Delhi RERA: No case made for delayed possession in case the RERA Authority extends the completion date of the project.

The Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**") is a landmark legislation in India, designed to bring transparency, accountability and protection to homebuyers in the real estate sector. Section 18 of the RERA Act deals specifically with the issue of delayed possession and the financial implications thereof. In this article, we have analyzed the case of **M/s DCM Nouvelle Ltd. vs. M/s Purearth Infrastructure Ltd. & M/s. Basant Projects Ltd**. to understand Section 18 of the RERA Act and its significance in cases of delayed possession.

Section 18 of the RERA Act mandates that if a 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 to Sell ("**ATS**") 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,

then the promoter, 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 the Act. Further, 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.

Factual Context: In the case of M/s DCM Nouvelle Ltd (the "**Complainant Company**") vs M/s Purearth Infrastructure Ltd. and M/s. Basant Projects Ltd. (the "**Respondent Companies**"), the Complainant Company had signed four ATS to buy apartments in the "Amaryllis, Phase-1 Project" being developed by the Respondent Companies. The Respondent Companies were to deliver the possession of these apartments by 31st January 2020. However, a dispute arose, wherein it was alleged by the Complainant Company that the Respondent Companies acted in violation of the RERA Act and were unable to deliver the possession of the flats on time. The offer of possession made on 20th August 2021; however, the actual possession of the flats was delivered vide possession letter dated 14th December 2021.

Being aggrieved by the delay in handover of the possession, the Complainant Company filed four separate complaints against the Respondent Companies before the Delhi RERA seeking possession of the apartments along with interest and directions to hand over registered sale deeds and copies of maintenance agreements. However, on the other hand, the Respondent Companies were granted extension of the validity of registration of their Project on account of force majeure events till 7th April 2021. The Respondent Companies completed the construction of the Project and duly applied for the Completion Certificate on 14th January 2021 and received the same on 19th April 2021. Subsequently, the possession of the apartments was offered to the Respondent Companies on 20th August 2021.

Held: The Delhi RERA rejected the claim of the Respondent Companies and observed that allegation of delayed possession was infructuous in light of the existence of the possession letter.

<u>Delhi RERA's reasoning for rejecting the interest claim was based on the sole premise that the Respondent Companies had valid reasons for seeking an extension of the project's registration validity on account of circumstances beyond the control of the Respondent Companies, such as orders passed by the Supreme Court and delays caused by the COVID-19 pandemic. Further, it was also observed that since the ATS and the possession letters were signed by the Complainant Company themselves, they were very much aware of the process and that a case for delayed possession cannot be made out, as the Respondent Companies had followed the due process of law for handing over the possession of the apartments.</u>

Relevant paragraphs have been reproduced hereinbelow for the ease of reference:

"The relief of handing over of possession and original sale deeds sought in complaints has become infructuous in view of the submission of Ld. Counsel for Complainant that possession of flats has been given and documents supplied. The only issue for consideration before us is whether Respondents-1 delayed in handing over the possession of said flats to the Complainant or not"

"The contention of Complainant that the Respondents-1 delayed the possession of said apartments cannot be accepted as after going through all the documents it is found that the Respondents-1 had time to time followed the due procedure for handing over the possession of apartments i.e., obtained the Completion Cum Occupancy Certificate from competent authority on 19.04.2021, offered the possession of apartments to the Complainant on 20.08.2021 and thereafter, took appointment from the Sub-Registrar's office for execution of sale deeds, executed the sale deeds with the Complainant on 14.12.2021 and 29.12.2021"

"The Authority by its certificate no F1(12) PR/RERA/2017/3171 dated 07.12.2020 ('Extension Certificate') granted an extension of time till 07.04.2021 for the completion of the said project. Thus, the due date of possession of the apartments stood extended"

In addition to the above, the Delhi RERA highlighted that a possession is deemed to be a **valid possession** if:

1. It is offered after obtaining Occupation Certificate/Completion Certificate;
2. The subject unit/apartment is in a habitable condition; and
3. The possession is not accompanied by unreasonable additional demands.

Crucially, Delhi RERA's determination in this case was based on the observation that the conditions necessary for valid possession were met by the Respondent Companies and as a result, no case of delayed possession could be made against them. Further, the Authority noted that if a developer/promoter follows the due process of law and if the components as listed above, are fulfilled, making it a valid offer of possession, then the liability of a promoter for delayed possession would come to an end.

Section 18 of the RERA Act serves as a vital protection for homebuyers, guaranteeing that developers adhere to the agreed-upon possession timelines. However, it is essential to recognize, as exemplified by the abovementioned case, that this provision also accounts for genuine reasons on account of delays that are beyond the control and scope of developers. When such reasons are valid and due process of the law for handing over the possession is followed, the claim for interest under Section 18 may not be upheld. In this context, Section 18 strikes a balance between safeguarding the rights of homebuyers as well as acknowledging unforeseen circumstances in the real estate industry.

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