

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

**Appeal No. AT00600000031609**

**M/s. Laabh Buildwell**

Block No. 6, Bhupali CHS,  
Next to Neela Paranjpe Hospital,  
Ram Maruti Road,  
Thane (West) 400602

**...Appellant/Promoter**

**Versus**

**Mr. Sanket Prabhakar Yadav**

201, Florentina, Lodha Paradise,  
Majiwada, Eastern Express Highway,  
Thane (West), 400601.

**...Respondent/Allottee**

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*Adv. Sanjay Chaturvedi for Appellant.*

*Adv. Mukesh Pabari for Respondent.*

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**CORAM : SUMANT M. KOLHE, MEMBER(J)  
S.S. SANDHU, MEMBER (A)**

**DATE : 20<sup>TH</sup> OCTOBER, 2020.**

**JUDGMENT**

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

 Appeal is filed by Appellant/Promoter to impugn the order dated 10.05.2019 passed by learned Member-1 (hereinafter referred to as the 'Authority') in Complaint No. CC00600000078275 as per which Respondent/Allottee claimed interest for delayed possession.

2. Appellant and Respondent herein will be referred to as Promotor and Allottee respectively in this order.

3. Stated briefly, as per facts of this case Allottee booked a flat in the project of Promotor namely '**Laabh Gloria**' at Thane. Claiming that Promoter failed to hand over possession by agreed date of 30.09.2017 as per agreement for sale, Allottee sought interest for delay in possession. In defense, Promoter contended before the Authority that completion of project got delayed as **(i)** Promoter wanted to load TDR on the project building and had to obtain approval to revised plans from the planning Authority due to change in TDR policy by the Government and **(ii)** The Hon'ble Bombay High Court stayed the issuance of permissions by the concerned planning authorities due to water shortage.

4. The aforesaid grounds have been rejected by the Authority holding them to be irrelevant since Promotor had already secured permission to construct up to six floors which included the flat purchased by Allottee at 2<sup>nd</sup> floor. It is further observed by the Authority that Promoter could not have constructed additional floors at the cost of buyers who already had bought the flats and waited for possession. Therefore, the Authority held Allottee entitled for interest with applicable interest for delayed possession with effect from 01.10.2017 till possession and passed the order under challenge.



5. In the appeal proceedings learned counsel for Promoter contended that the matter under Appeal being simple involves question of law which under Section 18 of Real Estate (Regulation and Development) Act, 2016 (RERA) provides that interest on account of delay is permissible only if the possession is not handed over as per terms and conditions of the agreement. He argued that one of the major reasons for delay was to obtain approval of the Thane Municipal Corporation to the revised plan as per new TDR policy declared by the Government on 29.01.2016 to load TDR on the project building. He contended that as per clause 'j' of the agreement executed on 09.03.2016, Allottee was made aware of this necessity and he had agreed for the same by putting his signatures to the agreement.

6. Learned counsel for Promoter further submitted that another reason for delay was injunction granted by the Hon'ble Bombay High Court vide order dated 05.05.2017 in Public Interest Litigation (PIL) No. 36 of 2016 as per which the entire Ghodbunder area was not given water for construction by the Thane Municipal Corporation. As a result, project could not be completed as Promoter could not undertake construction for more than a year. He argued that such *force majeure* mitigating circumstances entitle Promoter an extension in the agreed period of possession as expressly agreed by Allottee under clause 9 of the agreement. He contended that Promoter cannot be penalised for delay that took place due to the aforesaid factors beyond control of Promoter as also covered

