

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

No.AT006000000000231

M/s. Sheth Infraworld Pvt.Ltd.
Sheth House, Gen.A.K. Vaidya Marg,
Off. Western Express Highway,
Malad (East), Mumbai 400 097.

.. Appellant/s

V/s.

Neha Agrawal
8th floor, Piramal Tower
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel (W), Mumbai 400 013

..Respondent/s

No.AT006000000000194

Neha Agrawal

.. Appellant/s

V/s.

M/s. Sheth Infraworld Pvt. Ltd.

..Respondent/s

The allottee Neha Agrawal present in person.

Adv. Shri Kishore Salunke in the appeal of Promoter and also in the appeal of the allottee.

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

Heard on : 2nd May, 2018

Dictated/Pronounced on: 2nd May, 2018

Transcribed on : 3rd May, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. The Order dated January 30, 2018 in Complaint no. CC006000000000889 is questioned as to its legality and correctness by allottee and also the Promoter. Both appeals are heard together as common points are raised and argued.
2. The grievance of Promoter is the agreement entered into in January 2016 incorporated the term 'handing over possession by October 2016.' The project was delayed, for which reasons were assigned before the Ld. Chairperson. The reasons are (a) stop work notice of Municipal Corporation b) Complainant's default in payment c) sand

shortage d) labour shortage e) effect of demonetization and f) heavy rainfall. The 5% deduction directed by the Ld. Chairperson in paragraph 9 should be reconsidered and the order to that effect needs modification.

3. The Ld. Chairperson minutely considered these points and provided concession to the Promoter, spelt out in para 6 of the Order. I do not see any tearing hurry in said finding.
4. The allottee has, in her appeal, indicated that she has paid 95% of the cost of flat by November 2016. The possession was agreed to be given in October 2016. There was no delay on her part except 10 days that too bank's failure. She has urged that interest component should have been applied from the date agreed upon i.e. October 2016. The allottee has, in her appeal, furnished a chart showing that the interest of component from November, 2016 to March 2018 for 515 days @ 10.15% comes to Rs.7,86,327/- while she has been forced simultaneously to pay rentals which she has assessed at Rs.4,11,000/- @ Rs.23,000/- per month and Rs.25,000/- per month till March 2018. She says there will be fresh Lease Agreement which will have some enhancement in the rentals, adding to her dismay.
5. The Promoter has challenged the Leave and License Agreement under the ground that the address mentioned in the complaint does not match to said Leave and License.
6. I do not wish to attach much importance to address controversy flashed by the Ld. Counsel for the Promoter. It is the convenience of the party who has a genuine desire to receive communication to give alternate postal address to avoid any controversy of non reply or non compliance.
7. Now turning to the reasons for delay, the Ld. Chairperson in para 6 of the order provided such concession to the Promoter for treating such reasonable delay of 9-10 months to complete the remaining works.
8. The stop work notice dated 28.5.2015 does not inhibit stoppage of entire construction. But the reasons assigned are in respect of erection of compound wall which the Corporation desired to have been retained as per approval plan. This is in particular there was already a communication to Promoter by Municipal Corporation by letter 26.06.2014 thereby to construct the retaining wall / compound wall

with UCR masonry / RCC on North side of the plot, adjoining to Sambhaji Nagar slum area to prevent landslide. However it was not complied with by the Promoter. Thus the Promoter in the eyes of law cannot be permitted to trigger the issue of stop work notice to take benefit of concession in payment of interest or compensation.

9. The Ld. Chairperson has in the order under challenge, in para 9 provided a set off of 5% in lieu of the interest payable by the Promoter for delay in handing over possession of the flat. By calculation the 5% component comes to Rs. 3,46,000/-. The grievance of the allottee is she is required to release heavy bank interest and also to incur rentals as indicated above.
10. Having read entire order coupled with the statement furnished by the allottee the terms of agreement of January, 2016, I do not find any error in the order of Ld. Chairperson, to cause interference in the appeal preferred by the Promoter. At the same time, applying simple interest on the amounts borrowed by the allottee from the bank and the component of rentals she is required to suffer, needs consideration. I desire to give a cumulative effect by way of compensation which I propose to quantify at Rs.2 lakhs. This will naturally meet the difference of interest component, indicated by the allottee and also the 5% payment as a set off recorded by the Ld. Chairperson.
11. It cannot be said that the Ld. Chairperson erred in directing 5% deduction as a set off as asserted by the Promoter. This is moreso the factual scenario indicated above necessarily indicate there was no spike created by the allottee in remittance of payment as was directed, barring a delay of 10 days, the Promoter attributes such delay to be 33.4 months. Ld. Counsel for Promoter failed to establish such delay to be exorbitant. Again the reasons for delay for stop work notice or shortage does not match to the demand letters issued by the Promoter to the allottee. If the stop work notice was operational dated 28.5.2015, the Promoter has raised demands effective from 7th January 2016, indicated different phases of commencement of slabs and such dates ultimately are upto 8th November, 2016. Thus the delay to which a hue and cry was raised by the Promoter is non consequential so far as allottee is concerned. It is simply an eye blink.
12. Drawing balance sheet of the factual details, losses and turmoil suffered by Allottee the overall effect of Sections 71, 72, 38, 18 and Preamble of RERA, award of compensation of Rs.2 lakhs will meet the requirement.



-:ORDER:-

1. Appeal No. AT006000000000231 of the Promoter M/s Sheth Infraworld is dismissed.
2. Appeal No. AT006000000000194 of Neha Agrawal is partly allowed. In addition to interest and set off as directed by the Ld Chairperson in the order dated 30th January, 2018, the Promoter shall pay a compensation of Rs. 2 lakhs to the allottee within a period of two months from today.
3. If the Promoter fails to hand over possession by stipulated date of March 31, 2018 naturally he is bound to pay interest as was directed by the Ld. Chairperson in paragraph 10 of the Order.
4. Both appeals disposed off accordingly.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 2nd May, 2018



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