



2026:CGHC:34678-DB



CGHC010155752024



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 51 of 2024

1 - Chief Executive Officer Office Address- Nava Raipur, Atal Nagar, Vikas Pradhikaran, Formerly Known As Naya Raipur, Development Authority, Address- Paryavas Bhawan, North Block, Sector-19, Nranvp, Tahsil And District Raipur, C.G.

2 - Estate Manager Office Address- Nava Raipur, Atal Nagar, Vikas Pradhikaran, Formerly Known As Naya Raipur, Development Authority, Address- Paryavas Bhawan, North Block, Sector-19, Nranvp, Tahsil And District Raipur, C.G.

... **Petitioner(s)**

Versus

1 - Santosh Kumar Jangde S/o Shri Puni Ram R/o Flat No. G-9, Pwd Colony, Near Rajbhawan, Civil Lines, Raipur, Tahsil And District Raipur, C.G.

... **Respondent(s)**

For Petitioner(s) : Mr. Anumeh Shrivastava, Advocate

For Respondent(s) : Mr. Shailesh Tiwari, Advocate

D.B. Hon'ble Shri Parth Prateem Sahu, Judge

Hon'ble Shri Sachin Singh Rajput, Judge

JUDGMENT ON BOARD

Per Parth Prateem Sahu J.

06/08/2026

1. The appellant has filed this appeal under Section 58 of the Real Estate (Regulation & Development) Act, 2016 (*hereinafter for brevity referred to as the Act, 2016*) questioning the legality and sustainability of the impugned



order dated 12.02.2024 (Annexure P/1) passed in Appeal No. 225/2024 by the Chhattisgarh Real Estate Appellate Tribunal, Raipur whereby, the Tribunal has dismissed the appeal upholding the order passed by the Chhattisgarh Real Estate Regulatory Authority (*hereinafter for brevity referred to as RERA*) wherein, the RERA has allowed the application filed by the respondent and had ordered to the petitioner to give possession of shop of equal area at Sector – 12, Naya Raipur, Atal Nagar within a period of 02 days or to return back the amount deposited by the respondent with interest at the rate of 10.70% in accordance with the provision under Section 18 of the Act, 2016 and Rule 17 of the Chhattisgarh Real Estate (Regulation and Development) Rules, 2017 (*hereinafter for brevity referred to as the Rules, 2017*).

2. Learned counsel for the petitioner would submit that the appellant company is an urban body formed for the development of Naya Raipur, Atal Nagar as a green field project and the administrative capital of the State of Chhattisgarh. Apart from the various commercial and residential projects being developed by the appellant have started the project of CBD Retail Business District Complex at Plot No. E10A and E9B at Sector 21 at Naya Raipur and applications were invited. The Respondents had applied for the shop in the aforementioned project. Upon considering the applications, following due process, the Shop No. E9A – 106 was allotted in favour of the appellant on 21.01.2019 for Rs. 12,64,000/-. The respondent had filed a complaint under Section 31 of the Act, 2016 before the RERA stating that despite payment of Rs. 12,65,039/- on 04.05.2019 neither an agreement has been executed by the appellant nor possession has been handed-over to him. The RERA disposed of the complaint vide order dated 05.06.2023 (Annexure A/2) directing the appellant to provide the alternate shop within 02 months or to reimburse the amount so deposited with an interest at the rate of 10.7% from June, 2019 till May, 2023.



3. Aggrieved with the order dated 05.06.2023 (Annexure A/2), the appellant has preferred an appeal before the Appellate Tribunal and the Appellate Tribunal vide impugned order dated 12.02.2024 (Annexure A/1) had set-aside the part of the order of direction of providing an alternate shop only. He contended that the complainant/respondent was well aware of the construction of the retail complex under term loan provided by the Union Bank of India and therefore, No Objection Certificate of the bank is a prerequisite before execution of the sale-deed. The appellant was continuously pursuing the bank to issue No Objection Certificate and to resolve the persisting disputes amicably. However, the No Objection Certificate could not be procured till filing of this appeal, because of status-quo passed in WP (C) No. 1468/2013. The said writ petition is still pending consideration.
4. He also contended that the respondent vide letter dated 23.03.2026 has expressed his dissent to accept the possession of the Shop No. E9A – 106 admeasuring 158 sq. feet or Shop admeasuring 158 sq. feet of Sector – 12. The delay in issuing No Objection Certificate is attributable to the bank. The appellant is still ready and willing to grant interim possession of the allotted shop to the appellant after issuance of No Objection Certificate and subject to decision of this Court in pending WP (C) No. 1468/2013. As the delay in handling over of the possession of shop is not attributable to the appellant, the impugned order may be set-aside.
5. Learned counsel for the Respondent would oppose the submission of the counsel for the appellant with regard to the proposal made in the affidavit filed on behalf of the Appellant dated 31.07.2026. He would submit that the order dated 05.06.2023 (Annexure A/2) passed by the RERA is put to challenge by the appellant before the Tribunal stating that the complainant/respondent failed to deposit 90% of the amount within 03 months from the date of the allotment and failed to pay the electrification,



connection charge, annual lease rent, operational and maintenance charges and therefore, the lease agreement cannot be executed and further that as the Union Bank of India from whom, the term loan has been taken by the appellant, No Objection Certificate is not issued and therefore, the delay is beyond the contral of the appellant.

6. Upon considering the grounds taken in the appeal, the Tribunal has allowed the appeal in part and set-aside the order dated 05.06.2023 (Annexure A/2) with regard to direction of the RERA for allotment of alternate shop, but have maintained the order of refund of money which in the facts of the case does not call for any interference. He submits that the order of refund of money passed by the RERA and affirmed by the Appellate Tribunal is in accordance with the provisions under Section 18 of the Act, 2016 and Rule 17 of the Rules, 2017. Hence, no interference is called for in the impugned order dated 12.02.2024 (Annexure A/1).
7. We have heard learned counsel for the respective parties and also perused the documents enclosed along with the appeal.
8. It is the case of the appellants themselves that without No Objection Certificate to be issued by the bank from whom the appellants had taken loan, interim-possession of the shop cannot be granted. Even till the date of execution of the affidavit on 31.07.2026, No Objection Certificate was not issued in favour of appellants. Appellant failed to make out the case that the applicant/allottee was ware of the fact that the development of the project by the Appellant is after obtaining the term loan from the Union Bank of India. No document is filed to show that the appellants had ever intimated to the respondent about the term loan or the requirement of the NOC from Bank for handling over the possession of the allotted shop.
9. The Tribunal upon appreciating the fact that the appellant has deposited the balance amount of 90% and no document is filed to show that the appellant



has made demand for payment of the amount towards the electricity connection charge, annual lease rent. In fact, the document would show that it is the respondent allottee who wrote a letter to the appellants that he be communicated if any amount is due which was not replied to the respondent. The provision under Section 18 which is relevant, is extracted below for ready reference:-

“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 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.”

10. A bare perusal of Section 18 of the Act, 2016 would show that it talks of return of amount and compensation. It mentions that if promoter fails to complete or is unable to give possession of an apartment, plot or building duly completed by the specified date, 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 the same rate, as may be prescribed in this behalf including



compensation in the manner as provided under this Act. Section 19 (4) of the Act, 2016 talks of the entitlement of the allottee to claim refund of amount paid along with interest and compensation as provided under the Act, 2016 from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building in accordance with the terms of agreement for sale or due to discontinuation of his business as a developer.

11. Award of interest is provided under Rule 17 of the Rules, 2017. It is relevant and therefore, is extracted below for ready reference : -

“Rate of interest payable by promoter and allottee and timelines for refund

[17. 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 rates, the State Bank of India may fix from time to time, for lending to the general public.]”

12. From bare perusal of the extracted provision, it is apparent that the rate of interest prescribed is the highest marginal cost of lending rate of State Bank of India (+) 2%. In the case at hand, the RERA has awarded interest at the rate of 8.70% + 2% = 10.70% which is affirmed by the learned Appellate Tribunal. The Tribunal has also taken note of the provision under Section 2 (za) (ii) of the Act, 2016 which defines interest. Means, the rate of interest payable by the promoter or the allottee as the case may be and under explanation (ii), the interest payable by the promoter to the allottee has been specified from the date, the promoter received the amount or any part thereof, till the date the amount or part thereof and interest thereon is refunded.
13. Hon'ble Supreme Court in the case of ***Newtech Promoters & Developers (P) Ltd. v. State of U.P.***, reported in **(2021) 18 SCC 1** has dealt with the issue of refund of money to the allottee and observed thus:-



"25. If we turn to the power of the Authority, it envisages under Section 31, the complaints can be filed either with the Authority or adjudicating officer for violation or contravention of the provisions of the Act or the rules and regulations framed thereunder. Such complaint can be filed against "any promoter, allottee or real estate agent", as the case may be, and can be filed by "any aggrieved person", and it has to be read with an explanation, "person" includes an association of allottees or any voluntary consumer association registered under any law for the time being in force. The form and manner in which complaint is to be instituted has been provided under sub-section (2) of Section 31."

14. In the aforementioned decision, Hon'ble Supreme Court has considered that the Legislature has consciously provided, refund of payment as an unconditional absolute right to the allottee if the promoter fails to give the possession of the apartment, plot or building within the stipulated time.
15. In the facts of the case, from the discussions as made above, it is apparent that according to the case of the appellant itself, till date No Objection Certificate has not been issued by the bank from whom, the Appellant has obtained term loan, further interim order is passed in writ petition bearing WP (C) No. 1468/2013 due to which also possession could not be handed over according to the petitioner, the complainant by way of the letter written to the appellant which is enclosed along with the affidavit has shown his dissent to accept the shop and by that, shown his wish to withdraw from the project. From the above facts, provisions under the Act of 2016, Rules of 2017 and decision of Hon'ble Supreme Court as referred above, in the opinion of this Court, we do not find any good ground to interfere with the impugned order passed by the Appellate Tribunal. The appeal being devoid of substance, is liable to be and is hereby, **dismissed**.
16. Accordingly, the miscellaneous appeal is **dismissed**.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sachin Singh Rajput)
Judge