

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

**No.AT006000000000211**

M/s. Orbit Ventures Developers  
Sarkar Heritage,  
Jairaj Peerbhoy Khoja Sanatorium Complex,  
Kane & B.J Road, Band stand,  
Bandra (W), Mumbai 400 050.

.. Appellant/s

V/s.

Shri Salim Anwar Ali Kamani  
4/6 Karimabad Cooperative Housing Society  
116, Imamwada Road,  
Mumbai 400 009.

..Respondent/s

**No.AT006000000000198**

M/s. Orbit Ventures Developers  
Sarkar Heritage,  
Jairaj Peerbhoy Khoja Sanatorium Complex,  
Kane & B.J Road, Band stand,  
Bandra (W), Mumbai 400 050.

.. Appellant/s

V/s.

Shri Shafeen Sadruddin Charnia  
Through Mr. Nadir Umedali Dhroliya (SPOA Holder)  
Flat No. 2603-2604, 26th Floor, Wing B 2,  
Oberoi Springs, Off Link Road,  
Andheri (W), Mumbai 400 053

..Respondent/s



**No.AT006000000000224**

Shri Shafeen Sadruddin Charnia  
Through Mr. Nadir Umedali Dhroliya (SPOA Holder)  
Flat No. 2603-2604, 26th Floor, Wing B 2,  
Oberoi Springs, Off Link Road,  
Andheri (W), Mumbai 400 053 .. Appellant/s

**V/s.**

M/s. Orbit Ventures Developers  
Sarkar Heritage,  
Jairaj Peerbhoy Khoja Sanatorium Complex,  
Kane & B.J Road, Band stand,  
Bandra (W), Mumbai 400 050.

..Respondent/s

**No.AT006000000000227**

Shri Salim Anwar Ali Kamani  
Shri Salim Anwar Ali Kamani  
4/6 Karimabad Cooperative Housing Society  
116, Imamwada Road,  
Mumbai 400 009.

.. Appellant/s

**V/s.**

M/s. Orbit Ventures Developers  
Sarkar Heritage,  
Jairaj Peerbhoy Khoja Sanatorium Complex,  
Kane & B.J Road, Band stand,,  
Bandra (W), Mumbai 400 050.

..Respondent/s

For Sr. No. 1 and 2 - Adv. P.R. Zaveri with Mr. K.K. Ramani for Appellant,  
M/s. Orbit Ventures in first two appeals.

The allottees have also preferred appeals against the same order  
represented by Adv. Parminder Singh Malhi.

Shri P.R. Zaveri with K.K Ramani appears in the appeals of allottee for  
respective Respondent, the Promoter. Likewise, Shri Parminder appears  
for allottees in the appeals of M/s. Orbit Ventures.



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 finally.

1. Appeal no. AT00600000000211 and AT00600000000198 is preferred by promoter while appeal no. AT00600000000224 and AT00600000000227 is preferred by the allottee, challenging the same order dated 12<sup>th</sup> February 2018 recorded by Ld. Member and Adjudicating Officer, MahaRERA Mumbai. The Order was, in consequence to Complaint no. CC00600000001130 and CC00600000001132 of the respective allottees.
2. In the appeals of the Promoter on earlier date Shri Ramani argued at length pointing the events as to how the development of MHADA Land of demolishing 18 chawls consisting of 180 rooms was put in acceleration and how the promoter suffered due to inclusion of two interior roads thereby adding area of the plot. According to him MHADA misinterpreted by internal road and the promoter had to suffer by entering into Supplementary Agreement dated 6<sup>th</sup> October, 2015. The Development Agreement was dated 16<sup>th</sup> August, 2007 and by order from MHADA around 84 crores was released by promoter.
3. After hearing Shri Ramani, and Shri Parminder Singh for the allottees, certain via medias to resolve the controversy were deliberated. Both sides got the matter adjourned to this date and today it is informed that the parties could not resolve the controversy.
4. Today, again Shri Zaveri with K.K. Ramani and Parminder the Ld. Adv. for allottees put up their points extensively.
5. Mr. Ramani and Mr. Zaveri though referred to earlier events which in fact situation are not in controversy of delayed permissions at various levels, Airport Authorities issued NOC dated 26<sup>th</sup> November, 2008 and seeking revalidation by Promoter by Letter dated 21.8.2014 and Airport Authority of India issued another NOC on 7.10.2014 and thereby enlarging the time to complete the project, are highlighted by him.



6. Shri Parminder Singh for the allottees dealt with the Memo of Understanding dated 30<sup>th</sup> March 2015 entered into between the parties before the National Consumer Commission at New Delhi by December 2015 and clause 3) thereof which reads as under:

*" In the event the Opposite party fails to hand over to the Complainant the possession of the said flat within the stipulated period i.e. on or before December 2015 for any reason whatsoever, then the Opposite party agrees and undertakes to pay to the Complainant the compensation of Rs.5,000/- per day for the delay in possession, mental agony caused to the Complainant by the Opposite party on account of delay in constructing and handing over the possession of the said flat. The said compensation shall be paid by the Opposite party retrospectively alongwith interest i.e. from the date of the default i.e from June 2012 till the date of the possession of the said flat."*

7. On behalf of the Promoter Shri Zaveri Adv. pointed to the Supplementary Agreement dated 6<sup>th</sup> October, 2015 and clause 28 sub clause c) therein to specifically deal with impetus and impact of the Memorandum of Understanding dated 30<sup>th</sup> March, 2015. Clause 28 sub clause c) reads as under

*"(c) The Developers shall not be bound by any such agreement, Negotiations, commitments, writings, discussions, representations, warranties and/or compliance thereof other than expressly agreed by the Developers under this Agreement."*

8. In the light of the Supplementary Agreement dated 6<sup>th</sup> October, 2015 referred to above, the impetus effect and enforceability of the Memorandum of Understanding has eclipsed and it will not provide a ground of agitation for the allottees against the Promoter, to claim Rs.5000/- per day.
9. The Promoter though has argued of the past events occurred in dealing with several Government Authorities, Aviation Authorities. However, its adverse impact cannot and should not be shouldered by the allottee. This is moreso, the Agreement between the parties foreclosed all such difficulties prior to 6<sup>th</sup> October, 2015. The Ld. Counsel for the Promoter desired to take recourse to clause 17 of the Supplementary Agreement which provides handing over possession by June 2016 and equally provides that if the developer / promoter is unable to give possession of the said premises by the date stipulated therein, the Purchaser /

*M*

allottee shall have an option to terminate the Agreement. The extension of time referred in clause 17) to the Act of God, civil commotion, riot, war or any notice, order, rule, Notification of Government will not deflate the terms agreed upon by the Promoter to hand over the possession of the dream flat / apartment at the date stipulated at the end of 2016. This legal position is succinctly explained by Hon'ble H.C in the matter of Neelkamal V/s. State in Writ Petition No. 2737 of 2017 decided on 6<sup>th</sup> December 2017.

10. The Hon'ble Lordships of the High Court in the said Judgement of Neelkamal, indicated the hallmark in RERA Act to be associated with the efficient and transparent manner of the projects and protect the interest of consumers in the real estate sector. The scattered allottees who were unorganized owing to the RERA Act naturally have been brought with an umbrella of getting projects regulated in a time frame.
11. In the two Appeals of the allottees, they have urged for modification in the order dt. 12th Feb. 2018 and to direct release of interest from respective dates of payments made to the Promoter including saddling compensation for the delay. In fact, in the light of supplementary agreement, it is not open to the allottees to take recourse of all earlier payments or events that have transpired including reaching the matter to Consumer ~~of~~ Forum National Commission, New Delhi. A new era between the parties has opened consciously by virtue of Supplementary Agreement referred to above. Clause 17 of said Agreement will not wither away statutory obligations of Promoter.
12. The Ld. Counsel for the promoter while interpreting provisions of Section 18 of RERA Act says that "Terms of the Agreement for Sale " has some meaning as used in the statute. According to Ld. Counsel in the light of the allottees making it clear of their desire to continue in the project, the Proviso to Section 18 (1) shall naturally operate. Ld. Counsel says, the proviso does not stipulate the amount it only refers to payment of interest for every month of delay. According to him the Statute was pertinently silent to refer the amount, it should not be interpolated in said provision to draw such inference. The Ld. Counsel has, in this context criticised finding of the Ld. Adjudicating Officer, MahaRERA Mumbai raised by point no. 3. Point no. 3 reads 'whether the complainants are entitled to interest of their investment of every month of delay till they get the possession of their flat.'

h

13. The user of the term 'investment' by the Ld. Adjudicating Officer does not create violence to the provisions of Section 18 or to the Proviso therein. Section 18 of the RERA Act will have to be read completely and a particular line or a sentence should not be dissected, to draw adverse inference. The cumulative effect of Section 18(1) sends a message that the component of interest referred therein till filing of the complaint and with an enquiry as to his entitlement of such component of interest.' This is moreso when we put definition of interest referred in Section 2 (za), in juxtaposition to Section 18. It clearly spells out the amount received by the Promoter or any part thereof. Hence non- mention of amounts received by Promoter in proviso will not eclipse ordinary right of an allottee to claim interest even if he does not wish to withdraw from the project. I repeat using the term 'investment' will not change the scenario to criticise of Ld. Adjudicating Officer.
14. Shri Zaveri gave reference to Chapter VI of Contract Act and in particular Sections 73 and 74 thereof. Those provisions necessarily will have to be read in the spirit of and in the manner in which the RERA Act has been put in operation. The compensation used or the penalty used in Section 74 for the present case has no bearing as the allottee has desired to continue in the project.
15. The observation of the Ld. Adjudicating Officer in para 7, in response to point no. 1, though criticized by Shri Zaveri however, I do not find any merit in it.
16. The Ld. Adjudicating Officer has comprehensively considered the terms of supplementary agreement dated 6.10.2015 and also its consequences to the inter se concluded contract between the parties.
17. The Promoter was consciously aware of the deadline to give possession on or before 30<sup>th</sup> June, 2016. The raising of heights of the building or floors from 33 to 36 floors and getting C.C. upto 26<sup>th</sup> slab in June, 2011 will not be to the discredit of the allottees. It was naturally within contemplation, the time lag required in adhering to official formalities. The case tried to be projected by the Promoter of going bonafidely with the project unfortunately is not so. The initial area for agreement was for 7033.62 sq.mtrs. The demolition of 18 chawls consisting of 180 rooms was to the knowledge of the Promoter. The Promoter was consciously aware of the two internal Roads and the consequence of its amalgamation and getting it resolved with MHADA Authorities. The area of road added to the project amounting to 964.84 sq.m. which naturally made the Promoter to get the height of the building increased. This

cannot be said to be the fault of the allottees. The Airport Authority reducing height by 7 mtrs. may be was on wrong footing but by that time it was also expected of the Promoter to have carried balance construction activities. The position of the site illustrate that Promoter for the reasons best known did not discharge obligation as was required to have construction activities in the given time frame. The grievance of Allottee that at site there is no progress holds the field.

18. The Ld. Adjudicating Officer, in the reasoned order dated 12<sup>th</sup> Feb, 2018, has strike a balance, since the allottee desires to continue in the project and did not agree to release of interest for earlier period, I do not wish to interfere with the said finding of the Ld. Adjudicating Officer and consequently the appeals of the allottee on this point fails.
19. The delay caused by MCGM to remove the two proposed D.P. Roads from the Draft Development Plan dated 28<sup>th</sup> April, 2015 and rectified in May 2016, however its leverage for extension of time or avoiding liability to compensate allottees would not be a ground. A harmonious reading of statute needs to be considered. Section 38(2) of RERA Act contemplate considering principles of natural justice and power to regulate its own procedure. Section 72 conceive factors to be taken into account by Adjudicating Office i.e. a) amount of disproportionate gain or unfair advantage, as a result of default, b) the amount of loss caused as a result of default, c) the repetitive nature of default, d) such other factors. The Agreement of Allottees are of 13.4.2011 and 11.5.2011. A representation<sup>m</sup> was flashed by Promoter through brochures that the plan was sanctioned and valid and subsisting IOD was obtained. The possession was to be handed over before June 2012 (Mr. Shafeen and to Mr. Salim). The Allottee approached to Metropolitan Magistrate at Andheri for redressal of grievance as more than two years were wasted by the Promoter for giving possession. The Allottees had even approached the National Consumer Commission, New Delhi against the Promoter wherein as stated earlier, terms were settled, incorporating paying Rs.5000/- per day if possession is not handed over by December 2015. These facts are also ignored by the Promoter and went on keeping the Allottees in lurch and attempted to drain the dream proposed by the allottees. The rights and terms of the Agreement can not be permitted to be scuttled to the detriment of the Allottees.
20. The earlier discussions illustrates, so far as liability of fixing interest, saddled by the Adjudicating Officer against the Promoter commensurate from 1<sup>st</sup> July 2016 till handing over possession, is in tune to the

GA

Supplementary Agreement dated 6.10.2015 and In particularly<sup>ly</sup> the allottees in each of the case has released amounts to the extent of more than 75% of the cost.


21. It is clarified that the allottees cannot shirk their responsibility to pay legitimate Govt taxes cess, dues registration charges which the parties had mutually agreed upon on 6.10.2015. The biases to which reference is given by Mr. Zaveri does not stand to reason. If one goes by the interpretation advanced to Section 18, it will create a functioning anarchy and playing with the statute unreasonably, it is impermissible, hence the interpretation advanced to Section 18 is negated explained herein before. Hence the appeals by the Promoter also falls.

**-:ORDER:-**

1. The appeal of Promoter being Appeal nos. AT00600000000211 and AT00600000000198 is dismissed. No costs.
2. The Appeal nos. AT00600000000224 and AT00600000000227 of the respective also dismissed. No costs.
3. The allottees shall discharge their liability of releasing statutory taxes and charges on demand, in tune to the Agreement dated 6.10.2015.
4. Appeals disposed off.

Dictated and pronounced in open Court today.

Place: Mumbai  
Dated: 8<sup>th</sup> May, 2018

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