

MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL UNDER RERA Act

No.AT006000000010407

1. Prasannaraj Prakash
Bhatawdekar
2. Preeti Prasanna Bhatawdekar
A-104 Mahdavan CHS,
Shimpoli, Gorai Road,
Chikuwadi, Borivali (W),
Mumbai 400 092.

.. Appellant/s

V/s.

**Sheth Infraworld Pvt.Ltd.
Ground & 3rd floor, Prius Infinity
Behind Garware House,
Paranjape B Scheme,
Subhash Road, Vile Parle (East),
Mumbai 40 057.**

..Respondent/s

No.AT006000000010437

1. Saurabh Kesarwani
2. Rashi Kesarwani
5C/503, Green Hill CHS,
Lokhandwala Township,
Akruli Road, Kandivali (East),
Mumbai 40 101.

.. Appellant/s

V/s.

**Sheth Infraworld Pvt.Ltd.
Ground & 3rd floor, Prius Infinity
Behind garware House,
Paranjape B Scheme,
Subhash Road, Vile Parle (East),
Mumbai 40 057.**

..Respondent/s



No.AT006000000010494

1. Mahesh Mahadeo Kelkar
2. Janhavi M. Kelkar
B-73, Satya Darshan CHS,
MalpaDongri No.3,
Andheri (East),
Mumbai 400 093.

.. Appellant/s

V/s.

**Sheth Infraworld Pvt.Ltd.
Ground & 3rd floor, Prius Infinity
Behind garware House,
Paranjape B Scheme,
Subhash Road, Vile Parle (East),
Mumbai 40 057.**

..Respondent/s

Shri Satish Dedhia for the Appellant.

Adv. Pragati Malle for the Respondents in all the three Appeals.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 19th December, 2018
Dictated/Pronounced on : 20th December, 2018
Transcribed on : 20th December, 2018

-: JUDGMENT:-

Heard finally.

1. Dismayed by order of Ld. Chairperson, MahaRERA, Mumbai dated June 12, 2018, October 1, 2018, the Allottees / Original Complainants are before this Tribunal in Appeal. The Appellants / Allottees had purchased Flat No. B-103 (Preeti and Prassanaraj Bhatwadekar), Flat No. A-704 (Saurabh Kesarwani), Flat No.C-104 (Mahesh Kelkar) in the Project of the Appellant / Promoter named and styled as 'SHETH MIDORI' situated at Borivali, Mumbai by individual registered Agreement for Sale. The date of possession was March 2016 (Preeti and Prassanaraj Bhatwadekar), December 2017 (Saurabh Kesarwani) and December 2015 (Mahesh Kelkar).



2. The Ld. Chairperson by the impugned order dated June 12, 2018 in the matter of Preeti, October 1, 2018 in the matter of Mahesh Kelkar and June 12, 2018 in the matter of Saurabh, has disposed off the complaint thereby directing the Promoter / Respondent in the Appeal to pay interest on delay to the complainant from April 1, 2018 (Preeti) from January 1, 2019 (Saurabh), From June 2018 (Mahesh M. Kelkar). It is admitted position that Mahesh M. Kelkar had availed benefit of subvention scheme floated by the Promoter / Builder wherein the Promoter was to share interest till handing over possession to the flat purchaser.
3. The Ld. Chairperson, in the impugned order accepted plea of the Promoter that they will hand over possession of the Apartment in accordance with the plan of the respective apartments as mentioned in the Agreement for Sale and that no further charges towards the carpet area will be demanded. The Ld. Chairperson, as is apparent, did not venture to deal with liability of payment by the Promoter for delay occasioned from the afore referred dates of handing over possession.
4. Mr. Dedhia in the appeal raised grounds that the Ld. Chairperson has acted mechanically without appreciation of facts, with pre-determined approach, ignored provisions and objects of law and recorded a stereo typed order in a casual manner in undue haste just to dispose the matter. Shri Dedhia says if the Ld. Chairperson did not intend to hear the matter on merit and follow the procedure prescribed by law he ought to have transferred the complaint to the Adjudication Officer as per provisions of Rule 7 and Section 71 of 'The Real Estate (Regulation and Development) Act, 2016' (RERA Act), which requires that the complaint should be adjudicated by an Adjudicating Officer who should be a judicial officer. The Ld. Chairperson ought to have directed the Respondents to pay to the Appellants / Allottees interest for each month of delay from the date of handing over possession agreed upon till actual date of completion of the project and issuance of full Occupation Certificate of the Building.



5. The Ld. Counsel rightly points out that the stop work notices are dated 16.10.2017, 1st November 2017 and 28th November, 2017 issued by MCGM whereas the Promoter was expected to carry the completion well in time prior to March 2016 on the above referred dates.
6. Record reveals that from the date of Agreement for atleast 24 months the Promoter did not bother to obtain construction permission for the flats sold to the Allottees. The Allottee has pointed out and rather rightly that the Promoter has given priority to approvals and construction of other buildings and Promoter has diverted the resources for other buildings. An impression is generated that the Respondent himself ensued to get stop work notice from MCGM. The Respondent knew not to carry out unauthorized work or not to erect huts without prior permission, in the earmarked area but he did not adhere for permission. Made a show of collapse of compound wall.
7. The record unmistakably illustrate that the Promoter was more keen to get concessions of benefit of increase in the Floor Space Index (FSI) from 2.00 to 2.20 and consequently he has calculatedly delayed the project of construction and hand over the apartment in time schedule.
8. The Ld. Counsel for the Appellant though has attacked to the jurisdiction with Ld. Chairperson to deal with the complaints, bypassing provisions of Section 71 and Rule 6 & 7, however, considering the time spent in the matter, I do not wish to protract the matter by dwelling on this issue. This would delay the benefits to the Allottees who are already sufferers.



9. On perusal of the record, it reflects that Achyut Vatve, the Structural Engineer, gave Certificate dated February 28, 2014 about structural feasibility wherein he has indicated that the building have been designed to take the superimposed area of the 9 residential wings being A-3, two basements + lower ground plus stilt + 17 upper floors. Vide another letter dated July 19, 2017. Shri Vatve says that 'Foundation of captioned building is designed for (Wing 'A-1 and A-2' is lower ground + stilt + 22 upper floors and Wing 'A-3' first and part second basement plus lower ground + stilt + 22 floors) it is safe and stable with addition of 5 upper floors above 17 upper floors. Shri Vatve had on available record no access when plinth level construction was already completed on February 28, 2014 to issue erroneous Certificate dated July 19, 2017. This is obviously, to provide a concession to the Promoter to get enhanced the FSI and floors in the Building. These documents were suppressed by Promoter.
10. In the Agreement concerning flat purchased by Saurabh Flat no. A-704 the area shown is 695 sq.ft. The approved plan shows the area 693 sq. ft. and the Promoter has collected amount for 711 sq.ft. Thus 18 sq.ft. are additionally claimed by the Promoter. Saurabh is entitled for its remission.
11. The Appellant, Mahesh had availed subvention scheme. Its benefit should have been extended to the Allottee as the liability to pay interest was accepted by the Promoter but since the Promoter has failed to adhere date of possession, the Purchaser / Allottee should not be burdened with the liability of interest or the losses suffered in the process. It is settled legal position indicated in Section 72 of RERA that while engaging in the quantum of compensation or interest, in terms of Section 71, the Authority shall have due regard to the factors (a) the amount of disproportionate gain or unfair advantage wherever quantifiable made as a result of default and (b) the amount of loss caused as a result of default. The issue of subvention scheme and Tripartite Agreement should not have been skipped by the Ld. Chairperson. It was a mandate accepted by the

Promoter that the possession of the flat would be delivered on due date and in response thereto the Tripartite Agreement was executed. Since the Promoter has committed default, the Allottee who has borrowed money cannot be burdened with interest component. The Promoter naturally has to sustain this loss by compensating the Complainant / Allottee. The Promoter is not permitted under the law to shirk his responsibilities to say that he has released interest as per the date agreed upon in the Tripartite Agreement with the bank.

12. The picture coloured by the Promoter that delay is occasioned owing to belated permissions from the Municipal Corporation, are only excuses projected for avoiding liability to pay interest. The Promoter, was conscious of the delay. Even if the project is delayed as stated by the Promoter because of the reasons which were beyond his control, however, the Allottee cannot be expected to share such responsibility as the Promoter has calculated his profit and the impediments in procuring permission from competent authorities. On the other hand, it reveals that the Promoter deliberately killed time to take benefit of increase in FSI and thereby to increase the floors and mint money at the cost of the Allottee. Such conduct cannot be perpetuated. The predominant nature of RERA, should not be kept in shelves which provides benefit in terms of Section 18 to the Allottee. It is well settled law that when a legal fiction is enacted by the Legislature, the Authority should not allow its imagination to boggle but must carry the legal fiction to its logical extent and give full effect in it. The Authority should not have skipped that the Promoter has fraudulently withheld vital documents in order to gain advantage over the Allottee. Such conduct calls for condemnation. The documents, suppressed by the Promoter are letter of Municipal Corporation dated 1.11.2012, copy of Indicative Concession Report dated 8.10.2017, Copy of C.C. and Occupation Certificate of other area at CTS 2395 shows that alleged force majeure did not affect the area. In totality of the situation, the order of Ld. Chairperson calls for interference.

13. This Appeal was heard on 6th December, 2018 and thereafter on 13th December, 2018. During the course of submissions on these days, certain via media to resolve the controversy was suggested which principally the Allottee had accepted. The Ld. Counsel for the Promoter intimated that she personally ~~declared~~ ^{admitted} that the matter should be resolved. In the light of this, as prayed, the matter was adjourned by this Tribunal to 19th December, 2018 for communication of above settlement of controversies, else for orders. On 19th December, 2018 surprisingly, Adv. Salunke appeared and made application that time be granted to deal with compilation of documents / Judgements relied on by the Appellant. This was calculatedly to protract the matter. The application was rejected. The matter was kept today for settlement if any or for orders.

:- ORDER :-


1. The appeals of the Allottees are allowed.
2. The order of Ld. Chairperson October 1st, 2018 and June 12, 2018 set aside.
3. The Promoter to release interest in favour of the Allottee @ 10.05% from agreed date of possession as under :
 - a) March 2016 (Preeti and Prassanaraj Bhatwadekar),
 - b) December 2017 (Saurabh Kesarwani) and
 - c) March 2016 (Mahesh Kelkar).till handing over possession to the Complainant / Allottees, with Occupation Certificate from MCGM.



4. The Promoter to pay cost of Rs.20,000 to the Allottee in each of the Appeals.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 20th December, 2018



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