

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

**No.AT006000000000235**

Mr. Kiran Vasant Verekar  
4-D Ganpati Wadi,  
Irani Building, Prabhadevi,  
Veer Sawarkar Marg,  
Mumbai 400 025.

.. Appellant

V/s.

M/s.Samruddhi Developers  
B-5, Sai Dham, 1<sup>st</sup> Floor,  
Veer Savarkar Marg,  
Opp. Dadar Catering College,  
Dadar West, Mumbai 400 028.

..Respondent/s

**No.AT006000000000239**

Mrs. Mamta Suresh Sawant  
Mr. Suresh V. Sawant  
Residing at 115/3785  
Om Nanddeep Hsg. Soc. Ltd.  
Nehru Nagar, Kurla (East),  
Mumbai 400 024.

.. Appellant

V/s

M/s.Samruddhi Developers  
B-5, Sai Dham, 1<sup>st</sup> Floor,  
Veer Savarkar Marg,  
Opp. Dadar Catering College,  
Dadar West, Mumbai 400 028.

.. Respondent



**No.AT006000000000241**

Sudhakar Kashinath Salunkhe  
C/o. K.B. Chavan,  
Ganesh Prasad CHS Ltd.  
B/1546, Near Abhyudaya Bank,  
Nehru Nagar, Kurla (East),  
Mumbai 400 024.

.. Appellant

V/s

M/s.Samruddhi Developers  
B-5, Sai Dham, 1<sup>st</sup> Floor,  
Veer Savarkar Marg,  
Opp. Dadar Catering College,  
Dadar West, Mumbai 400 028.

.. Respondent

**No.AT006000000000242**

Suhas Tawde  
45/5 Chawl No.1, Aadarsh Nagar,  
Near Adarsh Vidyalaya,  
Shell Colony Road,  
Chembur, Mumbai 400 071.

.. Appellant

V/s

M/s.Samruddhi Developers  
B-5, Sai Dham, 1<sup>st</sup> Floor,  
Veer Savarkar Marg,  
Opp. Dadar Catering College,  
Dadar West, Mumbai 400 028.

.. Respondent

**No.AT006000000000243**

Mr. Rajuram Mangilal Banshiwal  
903, Building No.11,  
Yashomathi CHS Ltd. Sahkar Nagar,  
Shell Colony Road, Opp. Tilak Nagar Railway Station,  
Chembur (East), Mumbai 400 071.

.. Appellant

V/s

M/s.Samruddhi Developers  
B-5, Sai Dham, 1<sup>st</sup> Floor, Veer Savarkar Marg,  
Opp. Dadar Catering College,  
Dadar West, Mumbai 400 028.

.. Respondent



Adv. Vivek Salunke a/w Tushar Kadam i/b MDP & Partners for the Appellant / Allottee / Flat Purchaser.

Mr. Monish Choudhary and Sayali Rajpurkar i/b Kadam & Co. for the Respondent.

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

Heard on : 29th August , 2018

Dictated/Pronounced on: 29th August, 2018

Transcribed on : 30th August, 2018

**:-ORAL JUDGMENT:-**

Heard.

1. These are 5 Appeals by the Allottees / Flat Purchasers, feeling aggrieved by the common order of the Ld. Chairperson dated January 15, 2018. The Allottees have come in picture as flat purchasers for 8th floor to be erected on the building known as 'Amrapali CHS Ltd.' In Building no.133 situated at Nehru Nagar, Kurla (East), Mumbai.
2. The Society has entered into a Development Agreement dated December 30, 2007 for constructing a Ground + 7 storied building with M/s. Rebuilt Developers. However, since M/s. Rebuilt Developers did not carry the solemn terms agreed upon to coordinate in the project the present Respondents Samruddhi Developers entered into a Joint Agreement. The Ld. Counsel for Respondent / Developer says his client who is one of the developers has also suffered as he has booked two flats on the 8th floor apart from the flat booked by the Complainants / Appellants.
3. The grievance of the Respondents is he has been sandwiched owing to Society not cooperating and getting Commencement Certificate for erecting the structures from 8th floor onwards. The grievance is there is an available Floor Space Area which has to be utilized to be used but for that purpose, Society's concurrence is imperative.
4. It is admitted by the parties that the skeleton of the project upto 7th floor is ready. The compass of controversy needs to be narrowed. The order of Ld. Chairperson specifies directions to the Promoter to



complete the project and hand over possession of the respective premises to the Appellants / Complainants before 31/12/2018. The order under challenge does not incorporate further consequences if the Promoter fails to adhere to the deadline indicated by the Ld. Chairperson. Consequently, care needs to be taken in this direction.

5. The developer has come in picture by virtue of Agreement dated 5/11/2015. He has voluntarily purchased all the risk including non-availability of Commencement Certificate for 8th floor. When he has purchased the risk, it is for the Respondent that the obligation carved out in the Agreement will have to be adhered in its letter and spirit. Now he cannot be permitted to wriggle out of the solemn confirmation dated 5/11/2015 and canvass that he himself has been cheated by the earlier Rehab developer or that the Society is not cooperating. Thus eventually Respondent ought to have taken care of when the Agreement was entered. It is not in controversy, that each of the flat purchaser / Appellants have released their payment long back commencing 2013 and they were assured completion of the project in due time. If concession is given to the Promoter / Respondent thereof, the Allottees should not suffer for having parted with huge payments to ensure the dreams of their project / tenement. It is apparent the Allottees as Complainants are suffering from rentals. Equally RERA contemplates a harmonious construction of the statutory provisions coupled with Preamble. The Preamble indicates to ensure sale of plot, apartment of 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. Thus RERA is for regulation and development of real estate sector, taking care of all the stakeholders. The Respondents, at the same time has to herald the legacy of trust and commitment. The purpose of this statute need not be twisted to the sole disadvantage of the Allottees.
6. In the matter of Neelkamal Realtors Vs. State in Writ Petition No. 2737 of 2017 decided on 6th December, 2017 their Hon'ble Lordships have discussed the eventualities creeping in and the suffering of the Allottees/Flat Purchasers. Complying the said judgement it squarely meet that Allottees need to be compensated by way of interest for a period of one year i.e. effective from 1st January, 2018.

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7. It is equally expected of the Appellant / Allottees to ensure by influencing the society members or office bearers to get the blockage removed and ensure free passage for completing the project in the letter and spirit indicated while entering into the Agreement dated 5th November, 2015. Impediments created by the Housing Society naturally is detrimental to the interest to these flat purchasers including the Promoter himself, who has booked two flats. The order under challenge in the above situation is modified as indicated hereinbefore as under:

**: ORDER :-**

1. The Appeal is partly allowed.
2. The Respondent / Promoter shall release interest @ 10.05% p.a. in favour of each of the Allottee / Appellant for the payments made by the appellants, effective from 1st January, 2018 till handing over possession of their respective premises duly completed and getting the Completion Certificate from Competent Town Planning Authorities.
3. The interest for the period from 1/1/2018 till 31st August, 2018 shall be cleared, within a month.
4. No costs in the Appeal.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 29th August, 2018

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