

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

No.AT006000000010447

Vikas R. Pandey
303-A Wing, MIT Niketan Tower,
Kanakia Land Estate,
Opp. Lawrence Estet,
90 Feet Road, Thakur Complex,
Kandivali (East),
Mumbai 400 101

.. Appellant/s

V/s.

Neelkamal Realtors Suburban
Pvt. Ltd.
DB House, Gen. A.K. Vaidya Marg,
Opp. Dindoshi Bus Depot,
Goregaon East, Mumbai 400 063.

.. Respondent/s

No.AT006000000010446

Ashish R. Pandey
303-A Wing, MIT Niketan Tower,
Kanakia Land Estate,
Opp. Lawrence Estet,
90 Feet Road, Thakur Complex,
Kandivali (East),
Mumbai 400 101

.. Appellant/s

V/s.

Neelkamal Realtors Suburban
Pvt. Ltd.
DB House, Gen. A.K. Vaidya Marg,
Opp. Dindoshi Bus Depot,
Goregaon East, Mumbai 400 063.

.. Respondent/s



No.AT006000000010522

Neelkamal Realtors Suburban
Pvt. Ltd.
DB House, Gen. A.K. Vaidya Marg,
Opp. Dindoshi Bus Depot,
Goregaon East, Mumbai 400 063.

.. Appellant/s

V/s.

Ashish Radheshyam Pandey
303-A Wing, MIT Niketan Tower,
Kanakia Land Estate,
Opp. Lawrence Estet,
90 Feet Road, Thakur Complex,
Kandivali (East),
Mumbai 400 101

..Respondent/s

No.AT006000000010526

Neelkamal Realtors Suburban
Pvt. Ltd.
DB House, Gen. A.K. Vaidya Marg,
Opp. Dindoshi Bus Depot,
Goregaon East, Mumbai 400 063.

.. Appellant/s

V/s.

Vikas Pandey
303-A Wing, MIT Niketan Tower,
Kanakia Land Estate,
Opp. Lawrence Estet,
90 Feet Road, Thakur Complex,
Kandivali (East),
Mumbai 400 101

..Respondent/s

Adv. Mr. Sushant Chavan appears for Promoter in all these appeals,
two are preferred by Promoter and against same order, two are
preferred by allottees.



Mr. Jagannath Tiwari for Allottees in the appeal of allottees at Sr.Nos. 5 & 6 and as Respondent in the appeal of Promoter.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.

Heard on : 30th October, 2018

Dictated/Pronounced on : 30th October, 2018

Transcribed on : 31st October, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. Each of the four appeals are heard together and disposed of by a common order, since the controversies by the allottee and equally the promoter centres to the impugned Order of Ld.Member-1, MahaRERA Mumbai dated 17th May, 2018.
2. The Allottees approaching MahaRERA Authorities have urged for grant of interest for delayed possession in respect of their respective flats booked by them in Promoter's project having registration no. P51700003433 known as 'D.B. Ozone' at Mira Road, Thane. The Agreement interalia provided that the Promoter was to hand over possession of the flat to the Allottees on 31.12.2014 with a grace period of one year i.e. by the end of 31.12.2015. The principal grievance is, the date stipulated has been deliberately ignored by the Promoter.
3. The Ld. Counsel Shri Chavan for the Promoter in his appeal and also while dealing with the appeals of the allottee, principally emphasized on economic downturn faced by the Promoter and the economical situation projected by KPMG India dt. 9.7.2014. He travelled through the entire report to impress as to how the economical conditions worsened the development in the project and Promoter has suffered a lot. In the appeals for the first time balance sheets are produced to show the quantum of losses successively suffered by the Promoter for last three years.



4. From submissions from both the sides, it emerges that the allottee do not want in each of the case to withdraw from the project. The principal grievance is payment of interest for delayed possession.
5. Shri Tiwari for the allottee has a grievances to the concession extended in the order of Ld. Member-I, MahaRERA, Mumbai, subject of challenge and orders passed in respect of the said project in other cases of allottees. He has criticised the same branding it to be misuse of discretion by the Authority. He calls such order to be arbitrary in its character.
6. At this stage of the matter, I do not wish to comment on the peculiar nature of arbitrariness flashed by Adv. Shri Tiwari, However, a balance needs to be struck in between orders recorded by the Authority and equally, by this Appellate Tribunal.
7. My attention is invited to the appeal preferred by Neelkamal Realtors Versus Keshavlal Upadhyay in which on 25th April 2015 and on the peculiar facts, the canvas projected by the Promoter was declined to be entertained in respect of economic downturn or the non-availability of raw material. It was observed in the said order, the delay occasioned in completing the project cannot be attributed to be suffered by the allottee. The allottee was mandated under the terms of the agreement if he commits default to release interest @21% p.a. however when the turn of the Promoter comes, he took an umbrella to the legal provisions of MOFA to release interests @t 9% p.a. m
8. It is pointed by Mr. Tiwari and not disputed by Mr. Chavan that the allottee in the present two cases when committed default in making payment suffered liability of interest at 9% p.a. Thus no concession is extended to them in remittance. The grounds raised by the Promoter and involvement of huge project of 25 buildings which is undertaken by the Promoter and additional 8 buildings to be handed over to the Govt. of Maharashtra / MHADA under the Scheme may be a stalk ground reality but it will not tilt the balance so far as payment of interest is

concerned to be saddled and borne by the promoter, for delayed possession.

9. The allottees have booked their flats in bldg. No. 24. If one goes by the statement of allottees that they want to continue with the project and the projection by the Promoter that there was no siphoning of moneys still the facts remains that the balance sheet to which Mr. Chavan referred does not show downturn, on the contrary the share price has been fluctuating at higher pedestal than decrease. The economic downturn to which reference is given on 9.7.2014 will not accelerate the cause as the situation was of 2013-2014 while there is a sea change thereafter in economic condition and sale of immovable properties and in particular in the city of Mumbai. This is moreso Mr. Chavan informs the increase in price in resale or in the new project launched, in the nearby vicinity.

:- ORDER :-

1. Considering all the aspects, the effect of orders recorded in the matter of Keshav Upadhaya and 2nd appeal preferred by the Promoter before Hon. High Court, I do not see any merits in the appeal of the Promoter. Consequently the appeals are dismissed.
2. So far as appeals of the allottees are concerned, the Promoters are directed to release interest from 1.7.2016 @ 10.05% p.a. The Promoter is at liberty to appropriate / adjust the interest if certain recoverable are due by the allottees.
3. Thus the allottees' two appeals are partly allowed.
4. No costs.



5. Heard Mr. Chavan. The orders in the appeal are stayed upto 27th November, 2018.
6. At the request of Mr. Chavan the orders in the appeal should not be treated as a precedent by other allottees.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 30th October, 2018



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