

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

**APPEAL NO. AT006000000010403**

Shri Mahesh Khanolkar  
Residing at: B 1, Plot No. 63,  
18<sup>th</sup> Road,  
Chembur, Mumbai 400 071. ... Complainant

Versus

M/s Srushti Sangam Pvt.Ltd.,  
Situating at : Rashmoni Sadan,  
18<sup>th</sup> Road,  
Chembur, Mumbai 400 071. ... Respondent

*(Mr. Sanjay Chaturvedi, Advocate for Complainant  
Mr. Desai, Advocate for Respondent)*

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

**DATE :** **10<sup>TH</sup> JULY, 2019.**

**JUDGMENT : (PER S. S. SANDHU, MEMBER (A))**

The Complainant has preferred this Appeal against  
order dated 22-5-2018 passed by Learned Member,

MahaRERA ( for short, "the Authority") in Complaint No.CC 0060000000001802 filed by him.

2. For convenience, parties are referred to in this order as Complainant and Respondent as per their original status in proceedings before the Authority.

3. The brief facts of the case as gathered from documents and submissions of the parties on record are that, Respondent is a developer of the redevelopment project known as "Maulick Enclaves" at Chembur, Mumbai. The Complainant, a protected tenant, being original member of the society was entitled to get a flat admeasuring 383 sq. ft. (carpet area) free of cost in this project. In addition to this, he purchased additional area of about 340 sq. fts. from Respondent vide registered Agreement for Sale dated 3-12-2005 for a total consideration of Rs.3,14,000/-. He paid the said amount by 7-7-6-2007 as per terms and conditions of the said Agreement. Respondent was liable to handover the possession of flat to Complainant within a period of 24 months. However, as Respondent failed to give possession within the said period, Complainant filed the aforesaid Complaint before the Authority seeking following reliefs:



- a) Not to create third party rights in respect of the Complainant's flat No.201 on second floor of the said building.
- b) To pay rent @ Rs.20,000/- per month from 3-12-2007.
- c) To pay interest @ 26% on the amount paid by him.
- d) To form a society of the new allottees.
- e) To prepone the date of possession with occupancy certificate.

4. In the proceedings before the Authority, Respondent submitted various reasons beyond his control responsible for delay caused in completing the said project such as stay in the pending proceedings of arbitration, property being included in the heritage list, institution of suit between the owner of land and the Collector, delay in finalization of DP Plan etc.

5. In his written reply in response to the reply filed by Respondent to the complaint, the Complainant refuted the reasons for delay and reiterated his demand for reliefs which *inter alia* Included payment of compensation in lieu of rent as per the standard rent at market value of the area from



3-12-2007 till possession and interest at the rate of 21% on the amount paid.

6. After considering submissions of both the sides the Authority granted interest @ MCLR+2% as provided in the relevant Rules under the Real Estate (regulation and Development) Act, 2016 (for short 'the Act, 2016') w.e.f.

1-5-2017 on the amount paid by the Complainant. The Authority also revised date of completion of the project from 1-9-2022 to 1-11-2019. However the Authority declined the relief regarding payment of rent in the absence of any provisions to that effect in the Act, 2016 and Rules and Regulations thereunder.

7. Being aggrieved by the aforesaid order, the present Appeal has been preferred by Complainant.

8. Parties were given a patient hearing during which the learned Counsel for Complainant submitted that since there was neither any stay or injunction in arbitration proceedings nor any so called inclusion of the project property in the heritage list, these cannot be considered as valid and satisfactory reasons for justifying delay in completion of the project. Also that, none of the reasons as agreed under clause



10 of the agreement existed for Respondent to claim exemption from liabilities provided under the aforesaid agreement. He therefore argued that since the Respondent submitted false and misleading reasons to the Authority for failing to give possession within 24 months, the Respondent is liable to pay the Complainant Rs. 20,000/- per month as compensation till possession is given as per clause 5 of the agreement. In this background, he lamented that though in the last sentence of para 10 of the order, the Authority held his cause as maintainable for providing compensation by Respondent yet while passing the impugned order no consideration is given to payment of rent as compensation as prayed for by Complainant.

9. By referring to Section 88 of the Act, 2016 the learned Counsel for Complainant submitted that since the provisions of this Act are in addition and not in derogation to any relevant law for the time being in force, in the given facts and circumstances of this case the claim of the Complainant for payment of rent as compensation can be considered and granted under the Act, 2016.



10. In defence, Learned Counsel for Respondent primarily relied on and adopted his submissions made in the complaint proceedings justifying the delay in completing the project for various reasons beyond his control. He also submitted that prayer of Complainant in the present appeal for granting rent @ Rs. 20,000 per month is totally contrary to the relief of compensation in lieu of rent @ Rs. 75 per sq. feet as per standard market rate he sought in para 5 of the prayer of his complaint. Learned Counsel also submitted that as the reasons for delay in the completion of the project were just and satisfactory for delay in handing over the possession of the purchased flat and in due consideration thereof, the Authority has rightly granted the interest as per the provisions of Section 18 of the Act, 2016.

11. After considering rival submissions of the parties, it is observed that admittedly the Complainant, a protected tenant, is an allottee in the project registered under the Act, 2016. It is also seen that the transactions between the parties and the facts and circumstances of the case span the period attracting the provisions of both the enactments i.e. the MoFA and the Act, 2016. Accordingly adjudication of the dispute involved in



this case need consideration of relevant provisions of both the aforesaid enactments.

12. From the observations and conclusions recorded in Para 9 of the order, it may be clearly seen that the Authority has come to a conclusion that there has been a delay in handing over the possession and has therefore granted the interest to the Complainant under the Act, 2016. With regards to granting relief of interest in case of delayed possession, section 8 MoFA provides refund of the paid amount with interest. However, there is no provision regarding payment of interest for one who, like the Complainant in this case, chooses to stay with the project. Such provisions, as applicable to the facts and circumstances of the Complainant's case, are available u/s 18 of the Act, 2016 only. Therefore in the absence of relevant provisions under the MoFA, considering the facts that there is delay in delivering possession and the Complainant is not withdrawing from the project, Complainant has been held eligible rightly for interest till the date of possession. It is in accordance with this view, that the Authority observed in para 10 of the order, that the Respondent was liable to compensate the Complainant and



that compensation is in terms of providing interest for the delayed possession which is explained as compensatory and not penal in nature in the preceding sentences in the said para. In this para the compensation is contemplated and construed as interest and no other compensation as sought to be interpreted wrongly by the learned Counsel for Complainant for the purpose of rent in lieu of compensation for delayed possession.

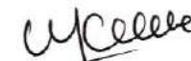
13. As far as the main claim of Complainant in this appeal regarding payment of rent @ Rs. 20,000 per month is concerned, it is not correct to say that the Authority has not given due consideration to it. It may be seen that in para 6 of the order, the Authority has clearly and unambiguously held that there is no provision in the Act and the rules thereunder for payment of rent. In such circumstances, the Authority acting within four walls of the law has rightly declined the claim of the Complainant for rent as prayed for. The rights such as relating to the said claim of rent, emanating from the agreement, but not supported by any provision of the MoFA or the Act, 2016 cannot be adjudicated or enforced by the Authority. Therefore, in our view the Authority has acted as



per law and we do not find any infirmity in the view taken by the Authority in refusing to adjudicate or grant relief relating to rent as sought by Complainant.

14. In the above circumstances we find appeal devoid of merits, warranting no interference in the impugned order. In result, the appeal stands dismissed with no costs.

  
(S.S. SANDHU)

  
(SUMANT KOLHE)

  
(INDIRA JAIN J.)