

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. AT006000000010534
In
Complaint No. CC006000000044352**

Ravindra Shankar Sawant

Sole Proprietor of
M/s. Raviraj Construction Co.
A-101, Radha Raman Bapu Bagwe Road
Near Kandarpada Talao
Kandarpada, Dahisar (West)
Mumbai – 400 068

... Appellant

Versus

Sanjay Bhaskar Kale

A/7, Om Shivam CHS Ltd.
Uttam Road, Near Datt Mandir
Keshav Park, Bhayander District
Thane – 401101

... Respondent

Adv. Tushar Shah for Appellant.

Adv. P. Hari for Respondent.

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

DATE : 1st JANUARY, 2021.

(THROUGH VIDEO CONFERENCING)

JUDGMENT

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

This appeal is filed against the order dated 10th July 2018 whereby, on a complaint filed by Respondent, Appellant

has been directed to pay interest @ 10.5% for delay in possession of flat booked by Respondent.

2. Appellant is a Promoter and Respondent an Allottee. We will refer them as Promoter and Allottee respectively for the sake of convenience.

3. In brief, relevant facts for deciding the Appeal are that Allottee booked a flat in Promoter's project by paying Rs. 17 lacs in July 2015 through cheques. Letter of Allotment (LOA) was issued on 23.07.2015. An agreement for sale (AFS) mentioning date of possession as 30.09.2015 was registered on 14.01.2016. Being an incomplete project sans completion certificate/ occupation certificate (CC/OC), the project was registered under Real Estate (Regulation and Development) Act, 2016 (RERA) and date of possession was declared as 15.12.2020 on the MahaRERA portal. As the possession was not given on the agreed date, Allottee filed complaint with the Authority on 01.05.2018 seeking compensation in the form of interest from the agreed date of possession till actual date of possession along with costs as per Section 18 of RERA.

 4. Matter was heard by learned Member and Adjudicating Officer (hereinafter as the learned Member). Stating the facts as mentioned briefly in para 3 above, Allottee contended that possession is not handed over on 30.09.2015 as agreed in the AFS dated 14.01.2016. Promoter in reply to contentions of Allottee, ascribed the delay inter alia to reasons

beyond control of the Promoter such as delayed approvals for construction, shortage of sand, delay in allotting number to booked flat by the Gram Panchayat etc. Promoter also submitted that due to clerical error back date of 30.09.2015 is mentioned in the agreement registered on 14.01.2016. Promoter also stated that on construction of flats the Allottee was given notice in May 2018 to pay the balance consideration and take possession. But Allottee neither made payment nor took the possession and instead filed the complaint with the Authority.

5. Learned Member after examining the grounds advanced by the parties and documents submitted on record, held 30.09.2015 mentioned in the AFS as the valid and agreed date of possession. He further observed that non-allotment of number to the booked flat by the Gram Panchayat appears to have caused the delay in possession. He further observed that as the Promoter has not yet obtained OC/CC, Allottee is justified in not taking possession. He accordingly passed the impugned order with directions as mentioned in opening para of this order.

6. Learned Counsel for both the parties argued the matter. Learned Counsel for Promoter reiterated that date 30.09.2015 mentioned in the AFS 6 months prior to its registration on 14.01.2016 is a pure human error and the Allottee cannot be allowed to take advantage of the same. He argued that if the date of possession as alleged is taken to be