

**MAHARASHTRA REAL ESTATE APPELLATE**  
**TRIBUNAL UNDER RERA Act**

**No.AT006000000010401**

Asha Devi Mall  
56A Lodha Heaven,  
Dombivali (East)

**.. Appellant/s**

V/s.

Shahaji Baba Zavir  
303 Mitra Nivas,  
Shrirang CHS, Thane (W)

**..Respondent/s**

**No.AT006000000010381**

Shahaji Baba Zavir  
303 Mitra Nivas,  
Shrirang CHS, Thane (W)

**.. Appellant/s**

V/s.

Asha Devi Mall  
56A Lodha Heaven,  
Dombivali (East)

**..Respondent/s**

Mr. Nagaraj Hoskeri a/w Nihant Panicker for the Respondent Shahaji  
Baba Zavir.

Asha Devi Mall the allottee present with the son Salim.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.  
Heard on : 12<sup>th</sup> December, 2018  
Dictated/Pronounced on : 12<sup>th</sup> December, 2018  
Transcribed on : 13<sup>th</sup> December, 2018



**:-ORAL JUDGMENT:-**

Heard finally.

1. These two appeals are taken up together and disposed off finally. The Promoter and equally the Allottee feels aggrieved by order 23<sup>rd</sup> May, 2018 recorded by Ld. Member-I, MahaRERA, Mumbai.
2. The prayer of the Allottee before the Authorities was for early possession of the flat booked in the name of her son in the registered project of the Promoter and to pay interest / compensation for delay in handing over the possession.
3. The grievance from the Promoter is the payments of Rs.22,56,000/- ascertained by the Allottee is incorrect. The Allottee was obliged by issuing receipts for 4 lakhs to enable him for bank loan, in fact the Promoter has received only Rs.18 lakhs. The order under challenge is a non speaking mechanical order. The Ld. Member did not specify what are the payments made by the Allottee and received by the Promoter. The Ld. Counsel says the Ld. Member did not consider the flat purchaser was behind schedule in payment which has protracted completion of the project. The Promoter has also challenged Power of Attorney in favour of Smt. Asha Mal of her son, who is employed abroad.
4. The grievance from Allottee is, Promoter is coming with all falsehood. The project was landed in civil litigation. The payments made earlier are not used for construction activities. Subsequent to civil litigations also promoter was obliged by release of additional payments of Rs.4 Lakhs. In her narration Smt. Mall even castigates the advocate for promoter saying that at his instance she was coerced to released addl. Payment of Rs. 4 lakhs to the Promoter. The Allottee has reiterated his stand to continue with the project.
5. The Ld. Counsel for the Promoter by flashing an Architect's certificate canvassed that the work as on December, 2017 was complete by around 90%.



6. The dispute raised by the Promoter about the amounts is factually incorrect as the receipts issued time to time by the promoter, having received the amounts from the Allottee are placed on record. This was even supported by bank record / statement which was verified before the Authority at the time of hearing. The Ld. Counsel for the Promoter banked on a notice issued by the advocate of the Allottee wherein an assertion was made of releasing Rs.18 lakhs. When asked the Ld. Counsel for the Promoter, what was the date on the notice he said it was a blank notice. Immediately, the Allottee has refuted such submission by pointing out original record which indicated that the notice was sent to the Promoter on 3<sup>rd</sup> December 2009. Thus an impression is generated that for the purpose of achieving cause of receipt of Rs.18 lakhs the date in the notice of the Allottee is wiped away with calculation. The Promoter is not a person of ordinary prudence to pass a receipt of Rs.4 lakhs in favour of the Allottee and in particular when the Allottee resides abroad. The Promoter has no right under the law to challenge the Power of Attorney given by the Allottee in his mother's name. Even otherwise, the mother being real mother in blood relation holds such power for and on behalf of her son so far as she does not act contrary to the interest of her son. To repeat, the Promoter has no authority to contest the Power of Attorney in favour of Asha Mall. Criticising the order of the Authority is very easy but the parties were aware about the booking of the flat, entering into transaction and the communication including payments. The payments made by the Allottee were highlighted time and again before the Tribunal and to the knowledge of the Promoter. On this score, the order cannot be branded to be mechanical or without disclosing requisite details. The Ld. Member has dealt with rival claims in precise and coherent manner.
7. The second contention raised by the Promoter is due to civil litigation, the project was hampered may be correct. But it was the timely assessment expected under the law by the Promoter about completion of the project as indicated in para 126 of Hon. Lordships in Neelkamal Vs. Union of India (Writ Petition No. 2737 of 2017) The liability to make interest payable to the Allottee being succinctly explained in Section 18 of RERA Act, 2016 and elaborated by Hon'ble Lordship, it does not provide any concession to be showered upon the Promoter. If there is delay on the part of Allottee, needless to indicate, Allottee shall be liable for interest for such delayed



payments. It should have been so established by the Promoter before the competent authority which unfortunately he has failed to do.

8. During the course of elaborate submissions, suggestion for compromise was extended to the Promoter's Ld. Counsel in presence of representative of the Promoter but for want of instructions Ld. Counsel did not make any commitment or concession. Repeatedly the Allottee Asha Mall and her son interrupted the submissions and more or less were branding the Promoter a cheater, fabricator and a defamer. Being as it may, it may be their perception or their anger which may have exploded during the submissions which one should simply ignore.
9. The point again to be reiterated is, there was no fault on the part of Allottee. Bank loan was availed of Rs.12 Lakhs. The interest is around Rs.10,700/- per month. The Allottee cleared the bank loan as reflected in the complaint, inspite of clamping of prohibition against the promoter, payments of 4 lakhs was made which has not been properly considered. On the contrary the payment of 4 lakhs is sought to be hijacked by Promoter by raising imaginary grounds to suit such purposes.
10. So far as appeal of the Allottee is concerned, I quite see the Allottee should not face difficulties for no fault on his / her part as the payments were made as per demand prior to injunction orders against the promoter. It was the gumption of the Promoter to protract the project and hence the Allottee should not be penalised. In the result the order of the Ld. Member -I, MahaRERA so far as appeal of the Promoter is concerned needs no change. So far as appeal of the Allottee is concerned, the order calls for modification by saddling interest against the Promoter for a fixed duration.

**-: ORDER :-**

1. Appeal no. **AT/06/000000010401** of the promoter is dismissed.
2. Appeal of Allottee being appeal no. **AT/06/000000010381** is partly allowed.



3. The order under challenge dtd. 23 May, 2018 is modified. The Promoter is made liable to pay interest @10.05% per annum from 15.02.2010 on the amounts received till handing over possession.
4. The Promoter is entitled to adjust the interest component in the receivables from the Allottee. However for such purposes an Account Statement shall be furnished by the promoter to the Allottee.
5. No costs in the appeals.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 12<sup>th</sup> December, 2018



(K. U. CHANDIWAL, J.)  
President,  
Maharashtra Revenue Tribunal,  
Mumbai  
& I/c. Maharashtra Real Estate  
Appellate Tribunal, (MahaRERA),  
Mumbai