

**MAHARASHTRA REAL ESTATE APPELLATE**  
**TRIBUNAL UNDER RERA Act**

(7)  
**No.AT006000000000145**

M/s. Kambhar Constructions  
A/52, Dakshina Park, NS Road 10,  
Juhu Scheme, Mumbai 400 049.

.. Appellant/s

**V/s.**

Mrs. Pradnya Nikhil Sable  
Room No. 4/7  
North Konkan Irrigation Department Colony,  
Old Mumbai-Pune Road,  
Opp. Sahakar Vidya Prasarak Mandal (SVPM School)  
Near Prashant Corner,  
Thane 400 605.

.. Respondent/s

Adv Jayesh Joshi for the Appellant.

Adv. Smt. Smita Kanse for the Respondent.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.  
Heard on : 3<sup>rd</sup> April, 2018  
Dictated/Pronounced on: 3<sup>rd</sup> April, 2018  
Transcribed on : 3<sup>rd</sup> April, 2018

**-:ORAL JUDGMENT:-**

1. Heard finally.
2. Since it is proposed to hear the appeal finally, and in contemplation of order, it does not warrant directing compliance under Section 43(5) proviso of RERA, the Appeal is finally heard.
3. The Appellant / Promoter questions legality of Order dtd. 23 Nov. 2017 passed by Ld. Member and Adjudicating Officer, MahaRERA in Complaint No. AT006000000000145.



4. There is no contest between the parties that the Allottee Pradnya has booked a Flat No. 404 in the Building 'Woodshire' of Village Mohili in Ambivali (E), Tal. Kalyan, Dist. Thane.
5. The record illustrates that the Promoter was to hand over the possession of the flat on or before December, 2015 however he failed to adhere to the deadline. It is an admitted fact that the allottee Pradnya has released payments as was demanded from time to time as reflected in para 7 of the impugned order.
6. Shri Joshi for the Promoter says that it was the bonafide desire of Promoter to complete the project in a time bound program however mitigating circumstances prevented him to adhere to the terms. There was tremendous pressure extended from various outside agencies who were demanding ransom and consequently having not succumbed to the demands, the sufferer was the Promoter. Mr. Joshi reiterates, it was only bonafide effort of the Appellant to ensure completion of project as per the deadline indicated while registering the project with MahaRERA.
7. The Allottee through her Advocate and also in person projected the grievance indicating that the Promoter has diverted the amounts received from the purchasers in another project adjoining the present plot. The grievance of the Allottee is, they have waited for fulfilment of their dreams for 5 years and they do not wish to wait for a further period of 5 years. Their peace is shattered and they are burdened with bank instalments and additional payments for their accommodation.
8. With all said and done, without accepting the contention of diversion of funds as asserted by the Allottee, in terms of Sec. 18 of RERA since the Allottee has found that the project is delayed and the purpose of booking the flat is frustrated, the mitigating circumstances for the Promoter alone would not be a ground to reconsider the situation.
9. The circumstances emphasized by Mr. Joshi indicated even before the Adjudicating Officer of harassment will not be a shield to operate for extension of time for completion of project. The time schedule of handing over possession notwithstanding any circumstances/situation is obligatory as indicated by Hon. Lordship in the matter of Neelkamal v/s. State in Writ Petition No. 2737 of 2017 decided on 6<sup>th</sup> December, 2017.
10. Having gone through the order, I do not see any error to have interference therein. I had asked both the sides, whether the Allottee is desirous to continue with the project. But the Allottee, Smt. Pradnya has flatly denied to go on with the project and insisted for refund of the amount as directed under the order.




11. Totality of circumstances illustrate, it is not the failure on the part of the Allottee in compliance with the schedule but the obligation of possession is delayed on the part of Promoter and hence no interference in the order dated 23<sup>rd</sup> November, 2017.

**:ORDER:**

1. Appeal dismissed with cost of Rs.10,000/-.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 3<sup>rd</sup> April, 2018

  
(K. U. CHANDIWAL, J.)  
President,  
Maharashtra Revenue Tribunal,  
Mumbai  
& I/c. Maharashtra Real Estate  
Appellate Tribunal, (MahaRERA),  
Mumbai