MADHYA PRADESH REAL ESTATE APPELLATE TRIBUNAL AT BHOPAL

Appeal No. A-135/2025
Institution Date :04/12/2024

Before

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

Shri Dinesh Kumar Ladhani
S/o late Shri Ramesh Kumar Ladhani
Address: G-1, Sakar Residency,
B-100, Vijay Nagar, Lalghati,
Bhopal, M.P. : Appellant

Versus

1. Deepmala Infrastructure Pvt. Ltd.
   Registered Address: Gammon House,
   Veer Savarkar Marg,
   Prabhadevi, Mumbai-400025
2. Sachidanand Nasalpurkar
   Address: Plot No. 244, Shrishti C.B.D.
   Gammon Square, South T.T. Nagar,
   Bhopal, M.P. : Respondents

Counsel for the parties

For the Appellant : Advocate Rahul Ganeshe
For the Respondents : Advocate Rishabh Khare

O R D E R

(Passed on- 30/09/2026)

Per , Justice, B.K. Dwivedi, Chairperson

This appeal under Section 44 of the Real Estate (Regulation and Development) Act, 2016 (for short hereinafter will be referred to as 'the Act, 2016') has been filed against the impugned order dated 19/09/2024 in Case No. N-BPL-21-0182 passed by Adjudicating Officer-2 (for short hereinafter will be referred to as 'AO-2), whereby partly allowing application of the Complainant/Appellant herein, following order has been passed:-

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

1. उन्होंने तहसील हुजूर एवं जिला भोपाल, साउथ टी.टी.नगर भोपाल के पास स्थित अनावेदक के प्रोजेक्ट सृष्टि सी.बी.डी. आवासीय एवं व्यवसायिक परिसर में आवेदक ने फ्लैट नं. बी-1603 सोलवे तल पर ब्लॉक बी का दिनांक 05.07.2017 से आधिपत्य दिये जाने की दिनांक तक प्रत्येक माह के लिए राशि रू. 22,500/- (बाईस हजार पांच सौ रूपये मात्र) राशि का भुगतान आवेदक को क्षतिपूर्ति के रूप में करेंगे।

2. यह कि मानसिक एवं शारीरिक क्षति के लिये 5,00,000/- (पांच लाख 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 आवेदकगण को करेगा।

4. यह कि 02 माह की अवधि के अंदर उपरोक्तानुसार क्षतिपूर्ति की राशि का भुगतान नही 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. आवेदन न करने वाले व्यक्ति अलग-अलग और संयुक्त रूप से हर्जाना अदा करने के लिए उत्तरदायी होंगे।

2. Facts necessary for disposal of this appeal, in a nutshell, are that the Appellant, who was complainant before the Real Estate Regulatory Authority (for short hereinafter will be referred to as ‘RERA’) has purchased one flat bearing No. B-1603, 16th floor, Block-B, admeasuring area 1569sq.ft. in project ‘Srishti C.B.D.’, Tehsil-Huzur, Bhopal. The flat was purchased on 08/11/2011 for the consideration amount of Rs. 89,05,880/- and sale agreement for the same was executed on 05/07/2014. As per terms and conditions of the agreement, the aforesaid fully developed residential flat was to be delivered by the year 2017. Due to infringement of terms and conditions of delivery of possession, the Appellant filed a complaint on 29/04/2023 before the RERA, wherein Respondents were directed to deliver possession of the flat

and a cost of Rs. 10,000/- was also directed to be paid to the Appellant. Learned Authority also gave finding that for the delay in delivering the possession the Appellant is not responsible. Taking cognizance over the aforementioned order, the learned AO-2 of RERA passed impugned order dated 19/09/2024, whereby Respondent was directed to pay compensation of Rs. 22,500/- per month from 05/07/2017 till the date of delivery of possession of the flat, along with Rs. 5,00,000/- as compensation for mental and physical agony and litigation expenses of Rs. 5,000/-. It was also directed that if aforesaid amount is not paid within a period of 02 months, the interest at the rate of 6% per annum shall be applicable upon the Respondent. Appellant being aggrieved by insufficient compensation has filed this appeal.

2.1 Ld. Counsel for the Appellant/Complainant submits that learned AO-2 failed to appreciate the facts and the quantum of compensation awarded is inappropriate and is on the lower side of the actual amount of rent prevailing in that area. Appellant never demanded the monthly compensation but has demanded interest on the principal amount payable to the Appellant, as Respondent failed to deliver the flat in the time promised. Appellant suffered for more than 07 years. Time mismatch and agony suffered by the Appellant have not been taken care of. On these miscellaneous contentions Ld. Counsel prays for allowing the appeal by awarding 20% per annum interest on the principal amount for each year till delivery of possession and enhancing the amount awarded on mental and physical agony to Rs. 10,00,000/- with litigation expenses of Rs. 1,00,000/-. To buttress his submission, Ld. Counsel has placed reliance upon the **order dated 14/11/2022 passed by Madhya Pradesh Real Estate Appellate Tribunal, Bhopal in case of Manvendra Singh Baghel Vs. Amit Jasuja.** He has also placed reliance upon **(2020) 16 SCC 512 WG. CDR. Arifur Rahman Khan and Aleya Sultana and ors. Vs. DLF Southern Homes Pvt.**

Ltd. (Now known as Begur OMR Homes Pvt. Ltd. And ors.) and the judgment of the Apex Court in **Civil Appeal No. 19421/2017 (Sri Shivaji Balaram Haibatti vs. Sri Avinash Maruthi Pawar).**

3. *Per contra,* Ld. Counsel for the Respondent vehemently opposes the impugned order on the ground that the Ld. AO-2 has acted beyond jurisdiction which has been provided to him by the Act, 2016. Ld. Counsel further submits that Appellant did not quit from the project, hence he is not entitled to any interest for the principal amount, which is provided under Section 18(1) of the Act, 2016. Ld. Counsel submits that when it comes to refund of the amount and interest on the refund amount or directing the promoter for delay in delivery of possession, or penalty or interest thereon, it is the RERA Authority which has power to examine and determine outcome of the complaint. For this Ld. Counsel has placed reliance upon the judgment of the Apex Court in **M/s. Newtech Promoters and Developers Private Limited Vs. State of UP. and Others.** He has also placed reliance on the judgement by Apex Court in **State of West Bengal & Ors. Vs. Jai Hind Pvt. Ltd. Dated 06/02/2026 in Civil Appeal No. 7407/2012,** to buttress his submission that order passed without jurisdiction is a nullity and can be challenged when it is to be enforced or relied upon even at the stage of execution and even in collateral proceedings. He has also referred judgment by the Apex Court in **Kiran Singh and Ors. Vs. Chaman Paswan (1954) 1 SCC 710.**

3.1 Ld.` Counsel further submits that the relief which was not claimed in the complaint cannot be given in appeal. For this, he has also referred relief clause of the complaint filed before the RERA by the Appellant. On these contentions, Ld. counsel prays for setting aside the impugned order as it is nullity.

4. Heard and considered the rival submissions raised at bar and perused the record.

5. From perusal of the complaint filed before the RERA, it is apparent that the relief no. 1 was with regard to direction for delivering possession of the booked flat and the same has admittedly been handed over to the Appellant. Second relief clamed in complaint was with regard to award of 12% interest on consideration amount from the date of deposit of the amount till actual payment and further for mental agony Rs. 10,00,000/- as compensation were claimed. Third relief claimed was with regard to award of litigation cost of Rs. 20,000/-. By the impugned order, for mental and physical agony Rs. 5,00,000/- has been awarded as compensation along with Rs. 5,000/- as litigation cost. In addition to the above by impugned order from 05/07/2017 till handing over the possession Rs. 22,500/- per month have been awarded as compensation.

6. In the relief clause of appeal memo, the Appellant/Complainant has claimed enhancement in compensation to the tune of 20% per annum over the principal amount deposited by the present Appellant for each year of failure to deliver the possession of the flat and also claimed enhancement in compensation amount awarded for mental and physical agony from Rs. 5,00,000/- to Rs. 10,00,000/- with litigation cost Rs. Of 1,00,000/-

7. Ld. counsel for the Respondent has vehemently argued that the compensation awarded by the AO-2, that is, Rs. 22,500/- per month, is beyond jurisdiction of AO as Appellant/Complainant has not quit the project, rather he remained in the project and obtained possession of the booked flat. No such compensation could have been directed to be paid by AO-2, as it is beyond its jurisdiction. To bolster his submission, Ld. Counsel for the Respondent has relied upon the judgment by the Apex Court in **M/s. Newtech**

Promoters and Developers Private Limited (Supra) and the judgment by **UP Real Estate Appellate Tribunal in appeal no. 351/2023 dated 20/11/2025 Aims Promoter Private Limited Vs. Bankim Chandra Nigam.** The Hon'ble Apex Court has elaborately discussed in para 86 of the judgment in **M/s. Newtech Promoters and Developers Private Limited (Supra)** the powers of the Authority and AO, referring Sections 12, 14, 18, 19 and 71 of the Act, 2016. Relevant para 86 can be beneficially reproduced, which runs as under.

> "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".

8. From perusal of the aforesaid finding by the Apex Court, it is amply clear 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 RERA Authority which has power to examine and determine the outcome of a complaint and when it comes to the question to seeking the relief of adjudging compensation and interest thereon, the AO exclusively has power to determine the same. The exposition of law made by the UP Real Estate Appellant

Tribunal in **Aims Promoter Private Limited Vs. Bankim Chandra Nigam** is also worth mentioning, wherein it has been observed that when allottee intends to stay in the project, he is entitled only to interest for delayed period as prescribed and its jurisdiction of determination lies with the RERA and not with the AO, hence the AO cannot grant delayed interest as compensation, because the statute does not provide any scope of compensation in such situation. Para 8.29 and para 8.30 are relevant for the case, which are reproduce as under.

> 8.29 On examination of the above finding of the Hon'ble Apex Court with the provision of the section 18 of the Act 2016, it is clear that when the Allottee decides to stay in the project even due to delay in handing over of the possession, 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, meaning thereby in this situation the Allottee is entitled for interest for every month of delay till the handing over of the possession, at such rate as may be prescribed, and not "compensation" as the Suffix "including compensation" in case of seeking refund due to delay beyond the period prescribed in the agreement.
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> 8.30 The scheme of the provisions of Section 18 of the Act 2016 clearly provides that in cases where the Allottee intends to stay in the project, the Allottee is entitled only for interest for delayed period as per the rate prescribed and its jurisdiction of determination lies in the Regulatory Authority and not with Adjudicating Officer, and hence the Adjudicating Officer cannot grant delay interest as compensation, because the Statute does not provide any scope of compensation in such situation. The question no. (i) is answered accordingly.

9. Thus, it is amply clear that direction as contained in para 12(1) and 12(4) of the impugned order with regard to payment of Rs. 22,500/- as compensation for the period of delay in delivering the possession is bad in law, hence not tenable. Even though Respondent has not filed any cross objection or cross appeal for setting aside the impugned order but keeping in view the settled position of the law to the effect that if any order is passed by the Authority beyond jurisdiction is deemed to be a nullity and can be challenged at

the stage of execution and even in collateral proceedings, as held in judgment by Apex Court in **Kiran Singh and Ors (Supra)**, therefore, even in absence of any cross objection or cross appeal from the Respondent side, the directions as contained in para 12(1) and 12(4) of the impugned order passed by AO-2 are nullity, therefore, are quashed.

10. So far as grant of compensation of Rs. 5 lakh for mental and physical agony along with Rs. 5,000/- as litigation cost by impugned order para 12(2) and 12(3) is concerned, the same is well within jurisdiction of the AO, as held by the Apex Court in **M/s. Newtech Promoters and Developers Private Limited (Supra).** Since no material is on record to show that the amount of aforesaid compensation for mental and physical agony and litigation cost is on lower side, hence arguments advanced on behalf of the Appellant for enhancement of the same cannot be accepted and the judgments relied upon by the Appellant do not come to his rescue, as they are distinguishable on facts. In the light of aforesaid discussions this appeal filed by the Appellant has no substance, deserves to be and is hereby dismissed.

11. Parties will bear their own cost.

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

13. Copy of this order along with record be sent to the Secretary, RERA for information and necessary action.

14. After noting the result case be consigned to the Record Room.

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

Date: 30/09/2026
Place: Bhopal

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