

**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. 02 of 2022

Mrs. Bindu Bala, w/o Shailendra Singh

Mr. Shailendra Singh, s/o Mr. Shatrughan Singh, r/o 222/2, Ward No. 10,
Devi Nagar, Ponta Sahib, Sirmour (H.P.) – 173025

.....Appellants

versus

1. Mr. Sudhir Windlass (Chairman)/ Mr. Pranav Rastogi (C.E.O.)

Address:- 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 Shailendra Singh, Appellant

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 27.12.2021
of the Real Estate Regulatory Authority, Uttarakhand (for short,

'RERA') mainly stating that RERA has passed the order of refund of the complete amount paid by the appellant-homebuyer to the respondent-promoter along with interest @ 9.30 % p.a. which is the current highest Marginal Cost of Lending Rate (MCLR) of State Bank of India (SBI) + 2 %, while the appellants have paid the highest MCLR rate of 8.55 % during the period of home loan taken for the apartment and accordingly the refund should be @ 8.55 % + 2 % i.e. 10.55 % and the interest was required to be paid as compound interest which is yet to be paid. In the impugned order dated 27.12.2021, RERA awarded four months' covid grace to the respondent no. 1 while the respondent had to deliver the flat on or before 14.10.2018, well before the onset of the covid pandemic in March, 2020. So the question of covid pandemic grace does not arise. The respondent no. 1 was fined for Rs. 5,000/- and Rs. 30,000/- on 22.09.2021 and 27.12.2021 respectively, so why covid grace.

The appellants have 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 2017, so Highest MCLR rate for the loan period/ Benchmark lending rate should also be applicable as natural justice.

UK RERA general rules doesn't specify that MCLR should be the current one.

(ii) 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).

(iii) Appellant would like to seek relief either as per RERA act 2016 or UK RERA general rules 2017, since the Appellant has paid MCLR to bank @ 8.55 %, then MCLR @ 7.30 % at the time of refund is not justified. Respondent should comply the same pattern adopted by bank for interest calculations.

(iv) Appellant is requesting honourable RERA appellate Tribunal to direct respondent or authority to pay four months interest which is waived of by the RERA judgement in lieu of Covid Crisis, since the appellant has paid interest to the bank and there is no such offer from SBI to waive of interest in lieu of.

(v) 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.

(vi) 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, fraud, misrepresentation, breach of explicit and implied representation and warranties, misappropriation, deficiency of service, and unfair trade practice.

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

2. Heard Sri Shailendra Singh, appellant and learned Counsel for the parties. They were also provided the opportunity to file written submissions subsequently within 15 days.

3. The appellant has argued that Rule 15 of Uttarakhand Real Estate (Regulation & Development) (General) Rules, 2017 (hereinafter referred as ‘Rules of 2017’) does not state ‘current’ highest MCLR and in the interest of justice, the highest MCLR during the period from the booking of the flat till the date of the order should be considered for grant of interest on refund of payment by the respondent-promoter to the appellant-homebuyer.

4. Written submission, filed on behalf of respondent no. 1, states 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 the 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 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 27.12.2021 and the same is the judicial discretion of the learned Authority below in which no interference is called for by this Tribunal.

8. As far the demand of compound interest by the appellants is concerned, the Tribunal observes that 'compound interest' has not been mentioned in the Act or the Rules of 2017 and only 'interest' has been mentioned. The non-mention of 'compound interest' shows that only simple interest is intended to be provided in the Act or the Rules of 2017.

9. The learned Authority below, in the impugned order, has also waived the interest for four months on account of covid pandemic. This Tribunal asked the learned Counsel for the respondents during the arguments to provide any order according to which, the banks have waived their interest for some months during the covid period. The learned Counsel for the respondents could not provide any such order regarding the waiver of interest 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.

10. 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 in the Act or the Rules of 2017.

11. The Tribunal notes that the learned Authority below has made strong observations against the respondent no. 1 and has imposed Rs. 30,000/- penalty on respondent no. 1 vide impugned order dated 27.12.2021. The cost of Rs. 5,000/- has earlier been imposed on respondent no. 1 for his absence during the hearing on 22.09.2021. The Tribunal is unable to subscribe to the allegation of the appellant

that the learned Authority below has delayed the final judgement purposefully benefitting the respondent no. 1.

12. The appellants have contended that though the principal amount was refunded within 45 days of the judgment dated 27.12.2021 of the learned Authority below but respondent no. 1 did not deposit interest within this 45 days' limit and deposited only part amount of Rs. 14,62,356/- on 09.05.2022, late by three months. The appellants have sought interest to be calculated on the basis of compound interest and also the interest for the delayed payment of interest.

13. The Tribunal has already observed that the interest to be paid according to Section 18 of the Act and Rule 15 of the Rules of 2017 is simple interest. If the simple interest was not paid within the prescribed time frame of 45 days, there is no provision for the interest on such delayed payment of interest but recovery proceedings shall have been initiated after the expiry of 45 days. The appellants may approach the adjudicating officer of the learned Authority below, after the same is appointed, for the same and other claims of compensation, demanded by them.

14. In view of the above, the Tribunal modifies the impugned order dated 27.12.2021 of the learned Authority below to the extent that there will be no waiver of four months' interest in view of the covid pandemic and the entire period shall be counted for calculation of interest.

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

16. 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