

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

No.AT005000000000212

Vivek Shashikant Agarwal
C-1, 402, Kumar Shantiniketan 1 Co-op.
Housing Society, Baner-Pashan Link Road,
Pashan, Pune 411 021.

.. Appellant/s

V/s.

1. M/s. Nirman Constructions
2. Abhijeet Ramnath Gunjal
Office No. 404, Plot No. 137B, Abhijeet Court,
CTS No. 799B, Bhandarkar Road,
Above VLCC Showroom, Shivajinagar,
Pune 411 004.

..Respondent/s

No.AT005000000000220

Vivek Shashikant Agarwal
C-1, 402, Kumar Shantiniketan 1 Co-op.
Housing Society, Baner-Pashan Link Road,
Pashan, Pune 411 021.

.. Appellant/s

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Above VLCC Showroom, Shivajinagar,
Pune 411 004.

..Respondent/s

Called out at 3.40 PM.

Adv. Shri M.V. Sahasrabuddhe for the Appellants.

Shri Abhijeet Gunjal Proprietor, present on behalf of M/s. Nirman
Constructions.



CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 23rd October, 2018
Dictated/Pronounced on : 23rd October, 2018
Transcribed on : 23rd October, 2018

-:ORAL JUDGMENT:-

Heard extensively.

1. The Allottee in both the appeals feels dissatisfied with the directions of Ld. Chairperson, MahaRERA, Mumbai dated March 5, 2018 whereby a concession has been extended in favour of the Promoter to hand over possession of the subject two apartments along with access road before March 31, 2018.
2. There is no contest that the Allottee by virtue of Agreement dated July 25, 2014 and August 20, 2014 has agreed to purchase Flat / Apartment nos. 601 & 604 with two car parking spaces vide the registered Agreements. The Agreement inter alia provided to hand over possession within a period of 12 months of the respective Agreements.
3. Audience was given by Ld. Chairperson to the parties and he was more considerate, to accommodate the Promoter, by allowing him to complete the project and hand over possession by March 31, 2018. This particularly happened as reflected in para 2 of the order, owing to statement made by the Promoter to do so. The natural impact of the said statement emerges that the concession was to be adhered to in its letter and spirit in positive direction. However, virtually 7 months have passed from the order but the possession to the Allottee of the 'Green House' is wanting. No flaw or shortcoming can be attributed to the credit of the Allottee. It was an obligation rather volitional acceptance by the Promoter to hand over possession in compliance of legal terms by a specified date.



4. If the project is not completed and possession is not handed over by the Promoter by the date earmarked and agreed upon, law contemplates liability of interest and compensation in terms of Section 18 of RERA. In this case, the Allottee does not wish to withdraw or quit from the project. He wants to continue. He justifiably requires access road with legal compliances of permission from Planning Authority and Occupation Certificate in all respect. Such demand cannot be attributed to be an enrichment solicited by the Allottee. It was basically a right conferred by virtue of Agreement, agreed upon to be strictly followed.
5. Even after giving concession of 12 months to the Promoter as per Agreement still according to Mr. Sahasrabuddhe the liability against the Promoter is for 38 months for interest @ 10.05% per annum.
6. There is, in normal situation no escape for the Promoter from such obligation. However, in the instant case when the arguments were advanced, it emerged from the Promoter that he lost his father Mr. Ramnath Gunjal on 2nd February, 2017. The submission of present Proprietor that it was a mess after death of his father for him to reconcile the documents and keep himself updated to completion of project, needs consideration. These subsequent changes though are not properly indicated rather not pleaded but cannot be disputed. The ground realities should not be ignored while adhering to the compliance of Section ^{18, 19} of RERA ~~18~~ for the liability.
7. Since the Allottee does not want to create further skirmish in the matter and continue with the project and to have a good sense to prevail between both of the parties, I propose to extend concession of 12 months to the promoter in payment of interest @ 10.05% per annum to the Allottee in both these appeals.


:- ORDER :-

1. The appeal is partly allowed.

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2. The Promoter shall pay interest for a total past period of 26 months calculated upto 30th October, 2018 and shall also pay future interest at 10.05% till handing over possession of the flats to the Allottees / Appellant by legal compliances of obligation of developing the access road and getting Completion Certificate from competent Planning Authority.

3. The liabilities of interest shall be cleared by the Promoter within two months from today's order.

4. No costs.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 23rd October, 2018


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