

Court No. - 05

Case :- WRIT - C No. - 12573 of 2020

Petitioner :- Paramount Prop Build Pvt. Ltd Through Its Authorized Signatory Mr. Anil Kumar Gupta

Respondent :- State Of U.P. And 118 Others

Counsel for Petitioner :- Syed Imran Ibrahim, Gaurav Tripathi

Counsel for Respondent :- C.S.C., Wasim Masood

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard learned counsel for the petitioner, learned standing counsel for the State-respondents and Sri Wasim Masood, learned counsel for the respondent No.2.
2. The petitioner is a promoter. The respondent Nos.3 to 119 are allottees. The petitioner could not deliver possession of the flats to the allottees in time and there occurred delay. The allottees filed separate complaints before the Uttar Pradesh Real Estate Regulatory Authority, Gautam Buddh Nagar (hereinafter referred to as 'the Authority'), who passed the impugned orders awarding interest.
3. Learned counsel for the petitioner submits that the impugned orders are without jurisdiction inasmuch as the power to grant interest, does not vest with the authority.
4. Learned counsel appearing for the respondent No.2 has controverted the aforesaid contention by submitting that the authority is vested with the power to grant interest and the orders impugned, do not suffer from any error of jurisdiction on this count.
5. We have carefully considered the submissions of learned counsel for the parties.
6. Section 18 and Section 38 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act 2016') are

relevant for the purposes of deciding the controversy involved in the present writ petition, which are reproduced below:

"Section 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.

Section 38. Powers of Authority. (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that-

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may, suo motu, make reference in respect of such issue to the Competition Commission of India."

7. Section 18 of the Act, 2016 is in respect of return of amount and compensation in case the promoter fails to complete or is unable to give possession of an apartment, plot or building. Sub-section (1) of Section 18 provides for two different contingencies. In case the allottee wishes to withdraw from the project, the promoter shall be liable on demand to return the amount received by him to the allottees in respect of the apartment, plot or building as the case may be with interest at such rate as may be prescribed including compensation in the manner as provided under the Act. Alternatively, where the allottee does not intend to withdraw from the project, the promoter shall, as per the proviso to Section 18(1), be liable to pay interest for every month of delay, till the handing over of the possession, at such rate as the case may be prescribed.
8. Section 38(1) of the Act, 2016 confers powers upon the Authority to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under the Act or the Rules or the Regulations made thereunder.
9. The case at hand being one where the promoter has failed to give possession of the apartments, duly completed by the specified date, and the allottees having not intended to withdraw from the project, the proviso to Section 18(1) casts an obligation on the promoter to pay to

the allottees interest for every month of delay, till the handing over of the possession, at the prescribed rate.

10.The promoter having contravened the aforesaid obligation with regard to giving possession of the apartment by the specified date, and complaints in this regard having been filed by the allottees, the Authority exercising powers under Section 38(1) is fully empowered to impose interest in this regard to contravention of the obligation cast upon the promoter.

11.We may take notice of the fact that the Act, 2016 was enacted for establishment of the real estate regulatory authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project in an efficient and transparent manner and to protect the interest of consumers in real estate sector; accordingly, the provisions of the Act have to be read in the manner so as to sub-serve the aforesaid objects.

12.Having regard to the aforesaid facts and circumstances of the case, we are of the considered view, that in case of contravention of any obligation cast upon the promoters, the Authority while exercising jurisdiction under Section 38(1), is fully empowered to award interest. The impugned orders passed by the Authority, therefore, cannot be said to be without jurisdiction.

13.No other point has been argued before us by the learned counsel for the petitioner.

14.For all the reasons afore-stated, we do not find any merit in this writ petition.

15. Consequently, **the writ petition** fails and is hereby **dismissed**.

Order Date :- 04.11.2020
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