

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

(2-8 & 9-15)

No.AT006000000000078

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

V/s.

Manoj Votavat
B/101/102 Sea Land Tower,
Opp. Sai Mandir, Jesal Park,
Bhayander (E),
District Thane – 401 105

..Respondent/s

(3)

No.AT006000000000086

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

V/s.

Bhupendra Ramji Vira
B 1103 Reema Residency Shimpoli Road,
Chiku Wadi, Borivali (West),
Mumbai 400 092

..Respondent/s

(4)

No.AT006000000000087

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

V/s.

1) Mr. Manoj Mehta
2) Mrs. Sonal Manoj Mehta
A/101 Krishnaraj,
St. Xavier School Road,
Vile Parle (W), Mumbai – 56

.. Respondents



(5)

No.AT006000000000088

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

V/s.

1. Nitin V. Shah & Ors
501, Plot No. 505 B,
Vishal Complex CHS Ltd.
S.V. Road, Near N.L. College,
Malad (W), Mumbai 400 064.
2. Maharashtra Real Estate Regulatory
Authority, SRA Building, Bandra (East),
Mumbai 400 051.

.. Appellant/s

..Respondent/s

(6)

No.AT006000000000089

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

V/s.

- 1) Mr. Rajesh Mahendra Mehta
- 2) Mrs. Nisha Rajesh Mehta
11 Vandana, 4th floor, Juhu Scheme
Vile Parle (W), Mumbai 56.

.. Appellant/s

..Respondent/s

(7)

No.AT006000000000090

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

V/s.

Mrs. Sheela Vira & Ors.
B/110, Reema Residency Shimpoli Road,
Chiku Wadi, Borivali (West),
Mumbai 400 092

.. Appellant/s

.. Respondents



(8)

No.AT006000000000091

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

V/s.

1. Rajesh Jain

2. Mr. Umesh Jain

Kanchan, Near Jain Mandir, Station Road,
Post Umbarpada, Saphale, Taluka Palghar
Dist. Palghar 401102

.. Respondents

(9)

No.AT006000000000154

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

V/s.

1) Mr. Manoj Mehta

2) Mrs. Sonal Manoj Mehta

A/101 Krishnaraj,
St. Xavier School Road,
Vile Parle (W), Mumbai – 56

.. Respondents

(10)

No.AT006000000000157

1) Mr. Rajesh Mahendra Mehta
2) Mrs. Nisha Rajesh Mehta
11 Vandana, 4th floor, Juhu Scheme
Vile Parle (W), Mumbai 56.

.. Appellant/s

V/s.

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

..Respondent/s



(11)

No.AT006000000000158

1. Rajesh Jain

2. Mr. Umesh Jain

Kanchan, Near Jain Mandir, Station Road,
Post Umbarpada, Saphale, Taluka Palghar
Dist. Palghar 401102

V/s.

Sea Princes Realty

Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

..Respondent/s

(12)

No.AT006000000000159

Manoj Votavat

B/101/102 Sea Land Tower,

Opp. Sai Mandir, Jesal Park,

Bhayander (E),

District Thane – 401 105

V/s.

Sea Princes Realty

Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

.. Appellant/s

..Respondent/s

(13)

No.AT006000000000160

Nitin V. Shah & Ors

501, Plot No. 505 B,

Vishal Complex CHS Ltd.

S.V. Road, Near N.L. College,

Malad (W), Mumbai 400 064.

V/s.

Sea Princes Realty

Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

..Appellant

..Respondent/s

(14)

No.AT006000000000161

Bhupendra Ramji Vira
B 1103 Reema Residency Shimpoli Road,
Chiku Wadi, Borivali (West),
Mumbai 400 092

.. Appellant/s

V/s.

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

..Respondent/s

(15)

No.AT006000000000162

Mrs. Sheela Vira & Ors.
B/110, Reema Residency Shimpoli Road,
Chiku Wadi, Borivali (West),
Mumbai 400 092

.. Appellant/s

V/s.

Sea Princes Realty
Ashok Raj, H Wing, 1st floor, S.V. Road,
Goregaon (W), Mumbai 400 062

..Respondent/s

Adv. Mustafa Safiyuddin ABH Law LLP for Allottees in all the appeals.

Mr. Aditya Mokashi appearing on behalf of Adv. Jaydeep Shringare & Avadhut Bidaye for the appellant / Promoter in 7 Appeals.

Adv. Shri Shringare in each of the Appeal of the Allottees. He has filed reply in 7 Appeals preferred by Allottees. Copy received by Adv. Shri Mustafa Saifuddin for ABH Law LLP. He also appears in the Appeals preferred by Promoter.

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

Heard on : 4th April, 2018

Dictated/Pronounced on: 4th April, 2018

Transcribed on : 5th April, 2018



-:ORAL JUDGMENT:-

Heard finally.

1. The 7 Appeals are by M/s. Sea princess Realty (Promoter) and 7 Appeals are by flat purchasers (Allottees) from the said Project. Both have assailed Order of the Ld. Chairperson, MahaRERA dtd Jan. 16, 2018, passed in the respective complaints filed by Allottees.
2. The Order under challenge incorporates payment of interest at the rate of 10% for a period of 6 months to the complainants / allottees on the total consideration amounts paid by them to the Promoter.
3. The Allottees had booked flats in the Project named as 'Gundeccha Trillium' situated at Village Magathane, Taluka Borivali by entering into various registered Agreements to Sale from October, 2013 to February, 2014. The Agreement inter alia provided the Promoter to hand over possession of said apartment to the allottee by Dec. 31, 2016. It is common ground and a case that the Promoter has failed to hand over possession of said apartment with amenities in the stipulated time. A chart of payment with schedule and amount released by each of the allottee is furnished by the Promoter today which illustrates that atleast or even more than 91 to 95% of the cost has been remitted by the allottee upto December, 2014.
4. The Ld. Counsel for the Promoter says the direction to pay interest for the period of 6 months itself is erroneous as the project was registered with RERA Authorities on 26/07/2017 and the stipulated date categorically illustrated was 31st Dec. 2017. He says the documents are complied with. He says, even if the Agreement provided the date of handing over possession as 31.12.2016 however, the date of registration and completion of project date 31.12.2017 will supersede earlier date. According to him, this certification was available on website of RERA since July 2017 however the allottee did not grumble. It was only the allottee filed later on complaint somewhere in Oct. 2017 with the Authority. He says that the building is complete in all respects ready for occupation as the Occupation Certificate is issued by BMC on December 21, 2017. He reiterates that the order under challenge is harsh and detrimental to the interest of the Promoter.



5. The Ld. Counsel for the allottees in support of the appeal preferred by them and opposing to the appeal preferred by the Promoter, has highlighted para 5 of the Agreement which defines "**Flat**" 'including IV Schedule therein.' He has referred to the Judgement of Hon'ble High Court of Judicature at Bombay in Group matters particularly Writ Petition No. 2737 of 2017 decided on 6th December, 2017 in the matter of Neelkamal Vs. Union of India (reported in 2017 SCC Online Bombay 9302) to indicate that the extension of date of the Agreement is impermissible and the Promoter cannot give a go-by to his solemn affirmation recorded at the time of registration of Agreement. It is observed by Hon'ble Division Bench it needs to be emphasized that RERA law is not to be considered as anti-promoter.
6. The Ld. Counsel has taken recourse to the information conveyed by the Promoter as on 9th January, 2018 on the RERA website. Highlighted that the project as on that date was not complete as at some place it was 0%, 90% and in some case it is 95% of the work. If the project was incomplete as on 09.01.2018 as according to Promoter, how could there be an Occupation Certificate to be termed as a legal document. He has criticised the Occupation Certificate by further highlighting the photographs taken in the month of March 2018 and 3rd April 2018, to impress again the shabby state of affairs at the site and to indicate that the project is inhabitable. According to the Ld. Counsel, the conduct of the Promoter speaks for itself. The Agreement refers Commencement Certificate but for construction of clubhouse belatedly the Promoter has applied in November, 2016 he cannot be permitted to take benefit of stay granted by Hon'ble High Court, as the stay was to some other work and not to the building and it was of a general character in Public Interest Litigation. He says a deterrent action is imperative against the Promoter as huge hard earned money of the allottee is consumed and they are suffering by way of interest, hardship and are slapped with rent.
7. The canvass projected by the Promoter about completion of the building in all details, from the photographs of March 2018 or 3rd April 2018 or the communication dated 9th January, 2018 illustrate that it was an eye-wash. It is unfortunate that the architect of the promoter, has toed to the tune of the Promoter in certifying as on 1st Nov. 2017 that the building is complete. This certificate naturally has been acted upon and believed too. A responsible authority like an architect who is also a Licensed Surveyor is not expected to sign



blindly when the project itself is in doldrum and incomplete. Such factually incorrect endorsement calls for condemnation and action.

8. The submission of Ld. Counsel that the Occupation Certificate dated 21st December, 2017 illustrate that the project is completed in all potentials , to repeat is not so. It is not that only one or two elevators which are installed are non functional but the recreational amenities, the clubhouse, the podium, the entrance, the staircases, scaffolding at the entrance of the wing, glass facades scaffolding at the floor lobby, floor lobby with bldg. Material, entrance lift door not functional, clubhouse and swimming pool work in progress, amphitheatre not complete, goes to show that the certificate dated December 21, 2017 of the Municipal Corporation will not accelerate, cause propagated by the promoter. It is with impunity such document is flashed with oblique motives to avoid the obligation of giving furnished apartment in the manner as was agreed upon by virtue of the Agreement, particularly clause 5 thereof. The joint inspection certifies and endorses the grievance of Allottees to be true.
9. It is pertinent that when the Promoter entered into with the Agreement with each of the allottee, it was at the volition of the Promoter that the definition of flat was indicated, which reads as under :

Pg. 46 para 5 of Agreement reads as under:

"The Flat Purchaser /s hereby agrees to purchase from the Developer and the Developer hereby agrees to sell to the Purchaser, subject to what has been received hereinabove and stipulated hereinafter, a residential Flat premises being Flat No. B-402 on 4th floor of Wing B of said building known as GUNDECHA TRILLIUM (said Building) admeasuring 1283.00 sq.ft. carpet area (including the area of the balconies and tangible FSI) which flat shown on the floor plan thereof hereto annexed and marked Annexure "J", by Red hatched lines at and for the price of Rs.2,28,17,000/- (Rupees Two crore Twenty Eight Lacs Seventeen Thousand only) which includes the proportionate price of the common / limited common areas and facilities appurtenant to the said Flat, the nature, extent and description of which common / limited areas and facilities are more particularly described in the Fourth schedule hereunder written. The said consideration is exclusive of any levies Taxes, Service Tax, VAT and royalty etc. Of any nature whatsoever as are or may be



applicable and/or payable hereunder in respect of said flat or otherwise, now or in further together with the exclusive right of use in respect of one/Two/ open/stilt/ basement/podium parking space within the compound of said building. The Purchaser agrees and confirm that all sums, Taxes and levies including Service Tax, VAT etc. Shall be solely borne and paid by the Purchaser. The proportionate share of the Flat Purchaser/s in the said common areas and facilities is liable to be increased or decreased in the event of there being a change/s in the building plans. It is specifically agreed that the apportionment of the proportionate price of common amenities is notional and the same is not subject to change even if the percentage of the undivided share of the said Flat in the common areas and facilities increases or decreases, the intent of the parties being that the said Flat is being sold to and purchased by the purchaser with all the appurtenant rights for the said price. The flat purchaser/s expressly consent/s to such changes in the said share and hereby expressly authorizes the Developer to so increase the said share of the Flat Purchaser/s in the said common areas and facilities and limited common areas and facilities of the said building and the Purchaser hereby irrevocably agreed to accept the said shares as changed as aforesaid. The said Flat, together with the said car parking space, garden, tennis court, club house, swimming pool etc. And the proportionate interest in the common areas and facilities are hereinafter collectively referred to as the said Flat."

The Agreement and clause 5 thereof reading in juxtaposition illustrates that the buyer / allottee was required to pay for amenities outside areas, clubhouse and other incidental charges. The Promoter cannot run away from the terms settled by him to define flat in para 5. There is no contest that document is to be read as a whole however when a document explicitly cast an obligation, the promoter cannot be allowed to escape from that obligation and raise undesired excuses, to create spike in discharging the time schedule. Needless to indicate, a builder has to herald a legacy of trust and commitment.

10. It is well settled principle of interpretation of statute that wherever a statute contains stringent provisions they must be literally and strictly construed so as to promote the object of the Act (AIR 1984 SC 871). RERA is a law for regulation and development of real estate sector.
11. On perusal of the Order of the Ld. Chairperson, indeed I find that he has extended a concession by not allowing interest payable from 1.1.2017 in favour of the allottees, still the Promoter had gumption



and audacity to question the concession and also the order by preferring appeal.

Since the Promoter has not accepted the order, he is bound to face music of the appeals preferred by him and as well the appeals of the allottees.

12. The date of Agreement will not be superseded even if an extended date is stipulated while registering the project. The Hon'ble Lordships in the matter of Neelkamal, highlights that there should be case to case analysis. However, on applying para 128 of the Judgement in the matter of Neelkamal, it does not apply that the Promoter was forced under the circumstances to suffer delay in completing the project.

Para 128 of the Judgement reads as under :

"Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted, the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, in unwarranted, illegal and highly arbitrary in nature."

13. It is curious that the Ld. Chairperson before passing the impugned Order has afford several opportunities to the Promoter to explain under a chart as to the reasons for delay in the project. The Promoter thought it fit to get the matter protracted and failed to comply the obligation of giving chart, still he wants concession in the orders of Ld. Chairperson. The reasons assigned for delay in handing possession to allottees is



general in nature. Even if the Occupation Certificate is flashed, the building is apparently inhabitable, and allottees cannot be lured.

14. The details narrated as on 9.1.2018 and the certificates highlighted by Promoter unfortunately are contradictory to each other. Already I have indicated that the Certificate by Manoj Dubal and Associates dated 1.11.2017 is without noticing that the project is incomplete and have certified that the building is completed in all respects for their residential project. The certificate dated 9th Oct. 2017 issued by Water Enviro (Exhibit 5) illustrates of a Completion Certificate of sewer treatment plant for the project. However as on 9th Jan. 2018 the Promoter has himself certified that only 95% of the work has been carried out. So far as certificate dated 14.10.2017 of Dnyanesh Bhave (Exhibit. 6) is concerned, he certified that Rain Water Harvesting is complete in good workmanship and manner. However, same is contradicted by the Promoter himself on 9th January, 2018 indicating that it is not even started. The certificate of Dnyanesh Bhave in respect of water supply dated 14.10.2017 certify water supply plan to be in good quality and the works are completed. However, the work was to the extent of 95% thus there is no completion of water, recreational aspects, no construction of clubhouse, the staircases are in a shabby state of affairs, the lobby is incomplete, the podium, the elevation is wanting and still the Promoter desires that the allottee should adhere to the Occupation Certificate and occupy the premises and to release the balance of the liabilities. This proposition advanced by the Promoter is contrary to the terms of Agreement in particular para 5 and other stipulations and even contrary to the registration of project in terms Sec. 4 of the RERA. The Promoter has in the above factual scenario naturally invited problems due to own fault without there being any 'Act of God' or any inhibition from Court Orders.

The Ld. Counsel for the allottee has urged for deterrent action in respect of payment of compensation and payment of interest.

15. Drawing balance sheet of all events coupled with the photos, documents and the joint inspection carried by the allottee with Viren Shah and Suresh Ghadigaonkar, reply dated 3rd February, 2018 it is illustrative that the Project is incomplete. Hence no concession can be rendered to the Promoter to disturb the Order under challenge of the Ld. Chairperson, however, the appeal preferred by the allottees urging for interest need positive consideration as they parted with monies before December 2014 and are in lurch. The allottees have undergone stress, bank liability and melancholy for no fault at their level. They are entitled for interest @ 10% p.a. from 01.01.2017.




:ORDER:

1. Appeal No. AT006000000000078, AT006000000000086, AT006000000000087, AT006000000000088, AT006000000000089, AT006000000000090, AT006000000000091 of Promoter dismissed. No costs.
2. Appeal No. AT0060000000000154, AT0060000000000157, AT0060000000000158, AT0060000000000159, AT0060000000000160, AT0060000000000161, AT0060000000000162 allowed. The Promoter M/s. Sea Princess Realty shall pay interest @ 10% p.a. as directed by Ld. Chairperson in the Order dated January 16, 2018 effective from 1st January, 2017 till actual handing over the individual flat to each of the allottees duly complete in all respect with amenities as illustrated in para 5 of the Agreement.
3. The Promoter shall pay Rs. 10,000/- as costs each, in the appeals preferred by the allottees.
4. The Promoter shall constitute Housing Society of different allottees within a period of 4 months from today.
5. The Secretary MahaRERA is requested to independently initiate action under the provisions of RERA against Mr. Manoj Dubal for issuing factually incorrect Certificate dated 01.11.2017.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 4th April, 2018


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