

Sarnobat

**MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL**

**APPEAL NO. 0006000000010557**

**M/s. Srushti Sangam Developers Pvt. Ltd.** )  
Rashmi Sadan, 18<sup>th</sup> Road, Chembur, )  
Mumbai 400 071. )... Appellant/s.  
Vs. )  
**1. Sarvapriya Leasing (P) Ltd.** )  
563, Dieal Annex, Central Avenue, )  
Corner of 11<sup>th</sup> Road, Chmbur, )  
Mumbai 400 071. )  
**2. Me. Devbrata B. Moulick,** )  
Kirana, D/2, Flat No.11, )  
Narayan Poojari Nagar, A.G. Khan Road, )  
Worli, Mumbai 400 018. )... Respondents.

Mr. Daswadikar Advocate, for the Appellant.

Dr. Sanjay Chaturvedi, Advocate for the Respondents.

**CORAM : SUMANT M. KOLHE,(Member J.)**

**DATE : JANUARY 29, 2019.**

**Appeal Under Section 44 of MAHARERA ACT 2016.**

**ORAL JUDGMENT :**

1. The Appellant-Original Respondent No.1 has challenged order dated dated 21.05.2018 passed by Member (1) Maha RERA in complaint No.006000000001643 whereby Appellant-Respondent No.1 was directed to complete the project on or before 01.11.2019 instead of 01.09.2022 and to make necessary correction in the webpage of his registration with MahaRERA (Maharashtra Real Estate Regulatory Authority).

2. The Appellant is original Respondent No. 1 (Promoter).

Respondent No.1 is original complainant (investor cum allottee).  
Respondent No. 2 is original Respondent No.2 (owner of the land).

2.1. I will refer the parties as per their status as Promoter and Investor cum Allottee and Owner.

3. In brief the facts are as under :-

The Promoter was developing a project namely Maulick Enclave at Chembur, Mumbai. It is a redevelopment project consisting of residential premises and shops and offices. Promoter and owner of the land had executed registered agreements of redevelopment in the year 2003. As the project was incomplete on 1<sup>st</sup> May, 2017 i.e. on the day of application of RERA Act 2016. Promoter has registered a project with MahaRERA and it bears registration No. P51800012986.

4. The investor cum allottee had paid a total sum of Rs.4,53,71,100/- towards price to the Promoter and Promoter executed in all Eight separate registered agreements for sale on 29.01.2007 in respect of Six shops and Two offices.

5. Allottee cum Investor could not get the possession of the commercial units as the project remained incomplete till the date of filing of complaint before MahaRERA Authority. Investor-Allottee had prayed in the complaint that directions be given to the Promoter for an early completion of the project along with occupancy certificate and to hand over early possession of the commercial units and to execute Conveyance Deed as per the terms and conditions of the registered agreements for sale dated 29.01.2007 in respect of commercial units.

6. Promoter has made out a case that original complainant (Allottee-Investor) is not genuine buyer but he is an investor and hence,

he is not entitled for protection and to seek any relief under RERA Act 2016. According to him original complainant is not allottee and he cannot file complaint under RERA Act 2016 against the Promoter. He also made submission regarding various reasons due to which redevelopment project was delayed. According to him there was no intention and deliberate attempt to keep the project incomplete on the part of Promoter.

6.1 The Ld. Advocate for original Complainant argued that the project is duly registered under RERA Act and rights and obligations of parties are governed by RERA Act 2016. According to him, there is no concept of Investor as such in RERA Act and original Complainant is Allottee as per definition laid down under Section 2(d) of RERA Act. He pointed out that original Complainant is Company and merely because Six shops and two offices are purchased by the Company, it cannot be termed as "Investor". He argued that there is no evidence to show that intention of Company was to make investment and then to earn income by selling the shops and offices. According to him, it is obligatory for Promoter to complete project earlier as it is lingering for more than Ten years.

7. After hearing the Ld. Advocate of Promoter as well as investor-allottee and after perusing the copies of documents filed on record by both the sides including copies of agreements for sale of commercial units, the Ld. Member No.1 of MahaRERA partly allowed the complaint of investor-allottee and directed the Promoter to complete the project on or before 01.11.2019 and accordingly to make necessary correction in the webpage of the registration of the said project with MahaRERA and also to hand over the possession of commercial units to investor-allottee and to execute conveyance deed. The Ld. Member No.1 MahaRERA relied on contents of registered agreements for sale as

well as definition of word "Allottee" as per Section 2(d) of RERA Act 2016. According to him original complainant is buyer and as per agreements for sale of commercial units, the original complainant is having a status of allottee. He did not accept the submission made on behalf of Promoter that the original complainant is investor and he wanted to earn more money by selling out these commercial units which are purchased in bulk. Ld. Member No.1 of MahaRERA also considered the report of technical officer regarding the status of construction work of the project on account of his visit to the site as per the order passed by Ld. Member No.1 of MahaRERa.

8. In view of rival contentions of both the sides the following points arise for my determination :-

**POINTS**

- W/S
- i) Whether the status of original complainant is of "Allottee" or of "Investor" ?
  - ii) If Allottee then whether Allottee is entitled for early possession of the commercial units?
  - iii) Whether Allottee is entitled for relief of giving direction to the Promoter to complete the project at earlier date and to obtain occupancy certificate and also to execute Conveyance Deed ?
  - iv) What Order ?

My findings on the above points for the reasons stated below are as under :-

**FINDINGS**

- i) Original complainant is having a status of "Allottee".
- ii) Affirmative.
- iii) Affirmative.
- iv) As per final order.

**REASONS :-**

**AS TO POINT NOS. i) to iv) :**

9. Admittedly registered agreement of redevelopment of the project was executed between Promoter and the Owner in the year 2003. It is not in dispute that Promoter executed registered agreement for sale of Six shops and Two offices in the said project in favour of the complainant on 29.01.2007 after accepting the total price of all the commercial units to the extent of Rs.4,53,71,100/-. It is not in dispute that the redevelopment project remained incomplete till complaint is filed before MahaRERA Authority. So Promoter had registered the said ongoing project with MahaRERA Authority as per Section 3 and Section 4 of RERA Act 2016. The Ld. Advocate for the Promoter strongly submitted that complainant is not "Allottee" as he invested huge amount to the extent of Rs.4,53,71,100/- and registered agreements for sale dated 29.01.2007 were executed in his favour only by way of security for this invested amount. According to him, provisions of RERA Act 2016 are not attracted to the present matter. On the other hand, the Ld. Advocate for complainant referred registered agreements for sale and pointed out that complainant is buyer and complainant has paid entire price of all the commercial units and complainant has acquired legal right of ownership over the said commercial units in view of registered agreements for sale.

10. I have perused the contents of registered agreements for sale. It is true that complainant is styled as investor in the said registered agreements. However, if we carefully perused all the terms and conditions in registered agreements for sale, it is revealed that the complainant is a buyer and complainant had paid total price of Rs.4,53,71,100/- to the Promoter towards purchase of Six shops and Two offices in the project of the Promoter. In fact the Promoter agreed

to transfer and assign all ownership rights, title and interest in favour of the investor i.e. complainant in respect of commercial units in the project. In order to ascertain intention of the parties and nature of the transaction between them only nomenclature is not sufficient. It is necessary to read the agreement as whole. Thus, from entire agreement for sale along with all contents therein, it is evident that it is transaction of sale. Apart from registered agreements for sale, there is no reliable and authenticate documentary evidence to support the case made out by Promoter that it is transaction of security for amount. So contents of registered agreements are quite manifest and clear to show that complainant is purchasing the commercial units and he is a buyer though he is shown with nomenclature of investor in the said registered agreements.

11. The definition of Allottee as per Section 2 Sub-Section (d) of MahaRERA is as under :-

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

In view of above mentioned definition of "Allottee" as well as all the contents of registered agreements for sale executed between Promoter and complainant, it is crystal clear that the complainant is Allottee. Once the complainant is an Allottee and admittedly original Respondent No. 1 is Promoter who wanted to redevelop the property of the said project and

the said incomplete project is duly registered with MahaRERA with registration No.P51800012986, the provisions of RERA Act 2016 are attracted to the present matter and the complainant is having a status of "Allottee". The concept of investor is not defined or referred in RERA Act 2016. Once the project of Promoter was incomplete on the day of application of RERA Act on 01.05.2017 and Promoter registered the said incomplete project with MahaRERA there will be Promoter and Allottee as per the definition given under Section 2 of RERA Act 2016 and there cannot be a party having a status of "investor".

12. Since project is delayed for more than ten years, the Ld. Member-1 of MahaRERA appointed technical officer for paying visit to the site of the project and to submit the report regarding status of the project. Accordingly, technical officer submitted the report from which it was revealed that 90% work of the project is already completed and the balance work of the project may be completed within one year. On the basis of the report of technical officer which is believable and acceptable, the Ld. Member-1 RERA preponed the date of completion of project up to 01.11.2019 instead of 01.09.2022 which was mentioned as extended date by Promoter while making registration of his incomplete project with MahaRERA. So order regarding preponing the date for completion of project which is already delayed for more than ten years, as passed by Member-1, MahaRERA is quite just and proper. Moreover, complainant being the "Allottee" is entitled to ask for relief of earlier possession of the commercial units which the Allottee intended to purchase from the vendor. Moreover, Allottee is also entitled as per provisions of RERA Act 2016 for relief of giving direction to the Promoter to complete the project at early date and also to get executed Conveyance Deed and to deliver the possession of commercial units at an early date along with occupation certificate as directed by Member-1 MahaRERA in his order.

Therefore, I answer the above point Nos. 1 to 4 accordingly.

13. Submission made by Ld. Advocate for Promoter that the Complainant is opportunist as he kept mum for ten years without asking relief of possession or refund of money will not be helpful in the present complaint to the Promoter as the present complaint pertains to issue of preponing the date of completion of project and to hand over the possession at an early date along with occupancy certificate as well as execution of Conveyance Deed. Similarly, objection raised by Ld. Advocate for Allottee that this proceedings is a revisional proceedings and not an Appeal because the present Appeal was already heard on merit by Hon'ble I/C Chairman of the Tribunal and decision on merit was already given on 31.10.2018. After perusing the various orders passed by Hon'ble I/C Chairman of Tribunal in this proceedings, it is revealed that by the order dated 31.10.2018 finally disposing of this Appeal was recalled by Hon'ble Chairman of Tribunal since, the Ld. Advocate of Promoter was absent and he had no opportunity to argue the matter at that time. Once the order is recalled, the ex-parte decision given on 31.10.2018 stands set aside and the original Appeal was restored and accordingly it was heard on merit in presence of both the sides.

14. Ld. Member-1 MahaRERA correctly passed the order regarding preponing the date of completion of incomplete project of the Promoter in this matter along with other consequential reliefs regarding delivery of possession along with occupation certificate as well as execution of Conveyance Deed. The order of Ld. Member-1 MahaRERA is quite proper and just and correct. It needs no interference in the Appeal. In the result, following order is passed.

**ORDER**

1. The Appeal No. 0006000000010557 stands dismissed.



2. The Appellant shall pay Rs.2,000/- towards costs of this Appeal to the original complainant.

MS

*Sumant M. Kolhe*  
29-01-19.

**[ SUMANT M. KOLHE, ]**  
**JUDICIAL MEMBER,**  
**Maharashtra Real Estate**  
**Appellate Tribunal, (MahaRERA)**  
**Mumbai.**