

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

Appeal No. AT006000000010946

In

Complaint No. CC006000000054794

Merchant Constructions Private Limited

403, "Panju Mahal". 112B,

B. J. Road, Bandra (West),

Mumbai – 400 050.

... Appellant

Versus

1) Peter Aquinas Lodge and Pamela Lodge

A2/102, Ratan Nagar,

Four Bungalows, Andheri (West)

Mumbai – 400 053

... Respondent No. 1

2) Maharashtra Real Estate Regulatory Authority.

Office at 3rd Floor, Slum

Rehabilitation Authority,

Administrative Building,

Anant Kanekar Marg, Bandra (E)

Mumbai – 400 051

... Respondent No. 2

Adv. Makarand V. Raut for Appellant.

Adv. Jovanka Pareira i/b P. Vas & Co. for Respondent No. 1.

None for Respondent No. 2.

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

DATE : 7th OCTOBER, 2021.

(THROUGH VIDEO CONFERENCING)

JUDGMENT

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

Vide the captioned Appeal Appellant seeks to challenge the order passed by learned Member-I, MahaRERA (hereinafter, referred to as 'the Authority') in the complaint of Respondent No. 1 whereby Appellant is directed to pay interest for delay in handing over possession of the flat purchased by Respondent No. 1.

2. Appellant is a Promoter and purchasers arrayed as Respondent No. 1 in this Appeal are Allottees. Parties will be referred to as the Promoter and Allottees respectively.

3. Broad facts of the case are that the D'Mellos, the original owners through Development Agreement dated 14.05.2010 granted development rights to Promoter. After obtaining necessary approvals and Commencement Certificate (CC) subsequently on 17.09.2013, Promoter undertook construction of 'Thais Residency' project in which Allottees booked flat No. 201 in 2013 for a total consideration of Rs. 1,32,50,000/-. Parties executed registered agreement for sale on 24.03.2014 whereby Promoter agreed to handover possession of flat by 24.03.2015. As Promoter failed to deliver possession within agreed timeline, Allottees filed the complaint seeking *inter alia* interest for delay in possession under Section 18 of RERA.



4. Promoter disputed the claim put forth by Allottees and justified the delay in possession for the reasons beyond the control of Promoter. Promoter also submitted that after obtaining Occupancy Certificate (OC) on 11.06.2018, possession was also offered to Allottees on 02.07.2018 subject to payment of outstanding dues. After examining the facts, the Authority concluded that there was delay in possession and passed the impugned order thereby holding the Promoter liable to pay interest to Allottees w.e.f. 01.05.2017 till obtaining of OC as per Section 18. The said order is challenged in this Appeal.

5. Heard learned counsel for the parties.

6. Learned counsel for Promoter though admitted the delay in possession, yet denied Promoter's liability to pay interest as directed by the Authority for the following reasons.

i) Municipal Corporation of Greater Mumbai (MCGM) as per new rules directed to pay 100% premium as against 10% payable earlier for open space. As per oral instructions of the MCGM officials, Promoter was not able to get further CC for construction of 6th floor slab unless the amount of premium was paid. The premium was payable by Allottees and other purchasers only as per clause 39 of the agreement. Allottees were informed accordingly well before the date of possession vide letters dated 20.10.2014 and 21.11.2014. However,

