

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

No.AT0060000000000003

Siddharth Patravali
Mrs. Rajni M. Patravali
P1, 04, Challenger Tower 1,
Thakur Village, Kandivali E,
Mumbai 400 101
V/s.

.. Appellant/s

Smt. Vishal Gaurishankar Damani
M/s Lucina Land Development Limited
F-60 Malhotra Building, 2nd floor,
Connaught Place,
New Delhi 110 001.

..Respondent/s

The Appellant, Shri Siddharth with his C.A. Mr.Ramesh Prabhu present.

Respondent / Promoter was absent. The Revision to proceed ex parte.

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

Heard on : 26th April , 2018

Dictated/Pronounced on: 26th April, 2018

Transcribed on : 26th April, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. The Respondent / Promoter inspite of two communications called and absent. Appeal to proceed ex parte against him.
2. The allottee (Appellant) feels dissatisfied with the order of the Ld. Chairperson, MahaRERA dated 18th December 2017 whereby the complaint is disposed of, accepting statement of the Promoter to hand over the possession of the apartment with Occupancy Certificate before December 31, 2018, failing which the Promoter to pay interest effective January 1, 2019.



3. The Appellant / Allottee says his dream of procuring a house / apartment has been shattered by virtue of protracted attempts by the Promoter to meet with the obligations carved at the time of entering into Agreement dated July 20, 2011.
4. There is no contest that the Appellant has agreed to purchase Flat no. 403 in Bldg. 15B of the Respondent's project "Indiabulls Greens" situated at Panvel, Raigad. There is no controversy that the agreed date of possession stipulated by the said agreement was July 2016 (referred as 60 months). The complainant / allottee says he does not want to withdraw from the project, however, he is interested to receive interest and compensation, due to his sufferings having required to pay equated monthly instalments to the financier / Indiabulls Housing Finance Ltd.
5. The grievance is, inspite of the certificate of an Architect way back dated 5th August, 2013, the subject Building 15B is complete as the Certificate shows 32nd floor has commenced its possession is delayed. The appellant allottee says there should not any hitch for the Promoter to procure necessary Occupation Certificate and hand over possession of the apartment to him. Without assigning any reasons and even not responding to persistent follow up from the allottee, the project is delayed. The allottee feels, his hard earned money is blocked and he is wandering for the rightful gains.
6. Having gone through the order under challenge of the Ld. Chairperson it informs that clause 9) of the Agreement between the parties was considered as a paramount aspect. Even if one toes to the said clause 9) it should not be construed to the detriment of the allottee as a purchaser. The legal position in respect of the future consequences of delay, except natural calamities, is indicated to be no a ground to seek the extension from the mandated date of handing over possession. This is so indicated in the celebrity judgement of the Hon' High Court of Bombay in Writ Petition No. 2737 of 2017 in the matter of Neelkamal Vs. State, decided on 6th December, 2017.
7. In this situation if the project is delayed because of reasons which were beyond the Respondent's control, the consequences could not be shouldered by the allottee. It was expected to be a foresight of the Promoter to ensure the hindrances that may creep in while carrying on a

magnanimous project. Hence on this score the Promoter cannot seek an elbow room of concession to strangle the Allottee's right. The delay in relieving of incentive FSI due to change in Planning Authority from Alibaug Township Authority (or Addl. Director of Town Planning, Alibaug) to City and Industrial Development Corporation (CIDCO) will not be a ground of justification to avoid delivery of possession during the time date. Even if the project came to a standstill, it will not be a part attributable to the allottee to face financial imbalance.

8. The impetus of Section 18 needs to be read in consonance to the Preamble of RERA Act. The Preamble conceives, "This Act is promulgated with an object to have an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions...."
9. Section 18 starts with return of amount and compensation. Two situations are indicated (1) – If the promoter fails to complete or is unable to give possession of an apartment, in accordance with the terms of the Agreement of Sale duly completed by the date specified therein or (2) - due to discontinuance of his business as a developer on account of suspension or revocation of the registration or for any other reason, then the Promoter shall be liable on demand to the allottees in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him. Proviso to Sec.18 (1) conceives where an allottee does not intend to withdraw from the project, he shall be paid by the Promoter, interest for every month of delay, till the handing over of the possession at such rate as may be prescribed. Sec. 18(3) also deals with liability of the Promoter to pay compensation if he fails to comply with the terms and conditions of Agreement for Sale.
10. The cumulative effect, of the Preamble and Section 18 referred to above illustrate that it is imperative for the Promoter to satisfy by making adequate financial arrangement to the allottee in the form of interest for the amounts received, for delayed possession.
11. Since the matter under challenge requires a fresh hearing in the light of legal position and after hearing of Promoter and equally getting date wise details of payment and delay, it would be just and equally reasonable that the Ld. Chairperson or the Adjudicating Officer, as the case may be, shall hear the parties afresh and decide in tune with the directions /

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observations of Hon'ble Division Bench of Bombay High Court referred to above. Hence the order under challenge calls for interference, to the extent of remand.

:-ORDER:-

1. The order dated 18th December, 2017 of the Ld. Chairperson disposing complaint is set aside.
2. The Ld. Chairperson is requested to visit the complaint afresh in the light of available material and also to deal with entitlement of the appellant for interest including amenities by way of clubhouse as was agreed between the parties.
3. The parties to appear before the Ld. Chairperson, MahaRERA on 14th May, 2018.
4. The appellant allottee and the Authorities of MahaRERA shall independently communicate date of appearance to the Respondent / Promoter.
5. No costs.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 25th March, 2018


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