

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL,MUMBAI**

**APPEAL NO. AT006000000010821**

Mr. Manoj Gagvani  
S/o Late Sh. Prataprai Gagvani  
R/o A/3a, Viceroy Court,  
Thakur Village, Kandivali (East)  
Mumbai 400 101 ... Appellant

Versus

M/s Sheth Infraworld Private Limited  
Ground & 3<sup>rd</sup> Floor, Prius  
Infinity, Behind Garware House,  
Paranjpe B Scheme, Subhash Road,  
Vile Parle (East)  
Mumbai 400 057. ... Respondent

*(Appellant in person.  
Mr.Rahul Vardhan, Advocate for Respondent)*

**CORAM : SUMANT M. KOLHE,  
MEMBER (J)  
DATE : 30<sup>TH</sup> AUGUST,2019**

**JUDGMENT : (PER SUMANT M. KOLHE, MEMBER (J))**

Order dated 6.9.2018 passed by Learned Chairperson  
MahaRERA in complaint No. 00C6000000055421 is assailed  
in this appeal.

**Status of Parties**

2. Appellant is Allottee. Respondent is Promoter. I will refer the parties as "Promoter" and "Allottee".

**Complaint by Allottee and decision**

3. The Allottee filed the complaint No.00C600000 0055421 against the Promoter before MahaRERA and prayed for possession of flat and interest for delayed period of possession.

4. After hearing both the sides, Learned Chairperson, MahaRERA disposed of the complaint by allowing the Promoter to complete the project till 31.5.2018 and to pay interest for delayed period of possession from 1.6.2018 till the date of handing over possession of flat.

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**Challenge to impugned order**

5. Being dissatisfied with order dated 6.9.2018, the Allottee has challenged the propriety, correctness and legality of the said order.

6. Heard Learned Allottee in person and Learned Counsel for the Promoter.

**Points for determination and findings**

7. The following points arise for my determination.

**POINTS:**

1. Whether the impugned order is sustainable in law ?

2. Is it necessary to modify the impugned order ?
3. What order ?

My finding on above points for the reasons stated below are as under .

1. Partly affirmative.
2. Partly affirmative.
3. As per final order.

## **REASONS**

### **Facts not in dispute**

8. The Promoter and the Allottee entered into registered agreement for sale of flat on 30.6.2014. The Promoter had agreed to hand over possession of flat to Allottee on or before 31.3.2016. Allottee has paid the price as per the schedule of payment agreed between the parties. The Promoter failed to hand over possession on 31.3.2016. The MOFA, 1963 was applicable to the transaction between the Promoter and Allottee. The RERA, 2016 has come into force with effect from 1.5.2017. The project launched by the Promoter in which Allottee agreed to purchase the flat as per the agreement for sale dated 30.6.2014 was incomplete on the date of application of the RERA, 2016 i.e. 1.5.2017. The transaction of sale and purchase of the flat between the Promoter and Allottee is governed by provisions of the

RERA,2016. Allottee filed the complaint against the Promoter before MahaRERA and prayed for giving direction to the Promoter to hand over possession of the flat and to pay interest for delayed period of possession. The Learned Chairperson, MahaRERA directed the Promoter to complete the project on or before 31.5.2018 and to pay interest for delayed period of possession from June 2018 till the date of handing over possession of flat.

**Occupancy certificate issued**

8. The Promoter received the occupancy certificate in February 2019 and offered possession of the flat to Allottee and demanded the balance amount of price from Allottee.

**Possession handed over as per consent terms**

9. Allottee and Learned Counsel for the Promoter submitted pursis on 28.6.2019 regarding mutually agreed terms for taking and handing over possession of flat between them. Those terms are as under:-

- (a) The Promoter has agreed to adjust the amount of Rs.6,73,106/- from total outstanding amount payable by Learned Allottee i.e. Rs. 10,97,744/- as per the order of MahaRERA.

- (b) Learned Allottee has agreed to pay the society maintenance charges of Rs. 2,82,600/- as demanded and GST of Rs.19,048/- ,so also the service tax of Rs.86,186/- at the time of handing over and taking possession of flat.
- (c) The Promoter agreed to hand over possession of the flat on or before 28.6.2019

10. The abovementioned pursis of agreed terms between the parties was taken on record and both the parties agreed to abide the agreed terms. All the disputed contentions of both the parties were kept open to be decided on merits in this appeal. The parties have executed the agreed terms as above and possession of the flat was handed over to Learned Allottee on 28.6.2019. So, the relief of seeking possession of flat does not survive.

**Interest on delayed period of possession**

11. As far as the issue of claiming interest on delayed period of possession of the flat by the Allottee and the right to recover the balance price of flat by the Promoter are concerned, both the parties have advanced their submissions on merits. At first, let us see what is the delayed period of possession. As per the agreement, the possession was to be given to the Allottee on 31.3.2016 and it was actually given

on 28.6.2019. So, there is a delay of 38 months in handing over possession to Allottee.

**Possession clause 32 of agreement**

32. It is expressly agreed between the Parties, that save and except if the Owner is prevented by any of the reasons mentioned hereinafter, the possession of the said Flat will be handed over by the Owner to the Purchasers on March,16 provided that the Owner has received the full purchase price of the said Flat/s and all other amounts, taxes, deposit of TDS with Income Tax and furnish correct amount of TDS certificate to the credit of the Owner, etc., payable by the Purchaser/s to the Owner under these presents. The Purchaser hereby agrees, acknowledges, confirms and accepts that the Owner may not be able to hand over possession to the Purchaser as mentioned above and the possession might get delayed due to the following events:

- i. reasons beyond the control of the Owner .. .. .
- ii. non-availability of the steel and/or cement .. .. .
- iii. any notice, order, rules, notification of the Government  
.. .. .
- iv. changes in any rules, regulations, bye-laws of various  
statutory bodies ... .. .
- v. delay in grant of any NOC/permission/licence/ ... .. .

**Delay after occupancy certificate**

12. The occupancy certificate was received by the Promoter in February, 2019. The Promoter offered possession of flat with the occupancy certificate by demanding the balance amount of price of flat from Allottee. Every Allottee is under obligation to take physical possession of the flat within a period of 2 months from the issuance of the occupancy certificate as per Sec. 19 Sub Sec. 10 of the RERA, 2016. As per Sec. 11 Sub Sec. 4(b) of the RERA, 2016, it is the duty of the Promoter to obtain the occupancy certificate and make it available to the Allottee. The Promoter had informed Allottee in February 2019 about obtaining of the occupancy certificate. The Promoter was punctual enough to inform about the issuance of the occupancy certificate immediately to Allottee in the same month i.e. February, 2019.

13. Now, from February, 2019 onwards it took 4 months to hand over and take possession of the flat. It means the delayed period is of 4 months after receiving the occupancy certified by the Promoter. It cannot be treated as "delayed period for possession" Neither the Promoter nor the Allottee can be held responsible for this delayed period of 4 months

for handing over possession after receiving the occupancy certificate.

14. The Learned Counsel for the Promoter argued that the delay in handing over possession was caused due to the reasons beyond the control of the Promoter. In order to substantiate his submission, he mentioned the following reasons for delay for which the Promoter cannot be held responsible.

#### **STOP WORK NOTICE**

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- (i) Local authority issued stop work notice to the Promoter on 25.5.2015
  - (ii) The Promoter gave reply to stop work notice on 22.7.2015.

15. Promoter had not complied the direction of local body to make construction of the compound wall before commencement of the work. So, stop work notice was issued in May, 2015 and Promoter gave reply to said notice in July, 2015. This matter was processed between the concern department of local body. There was internal correspondence of this matter. As seen from the letter dated 19.8.2015 of internal correspondence it was recommended that stop work

notice should be withdrawn. On 9.2.2016, there was joint inspection and thereafter stop work notice was withdrawn. Thus, from May 2015 to February, 2016, the work of project was stopped as per the order issued by the local body i.e. BMC. Allottee pointed out the letter dated 26.6.2014 in which it is duly mentioned that an intimation was given to the Promoter to carry out the work of compound wall before commencement of the work, but the Promoter did not pay any heed to the same. According to Allottee, the period of 7 months in which the work was stopped due to stop work notice is attributed to the Promoter and the Promoter was careless on that count. Though there was intimation given to the Promoter to carry out the work of compound wall and then to proceed with the work of project, it cannot be said that the Promoter had deliberately and intentionally avoided to pay any heed to the said intimation and to carry out the work of compound wall as directed by Corporation.

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16. The issuance of stop work notice by the local body and thereafter withdrawal of the said notice consumed 7 months time and as such the Promoter alone cannot be said to be responsible for such delay. In fact, such stop work notice after the commencement of the work can be treated as "reason beyond the control of the Promoter".

### **DEMONETISATION**

17. The Learned Counsel for the Promoter argued that due to demonetization from 8.11.2016, the contractor or sub-contractor could not pay the daily wages of the workers which affected the strength of workers and their efficiency of the work. It is quite natural and acceptable that the workers earning daily wages are required to be paid their wages in cash on every day or at least on week basis. So, the effect of demonetization was unexpected and it was beyond the control of the Promoter to face such situation. The submission of Learned Allottee that the demonetization has no relevancy to hand over possession of flat cannot be accepted. So, the reasonable period of 3 months may be considered for delayed possession due to the demonetization.

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### **SHORTAGE OF SAND**

18. The Learned Counsel for the Promoter argued that there was acute shortage of sand in the year 2017 as seen from the report published in the newspapers and this was also the reason for delay in completion of the project.

19. The Allottee argued that there was shortage of sand in the year 2017 only and the Promoter was bound to give

possession of flat in the year 2016. So, the Promoter cannot take advantage of alleged shortage of sand in the year 2017. There appears to be some substance in the argument of Learned Allottee. By not handing over possession of flat in the year 2016, the Promoter failed to discharge his obligation and the Promoter cannot refer the reasons of delay which are relevant for subsequent period i.e. after the year 2016.

**NOC FROM POLLUTION DEPARTMENT**

20. The Learned Counsel for the Promoter argued that the Promoter had applied for No Objection Certificate of pollution department in June 2018 and it was issued in January 2019. He further argued that immediately after the issuance of the certificate, the occupancy certificate was issued in February, 2019 i.e. within one month.

21. The Allottee argued that it was the duty of the Promoter to obtain the NOC of the pollution department and delay in obtaining such certificate cannot be the circumstance which is beyond the control of the Promoter for completing the project. It cannot be ignored that during the course of commencement of the project till its completion, there are some mandatory permissions required to be obtained from the Competent Authorities and some of them were issued only at the relevant time and not well in advance. So,

considering this aspect, I am of the opinion that six months delay in obtaining the NOC of the pollution department cannot be treated as "deliberate and intentional delay on the part of the Promoter in completing the project". In fact, this circumstance of getting the NOC of pollution department is beyond the control of the Promoter.

22. Considering the above various reasons for delay in completing the project, I am of the opinion that delay of 6 months for not getting the NOC of pollution department, delay of approximately 3 months due to effect of demonetization in real estate sectors, the same shall not be attributed to the Promoter and moreover this period of delay was beyond the control of the Promoter. So, the period of 4 months delay in handing over and taking possession of flat read together with the above mentioned periods of delay in completing the project within time. It is seen that delayed period of total 20 months is not due to deliberate and intentional act on the part of the Promoter. Moreover, the reasons for such delay were beyond the control of the Promoter. The Promoter cannot be held liable to pay interest for this total delayed period of 20 months. Now, out of total delayed period of 39 months(i.e. from 31.3.2016 till June 2019), delayed period of 20 months will have to be deducted. Similarly, Learned Chairperson, MahaRERA has directed the Promoter to pay interest on

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delayed period with effect from January 2018 till actually handing over possession of flat. Both the parties have agreed that interest for delayed period of 8 months has been adjusted against the claim of recovery of balance price from the Allottee while handing over possession of flat on 28.6.2019.

**Liability for 10 months**

23. In view of above discussions, I am of the opinion that out of total delayed period of 38 months, the Promoter cannot be held liable for the period of 28 months. The Promoter is liable to pay interest only for delayed period of 10 months on the amount paid by the Allottee to the Promoter.

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**Spirit of RERA, 2016**

24. It cannot be ignored that the RERA, 2016 is social and beneficial legislation. To safeguard the interests of the Allottees is one of the object of RERA 2016. However, Their Lordships of the Hon'ble Bombay High Court in Neelkamal case have laid down that the RERA does not re-write the contracts and the date of possession as per the agreement is to be taken into consideration for deciding the delayed period in handing over possession of flat. In the given case, it is revealed that when the Promoter has taken genuine efforts to

complete the project and to hand over possession to home buyers then Authority or Tribunal or Forum can mould the relief accordingly. Their Lordships have also observed that to complete the incomplete project is also an important object of the RERA,2016. Though the RERA,2016 has come into force from 1.5.2017, the transactions entered into between the Promoter and the Allottee even prior to 1.5.2017 are duly governed by the provisions of the RERA,2016.

### **Importance of Promoter and Allottee in Real Estate Sector**

25. The Promoter and the Allottee are two pillars of real estate sector. Unless the Promoter comes forward to make the development by constructing the homes, the buyers cannot get opportunity to purchase the homes. Similarly, unless the buyers are demanding the homes, the Promoter will not come forward to construct the homes for buyers.

### **Protection of Allottee and project**

26. Aim and object of the RERA,2016 is to bring transparency in the transactions and to complete the incomplete projects and also to protect the interest of the Allottees. Whenever Allottee has claimed possession and

interest on delayed period of possession, Paramount Preference should be given to complete the handing over possession to the Allottee and then to determine interest on delayed period of possession as sought by Allottee. For giving possession, flat must be ready in all respect with occupation certificate. If project is incomplete, it must be completed and for that purpose, project must survive. So, project must be protected and survived while protecting the Allottee to the extent of relief of interest on delayed period of possession is concerned. However, it is also required to be seen that the Promoter should not suffer hardship and the Promoter should not be discouraged from launching the project of construction of homes. In order to complete the project, it is always necessary to take care of situation that the home buyers should get possession as early as possible and the Promoter should not be financially so burdened due to provision in respect of interest to be paid to the Allottee on account of delayed possession as per the RERA, 2016. I would like to point out that an option of staying with the project and claiming interest for delayed period of possession from the Promoter is contemplated only under Sec.18 of the RERA, 2016 and under such provision of claiming only interest for the delayed period was not provided under MOFA, 1963. One aspect cannot be ignored that as per Sec.8 of

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the MOFA, 1963, the allottees were at liberty to withdraw from the project and to get back refund along with interest from the Promoter in respect of the amount paid for purchase of flat. The liberty to withdraw from the project and to get refund with interest is also given under Sec. 18 of the RERA, 2016. If the home buyers are really dissatisfied for not getting their homes within a stipulated period, they would have definitely opted for withdrawing from the projects by claiming interest either under Sec. 8 of MOFA Act, 1963 or under Sec. 18 of RERA Act, 2016.

27. This is peculiar case in which the Allottee has continued to be in the project and finally got possession of flat though it is delayed. Now, Allottee is seeking the relief of interest on the amount paid to the Promoter for delayed period of possession. Whenever the delayed period of possession is substantial, it is always necessary to see that the Promoter should not be thrown out of such project on account of financial liability of payment of interest for delayed possession. So, the balance is always required to be struck down in such cases when Allottee has received possession though relief of interest for specific delayed period is sought.

### **Conclusion**

29. In view of above discussions, I am of the opinion that the Allottee is justified in claiming interest for the delayed period of 10 months from the Promoter.

30. Impugned order passed by Learned Chairperson of MahaRERA is partly just, proper and legal by directing the Promoter to hand over possession and also to pay the interest for the period from 1.6.2018 onwards till the date of actual possession. The impugned order is modified by making addition of delayed period of 8 months for which the Promoter is liable to pay interest to the Allottee. So, I answer the points accordingly and pass the following order.

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### **ORDER**

1. Appeal No. . AT006000000010821 is partly allowed.
2. Impugned order stands confirmed with modification to the effect that the promoter is further directed to pay interest for 10 more months on the amount received from the allottee after adjusting the due amount or charges if any which the allottee is under obligation to pay to the promoter.
3. Parties to bear their respective cost.

4. Copy is sent to both the parties and MahaRERA as per Sec. 44 Sub Sec. 4 of RERA 2016.

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30-08-2019

*W/Sumant 30-08-19*  
(SUMANT M. KOLHE)  
MEMBER (J)

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