

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

No.AT006000000000240

Spenta Builders Pvt. Ltd.
C/o. M/s. Dhaval Vussonji and Associates
113-114, Free Press House,
215, Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

.. Appellant/s

V/s.
1. Mrs. Sangeeta Pradeep Sharma
2. Mr. Pradeep Shivkumar Sharma
A/4 Sachdev Nagar, Opp. Dolphin Club
C Block, Ulhasnagar,
Thane 421 003

..Respondent/

Called out at 3.45 PM

Adv. Sonam Mhatre a/w. Adv. Tejas Gokhale,
M/s. Dhawal Vussonji Advocates & Solicitors for the Appellant.

Respondent Pradeep and Sangeet Sharma present.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 8th May, 2018
Dictated/Pronounced on: 8th May, 2018
Transcribed on : 9th May, 2018

:-ORAL JUDGMENT:-

Heard extensively

1) This is Promoters appeal against order dated 16th March. 2018 recorded by Ld. Member-I MahaRERA directing the Promoter / Appellant to pay interest to the complainant/ allottee from 1st July 2017 till the actual date of possession.



2) There is no contest that the allottee has entered into an Agreement with the Appellant / Promoter for purchase of Flat C / 902 in Wing no. 'C' admeasuring 730 sq.ft. carpet area in the Bldg. known as 'Palazzio' at Kurla (West), Mumbai for a total consideration of Rs.58,62,000/- on 24.06.2016 in resale by executing a Tripartite Agreement.

3) The Ld. Counsel for the promoter / appellant has pointed to clause 10.1 of the Agreement to illustrate that the possession of the flat was to be given upto 31.12.2016 with a grace period of 6 months. The Ld. Counsel says unfortunately the Authorities did not venture to deal with clause 10.3 (iv) of the Agreement which provides a concession to the Promoter / Appellant, of extension of time for delayed Occupancy Certificate from the competent sanctioning Authorities. The Ld. Counsel says that import of Sec. 18 (1) (a) of the RERA is to be read in consonance to the judgement of Hon'ble High Court in the matter of Neelkamal in Writ Petition No. 2737 of 2017 decided on December 6, 2017 read in particular para 126 thereof. The other grievance of the Ld. Counsel is there was no access to the Appellant for the same nor the Appellant was heard. According to Ld. Counsel, JVK was summoned on 23rd Feb 2018 and JVK filed report on 6th March 2018. She repeats that thereafter the Appellant / Promoter had the NOC for height clearance from Airport Authority of India dated 21st March, 2018 in respect of 'C' Wing of the questioned premises. The Ld. Counsel candidly accepts that the final Occupancy Certificate from Municipal Corporation of Greater Mumbai (MCGM) is yet to be received though the building is complete in all respects and the matter is under process . According to her, it cannot be said that the project is incomplete.

4) The Respondent Allottee in person says all sort of illegalities are committed by the Promoter / Appellant. The original NOC of AAI was dated 25.4.2011 which provided a period of 5 years for completing the project and maintaining height regulations but the Promoter did not meet with the requisitions. The respondent has tendered vide Exhibit '7' the progress report in respect of the permission applied for by the Promoter / Appellant concerning 'C' Wing or the entire project consisting of A, B, C, D Wings with MCGM. He points that the site was visited on 13.6.2018 and the official did not find the same as per the drawing submitted. The officials of Municipal Corporation requested the promoter to incorporate all the details as per site condition and submit for necessary approvals required. He says the Promoter has not responded for over a month to the refusal of MCGM and still has the audacity to play with the delay of the project. The allottee says unauthorised occupation of flats is nakedly proved and invited troubles protracting the formalities of Municipal Corporation.

5) The above submissions of both the sides put in juxtaposition and read in tune with the order under challenge dated 16th March, 2018, it emerges that the fault cannot be attributed to the allottee as such for so called delayed



payment by him. For that purpose, the Ld. Member in para 5 of the order dealt with as to whether it amounts to a valid reason for delaying the project.

6) The conduct of the appellant as Promoter indicates that without proper authorization a high rise building is erected in a restricted area and when it came for height clearance, objection was raised. Such objection was pointed to the Ld. Member-I MahaRERA when the authorities were summoned. What was the subsequent change from 5th March 2018 when JVK filed report with the MahaRERA at to grant of NOC on 21.3.2018 is within the exclusive knowledge of AAI Authorities and the Appellants. Even if such clearance is obtained on 21st March, 2018 it will not provide a concession to the Appellant to wriggle out of the compliances as was expected of handing over possession to the allottee by procuring Occupancy Certificate from MCGM. The date of handing over possession of 31st December, 2016 plus grace period of 6 months has lapsed long back.

7) There cannot be a contest to the impetus of sec. 18(1)(a) of the RERA Act and the observations of the Hon'ble Lordship in the Judgement of Neelkamal but harmonious construction as has been indicated by the Hon'ble Lordship in the judgement needs to be extended and the requirement and the penalty under Chapter 8 of the RERA Act will not come into effect of the assistance of allottee however the impetus of Sec. 18 (1) (a) coupled with Proviso will have to be read in consonance to the Preamble of the statute and impact of the Proviso itself. The Proviso, in the situation qualifies impact of Sec. 18 (1) (a) of the RERA Act. Impact of Paragraph 126 of Judgement indeed has been obliterated by Promoter.

8) The terms of the Agreement to which reference is given, and in particular 10.1 and 10.3 (iv), however, it does not provide a blanket concession to the Promoter to extend the time till eternity and sit on fence in compliance of the obligations. The dilatory practices incorporated and reflected of the promoter need not be encouraged. He has the audacity to hand over possession unauthorizedly and music is faced by other bonafide purchasers as the formalities of MCGM are delayed.

9) The order under challenge though refers of giving audience to JVK by asking them to file reply, however it will not cause any prejudice to the Promoter as Promoter's obligations to meet with other formalities of MCGM are still wanting. In the result I do not see any error in the order under challenge of the Ld. Member I MahaRERA dated 16th March 2018.

-:ORDER:-

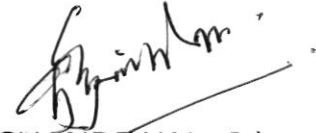
1. Appeal dismissed.



2. The Appellant to pay cost of Rs.20,000/- to the Respondents.
3. Cost to be paid within 60 days directly to the allottee or to his account or adjusted under the communication towards the payables receivable from Allottee.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 8th August, 2018



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