

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Member (J)

Hon'ble Mr. Rajeev Gupta

----- Member (A)

Appeal No. 11 of 2021

Mr. Praveen Khanduri, s/o Mr. D.D. Khanduri, r/o A-34, Rajrajeshwari Vihar,
Lower Nathanpur, Dehradun- 248001, Uttarakhand.

.....Appellant

versus

1. M/s Windlass Developers Pvt. Ltd.

Windlass River Valley, Kuanwala, Haridwar Road, NH-72, Dehradun-
248001, Uttarakhand,

Reg. Office- M/s Windlass Developers Pvt. Ltd., 53-R, Rajpur Road,
Dehradun, Uttarakhand.

2. Uttarakhand Real Estate Regulatory Authority

Address:- 5th Floor, Rajiv Gandhi Multipurpose Complex, Dispensary
Road, Dehradun- 248001, Uttarakhand.

.....Respondents

Present: Sri Praveen Khanduri, Appellant-Homebuyer

Sri Rajeshwar Singh, Advocate, for the Respondent-Promoter

Sri Aman Rab, Advocate, for Respondent No. 2 (RERA)

JUDGEMENT

Dated: 23rd September, 2022

Per: Mr. Rajeev Gupta, Member (A)

This appeal has been filed against the order dated 11.06.2021
of the Real Estate Regulatory Authority, Uttarakhand (for short,
'RERA') mainly stating that RERA had ordered to refund the complete

amount paid by the appellant to the promoter along with interest @ 9.30 %, which is the current highest Marginal Cost of Lending Rate (MCLR) of State Bank of India (SBI) + 2 %, while the appellant has paid interest to the SBI for the home loan taken for the apartment @ 9.75 %. RERA has held the respondent (promoter-builder) responsible for not complying with the rules and regulations, not abiding with the laws and repeated violation of its orders for which RERA has imposed a fine of Rs. 1,00,000/- on the respondent-promoter but still has given him the benefit of relaxing interest for two months in view of covid crisis while the appellant has paid interest to the bank for the same time period. Appellant strongly considers this as an act of favouritism by RERA towards the respondent-promoter.

According to the judgement of learned Authority below, respondent-promoter has to refund the amount of Rs. 34,66,719/- alongwith annual interest at the rate of 9.30 %, which amount comes to Rs. 55,29,436/- while the respondent has refunded Rs. 48,17,929/- only and the representative of respondent has refused the share the calculation basis of the amount refunded.

The appellant has prayed for following reliefs:

“(i) As per section 15 of UK RERA general Rules, which states that appellant will be given (Highest MCLR rate of SBI/ Benchmark lending rate) + 2 % as appellant has taken loan from SBI in year 2015, so Benchmark lending rate can be applicable as natural justice. UK RERA general rules doesn't specify that MCLR/ Benchmark lending rate should be the current one.

As per RERA Act 2016 Section 2-za(i) the rate of interest chargeable from the allottee by the promoter, in case of default shall be equal to the rate of interest which the promoter shall be liable to pay the allottee in case of default. In my case respondent has mentioned rate of interest of 15 % in flat buyer agreement (Article 5 clause no. 7).

Appellant would like to seek relief either as per RERA act 2016 or UK RERA general rules 2017, since the Appellant has paid interest to bank @ 9.75 % and in turn getting refund @ 9.30 % is not justified. Respondent should comply the same pattern adopted by bank for interest calculations.

(ii) Appellant is requesting honourable RERA appellate Tribunal to direct respondent or authority to pay two months interest which is waived of by the RERA judgement in lieu of Covid Crisis, since the appellant is paying interest to the bank on daily basis and there is no such offer from SBI to waive of interest in lieu of Covid crisis. RERA authority is extending sympathy to the builder instead of victim.

(iii) Direct the Respondent to pay a penalty of five percent of the estimated cost of the real estate project or lower, as may be determined by the Learned Authority.

(iv) Hold the Respondents liable to pay INR 1,00,0000/- to the Appellant as the cost of litigation & other expenses and compensation for harassment, mental agony, misrepresentation, breach of explicit and implied representation and warranties, fraud, misappropriation, destroying the social image of Appellant by putting his posters in township, deficiency of service, and unfair trade practice.

(v) Hold Respondent to issue formal apology letter to Appellant regarding defamation activates carried out by Respondent against appellant.

(vi) Although the matter was clear in honourable RERA court, still the matter was extended deliberately, no stringent timely action was taken against respondent neither they were penalized even after not abiding to the verdict laid down by RERA. Respondent was found out to be wrong and fake in several occasions still RERA passed on sympathy towards them. Appellant is having strong belief that all this action of sympathy and favouritism by authority towards respondent is deliberate in nature so appellant by means of this petition seeking intervention of Honourable RERA appellate tribunal and request to take action against RERA for harassment against appellant.

(vii) Graciously be pleased to pass any such other relief or reliefs in circumstances of this case.”

2. Heard the appellant and learned Counsel for the respondents. The appellant and the learned Counsel for respondent no. 1 have filed written submissions as well.

3. The appellant has produced the table of the MCLR historical data of SBI from 01.04.2016 to 15.02.2022, according to which the highest MCLR of SBI has decreased from 9.35 % to 7.30 % over this period. According to him, at the time of booking of the flat in June, 2015, highest MCLR/ BLR (Benchmark Lending Rate) was 14.05 %.

Appellant has argued that Rule 15 of Uttarakhand Real Estate (Regulation & Development) (General) Rules, 2017 (hereinafter referred as 'Rules of 2017') provides for interest rate to be highest MCLR/ BLR of SBI + 2 %. In the same, the word 'current' is not mentioned and therefore, the highest MCLR/ BLR from June, 2015 (date of booking of the flat) until now should be the basis of rate of interest.

4. Learned Counsel for the respondent no. 1 submitted that the power to grant interest comes from the Interest Act and Section 3 of this Act is as below:

“3. Power of court to allow interest –(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-”

Thus, the Interest Act states current rate of interest which will be the rate as on the date of order of payment of interest.

5. The Tribunal observes that the above Section 3 mentions proceedings about recovery of any debt or damages or proceedings about claim for interest in respect of any debt or damages already paid. However, the refund of the amount received by the appellant from respondent no. 1 cannot be classified as recovery of any debt or damages and therefore, the above provision is not applicable in the instant case. The refund of such amount alongwith interest and compensation is provided under Section 18 of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act'), which is reproduced below:

“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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

[emphasis supplied]

6. Rate of interest is prescribed under Rule 15 of the Rules of 2017, which is as below:

15- Rate of interest payable by the promoter and the allottee- The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent.

Provided that in case the State Bank of India Marginal Cost of Lending Rate is not in use, it would be replaced by such benchmark lending rate which the State Bank of India may fix from time to time for lending to the general public.

7. The Tribunal further observes that the above Rule 15 of the Rules of 2017 is silent about the date on which the State Bank of India highest Marginal Cost of Lending Rate has to be seen. The learned Authority below has taken the highest MCLR as prevalent on the date of the impugned order dated 11.06.2021 and the same is the judicial discretion of the learned Authority below in which no interference is called for by this Tribunal.

8. The learned Authority below, in the impugned order, has also waived the interest for the months of April and May, 2021 on account of covid pandemic. This Tribunal asked the learned Counsel for the respondents during the arguments to show any order according to which, the banks have waived their interest for this period. The learned Counsel for the respondents could not provide any such order regarding the waiver of interest for this period by the banks and the written submission dated 03.08.2022 subsequently filed on behalf of respondent no. 1 is also silent on this aspect.

9. The Tribunal observes that there is no provision for waiver of interest for certain period on account of pandemic either in the Act or the Rules of 2017 and order of such waiver by the learned Authority below was in contravention of the Act and the Rules of 2017.

10. The learned Authority below has made strong observations against the respondent no. 1 in the impugned order and has imposed penalty of Rs. 1,00,000/- on him for violation of the provisions of the Act and non-compliance of the orders of the RERA. The learned Authority below has also imposed heavy costs on respondent no. 1 on some adjournment sought during the hearing. Therefore, the Tribunal is unable to subscribe to the allegation of the appellant that the learned Authority below has shown any sympathy or undue favour towards respondent no. 1 (builder-promoter).

11. The written submission dated 03.08.2022, filed on behalf of respondent no. 1, states that he shall refund the amount of GST to the complainant (appellant herein) after getting the loan closure letter from the bank. The Tribunal observes that any part of the principal amount, which has been ordered to be refunded to the appellant by the learned Authority below shall also carry the liability of interest @ 9.30 % p.a. to be calculated till the actual date of payment. The Tribunal also observes that more than 15 months have been passed after the impugned order of the learned Authority below and the total amount along with interest thereon should be

refunded at the earliest failing which the learned Authority below should ensure recovery proceedings against the respondent no. 1.

12. The Tribunal further observes that the appellant may approach the adjudicating officer of the learned Authority below, after the same is appointed, for his other claims of compensation.

13. In view of the above, this Tribunal modifies the impugned order dated 11.06.2021 of the learned Authority below to the extent that there will be no waiver of interest for the months of April and May, 2021 on account of covid pandemic. The Tribunal also directs the learned Authority below to ensure that the entire amount received from the appellant by the respondent no. 1 along with interest @ 9.30 % p.a. is refunded to the appellant at the earliest failing which recovery proceedings may be initiated against respondent no. 1.

14. The appeal is accordingly disposed of. No order as to costs.

15. Let a copy of this order be sent to RERA for information and necessary action, in terms of Sub Section (4) of Section 44 of the Act.

(RAJENDRA SINGH)
MEMBER (J)

(RAJEEV GUPTA)
MEMBER (A)

DATE: 23rd September, 2022
DEHRADUN
RS