

MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL UNDER RERA Act

No.AT0060000000010474

Bharat Raichand Shah
8, Harish Terrace, R.A.K. Road,
Wadala, Mumbai 400 031.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s

No.AT006000000000301

1. Parag Chandrakant Sawant &
2. Mrs. Aditi Parag Sawant,
1, Guru Kripa Trimurti Road,
Mulund (West),
Mumbai 400 080.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s



No.AT006000000000317

Nitin Korgaonkar
B/37, Kanchankrupa,
P.K. Road, Mulund (West),
Mumbai 400 080.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s

No.AT006000000000281

Satish Maruti Shirsekar
Yogi Hills, Flat No. 105,
Green Acres, Off. Balrajeshwar Road,
Mulund (West), Mumbai 400 080.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s

No.AT006000000000297

Garfield Deepak Dsouza
B-11, Shrenik, Ashok Nagar
Nahur Road, Nr. Nirmal Life Style
Mulund (W), Mumbai 400 080

.. Appellant/s

V/s.

Runwal Infinity
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.



..Respondent/s

No.AT006000000000309

Mr. T.A. James Pereira
Sudhir Tower, B-402, S.N. Road,
Mulund (West), Mumbai 400 080.

.. Appellant/s

V/s.

Sandeep Runwal
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s

No.AT006000000000289

Pravir Karmokar
5/6 Flat No. 401, Manish Tower,
Manish Nagar, 4 Bungalows,
J.P. Road, Andheri (West),
Mumbai 400 053.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s

No.AT006000000000291

Neha Arvind Nadkarni &
Arvind Sadanand Nadkarni
604, Bansuri Building,
Lokpuram, Pokhran-2,
Gladys Alvares Road,
Thane 400 610.

.. Appellant/s

V/s.

Sandeep Runwal
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s



No.AT006000000000280

Srinivasan Sundaresan
Sathish Kumar &
Mr. Krishna Iyer
A-3/ 209, Vasundhara
Lok Rachana CHSL, GGS Road,
Amar Nagar, Mulund (West),
Mumbai 400 082.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s

No.AT006000000000287

1. Nilesh Chindarkar
2. Prachi Chindarkar
605, OPAL,
Nirmal Lifestyle,
L.B.S.Road, Mulund (West)
Mumbai 400 080.

.. Appellant/s

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

..Respondent/s



Samira Sultana Halim Mohammed
2/274/3553, Tagore Nagar,
Vikhroli (East),
Mumbai 400 083.

V/s.

Sandeep Runwal
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

.. Appellant/s

..Respondent/s

No.AT006000000000279

Nitin Shantilal Jain
Flat No. 341/13, 3rd floor,
Lila Nowas, Opp. Shanti Near Lakhma,
Chandavarkar Road,
Matunga (East), Mumbai 400 019.

V/s.

Sandeep Runwal
Runwal Constructions, Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

.. Appellant/s

..Respondent/s

No.AT006000000000290

Sudhir Ray
H-199 Mulund Darshan
Mulund Colony,
Mumbai 400 082.

V/s.

Runwal Constructions
Runwal Group,
Runwal & Omkar Esquare, 5th Floor,
Off. Eastern Express Highway,
Opp. Sion Chunabhatti Signal,
Sion, Mumbai 400 022.

.. Appellant/s

..Respondent/s

No.AT006000000010556



Adv. Thakkar and Kanani in all the matters except Appeal No. AT006000000010474.

Smt. Deepali Thakor i/b Shri Sachin Karia, Advocate for Allottee in the Appeal No. AT006000000010474.

Shri James Pereira in Appeal No. AT006000000000309 in person.

Smt. Garima Agarwal for Respondent M/s. Runwal Constructions in all the Appeals.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 31st October, 2018
Dictated/Pronounced on : 1st November, 2018
Transcribed on : 1st November, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. Allottees in group of appeals feel dismayed by order of Ld. Chairperson, MahaRERA, Mumbai dated April 2, 2018 and May 21, 2018. The Appeals are taken together as common ground of agitation is projected. The other appeals of Allottees only with Receipt, Appeals of Allottees and promoters whose Agreements were cancelled by promoter are de-tagged.
2. The Allottees had entered into Agreement in respect of purchase of Flats in Respondent / Promoter's project 'Runwal Infinity' situated at Village Nahur, Mulund, Mumbai.
3. The common grievance of Allottees was though the project started in 2006, Agreements were entered in 2006, 2007. The possession date was 2008, 2009 (Halim Mohd. Iqbal - possession dated was 31.12.2010), however, the Promoter / Respondent failed to hand over possession in stipulated time upto December, 2009 or extended period in the case of Sameera Halim Mohd. (possession date was 31.12.2010).



Another grievance was the date of completing project quoted by the Respondent is far off to reason. The Respondent / Promoter be directed to pay interest / compensation for delayed possession.

4. The parties to the Appeal and their Advocates were given sufficient time to resolve the controversy amicably. Certain modalities were even suggested, however, no settlement reached and hence the Appeals are heard on merits.
5. The grievance of the Appellant is the Ld. Chairperson, MahaRERA, Mumbai erred in not appreciating the Judgement passed by Division Bench of Bombay High Court in Writ Petition 2737 of 2017 dated 6th December, 2017. The Ld. Authority erred in inferring that work cannot be carried out due to status quo order issued by Hon'ble Bombay High Court. The Ld. Authority erred in not appreciating that such status quo was restricted to one Building No.5 (A-1) and that too for a limited area. The Ld. Chairperson erred in concluding that delay in handing over possession cannot be ascertained. The import of Section 18 of RERA which contemplate 'Promoter to pay interest for every month of delay till handing over possession to the Allottees at prescribed rate from agreed date of possession till actual date of handing over possession to the Allottees,' is ignored. The Ld. Chairperson erred in not appreciating that the delay in obtaining requisite permissions cannot be said to be a mitigating circumstance so as to enable the Promoter to unilaterally extend the date of possession.
6. The relevant observation in the two orders of the Ld. Chairperson in the orders under challenge are as under :

Para 6 in order dated April 2, 2018 in group matters reads as under:

The reasonable time period which can be allowed to the Respondent for completion of the project in accordance

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with Rule 4 of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, registration of Real estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017, can only be established after the mitigating circumstances get over and the project work recommences. At present, the project work cannot be carried out due to the stop work notice issued by the BMC, pendency of the receipt of the environmental clearance and the status-quo Order issued by the Hon'ble Bombay High Court. Consequently, the time period which can be attributed to the Respondent for delay in handing over possession can neither be ascertained nor the date of handing over possession can be determined, at this stage.

Para 3 in order dated May 21, 2018 :

In order dated April 2, 2018 passed by MahaRERA in various complaints filed against the said project, this Authority has already held that the reasonable time period which can be allowed to the Respondent for completion of the project in accordance with Rule 4 of Maharashtra Real Estate(Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of interest and Disclosures on Website) Rules, 2017 , can only be established after the mitigating circumstances get over and the project work recommences. At present, the project work cannot be carried out due to the stop work notice issued by the BMC, pendency of the receipt of the environmental clearance and the status-quo Order issued by the Hon'ble Bombay High Court. Consequently, the time period which can be attributed to the Respondent for delay in handing over possession can neither be ascertained nor the date of handing over possession can be determined, at this stage.



7. Shri Kanani and Shri Thakkar for the Allottees further elaborated the profits earned and likely to be earned by the Promoter as the original project was of 490 flats while the present project figure is 1003 flats. Each of the Allottee has paid more than 20% of the amount at the time of booking. Private Forest was declared in 2006 still the Promoter had gumption to enter into Agreements. There was no stay against the Promoter from carrying on construction as Hon'ble Supreme Court on 25th January, 2010 granted permission to go on with the construction. Construction of Wings (Building B1) is 90% and Wings (Building B2) is 80%.
8. The Promoter has by subsequent details and communication fixed the date of possession for Building B1 and B2 to be July 2024.
9. The Allottees summarized their case as under:
 - 1) The Allottees, without prejudice to their rights suggested to release Rs.750/- per sq. feet at carpet area at the time of possession. This is not agreed by Appellant Mr. Sundaresan (Appeal No. AT006000000000280 and Bharat Shah (Appeal no. AT0060000000010474).
 - 2) The maximum period should be extended to 12 months to complete the building and giving possession.
 - 3) The Allottees / Appellant are very much keen to continue with the project and their earnest desire is to have peaceful possession of the booked flats in a shortest time.
 - 4) The Promoter shall execute regular Agreement for Sale for those Allottees with only Allotment Letter.
- 8) Mr. Jagtiani for the Promoter says there is no perversity in the order of the Ld. Chairperson. The mitigating circumstances were such that no time for handing over possession could be fixed. There was dispute with Government and the intervening circumstances were



beyond the control of the Promoter. The date of possession mentioned in Agreement was subject to a Caveat, a remedy to demand refund was available to Allottee. Today also, Promoter is ready to refund the amount with interest at 10.05% per annum. He says, contractual framework and rights and liabilities should not be decided divorce the contract. For nine years, there was embargo till 17th January, 2015 and potential of the property was totally locked. Promoter too has availed loan. 229 Flats are sold, 115 Flat purchasers have signed escalation letters.

- 9) On perusal of say on behalf of the Promoter in these matters, it emerges that on 18th May, 2006, Municipal Corporation of Greater Mumbai (MCGM) issued stop work notices on 25th May, 2006, Tahsildar, Kurla recorded Mutation Entry 777 as 'Private Forest'. Aggrieved by declaration of said land to be a 'Private Forest', Runwal filed Writ Petition No. 1578 of 2006 in Hon'ble High Court of Mumbai challenging the first stop work notice and Government Notification. The Hon'ble High Court on 25th July, 2006 passed interim order permitting Runwal to commence/continue the construction on the said land subject to outcome of the Writ Petition. MCGM withdrew first stop work notice from 13th September, 2006, Runwal obtained Environmental clearance for development of the said property on 16th November, 2006. The Writ Petition No. 1578 of 2006 was dismissed on 24th March, 2008. Aggrieved by said order, Runwal filed Special Leave Petition No. 11059 of 2008 before Hon'ble Supreme Court of India. The Hon'ble Supreme Court passed interim order in the said SLP on 25.01.2010 permitting Runwal to proceed with construction on the said land subject to decision of Ministry of Environment & Forest (MoEF). On 30th January, 2014, Hon'ble Supreme Court quashed and set aside the order dated 24th March 2008 of the Hon'ble High Court of Bombay. Runwal was prosecuting with Environmental Agencies in respect of MoEF Notification. Recently, on 22nd January, 2018, MCGM issued one more stop work notice on the ground that the project did not have a valid Environment clearance.



- 10) While dealing with the Appeals in the light of above background of events, one should not be oblivious to the spirit of 'The Real Estate (Regulation and Development) Act, 2016 (RERA).'

Preamble of RERA reads as thus :

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto;

- 11) As per the provisions of Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 the revised date of possession for an ongoing project has to be commensurate with the extent of balance development.
- 12) The Ld. Counsel for Promoter relied on the Division Bench Judgement of Neelkamal and in particular Paras 89, 96, 244, 304 and 308.

There should not be contest to the observations but at the same time other directions of Hon'ble Lordships and conclusions drawn needs to be harmoniously construed.

Paras 262 & 263 (Neelkamal Judgement) are as under:

"As far as interest under Section 18(1)(b) is concerned, it was submitted that under Section 8 the Authority appoints facilitator / agency for carrying out remaining development works. After ouster of the promoter, he cannot be held

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responsible on account of delay in handing over possession by the facilitator/ agency so appointed by the Authority. It was contended that it is quite possible that the amount of 70% deposited under Section 4(2)(1)(D) may have been utilized by the promoter for carrying out construction. In that event, it will be extremely harsh and unreasonable to direct the promoter to pay interest till handing over possession after his ouster. The provisions of Section 18(1)(b) are, therefore violative of Articles 14, 19(1)(g) of the Constitution of India. I do not find any merit in this submission. The promoter is liable to pay interest on account of suspension or revocation of the registration under the Act or for any other reason. The basic presumption is that the promoter was unable to complete the construction despite prescribing the time period under Section 4(2)(1)(C). The amount of 70% is already credited in a dedicated bank account under Section 4(2)(1)(D). The promoter has retained 30% paid by the allottee to him. Thus the allottee has parted with entire consideration for purchasing the apartment and still he is not given possession. The allottee cannot be said to be acting gratuitously. The promoter enjoying the benefit is bound to make compensation to the allottee. In other words though it is a case of unjust enrichment on the part of the promoter, still he is not liable to compensate the allottee by paying interest on the amount retained by him. In view thereof, it cannot be said that Section 18(1)(b) is violative of Articles 14 and 19(1)(b) of the Constitution of India. It also cannot be said to be a penal provision."

Para 263 (Neelkamal Judgment) reads as under:

"In so far as Section 38 is concerned, the Authority is empowered to impose penalty or interest in respect of contravention of obligations cast upon the promoter / allottees under the Act or the Rules and the Regulations made thereunder. Thus, the Authority can also impose penalty or interest on the allottees for contravention of the



obligations cast upon them. At the same time, the Authority can impose penalty or interest on the promoter on account of contravention of obligations cast upon him. The legislation has done balancing of rights and liabilities of the promoters and allottees. While exercising the power, the Authority is guided by the principles of natural justice. It, therefore, cannot be said that Section 38 violates Articles 14 and 19 (1) (g) of the Constitution of India."

Para 119 (Neelkamal Judgment) reads as under:

"Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the



parties, is unwarranted, illegal and highly arbitrary in nature."

Para 122 (Neelkamal Judgment) reads as under:

"We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so conferred would have been an absolute one."

Para 126 (Neelkamal Judgment) reads as under:

"The another plea raised is as to why a promoter shall pay interest for the past contractual rights, in case of failure to complete the project after registration under RERA, till the possession is handed over. Under the scheme of the RERA it is clear by now that a promoter has to self assess and declare time period during which he would complete the project. But in case, inspite of making genuine efforts, a promoter fails to complete the project, then the concerned



authorities, adjudicators, forums, tribunals would certainly look into genuine cases and mould their reliefs accordingly. We do not find that on that count the provisions of Section 18(1)(a) are to be declared as contrary and violative of Articles 14 and 19(1)(g). Considering the scheme of the RERA and the provisions of Section 18(1)(b), we are of the view that the same are not contrary to Articles 14 and 19(1)(g) of the Constitution. The provisions cannot be struck down on the ground of challenge that its operation is retroactive in nature. Neither the provisions of Section 18(1)(a) and (b) violate Article 20 of the Constitution. The payment of interest under Section 18 is compensatory in nature [Abati Bezbaruah vs. Director General, Geological Survey of India – (2003) 3 SCC 148 (para 18) and Alok Shanker Pandey vs. UOI – (2007) 3 SCC 545 (para 9)]

The provisions of Section 18 must be read with Sections 71 and 72. The adjudicator would consider each case on its merits and unless such cases emerge and decisions are taken by the authority, it would not be appropriate at this stage to hypothetically consider a situation and decide constitutional validity of statutory provisions."

- 13) In Suit no. 962/14 pending before Hon'ble High Court, on February 14, 2018 Runwal were restrained from creating third party interest in respect of an area of 14,343.76 sq.ft. in A-1 Building. On 2nd July, 2018, based on Minutes of Order, same area was directed to be maintained and an undertaking was given by Runwal not to transfer, alienate, deal with, dispose of or encumber such area of 14,306 sq.ft. in A-1 Bldg.
- 14) Thus, the stay or its impact would not generate any momentum in favour of the Promoter to take shelter and scaffolding to protract the matter of handing over possession. The mitigating circumstances referred by Shri Jagtiani highlighted hereinbefore, were not of such grave quality which has inhibited or stalled complete construction activities of the Promoter. The Government of India clarification in



respect of Environmental Clearance indicated in Notification dated 21st August, 2013 Paragraph 2 & 3 thereof reads as under:

"2. And whereas the above said notification was further amended vide notification number S.O. 356(E), dated the 4th May, 1994, Clause (c) of sub-paragraph (III) of paragraph (2) of the said notification provides that –

"the clearance granted shall be valid for a period of five years from commencement of the construction or operation".

3. And whereas the intent of the Central government has been and has always been that the validity of the environmental clearance is five years "for" commencement of the construction or operation and not that the environment clearance is only for five years "from" the commencement of construction or operation.

This also need not be ignored.

- 15) Thus, the Promoter cannot be further permitted to put a blame to the Environmental Clearance. Even if all the constraints flashed by Promoter are positively considered but the issue that triggers here is there was adequate time for the Promoter to complete the project in given schedule. There should not be a misconception that unilateral terms in Agreement de hors the statutory obligations will prevail. In fact, they are contrary to the statutory Scheme. The Preamble referred to above, Rule 4 indicated above, provides for a revised date of possession for an ongoing project, commensurate with extent of balance development. As indicated hereinbefore, Building B-2 is complete by 80% and Building B-1 by 90%. In the situation, it is beyond comprehension to extend time to the Promoter to meet the dreams of flat purchases by July 2024. There should be reasonableness on both the sides. The matter needs to be looked with larger picture from a wider perspective to the benefit of both the stakeholders. The Allottees should not be tormented viciously.

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- 16) The dialogue of resolution of controversy by providing escalation, as stated earlier has failed. Escalation letters signed by three Allottees (AT006000000000291, AT006000000000290 and AT006000000000281) will not tilt the picture from liability of the Promoter to pay interest for delayed possession.
- 17) The Allottees have stated in the light of stage of the construction, the Promoter should be directed to hand over possession within a period of 12 months. However, I propose it should be 18 months. So far as Bldg. 'C' is concerned, the reasonable period could be 30 months. However, considering the facts as pointed by Shri Jagtiani, and giving concession, to strike balance between the parties, I propose to award interest in favour of Allottees after orders in the S.L.P. dated 30th January, 2014. The Promoter shall release interest in favour of the Allottees / Appellants effective from 1st February, 2014. This will be in tune with Scheme of RERA Preamble and Judgement in Neelkamal.
- 18) Shri Jagtiani has also referred to the judgement of Hon'ble Supreme Court reported in (2013) 12 Supreme Court Cases 776 in the matter of Hansa V. Gandhi Versus Deep Shankar Roy and Ors. In the said Judgement, Letter of Intent was issued in favour of Appellant / Plaintiff therein and suit for specific performance was filed. The Letter of Intent provided, 'only upon payment of purchase price, the developer and the purchaser were to enter into an Agreement with regard to sale of flats.' However, in this context, Hon'ble Supreme Court directed that no specific performance of one flat could be granted, however, allowed of Plaintiff's money with 9% per annum. Then the Letter of Cancellation was written by developer to the purchaser. In the instant case, for few of the Appellants, Allotment Letters are issued. Almost all the stipulations are briefly identified except date of handing over possession. That will not change the scenario as it should be in consonance to the prevailing statute 'Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA)' which mandates specification of date of possession. Impact of MOFA is not taken away as could be seen in Section 88 of RERA. Thus,



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non-mention of date of possession in the Allotment Letter will not be detrimental to such Allottees.

- 19) Sec. 2(c) of RERA deals with Agreement for Sale means an agreement entered into between the Promoter and the Allottee. It is only the difference of nomenclature, one may brand it as letter of allotment or one may brand it as an Agreement or one may brand it as provisional agreement or define it as an acceptance letter. However, it will not dilute the terms settled between the parties of a purchaser, seller of property and price agreed upon in schedule, and details of the property.
- 20) Sec. 2(d) of RERA contemplates definition of 'allottee' which includes in relation to the real estate project allotted or sold whether as freehold or leasehold or otherwise transferred by Promoter and includes the persons who subsequently acquires the said allotment. Broadly speaking the term 'allottee', put in juxtaposition with the letter of allotment meets the requirement of Agreement as indicated in Sec. 2(c) of RERA. It is not the case of Promoter that Letter of Allotment does not meet required details. On the contrary, the Promoter has not raised objection to contractual relations, nor agitated that complaints sans consideration for want of regular Agreement for Sale.
- 21) The Allottees, alleged that there is escalation in prices in the vicinity, also in the project of the Promoter and hence Promoter wants to avoid compliance. I do not wish to advert to this issue, however, it is crystal clear that the Allottees / Appellants want to continue with the project. At the same time, the promoter is also ready to refund the amount received with interest @10.05% p.a. if the Allottee wants to withdraw. This aspect now becomes academic.
- 22) One should not be oblivious to the spirit of RERA - the Preamble. It also needs to be considered that in the judgement of Neelkamal in Para 109, it is observed "The Authority shall examine each case in compelling circumstances and reasons for a Promoter in failing to complete the project. The Authority / Tribunal can look into individual cases and mould their reliefs accordingly."




23) Drawing balance sheet of the above facts, the Appeals are allowed.

:- ORDER :-

1. The Appeals being No. AT006000000010474, AT006000000000301, AT006000000000317, AT006000000000281, AT006000000000297, AT006000000000309, AT006000000000289, AT006000000000291, AT006000000000280, AT006000000000287, AT006000000000279, AT006000000000290, AT006000000010556 of the Allottees are allowed.
2. The Promoter / Respondent to pay interest to the Allottees @ 10.05% p.a. effective from 1st February, 2014 till handing over actual possession.
3. The Promoter / Respondent to complete Building B1 and B2 in the registered project within 18 months from order. Failure, to follow action and consequences in terms of Section 7 of RERA.
4. The Promoter / Respondent to pay cost of Rs. 10,000/- to Appellant / Allottee.
5. The operation of order is stayed upto 5th December, 2018.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 1st November, 2018


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