

Sarnobat

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 006000000010888

1. **Mrs. Rujuta Mandar thatte,**
Aged 40 years, Occupation : Service,
2. **Mr. Mandar Narayan Thatte,**
Aged 43 years, Occupation : Service,
Both residing at B-402, Charmee Enclave
CHSL., Service Road, Vile Parle (East),
Mumbai 400 057.

... Appellants.
(Allottees)

**M/s. Forefront Property Developers
Pvt. Ltd.,**

A company registered under
The Companies Act, 1956 having it's
Registered office at 60-1, 6th Floor,
Hub Town Viva, Western Express
Highway, Jogeshwari (East),
Mumbai 400 060.

... Respondent.

Advocate Mr. P. B. Gujar, for the Appellant/s.

Advocate Mr. Anil D'Souza a/w Mr. Bishwajeet for the
Respondent/s.

CORAM : SUMANT M. KOLHE,(Member J.)

DATE : MAY 10, 2019.

Appeal Under Section 44 of RER ACT 2016.

ORAL JUDGMENT :

Challenge to impugned order

1. Correctness, legality and propriety of impugned order dated 16.10.2018 passed by Ld. Chairman MahaRERA Authority in Complaint No. 23293 is assailed in this Appeal.

State of Parties

2. Appellant is the Allottee who is original complainant. Respondent is the promoter who is original Respondent. I will refer the parties as Allottee and Promoter in my further discussion.

Case of the Allottee

3. Promoter launched the project namely "Forefront Primeria" situated at Vile Parle, Mumbai. Allottee agreed to purchase and promoter agreed to sell flat No.401 admeasuring 1159 sq. ft. carpet area (which is inclusive of area of balconies) situated in 'A' wing of Forefront Primeria building. Agreed total price of the flat was Rs.4,40,42,000/-. Agreement for sale was executed and registered on 09.09.2015 between the parties on certain terms and conditions. Allottee agreed to pay the price of the flat as per schedule of the payment described in para 4 of an agreement. Promoter agreed to deliver the possession of the flat on or before 30.06.2017 as per clause 12 of an agreement. Allottee has paid more than 85% of the total price of the flat to the promoter i.e. up to 16th instalment as per schedule of payment of price. Thus, Allottee has paid Rs.3,83,16,540/- towards price to the promoter. RER Act, 2016 has come into force with effect from 01.05.2017. As the project was incomplete, promoter registered the project with MahaRERA Authority and extended the time line of completion of project up to December, 2020. Promoter failed to hand over the possession of the flat to the Allottee as per due date i.e. on or before 30.06.2017 as mentioned in clause 12 of an agreement for sale. Allottee filed complaint No. 23293 against the promoter under Section 18 of RER Act, 2016 and claimed interest for delayed possession of the flat against the promoter. MahaRERA Authority

heard both sides and perused the papers on record.

Defence of the Promoter

4. Promoter contended before MahaRERA Authority that the project consists of redevelopment of old building of Co-operative Housing Society which was standing on the land. Co-operative Housing Society had filed suit against the promoter in Hon'ble Bombay High Court and promoter could not continue the construction work due to the said suit. It was also contended by promoter that, he was required to obtain commencement certificate from competent authority from time to time for construction of every floor and phase wise and there was a delay in completing the construction for its purpose also.

Decision of MahaRERA Authority

5. The Ld. Chairman of MahaRERA Authority passed equitable order by giving direction to the promoter to hand over the possession with occupancy certificate to the Allottee on or before March, 2019. The Ld. Chairman of MahaRERA Authority also given liberty to the Allottee to demand interest at an appropriate stage as per Section 18 of RER Act, 2016 against the promoter for delay in handing over the possession of the flat. The Ld. Chairman thus preponed the extended time line of completion of project from December, 2020 to March, 2019 and allowed the Allottee to raise her right to claim interest for delayed possession at proper time in due course. The Ld. Chairman of MahaRERA Authority mainly observed that the total price of the flat is more than Four Crores and Allottee has already paid more than Rs. Three Crores and substantial amount of interest will be required to be paid by the promoter on said amount for delay in handing over the possession

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to the Allottee and that should not hamper the work of project.

Order assailed by Allottee

6. Feeling aggrieved by the decision of Ld. Chairman, MahaRERA Authority, Allottee has challenged the correctness, legality and validity of the said order.

Argument of Allottee

7. The Ld. advocate for the Allottee mainly argued that the promoter has admitted that there is a delay in handing over the possession of the flat to the Allottee. According to him, the defence of promoter that due to litigation in the Court, there was a delay in completion of the construction work is not acceptable and probable. According to him there was no such preventive order against the promoter to continue the construction work of this project. He referred Section 18 of RER Act, 2016 and strongly submitted that Allottee is justified in claiming the interest on the amount paid to the promoter for the delayed period of possession. He pointed out that as per impugned order promoter was given opportunity to complete the project by 31st March, 2019 even though due date of 30th June, 2017 was crossed. However, promoter could not avail the said opportunity which was given by Ld. Chairman of MahaRERA Authority.

Argument of Promoter

8. On the other hand the Ld. advocate for the promoter argued that there is a delay in handing over the possession as the construction work was not completed due to some genuine reasons. According to him, this project consists of re-development of old building of housing Society and Society had filed Suit against the promoter in respect of this construction work in Hon'ble Bombay

High Court and the promoter has prevented from completing the construction work of the project within the stipulated time. He filed copy of order passed by Hon'ble Bombay High Court in Writ Petition No.2686/2018 to support his submission. He further referred clause 12 of an agreement and submitted that promoter was entitled for extension of time in giving possession if the work of completion of building is delayed due to non-availability of steel, cement, building material, water or due to social commotion or any act of God or due to delay in issuance of permission or approval related to construction work or due to chance in Rules and Regulations of construction work and for reasons which were beyond the control of the developer. According to him promoter is entitled for reasonable extension of six months for above mentioned reasons in completing the work of construction of the building. According to him there was no intentional and deliberate delay on the part of promoter in not completing the construction work of the said project within the stipulated time.

Points of dispute

9. In such circumstances the following points arise for my determination;

POINTS

- i) Whether the Allottee is entitled to recover the interest on delayed period of possession from the promoter ? If yes what is the delayed period of possession and what is the rate of interest ?
- ii) Whether the impugned order is just, proper and legal?

iii) What order?

My findings on above points for reasons stated below are as under :

FINDINGS

- i) Affirmative.
- ii) Partly Affirmative.
- iii) As per final order.

REASONS :

POINT NO. 1 TO 3 :

Details of Project and Transaction

10. Promoter launched the project namely Four Front Prime situated at Vile Parle, Mumbai. Project consists of demolition of old building of co-operative housing Society and to redevelop the same. There are 55 flats in the project. 30 flats were allotted to occupants of old Society and 25 flats were sold out by promoter to purchasers. Allottee is new purchaser and home buyer. Allottee agreed to purchase and promoter agreed to sell flat No.401 admeasuring 1169 sq. ft. area in 'A' wing of the said building for total consideration of Rs.4,40,42,000/-. Agreement for sale was executed and registered between the parties on 09.09.2015. Allottee agreed to pay the price of the flat as per the schedule of the payment as shown in clause 4 of the agreement. Allottee has already paid an amount of Rs.3,83,16,540/- towards price of the costs of the promoter. Thus, 85% of the total price and up to 16th instalment as per the schedule of the payment is paid by the Allottee to the promoter. Due date of handing over the possession of the flat was agreed as 30.06.2017 as per clause 12 of an

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agreement. Admittedly, promoter has failed to hand over the possession of the flat on or before due date.

Complaint by Allottee

11. Allottee filed complaint before MahaRERA Authority and claimed interest for period of delayed possession against the promoter as per Section 18 of RER Act, 2016. Since the project was incomplete on 01.05.2017 when RER Act, 2016 was made applicable, promoter registered the said project with MahaRERA Authority and extended the time line of completion of the project up to December, 2020.

Equitable order of MahaRERA

12. The Ld. Chairman of MahaRERA Authority decided the complaint by passing equitable order that Respondent shall hand over the possession of the flat on or before 31st March, 2019 and Allottee was at liberty to agitate the claim for recovery of interest of delayed period of possession at appropriate stage in due course.

Delay is not in dispute

13. It is revealed from the record that promoter could not avail the opportunity of completing the project even before March, 2019 as directed by Ld. Chairman of MahaRERA Authority. So, Allottee has claimed the interest on the amount paid to the promoter on account of failure of the promoter to hand over the possession of the flat to the Allottee. Thus, Allottee is entitled to claim interest on delayed period of possession since promoter has failed to hand over the possession of the flat on or before due date as mentioned in registered agreement between the parties.

Period of Delay

14. In order to determine the period of delayed possession, the due date agreed between the parties for handing over the possession as on or before 30.06.2017 is mentioned. Thereafter, possession has not been offered with occupancy certificate till date by the promoter to the Allottee. So, the total delayed period from due date 30.06.2017 till today is about 23 months.

Moulding Relief

15. Hon'ble Bombay High Court in Neelkamal Realtor Pvt. Ltd. Case Writ Petition No.2737/2016 decided on 06.12.2017 has laid down that RER Act 2016 is a social and beneficial legislation. It is further laid down that payment of interest under Section 18 is compensatory in nature and object of Section 18 is to recompensate an allottee for depriving him of use of funds paid by him. In para 126 of the judgment of Hon'ble Bombay High Court in **Neelkamal Realtor Pvt. Ltd. Case Writ Petition No.2737/2016** decided on 06.12.2017 has held that;

" In a given case, inspite of making genuine efforts a promoter fails to complete the project then the concern Authorities Adjudicators forums, Tribunals would certainly look into genuine cases and mould their reliefs accordingly."

In this matter, it is a fit case to consider above observation of moulding the relief for striking the balance between right of Allottee on one hand and obligation of promoter on the other hand to pay interest for delayed period of possession.

Some period exempted for genuine reasons

16. However, as per clause 12 of registered agreement,

promoter is entitled for extension in time for completing the construction work and Allottee had agreed for the same. The reasons for such a delay in completing the construction work are already given in clause 12(1) of registered agreement. Considering the nature of the said reasons and the entitlement of the promoter for extension of period for completion of the project, promoter is justified for reasonable extension of Six months from due date of 30.06.2017. So, this period of Six months will have to be deducted from total delayed period of 23 months. So, there might be delay of 17 months in handing over the possession. It cannot be ignored that the promoter was required to register the present project as it was incomplete on 01.05.2017 when RER Act, 2016 was made applicable. A period of three months was given for all incomplete projects for getting them registered with MahaRERA Authority. Moreover, grace period of one month was also given for completing the formalities of registration of incomplete projects since voluminous and huge documents and information was required to be submitted by promoter for seeking the registration with MahaRERA authority. So, incomplete project was permitted to be registered within the period of four months means a project may be registered on the very first day of the period of four months or on the last day of the period of four months. Thus, period of four months allowed for registration of incomplete projects will have to be deducted from the total delayed period of possession. After deducting four months from 17 months of period of delayed possession, there would be a delay of 13 months in handing over the possession. As far as defence of promoter that there was a delay in completing the construction work due to litigation in Hon'ble



Bombay High Court between the promoter and the Society is concerned, it is not useful to the promoter. The copy of the order produced by promoter in respect of the said litigation shows that Writ Petition No.2695 of 2018 was filed by one Yamuna Shankar Ghanekar against the Municipal Corporation of Greater Bombay and another and the Hon'ble Bombay High Court has directed to both the parties to maintain status-quo till next date. It appears that the said status-quo was further extended from time to time. However, it is submitted on behalf of the Allottee that it was personal dispute of Plaintiff Yamuna Shankar Ghanekar against the competent authority i.e. Municipal Corporation of Greater Mumbai and the said dispute has no concern with the construction of the present project. According to the Ld. advocate of the Allottee there was no preventive order against the promoter for not making the construction work of the project. At this stage I would like to point out copy of order of status-quo passed by Hon'ble Bombay High Court in Writ Petition No.2695 of 2018 filed by one Yamuna Shankar Ghanekar Vs. Municipal Corporation of Greater Bombay. It cannot be said that promoter was prevented for carrying out the construction work of the project. It cannot be ignored that the construction work up to 10th floor is admittedly completed by the promoter and the said construction is to be raised up to 12th floor. In fact promoter had obtained the commencement certificate for each floor separately and independently. Considering the above mentioned fact of completion of construction work up to 10th floor, it is very difficult to say that the promoter was prevented by interim injunction for not carrying out the construction work of the project. At the most it can be said that promoter was required to spend

some more unexpected time for seeking fresh commencement certificate for construction of every floor from the competent authority. Let us think equitable and just approach in granting the reasonable exemption of three months to the promoter for obtaining such commencement certificate for every floor from the competent authority. So, out of 13 months of delayed period of possession three months will have to be deducted. So, the delayed period of possession in the present matter is of 10 months. Allottee is justified in claiming the interest for delayed period of possession of 10 months on the amount which the Allottee has paid to the promoter.

Rate of Interest

17. As far as rate of interest is concerned, it is as per Rule 18 of Maharashtra Real Estate (Regulation and Development) Registration of Real Estate Project, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

No impact on project due to financial burden on Promoter

18. Since there are 55 flats in the project out of which 30 flats are allotted to old housing Society and 25 flats are to be sold out by promoter to new home buyers and allottee is such a new home buyer and no other new home buyer has filed a complaint for recovery of amount with interest or for interest on delayed period from promoter as admitted by Ld. advocate for the promoter, I am of the opinion that the obligation on the promoter to pay the interest for 10 months on substantial amount of Rs.3,40,42,000/- will not put the project in limbo and will not push promoter in financial trouble and thereby hamper the construction work of the project and project will not be stopped for ever for that reason.

Conclusion

19. In view of above discussion, I am of the opinion that the impugned order of Ld. Chairman MahaRERA Authority in giving liberty to the Allottee to agitate her right of claiming interest on delayed period of possession and preponing the time line in completion of project from December, 2020 to March, 2019 is partly just, proper and correct. Moreover, it is necessary to pass specific order by directing to promoter to pay an interest to Allottee on delayed possession of 10 months on the amount paid by the Allottee to the promoter from the date of its payment. So, I answer point No. 1 and 2 accordingly.

In the result, I pass the following order;

ORDER

- a) Appeal No.006000000010888 is partly allowed.
- b) Impugned order dated 16.10.2018 passed in Complaint No.23293 by Ld. Chairman, MahaRERA Authority is confirmed with following modification :-
- i) The promoter shall pay interest to the Allottee for delayed period of possession of 10 months on the amount paid by Allottee to the promoter from the dates of its payment till its realization.
 - ii) The rate of interest shall be as per Rule 18 of Maharashtra Real Estate (Regulation and Development) Registration of Real Estate

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Project, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017.

- iii) Interest payable by Promoter for delay in delivery of possession shall be adjusted against the payment of balance price of flat to be paid by Allottee as per schedule of payment mentioned in clause 4 of an agreement at the time of handing over possession of the Flat with occupancy certificate to the Allottee.

- iv) Parties to bear their respective costs.

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10.05.2019.

W Kolhe 10-05-19
[SUMANT M. KOLHE,]
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal, (MahaREAT)
Mumbai.

