

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

No.AT006000000000199

1. Sucheta Deshpande & Ors.
1045 B Flat No.11, 3rd floor, Sadashiv Peth
Opp. Rahalkar Ram Mandir, Pune 411 030
2. Zeeshan Nisar Shaikh
Flat No.11 C Wing, Landge Networth Society
Op. Spine City Mall, Sector 10,
Bhosari, Pune 411 026
3. Mr. Akshay Vinayak Walkhade
A/9 Samarth Vihar, Opp, Sai Raj Residency,
Near M.S. Kate Chowk, New Sangavi
Pune 411 061.
4. Mr. Vikas Laxman Sali,
B-14/95 Ruston Colony, Bikalinagar Road,
Chinchwadgaon, Pune 411 033.
5. Mr. Pradeep Narayan Wadekar,
J-104, Parmar Park, Sector – 26,
Pradhikaran , Nigadi, Pune 411 044.
6. Neeta Rajesh Bhagodia
Sector 27, Plot No. 522, Bhagyarekha
Pradhikar, Nigadi, Pune 411 044
7. Mr. Jayesh Balu Pachpute,
C/o. Prasad Bhor, C-703, Silver Oaks,
Near Lotus Nandanwan, Dehu-Alandi Road,
Moshi, Pune 412 105.
8. Mr. Dilip Bhikaji Bhosale,
Swayambhu Bungalow, Plot No. 60C,
Sector – 20, Behind Nutan Schol, Krishnanagar,
Chinchwad, Pune – 411 019.



9. Mr. Anant Anil Shaligram,
Goyal Garima Housing Society No.1,
Building A, Flat No. 203, Survey No. 137 to 1340
Keshavnagar, Chinchwadgaon, Pune 411 033.

10. Prakash Chandragouda Patil
Flat No. 18, Building No. 11,
Sharada Garden, Gawade Colony,
Chinchwad, Pune 411 033

.. Appellants

V/s.

1. M/s. Anshul Bhosale Realty,
2. A registered partnership firm having office at
3. 501, Karan Tej Bonita, CTS No. 1187/16, Plot No.
4. 549/2015, Off Ghole Road, Pune 411 005. ..Respondent/s

Adv. Nitin Munot and Pradnya Sarode, for the Respondents. Present.
Adv. Nitin Munot has filed Vakalatnama.

The Appellant Sucheta Deshpande with her Adv. Rajashree Kare, for
Appellants.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 29th May, 2018
Dictated/Pronounced on: 29th May, 2018
Transcribed on : 29th May, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. The ten appellants / allottees feel dissatisfied with the Order of Ld. Chairperson MahaRERA dated Jan. 29, 2018 wherein the statement of the Promoter / Respondent to hand over possession of the respective apartments with Occupancy Certificate, upto May 31, 2018 has been accepted.
2. Clause 2 of the Order reads as under:
"The Complainant were agreeable provided the possession of the Apartment is handed over within the next few months The respondent agreed to hand over Occupancy Certificate by May 2018. The Complainant agreed to the same."



3. There is no contest between the parties about booking of apartments in the Respondent project and entering into respective Agreements which have commenced between April 2014 and few in May 2016. The agreement inter alia provided handing over possession within a period of 30 months from the date of respective Agreements.
4. The Ld. Counsel for the Promoter / Respondent states that the Appeal itself is not maintainable as it is barred by Doctrine of Laches Estoppel by conduct, Acquiescence and Waiver disentitling them from any relief as prayed for or otherwise. The very intention of the appellant in filing of this appeal is to hold the Respondent at ransom. The present appeal is the abuse of process of law. The Ld. Counsel says since the order under challenge particularly in the light of above details was a consent order, it was not open to question its legality before this Appellate Tribunal. The Ld. Counsel has, to stress his point placed reliance to the Judgement reported in (2005) 6 S.C. cases 478 (P.T. Thomas Vs. Thomas Job)
5. The judgement of Hon'ble S.C. will not be applicable to the factual scenario of the present case. The parties in the matter before Hon'ble Supreme Court had recorded a decree in Lok Adalat and certain lacuna remained to be complied, which sought to be taken shelter of by the party who desired to avoid the Award. It was in this situation, Hon'ble S.C. expressed that judicial review cannot be invoked in such awards especially on the ground amounting to a challenge to the factual findings or appraisal of evidence.

The said judgement, to repeat in factual situation will not be accelerating cause of the promoter to shut doors of appeal for the allottees. The centre of controversy between the allottee and the promoter is about the past delayed period of around 1 year 7 months or 1 year 1 month or in two cases, 7 months and six months.
6. It was pointed by the allottees that for completing the purchase transaction, they had availed loans from financial institutions for which they have to release equated monthly instalments and additionally rentals for want of regular accommodation.
7. My attention was invited to clause 8 and 19 of the Agreement between the parties.
8. During the course of submissions, I had suggested both the parties to have a amicable working of the controversy and not to carry biases against each other. However, both did not agree to the suggestions extended to them.
9. The allottees as could be seen were required to release 95% of the payment of purchase price and they were constrained and forced for redressal owing to delay on the part of Promoter. The question of EMI and rentals required to be released by the appellants, should not be ignored.



10. I quite see in the order of under challenge as referred to above the allottees agreed to the period of May 2018 of handing over possession with Occupancy Certificate. However, that by itself will not eclipse the rigours of Statute which provided for penal compensation if the project is delayed. Effect of clause 19 and 8 has to be read in juxtaposition and consequently the Promoter, cannot have an umbrella to shirk his responsibility of handing over possession in a time bound schedule. It was the calculated time that has been referred in the Agreement of 30 months to complete the Project. Failure to do so, should not be to the discredit of the flat purchasers. The hallmark of the statute should not be bypassed and for no fault of the allottees they should be directed to suffer.
11. I had asked both the sides to agree for past interest component for one year for 8 Appellants and for 7 months (Anant) six months (Ankita) but it did not yield result with the Promoter. He was harping on paragraph 2 of the Order under challenge to negate the canvass of appeal and the suggestions extended by me.
12. It is curious that the appellants desire to continue in the project. Hence, I feel some incentive of around 7 months to be given to the Promoter and the interest for 8 of the appellants shall be made applicable for past period @ 10.05 % and for the two appellants Anant Shaligram and Ankita the period shall be computed as 7 months and 6 months respectively. This arrangement will work for betterment of both the parties and there will not be a major financial setback to the Promoter. The mitigating facts to which repeated reference was given, in the above backdrop, is taken care of. The hallmark of the Statute and Preamble should not be ignored by the parties Hence Order.

-: ORDER :-

1. Appeal is partly allowed.
2. The Respondent / Promoter to pay interest @ 10.05 % per annum for a period of 12 months to 8 Appellants and for the two appellants namely Anant Shaligram, 7 months, and Ankita and Prakash Patil 6 months respectively.
3. The Promoter shall give setoff of these amounts at the time of final settling of the accounts between the flat purchasers and the Promoter.
4. The Promoter shall also be responsible to pay interest as directed in the Order under challenge if the possession as with amenities is not handed over with Occupancy certificate upto May 31,2018.
5. No costs in the appeal.

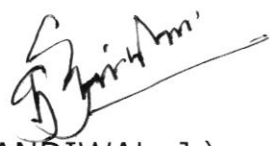


6. Heard. Since the Promoter desires to challenge the order, the Order is stayed for a period of 30 days.

Dictated and pronounced in open Court today.

Place: Mumbai

Dated: 29th May, 2018


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

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

(1)

No.AT006000000000199

Mrs. Sucheta Deshpande & Ors. .. Appellant/s
V/s.

M/s. Anshul Bhosale Realty & Anr. ..Respondent/s

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
President, Maharashtra Revenue Tribunal, Mumbai
& I/c. Maharashtra Real Estate Appellate Tribunal
under Maharashtra RERA Act
DATED:-29th May, 2018

-: **ORDER** :-

Called at 3.00 p.m.

Adv. Nitin Munot and Pradnya Sarode, for the Respondents. Present. Adv. Nitin Munot has filed Vakalatnama.

The Appellant Sucheta Deshpande with her Adv. Rajashree Kare, for Appellants.

Heard finally.

FRSR following order is passed.

-: **ORDER** :-

1. Appeal is partly allowed.
2. The Respondent / Promoter to pay interest @ 10.05 % per annum for a period of 12 months to 8 Appellants and for the two appellants namely Anant Shaligram, 7 months, and Ankita and Prakash Patil 6 months respectively.



3. The Promoter shall give setoff of these amounts at the time of final settling of the accounts between the flat purchasers and the Promoter.
4. The Promoter shall also be responsible to pay interest as directed in the Order under challenge if the possession with amenities is not handed over with Occupancy certificate upto May 31, 2018.
5. No costs in the appeal.
6. Heard. Since the Promoter desires to challenge the order, the Order is stayed for a period of 30 days.



Place: Mumbai
Dated: 29th May, 2018

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