MADHYA PRADESH REAL ESTATE APPELLATE TRIBUNAL AT BHOPAL

Appeal No. A-160/2025
Institution Date : 22/08/2025

Before

Hon'ble Justice Shri B.K. Dwivedi, Chairperson
Hon'ble Shri P.C. Gupta , Member (Judicial)
Hon'ble Shri Ravindra Singh, Member (Administrative)

01. Municipal Corporation Bhopal
Address: Bhopal Municipal Corporation,
PMAY, (HFA CELL), Third Floor, ISBT Bhavan,
Habibganj, Bhopal (MP)

02. Mr.Ashok R Pawar
Address: A-81, Alkhapuri, Sagar Public School
Habibganj, Bhopal, MP : Appellants

Versus

Rishi Kumar Badode,
Address: H No. 114, B Rameshwaram,
Baghmughalia, Bhopal
Madhya Pradesh : Respondent

Counsel for the parties

For the Appellants : Advocate Nikunj Garg
For the Respondent : None

O R D E R

(Passed on- 17/09/2026)

Per , Justice, B.K. Dwivedi, Chairperson

The appeal under Section 44 of the Real Estate (Regulation and Development), Act 2016 (for short, hereinafter will be referred as, 'the Act of 2016') has been filed against impugned order dated 03/07/2025 passed by the Adjudicating Officer of Real Estate Regulatory Authority (hereinafter will be referred as, 'AO') in complaint case no. N-BPL-24-0341 whereby application filed by the under Section 31(1) read with Section 18 of the Act of 2016 has been partly allowed and following order has been passed:-

10. परिणामस्वरूप परिवाद अंशतः स्वीकार किया जाता है, और अनावेदक के विरूद्ध निम्नलिखित आदेश पारित किया जाता है।

1. उन्होंने तहसील हुजूर जिला भोपाल के ग्राम बागमुगलिया स्थित अनावेदकगण के प्रोजेक्ट प्रधान मंत्री आवास योजना में एक फ्लैट क्रमांक-1/106 एम.आई.जी. के ब्लॉक फेस-1 का दिनांक 23.06.2025 से आधिपत्य दिये जाने की दिनांक तक प्रत्येक माह के लिए राशि रू. 5,000/- (पांच हजार रूपये मात्र) राशि का भुगतान आवेदक को क्षतिपूर्ति के रूप में करेंगे।

2. यह कि मानसिक एवं शारीरिक क्षति के लिये 50,000/- (पचास हजार रूपये मात्र) की राशि का भुगतान आवेदक को करेगा।

3. यह कि प्रकरण के व्यय के रूप में 5,000/- (पांच हजार रूपये मात्र) की राशि का भुगतान आवेदक को करेगा।

4. यह कि 02 माह की अवधि के अंदर उपरोक्तानुसार क्षतिपूर्ति की राशि का भुगतान नहीं किये जाने पर अनावेदकगण उपरोक्तानुसार देय क्षतिपूर्ति राशि पर 6 प्रतिशत वार्षिक साधारण ब्याज का भुगतान आवेदक को करेगा।

5. यह कि दो माह की अवधि के पश्चात आवेदक नियमानुसार उपरोक्त क्षतिपूर्ति राशि के लिये कार्यवाही कर सकेगा।

6. अनावेदकगण क्षतिपूर्ति राशि पृथकतः एवं संयुक्ततः अदा करने के लिए उत्तरदायी होगें।

02. Facts necessary for disposal of this appeal are that Respondent has booked a flat no. 1/106 MIG in phase one of the Appellants project for total sale consideration of Rs. 25.00 lakh. A temporary allotment letter dated 24/06/2022 was issued in favour of the Respondent and after payment of entire sale consideration permanent allotment letter dated 28/10/2022 sale deed of the said flat executed on 28/03/2023.

2.1 Alleging not handing over the possession for the flat Respondent filed complaint for possession and also interest and compensation for delay due to mental and physical harassment. Appellants failed to mark their appearance after service of summons, therefore, *ex-parte* proceedings were drawn against them.

2.2 AO relying upon the documents filed by the Respondent came to the conclusion that till date the flat of the Respondent had not been completed and possession of the same has not been handed over to him. Relying upon the judgment by Apex Court

in **M/s Fortune Infrastructure and others Vs Trevor Delima,** Ld. AO held that the Appellants should have given possession of the flat to the Respondent by 25/06/2025. With reasoning that if the Appellants have provided possession of the flat to the Respondent by aforesaid date, Respondent could have earned rent on this property. On this basis complaint of the Respondent was partly allowed by the AO for sum for Rs. 50,000/- as compensation and further imposing liability of Rs. 5,000/- per month in lieu of rent, till handing over of the possession to the Respondent.

2.3 Ld. counsel for the Appellants submits that order passed by the AO is contrary to the law and facts of the case. Section 18 of the Act of 2016 has not been interpreted in the right perspective. Inviting attention of this Tribunal towards provision of Section 18 of the Act of 2016, Ld. counsel further submits that if promoter fails to complete or unable to given possession of an apartment, plot or building in accordance with the terms and conditions of agreement to sell or as the case may be, duly completed by date specified therein or due to discontinuance of his business as a developer on account of suspension or revocation of the registration, he shall be liable on demand to the allottees, to pay interest for every months' delay if allottee does not wish to withdraw from the project.

2.4 Ld. counsel further submits that in the instant case, AO failed to considered that no demand has been made as per Section 18 of the Act of 2016 by the Respondent, therefore, impugned order deserves to be set aside. It was not the case of Respondent that the flat is not ready for possession or that flat has not been constructed as per terms of the allotment which makes it crystal clear that the case was not falling within the ambit of Section 18 of the Act of 2016 which has been relied upon for passing the impugned order by the AO.

2.5 Ld. counsel further submits that Respondent has neither mentioned the terms of the agreement which the Appellants have violated nor mentioned the date by which the Appellants was liable to give possession of the flat which clearly establishes that essential of Section 18 have not been made despite that impugned order has been passed which is bad in law.

2.6 Ld. counsel further submits that the amount of Rs. 50,000/- has been awarded for mental and physical harassment overlooking the fact that Respondent has not given any details of mental or physical harassment. Default of the promoter as per Section 72 has not been established. Judgment relied upon by the AO that is M/s Fortune Builders (supra) was not applicable in the instant case which has been wrongly relied upon by the AO for passing the impugned order. Ld. counsel further submits that Ld. AO has also overlooked the fact that project in question was launched in 2020 and thereafter worldwide lockdown was imposed due to onset of Covid-19 pandemic. Even after that Appellants manage to complete the flat of the Respondent by June 2025 therefore, impugned order deserves to be set aside. Ld. AO has also failed in calculating the period from 24/06/2022 whereon only temporary allotment letter was issued but permanent allotment letter was issued on 28/10/2022, therefore, awarding of rent from any date prior to 28/10/2022 that too without any default from the side of Appellants has not been considered, which results of passing of impugned order. On these miscellaneous grounds Ld. counsel urges the court for setting aside the impugned order by allowing appeal.

03. Heard and considered the submissions. Perused the record.

04. It is not in dispute that the Respondent has purchased Flat No. 1/106 MIG in Block Phase 1 of the project developed under Prime Minister Awas Yojana at Baghumugaliya, Tehsil Huzur, Bhopal, for Rs. 25,00,000/-, for which allotment letter dated 24/06/2022 (Annexure A-4) and thereafter, a permanent allotment

letter dated 28/10/2022 (Annexure A-5) was issued. On 28/03/2023, a registered sale deed was executed in favour of the Respondent, after payment of the whole consideration amount. When Appellants did not provide possession of the aforesaid flat to the Respondent, he filed a complaint before the Authority, wherein the impugned order has been passed.

05. Section 18 of the Act, 2016 provides for return of amount and payment of compensation to the Allottee. It is beneficial to reproduce Section 18 of the Act, 2016, which runs as under:

> **"18. Return of amount and compensation.-(**1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,--
> (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
> (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason;
> **he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project,** without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:
> **Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."**

06. From bare perusal of the aforesaid provision as contained in Section 18 of the Act, it is evident that if the **allottee wishes to withdraw from the project, the promoter/developer on demand** will be under an obligation to return the amount received

by him to the allottee/s in respect of that apartment, plot or flat, as the case may be, with interest at such rate as may be prescribed. Proviso to aforesaid Section 18(1)(b) comes into play only when the allottee does not intend to withdraw from the project. In such situation, liability has been imposed upon the promoter/developer to pay to the allottee interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. Counsel for the Appellants has vehemently argued that liability of payment of interest for every month is also subject to **demand from the allottee**, but this Tribunal finds no reason to agree with the aforesaid contentions because in the instant case the Respondent has not withdrawn himself from the project, rather he continued with the project. Therefore, the condition as mentioned in Section 18(1)(b) of the Act shall not be attracted, which provides for return of the amount received by the promoter **on demand by Allottees**.

07. In the instant case, the proviso to clause (b) of sub-section (1) of Section 18 will be applicable, which provides for exigency if the allottee does not intend to withdraw from the project. The proviso does not start with the words, **"he shall be liable on demand of the allottee".** Therefore, in the considered view of this Tribunal, it is not required for the allottee to demand interest for every month of delay till handing over of the possession, if he intends to continue with the project. In view of the aforesaid discussion, the contention raised on behalf of the Appellants that interest for every month's delay will be payable to him **only if he demands the same** cannot find approval of this Tribunal and is, hence, discarded.

08. As far as the date fixed by the AO, i.e., 23/06/2025, for start of payment of compensation is concerned, the judgment passed by the Apex Court in **M/s Fortune Infrastructure and others v. Trevor Delima and Others in Civil Appeal Nos.**

3533-3534/2017 dated 12/03/2018 has dealt with and settled that where agreement entered into between parties, no time limit has been fixed for handing over the possession of flat or plot, time limit of 03 years from the date of entering into agreement will be considered as reasonable time limit. Para 15 of the aforesaid judgement is extracted as under:-

> "15. Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?"

09. In the similar factual matrix of the case in hand the learned AO has fixed deemed date 23/06/2025, relying upon the aforesaid judgment of the Apex Court, whereby possession of the flat purchased by the Respondent was to be delivered. In the light of the above observation by the Apex Court in judgement, the objection raised on behalf of the Appellants with regard to the date, i.e., 23/06/2025, is apparently erroneous when the agreement between the Appellants and Respondent was undisputedly entered into on 24/06/2022 and no time limit for delivery was fixed. Even if the permanent allotment letter (Annexure A-5) was issued on 28/10/2022, it will make no difference, as the actual allotment letter was already done on 24/06/2022 (Annexure A-4). The AO acted well within its powers as given under Section 71 of the Act for adjudicating compensation. Therefore, no fault can be found

with the impugned order, as the Appellants failed to point out any legal or factual error in passing of the impugned order.

10. In the light of the aforesaid discussion, we are of the considered view that the impugned order is not suffering from any legal or factual error, hence, no case is made out for interference by way of exercising appellate power by this Tribunal. Since the appeal is devoid of any substance, it deserves to be and is hereby dismissed.

11. No order as to costs.

12. Copy of this order be sent to the both parties free of cost.

13. Record of the Authority be sent to the Authority along with copy of this order.

14. After noting the result, case be consigned to the record room.

Sd/-	Sd/-	Sd/-
(JUSTICEB.K. DWIVEDI)	(P.C. GUPTA)	(RAVINDRA SINGH)
CHAIRPERSON	MEMBER (J)	MEMBER (A)

Date:17/09/2026
Place: Bhopal