BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000021137
In
Complaint No. CC006000000023368

1) M/s. Siddhitech Homes Pvt. Ltd.

2) Hemant Mohan Agarwal

Director,

M/s. Siddhitech Homes Pvt. Ltd.

Unit No. 14, 14th Floor, Sunshine Tower

Senapati Bapat Marg, Elphinstone (West)

Mumbai 400 013

And

Vidhii Partners, Advocates,

Advocates for the Appellants,

Ground Floor, Construction House,

5, Walchand Hirachand Marg,

Ballard Estate, Mumbai -400 001. **... Appellants**

Versus

1) Karanveer Singh Sachdev

Flat No.703, 7th Floor, Jewel Tower,

49, St. Pauls Road, Bandra (West),

Mumbai 400 050 **... Respondent No. 1**

2) DHFL Property Services Limited

Madhava, Ground Floor, Bandra Kurla

Complex, Bandra (East),

Mumbai 400 051 **... Respondent No. 2**

3) Kanayalal Vidhani

Estate Agent, Residing at 201,

A-Wing, Nirmal Cottage, Yari

Road, Andheri (West),

Mumbai 400 061 **... Respondent No. 3**

Mr. Chirag Kamdar, Advocate for Appellants.
Mr. Shoaib I Memon a/w Adv. Iram S. Memon, Advocate for Respondent No.1.

CORAM : INDIRA JAIN J., CHAIRPERSON & S. S. SANDHU, MEMBER (A)

DATE : 29th OCTOBER, 2021.

(THROUGH VIDEO CONFERENCING)

JUDGMENT

[PER: S. S. SANDHU, MEMBER (A)]

This Appeal arises from order dated 05.12.2018 passed by learned Member-2 of MahaRERA whereby in the complaint filed by Respondent No. 1 Allottee, developers have been directed *inter alia* to execute agreement for sale and pay interest for the delayed period of possession.

2. Appellants are developers and Respondent No. 1 is an Allottee. Respondent No. 2 is the selling agent of Appellants. Respondent No. 3 an estate agent provided information and connectedAllottee to Respondent No. 2 to book flats in the project being developed by Appellants.

Appellants and Respondent No. 1 for the sake of convenience will hereinafter be referred to as Developers and Allottee respectively whereas other Respondent Nos. 2 and 3 will be addressed as per their status in the Appeal.

3. Put briefly, the facts of the case are that on being told that Allottee and his family members were interested to do some investment, Respondent No. 3 informed them about Developers' project 'Siddhi City' Phase-IV, Kharvai Road, Badlapur (East), District Thane. According to Allottee, he and his family members along with Respondent No. 3 met CEO of Respondent No. 2 who on the directions of Developers, after negotiations fixed the cost of each flat as Rs. 6,14,250/-. Upon this, Allottee decided to purchase 7 flats i.e. 601 to 603 and 701 to 704 and paid Rs. 36,85,500/- (90%). Balance 10% amount equivalent to Rs. 6,14,250/- was to be paid at the time of possession.

4. Developers issued Memorandum of understanding (MOU) dated 20.09.2011 acknowledging payment of advance amount made on 03.09.2011 towards abovementioned flats. MOU apart from mentioning Rs. 51,000/- payable for each flat for Society charges and electricity deposit also provided that other charges as applicable will be payable by the end user. MOU also mentioned that possession will be given within 18 months

from the date of receipt of this MOU subject to availability of material on time and natural calamity.

5. Vide letter dated 01.12.2011 and 16.12.2011 Respondent No. 2 demanded balance payment of Rs. 6,14,250/- from Allottee to which Allottee objected to in his letter dated 24.12.2011 stating that he had already made 90% payment and balance 10% amount was payable only at the time of possession. Respondent No. 2 confirmed the view of Allottee in its reply dated 24.09.2012. On 09.11.2014 Allottee wrote to Respondent No. 2 for registration of documents and also raised the issue of delay in possession. He wrote a letter dated 02.12.2014 to Director (Appellant No. 2) of Appellant No. 1 as well as Respondent No. 2 seeking documents such as plans, agreements to be registered etc. and compensation for delay in possession. In reply, Developers wrote to Allottee and his mother on 09.12.2014 and 08.12.2014 respectively stating that they had not yet received the required permission from KBMC and would provide documents sought by Allottee as soon as possible.

6. Allottee also sent legal Notice dated 14.05.2015 to Developers and Respondent Nos. 2 and 3 detailing therein the failure of Developers to execute sale agreement and sought possession of flats within 30 days. As no reply was received, Allottee filed complaint raising all relevant issues and

seeking interest w.e.f. 09.03.2013 (18 months from the date of MOU).

7. Developers contested the complaint. Developers though admitted receipt of amount of Rs. 36,85,500/- from Allottee, yet denied that Allottee had paid 90% amount and only balance amount of 10% was required to be paid as alleged by Allottee. Developers argued that as per the cost claimed by Allottee, the rate per sq.ft. comes to Rs. 945/- whereas as per discussion with Respondent No. 2, flats were agreed to be sold at a discounted price of Rs. 1575 to 1600 per sq. ft. against the market rate of Rs. 1800 to 2000 per sq. ft. Thus, Developers contended that price of each flat was actually fixed @ Rs. 10,48,333/-and not 6,14,250/- as falsely claimed by Allottee. Developers also claimed that claim of Allottee for execution of agreement for sale and interest for delay was time barred as the same was not raised within 3 years i.e. by 19.03.2016 from the date of possession mentioned in the MOU i.e. 19.03.2013.

8. The Authority after examining the respective contentions of the parties held that price of each flat was proved as Rs. 6,14,250/- and directed the Developers to execute sale agreement as per MOU dated 20.09.2011 with date of possession as 19.03.2013. The Authority also directed the Developers to pay interest w.e.f. 19.03.2013 on the

amount paid by Allottee along with costs of Rs. 20,000/-. The said order is impugned in the instant Appeal by Developers.

9. Heard Appellants and Respondent No. 1 Allottee through their learned counsel. Respondent No. 2 though duly served remained absent and matter proceeded ex-parte against Respondent No.2. Respondent No. 3 had already expired before the impugned order was passed.

10. Learned counsel for Developers contended that considering the claim of Allottee that 19.03.2013 was purported date of possession as per MOU dated 20.09.2011 (18 months), the Allottee was entitled to sue Developers for breach of date of possession within 3 years i.e. by 19.03.2016 in terms of Article 54 of Limitation Act, 1963. It is contended that applying the principles settled by the Hon'ble Supreme Court of India in **K. Raheja Constructions Ltd. & Anr. Vs. Alliance Ministries & Ors. [(1995) Supp (3) SCC 17]** and **T. L. Muddukrishna & Anr. Vs. L. Ramchandra Rao [(1997) 2 SCC 611]** the claim of Allottee filed vide complaint in 2018 was clearly time barred. Developers argued that the aforesaid ground raised by Developers was not decided particularly by the Authority except making perfunctory observation that cause of action would survive even after the enactment of the RERA. Developers placed reliance on **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates [(2019) 11 SCC 633]** to contend that an

already time barred claim prior to RERA came into force for possession cannot be revived or made live merely owing to new legislation of RERA coming into effect from 01.05.2017.

11. Developers further submitted that considering that breach of purported date of possession of March, 2013 and subsequent service of legal Notice by Allottee on 14.05.2015, nothing is placed on record to show cause of action for filing complaint belatedly in the year, 2018. Developers contended that complaint of Allottee suffers from delay and laches and the same having been filed after 5 years was a sufficient ground for its dismissal which the Authority failed to do. It is argued that Allottee who slept over his rights cannot seek indulgence of the Authority at belated stage as per the view held by the Hon'ble Supreme Court of India in **Chennai Metropolitan Water Supply Board Vs. T. T. Murali [(2014) 4 SCC 108].**

12. It is further contended that having already elected the remedy under MOFA in his legal Notice dated 14.05.2015, it was not open to Allottee to proceed later under Section 18 of RERA for the reason of alleged failure of Developers to hand over possession of flats in accordance with terms and conditions of the agreement or the date specified therein as no such agreement was executed between the parties as envisaged under Section 18 of RERA.

Developers also questioned that purported letter of confirmation dated 21.09.2011 and letter dated 20.09.2011 regarding MOU in no way constituted a concluded contract as these documents did not contain minimum basic details such as agreed purchase consideration, a crystalised date of possession, payment schedule, details of ownership etc. Developers stated that MOU dated 20.09.2011 merely indicated the balance advance amounts due whereas letter dated 21.09.2011 recorded merely that flats were booked in Allottee's name at relevant time, balance amount due and assurance to issue allotment letter whenever Allottee desired to sell the flats. Developers claimed that these documents categorically evidenced that Allottee was an investor and agreed terms in the form of allotment letter/agreement were to be provided only upon crystallisation of a future sale. With these explanations,Developers contended that the aforesaid documents at best are the agreement to enter into an agreement and could never be construed as concluded contract actionable under Section 18 as erroneously done by the Authority. Developers also contended that Authority had no jurisdiction to decide that the said documents constitute a valid and concluded contract.

13. Further contention of the Developers isthat the Authority erroneously suggested and subsequently got the prayer for execution of agreement incorporated to make the complaint maintainable. Developers argued that this not only

showed that there was never any agreement between the parties for alleging violation of the terms thereof to claim reliefs under Section 18 of RERA but this act of the Authority also took away valid and cogent defence already vested in the Developers and it tantamounts to violation of principle of natural justice, judicial fairness and equal treatment to parties as envisaged under Section 38(2) of RERA.Developer vehemently argued that it was not permissible to grant the amended prayer for execution of sale agreement for the following reasons:

(i) In the absence of any documentary evidence to show agreed total consideration, Allottee made a false statement on oath that amount of Rs. 36,85,000/-, paid as part consideration for 7 flats was 90% of the total consideration. As per this amount, the cost per sq. ft. for 650/- sq. ft. flat booked by Allottee comes to Rs. 945/- as against the ready Reckoner value of similar flats in Badlapur area sold by Developers for Rs. 1800 to 2000 per sq. ft. The purported acknowledgement of payment of Rs. 90% vide letter dated 21.09.2011 as relied upon by Allottee is sent by Respondent No. 2 and not by Developers and the same was also categorically denied by Developers in their affidavit in reply filed before the Authority.

(ii) The purported MOU dated 20.09.2011 refers only to 'balance advance amount' and not 'balance consideration' and it lacked necessary ingredients as stated in para 11 hereinabove to constitute an agreement and various charges

mentioned therein were payable by the end user and not the Allottee. No agreement in terms of the MOU could be executed as it established no Promoter/Allottee relationship and no terms and conditions necessary for execution of agreement for sale were crystalised therein.

(iii) There is nothing to show that 7 flats were allotted to Allottee as being an investor identified by Respondent No. 2 no allotment letter was ever issued to him. It is clearly evident from statement made in para 4(a) of the complaint and para 1(a) of affidavit in reply filed by Allottee in Appeal that Allottee wanted to do investment. Accordingly, Allottee had advanced monies to provide seed finance to the project to be repaid as per agreed terms upon future sale to the end user as categorically mentioned in Respondent No. 2's letter dated 21.09.2011 that as and when Allottee wished to sell the flats, an allotment letter would be issued in his favour. As held by the Hon'ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [(2019) 8 SCC 416]** speculative investors like Allottee herein not genuinely interested in purchasing 7 flats cannot be given benefit of beneficial legislation of RERA.

14. Developers also contended that directions in the impugned order for execution of agreement with possession date as 19.03.2013 and payment of interest from the said date till possession make the RERA retrospectively

applicable contrary to the view held by the Hon'ble Bombay High Court in paras 132, 139 and 140 of **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Ors. [(2017) SCC Online Bom 9302].** Developers submitted that the said judgment holds that RERA provisions are prospective in nature and penalty in contravention of provisions thereunder including that under Section 18 is to be levied prospectively and not retrospectively. Developers further referred to observations made in para 140 of the said judgment that 'even assuming that the interest is penal in nature, levy of interest is not retrospective but is only based on antecedent facts, it operated prospectively.' It is thus argued that by granting interest retrospectively for the pre-RERA period, the impugned order circumvents and violates the binding ruling of the Hon'ble Bombay High Court regarding prospective Application of interest which is not permissible in law.

15. Further, Developers also argued that the Authority cannot direct the parties to execute agreement under Section 13 of RERA with possession date as 19.03.2013 which amounted to backdating the agreement to make provisions applicable retrospectively. Developers reasoned that the aforesaid directions are given by the Authority to overcome the lacuna of non-existence of an agreement at any cost to grant interest in favour of Allottee.

16. Learned counsel for Allottee, on the other hand, submitted that on knowing from Respondent No. 3 about the Developers project 'Siddhi City' he and his family along with Respondent No. 3 met the Respondent No. 2 who was the sole selling agent of Developers for the project. Allottee claimed that as per directions of Developers, Respondent No. 2 negotiated and fixed the price of Rs. 6,14,250/- per flat of 650 sq. ft. and Allottee thereupon booked 7 flats by paying 90% amount equivalent Rs. 36,85,500/- towards advance amount of total consideration. Allottee submitted that the balance 10% amount (6,14,250/-) was to be paid on possession. In support of his contentions, Allottee referred to the receipts for payments and MOU dated 20.09.2011 and letter dated 21.09.2011 placed on record. It is contended that vide the MOU issued by Developers receipt of advance amount for 7 flats and balance advance due to Developers of Rs. 6,14,450/- is acknowledged and admitted by the Developers. It is also emphasised that possession is agreed to be given within 18 months from the date of MOU i.e. 19.03.2013. Allottee further stated that even the Respondent No. 2 vide letter dated 21.09.2011 admitted receipt of payment directly by the Developers and categorically mentions balance cheque payable to Developers as Rs. 6,14,250/-.

17. Allottee submitted that despite having paid 90% of the total consideration and continuous follow up

thereafter, Developers and Respondent No. 2 failed to supply various documents necessary for execution of agreement for sale. Allottee submitted that finally vide letters dated 02.12.2014, both Developers and Respondents were requested to provide the said essential documents within a week or else to face legal consequences. Allottee referred to reply dated 09.12.2014 whereby Developer informed him about non-receipt of required permission from the KBMC and undertook to provide the requested documents at the earliest. Allottee further submitted that seeing no favourable response again, Allottee issued legal Notice on 14.05.2015 to Developers and Respondent Nos. 2 and 3 for giving possession withing 30 days to which no reply was given either of them till filing of the complaint by Allottee. It is contended that building is half complete even today and therefore as the possession is not given by 19.03.2013 as specified in the MOU dated 20.09.2011, the Authority has rightly granted interest to Allottee w.e.f. 19.03.2013 till possession.

18. With regards to controversy regarding price consideration price of the flats booked by Allottee, it is submitted that during the proceedings so far, parties have staked claim to 3 different rates. Allottee pointed out that all along Allottee has maintained that the agreed consideration was Rs. 6,14,250/- for each flat and for the 7 booked flats he had paid 90% at the time of booking and remaining 10% was to be paid at the time of possession. It is contended that the

same amount is mentioned in the MOU dated 20.09.2011 issued by Respondent No. 2. Allottee further referred to communication dated 24.09.2012 sent by Respondent No. 2 confirming in reply to Allottee's letter dated 24.12.2011 that Allottee had paid 90% and no more amount is to be paid except balance 10% payable on possession.

19. Allottee further contended the aforesaid claim regarding consideration price made in the Notice dated 14.05.2015 sent to Developers and other Respondents was neither replied to nor contradicted by either of them till the complaint was filed. Allottee pointed out that for the first time in the complaint Developers claimed in para 5(f) of their affidavit in reply that amount of agreed consideration was Rs. 10,48,333/- though never before this amount was communicated to Allottee. Allottee also stated that contrary to Developers' claim, Respondent No. 2 in para 3(h) of its reply stated that the agreed consideration was Rs. 7,80,000/- which was in contradiction to its own communication and aforesaid dated 21.09.2011 and 24.09.2012 etc. Allottee pointed out that there is a variation almost of 3 lacs between the two amounts and further alleged that Developers and Respondent No. 2 are falsely denying the claim of Allottee in collusion with each other. Allottee therefore submitted that as rightly observed in para 12 of the impugned order Allottee was able to substantiate the claim whereas there is no basis for the

varying consideration amounts claimed by Developers and Respondent No. 2.

20. Denying that Allottee is an investor as alleged by Developers, Allottee contended that as held by the Authority Developers have not produced any document to that effect nor made any declaration that Allottee was an investor while registering the project under RERA. Allottee also submitted that they are 4 brothers with father, mother and 8 children and booked the 7 flats as per need of the family for accommodation.

21. Allottee also refuted the contention of Developers that the complaint filed by Allottee in 2018 after expiry of 3 years from the purported date of possession mentioned in the MOU dated 20.09.2011 was barred by limitation. He argued that despite having discharged his obligation for payment under MOFA as the building remained in complete, the OC was not obtained and possession was not handed over in time, the claim of the Allottee continuous and not time barred. It is contended that except under Section 44 which provided limitation for filing appeal, RERA nowhere provides any limitation for pursuing remedies by filing complaint where compliance of statutory obligations in case of default in the ongoing projects is to be enforced. It is also submitted that RERA is a special law for welfare of allottees

and by virtue of Sections 88 and 89, this Act overrides the provisions of Specific Relief Act and Limitation Act.

22. With the aforesaid submissions, Allottee contended that judgments cited as above by Developers on the point of limitation, particularly the B. K. Educational Services being under Companies Act, are not relevant or applicable to the matter under consideration.

23. Allottee also denied the contention of Developers that MOU dated 20.09.2011 was not a concluded contract. Allottee argued that the MOU contains all necessary ingredients of concluded contract such as area of the booked flats, price paid and the balance amount to be paid on possession, other payable charges and finally the date of possession within 18 months from 20.09.2011. It is contended that intention to sell is clearly made out from the MOU and there was no denial to the amount of agreed consideration mentioned in the legal Notice dated 14.05.2015 even though receipt of Notice is never denied by Developers. Allottee submitted that in the circumstances, Developers is estopped from alleging that MOU is not a concluded contract.

24. Allottee submitted that despite several notices/communications and having paid the requisite amount, Promoter failed to execute the sale agreement. It is therefore

argued that in such a situation Allottee is entitled for reliefs as rightly granted by the Authority based on the MOU dated 20.09.2011. To support his contentions, reliance is placed upon the view taken by this Tribunal specifically in paras 19 to 22 in the case of **Mrs. Bharti Arvind Modi & Ors. Vs. SSSC Escatics Pvt. Ltd. & Anr. in Appeal No. AT006000000031703** and paras 36 and 39 of **Mrs. Jyoti Narang and Mr. Kishore L. Narang vs. CCI Projects Pvt. Ltd. in Appeal No. AT006000000010841.**

25. In reply to some of the contentions raised by Allottee, learned counsel submitted that there is no foundation of many of the arguments made by Allottee. He submitted that there were no pleadings before RERA nor any documentary proof is submitted that Allottee purchased the flats for his family members. He, however emphasised that it is evident from para 4(a) of Allottee's complaint and para 1(a) of his affidavit in reply filed in Appeal that Allottee wanted to do investment and therefore Allottee is an investor and not a genuine Allottee. Developers reiterated that complaint is time barred as Allottee could not file any case law for non-applicability of Article 54 of the Limitation Act. He asserted that no equivalent provisions exist under Section 18(1) for condoning the delay in filing complaint but provisions of Section 88 providing that RERA provisions are not in derogation to any other law for the being in force do not bar

application of the provisions of Limitation Act as per which issue of limitation can be raised at any stage.

26. Developers also contended that merely for not replying to Notice dated 14.05.2015 Allottee cannot justify the reliefs granted in the impugned order. It is also submitted that in the absence of necessary details, since the MOU dated 20.09.2011 was not a concluded contract to mandate execution of agreement for sale Developers were not obliged to reply to the legal Notice.

27. After thoughtful consideration of respective averments made by the learned counsel on behalf of the parties following points emerge for our determination which we answer as shown against them for the reasons that follow.

Sr. Nos.	Points	Findings
1.	Whether Allottee is entitled to reliefs granted in the impugned order?	Yes
2.	Whether impugned order calls for interference?	No

Point Nos. 1 and 2.

28. The impugned order is challenged on multiple grounds as may be seen from contentions of

Developers recorded hereinabove. The foremost challenge is to the maintainability of the complaint. According to Developers, despite the claim of Allottee that as per MOU dated 20.09.2011 purported date of possession was 19.03.2013, the complaint filed after expiry of 3 years in 2018 was barred by limitations as per Article 54 of the Limitation Act. Reliance is placed on certain case law as enumerated in Para 9 hereinabove. Allottee has vehemently contested this contention of Developers by *inter alia* referring to provisions of Section 89 of RERA. It is rightly contended by Allottee that as the project is still incomplete and Developers have failed to discharge their obligations, Allottee has a continuous right to seek relief by filing the complaint under Section 18 of RERA.

29. Agreeing entirely with the Allottee, it is observed that RERA no where provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time lime limit for filing

complaint reliefs provided thereunder cannot be denied to Allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to Developers placing reliance on the case law cited supra to render the complaint of Allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue.

30. Further, it is the case of Developers that once Allottee elected to proceed under MOFA vide legal notice dated 14.05.2015, Allottee was not entitled to seek remedy under Section 18 as neither any agreement as contemplated under Section 18 was executed, nor the MOU 20.09.2011 by Developers and letter dated 21.09.2011 issued by Respondent No. 2, constituted a concluded contract as they lacked necessary ingredients of a contract. However, on perusal of the said documents, as rightly argued by Allottee the said documents clearly indicated the consideration price already paid and balance to be paid on possession. From the balance amount of 10%, i.e. Rs. 6,14,250/- to be payable on possessionas mentioned in the said letters the agreed consideration can be easily inferred. Similarly, the area of flats, the price thereof, other charges payable, date of possession etc. are also mentioned in the MOU dated 20.09.2011 which are sufficient to hold these documents as a concluded contract enforceable under Section 18 of RERA. There is nothing untoward in holding the MOU as concluded contract by the Authority. Also, there is no bar to avail remedy

under Section 18 having elected to proceed earlier under MOFA. In fact, as clearly held by the Hon'ble High Court in **Neelkamal Realtors** by virtue of Section 3 of RERA, the surviving rights and entitlements of Allottees under MOFA are enforceable as per provisions of RERA upon registration of incomplete projects under RERA. The contention therefore of Developers being contrary to laid down law cannot be accepted and hence rejected.

31. Developers have also raised objection that though there was no agreement for alleging violation of the terms thereof under Section 18, the Authority suggested and allowed the amendment for incorporation of prayer regarding execution of agreement for making the complaint maintainable for alleging violation of terms thereof under Section 18 of RERA to seek reliefs as prayed for. Developers alleged that this caused violation of natural justice, judicial fairness etc. It is also alleged that Allottee falsely claimed payment of 90% even in the absence of an agreed consideration. It is further alleged that acknowledgement was given by Respondent No.2 and not by Developers and the same was also denied by Developers in their reply in the complaint. Contention of Developers is also that Allottee being investor was not issued Allotment Letter and the same was to be issued as and when he was to sell the flats.

32. On examination of above contentions, as already observed hereinbefore that agreed consideration was

easily inferable from the balance amount of Rs. 6,14,250/- shown as payable in various communications dated 20.09.2011, 21.09.2011, 24.09.2012 etc. On close perusal of the record, it is undeniable that as mentioned by Respondent No. 2 in its letter dated 21.09.2011 and also in the reply filed by Respondent No.2 in the complaint the amount of Rs. 36,85,500 was directly received by Developers and receipts were also issued by them. It is evidently clear from the record that an amount of Rs. 6,14,250/- only remained to be paid. It is also noted that Respondent No. 2 in the letter dated 24.12.2014 also confirmed the status of payment as claimed by Allottee and there was no dispute whatsoever. We further see that Developers never categorically conveyed to Allottee regarding agreed consideration in any of their communications. Also, it is pertinent to note that they even failed to reply to contradict the amount of 90% claimed to have been paid by Allottee in the notice dated 14.05.2015. In such circumstances Developers have to blame themselves for not clarifying the agreed consideration in any of their documents or for never denying the claim of Allottee to that effect in his various communications.

33. The facts observed as above in the absence of any cogent evidence submitted by Developers or Respondent No. 2 to the contrary substantiates the claim of Allottee that he paid 90% amount on booking the flats. Thus, under provisions of MOFA and RERA Allottee was entitled to seekexecution of agreement. The contention of Developers

that Allottee was an investor is without substance as nothing is placed on record in substantiation thereof as rightly observed by the Authority. Moreover, RERA does not provide or define the term investor and therefore in the fact circumstances of the matter we cannot accept the plea of Developers.

34. In these circumstances Allottee deserved execution of agreement so as to be able to enforce his rights under Section 18. Therefore, the Authority has committed no wrong in suggesting or allowing amendment to the prayer for execution of agreement. Even otherwise the Authority is competent under RERA to give suo moto directions to Promoters to discharge their obligations under Section 13 of RERA on fulfilment of criterion prescribed thereunder.

35. It is further observed that as consistently held by this Tribunal in catena of cases, considering the welfare nature of RERA it is not always necessary to insist for registered agreement for considering claim of an Allottee in case a developer failed to execute the same in violation of its obligations under Section 13. It is now well settled that in the absence of formal registered agreement also, as held by this Tribunal in paras 21 and 36 of the judgements in **Mrs. Bharti Modi** and **Mrs. Jyoti K. Narang** respectively (supra) date of possession mentioned in other various documents such as allotment letter, Brochures, Prospectus, communications

between the parties, etc. would be considered for determination of delay for extending reliefs under Section 18 of RERA. Accordingly, even in the absence of agreement, Authority was well within its powers under RERA to grant reliefs as per MOU dated 20.09.2011 from which date of possession can be clearly inferred to be as 19.03.2013.

36. Another contention of Developers is that by allowing and directing execution of agreement with date as 19.03.2013 as per letter dated 20.09.2011 and by granting interest for the pre - RERA period the Authority has acted contrary to the view held by the Hon'ble Bombay High Court in the **Neelkamal Realtors** (supra) that RERA operates prospectively and not retrospectively. This contention appears to be erroneous considering the settled law on this point. In fact, by following the law laid down in the **Neelkamal Realtors** this Tribunal has consistently held that on registration of ongoing incomplete projects under Section 3 of RERA, provisions of RERA are applicable to the transactions transpired prior to the RERA period. Not only that it is specifically held in paras 119 and 256 of the Neelkamal that fresh date prescribed for possession while registering the project does not absolve the developer of the liability of handing over possession as per date agreed prior to registration. We therefore do not find any infirmity in the view taken by the Authority in directing the Developers to execute agreement with possession date as 19.03.2013 based on the date agreed as per MOU dated 20.09.2011.

37. On overall consideration of discussion and observations made hereinabove, we find no substance in the contentions raised by the Developers and no cause to interfere in the impugned order. We therefore answer the points accordingly and pass the following order.

ORDER

i) Appeal No. AT006000000021137 is dismissed.

ii) Impugned order dated 05.12.2018 is upheld.

iii) No costs.

iv) Copy of this judgment be sent to the Authority and parties as per Section 44(4) of RERA, 2016.

(S. S. SANDHU) **(INDIRA JAIN, J.)**

Bmb/-