether it was on 15/23.10.2018 as contended by the promoter with all required documents including clearance from the Fire Service Department or it was filed on 2.11.2019 as contended by the allottees with reference to relevant provisions of laws such as Karnataka Municipal Corporation Act, 1976, with Rules

thereto and prevailing Building bye-law issued thereunder in addition to RERA Act and Rules thereto;

(ii) whether the promoter is entitled for inclusion of six months grace period as per the terms of the Construction agreement or not and whether the promoter is entitled for deduction of three months lockdown period on account of pandemic Covid-19 or not;

(iii) whether there is benefit of deemed O.C in favour of the promoter or not in respect of the project "Sobha City Casa Paradiso Block 4" (Block No.16) or not; and

(iv) further the Authority has not afforded reasonable opportunity to the promoter to have his say on the memos filed by the complainants.

Thus there is no merit in the contention of the learned counsel for the allottees that matter may not be remanded to the Authority for consideration of the above aspect of the matter and the judgments cited by him opposing remand are not applicable to the facts and circumstances of the case. Therefore, we are inclined to set aside that portion of the impugned order passed at para 4(i) and (ii) of the operative portion of the order and remand the matter to the Authority for determination of interest for the period of delay, if any, in delivering possession by formulating the following points:

- (i) Whether the promoter had applied to the Planning Department, BBMP for issuance of O.C on 15/23.10.2018 as contended by the promoter or on 2.11.2019 as contended by the allottees along with all required documents including clearance from Fire Services Department?

- (ii) Whether the promoter is entitled for the benefit of deemed Occupancy Certificate in respect of the instant project?
- (iii) Whether the promoter is entitled for inclusion of grace period of six months as provided under clause 5.1 of the Construction Agreement while computing the period of delay, if any, in delivering possession?
- (iv) Whether three months lockdown period declared by the Union Government on account of COVID 19 has to be excluded while computing the period of delay if any in delivering possession?

Accordingly, we answer point No.(ii) in the negative.

Point No.(iii):

29. On careful perusal of the record including the terms of agreements with reference to relevant provisions of law applicable to the facts of the case especially Rule-16 of the RERA Rules, the Authority could awarded interest @ State Bank of India highest marginal cost of lending rate plus two percent for every month of delay in delivering possession of the flat. In the event of Authority holding there is delay in delivering possession could very well award interest @ State Bank of India Highest Marginal Cost of Lending Rate plus two percent for every month of delay and it would be in accordance with Section 18 of the Act and Rule 16 of the Rules thereto.

Point no.(iii) is answered accordingly.

30. Before parting with the case we state that as per Section 44(5) of the Act, the appeal shall be disposed of within sixty days from the date of receipt of appeal. The appeal was filed before the Tribunal on 25.06.2020. During 2020 and 2021, on account of certain restrictions due to Covid-19 pandemic and for want of presence of the

parties and their counsel the matter was adjourned from time to time. Further, for deposit of total amount by the promoter and on the submission of the learned counsel for both sides that there was possibility of amicable settlement, the matter was further adjourned on several occasions. As the attempts for amicable settlement on two occasions failed, the parties filed Interlocutory applications and, after notice on the said application, the appeal was finally heard on merit along with I.As. Hence, the appeal could not be disposed of within the time prescribed under Section 44(5) of the Act. I.A.III is rejected by a separate order granting liberty to the allottees to make such application before the Authority on remand of this appeal, if they are so advised in the matter.

31. For the reasons stated hereinabove, we pass the following:

ORDER

- (i) The reliefs granted at paragraphs 1,2,3 and 5 of the operative portion of the impugned order have become infructuous and they do not arise survive for consideration;
- (ii) The appeal is allowed and the impugned order dated 16.03.2020 passed by the Karnataka Real Estate Regulatory Authority, Bengaluru in compliant No. CMP/190112/ 0001852, insofar as to paragraph-4(i) and (ii) of the operative portion of the impugned order is hereby set aside and the matter is remitted to the Authority only to the said extent, for fresh

consideration, in accordance with law and in the light of the observations made herein above, after affording opportunity to both the parties;

- (iii) All the contentions of the parties are kept open to be urged before the Regulatory Authority;
- (iv) As the matter pertains to the year 2015, the Authority shall make an endeavor to dispose of the complaint as expeditiously as possible and at any rate within the outer limit of 45 days from the date of parties entering appearance;
- (v) Since the appellant-promoter and allottees-respondents have appeared before this Tribunal through their counsel, they are directed to appear before the RERA on 19.12.2022 without expecting further notice from RERA;
- (vi) In the event if there is no sitting of the authority on the said date, the matter may be taken up immediately on the next date of sitting;
- (vii) The Registry is hereby directed to release the amount deposited by the appellant with this Tribunal while preferring the Appeal in compliance of proviso to Section 43(5) of the Act, along with interest, if any, accrued thereon, by issuing either a cheque or DD in the name of the appellant-company and shall hand over the cheque or DD to the Authorised signatory of the appellant-company who has signed the vakalath and appeal memo, on furnishing necessary documents and by following due procedure;
- (viii) In view of disposal of the Appeal, all pending I.As. if any, stand rejected, as they do not survive for consideration;

- (ix) The Registry shall comply with the provisions of Section 44 (4) of the Act and return the records to RERA, if any.

There is no order as to costs.

**Sd/-
HON'BLE CHAIRMAN**

**Sd/-
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**

NOT AN OFFICIAL COPY