

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

**No.AT006000000000219**

M/s. Neelkamal Realtors Suburban Pvt. Ltd.  
D.B. House, General A.K. Vaidya Marg,  
Goregaon East, Mumbai 400 063

.. Appellant/s

V/s.

Shri Keshavlal Upadhyay  
12/8, Ram Naresh Yadav Chawl,  
Ram Nagar, Behram Baug,  
Jogeshwari (West),  
Mumbai 400 102

..Respondent/s

Shri Sushant Chavan and Abir P. i/b Wadia Gandhi & Co. for  
Appellant.

The Respondent Keshavlal Upadhyay present.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.  
Heard on : 25th April , 2018  
Dictated/Pronounced on: 25th April, 2018  
Transcribed on : 26th April, 2018

**:-ORAL JUDGMENT:-**

1. The Promoter by present appeal has challenged correctness and legality of Order dated 7th March 2018 passed by the Ld. Member – I MahaRERA, whereby the Promoter is directed to pay interest to the Complainant / Allottee from 1st July, 2017 till the actual date of possession at the rate of marginal cost lending rate (MCLR) + 2% as prescribed u/s. 18 of Real Estate Regulatory and Authority Act, (for short RERA)



2. The allottee has booked a flat in Building No. 18 being Flat No. 1105 by virtue of an Agreement entered into in April 2013. The possession agreed upon was 31.12.2015 with a grace period of 12 months.
3. The Ld. Counsel for the appellant says RERA takes care of allottee and equally the Promoter and a scale needs to be drawn. Ground realities which the Promoter has suffered, need not be ignored. The project in question does not involve the allottees alone but it relates to 3396 flats spread over in 25 buildings, of which possession of 256 flats so far is released. The project has faced down turn owing to economics and other environmental issues. The ban on sand minings and quarrying have added to miserableness to complete the project in given time. Shri Chavan, Ld. Counsel on instruction says that if the allottee is not happy with handing over the date of possession by December, 2018 the Promoter is ready to refund the entire amount received till date within a month with interest @9% p.a.
4. The allottee has different say to advance. His grievance is, his hard earned money is blocked. He has to pay bank interest and suffer monthly rental component. His dream of house is shattered and is rendered wandering to the whims of the builder to get the project completed.
5. During the course of submissions., several alterations were suggested to the promoter however considering the volume involved in the project and adversity of one order is apprehended to multiply agonies and financial disruption hence with humility some of the suggestions were turned down.
6. With all said and done, in the afore state of facts, the delay occasioned in completing the project cannot be attributable 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 takes umbrella to the legal provisions of MOFA to release interest @ 9% p.a. This approach tilts naturally the balance.
7. It is not in controversy that huge project of 25 buildings which is undertaken by the Promoter and additional 8 buildings to be handed over to the Government of Maharashtra / MMRDA under the Scheme, I quite see the financial crunch or the degradation in velocity of sale has

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its adverse impact on the project, but it was the contemplated vision of the Promoter for such eventualities which he could not have ignored. Restriction on sand mining or quarrying by itself will not be an impediment under the Statute.

8. The Ld. Member-1 MahaRERA in the order under challenge directed payment of interest effective 1st July 2017 till handing over possession which approximately comes to December, 2018 and the interest component comes to around 4.70 lakhs
9. It was suggested by Shri Chavan on instruction that the Promoter shall deposit amount of 4.50 lakhs as a security to complete the project on time schedule however this amount will not be released to the allottee.
10. The allottee in the referred fact situation cannot be directed to go haywire at the whims and convenience of the promoter for no fault committed in past of his obligation. It is not that the allottee has articulately avoided his payment schedule and has created a dent in the large project of the Promoter.
11. In the above situation and in particular in the light of the decisions of the Hon'ble Division Bench of Bombay H.C. in Writ Petition No. 2737 of 2017 decided on 6th December, 2017, the concession of the non availability of sand or quarry of stone or down turn in the market could not be a ground to obliterate effect of compliance of terms of agreement. The agreement inter alia provided handing over possession by 31.12.2016. A concession is naturally extended to the Promoter by Ld. Member's order to release the interest from 1st July 2017, it should have been honoured by the Promoter.
12. Having gone through the order under challenge read with entire scheme of the project coupled with the Preamble of RERA, I do not see any error in the order under challenge and hence the appeal is dismissed.

**:-ORDER:-**


1. The Appeal of Promoter is dismissed.
2. No costs.
2. Heard Shri Chavan and the allottee.



The order under challenge dated 7th March 2018 and also of this Appellate Authority is stayed till 8th of June, 2018.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 25th April, 2018

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