

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

No.AT006000000000060

Sagar Sarjerao Nikam and
Mrs. Sonia Sagar Nikam
110 New Municipal Tenements
Room No.B, 3rd floor, Transit Camp,
D.G. Mahajani Road, Near Fatima Church,
Sewree West, Mumbai 40 015.

.. Appellant/s

V/s.

M/s. Spenta Builders Pvt. Ltd.
3-A/B Rajabhadur Mansion,
1st Floor, 20, Ambalal Doshi Marg, Fort,
Mumbai 400 023

.. Respondent/s

Shri Sagar Nikam in person appeared for the Appellant.
Adv. Shri Ajay S. Vardhan for the Resondent.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 20th March, 2018
Dictated/Pronounced on: 20th March, 2018
Transcribed on : 21st March, 2018

-:ORAL JUDGMENT:-

1. Heard finally.
2. The appellant flat purchaser has questioned correctness and legality of order dt. 13 October, 2017 recorded by Ld. Member-1 of MahaRERA Authority.
3. The appellant has booked or purchased a flat in the scheme promulgated by the respondent by resale purchase by virtue of agreement dt. 12th January, 2017. The Agreement stipulates possession to be handed on 31.3.2-017. These facts are not in controversy.
4. It was argued before the Ld. Member that owing to the delayed aspects, due to Public Interest Litigation being no. 86of 2014 directing the concerned Planning Authority to maintain status quo and not to issue Occupation Certificate to some projects was one of the reasons.




5. The interim order of Hon'ble High Court is dated 1st Sept. 2016 but prior thereto the developer did not attend consciously to complete the project in its letter and spirit. The developer has applied for Occupation Certificate in May 2017 with the Planning Authority. The appellant has flashed photographs to demonstrate that it is an eye-wash of contemplating to make application for Occupation Certificate as even as on today the project is totally in a shattered state of affairs. Leave apart the amenities, even the internal structure of the apartment or any unit is totally in a shabby shape and incomplete.
6. An impression was generated before the Ld. Member that the project would be completed by its letter a spirit by the developer by 31.03.2017 which naturally influenced the Ld. Member to allow such respite to the developer as his project should not be frustrated.
7. It is in this scenario that accepting the statement of the developer to hand over possession to the appellant on or before 31.03.2017 failure to pay interest was slapped.
8. There should not be contest on the texture of the order referred to. The short point needs intervention that the reasons assigned of stay by Hon. High Court will not be a cause to circumvent the obligation cast on the developer to complete the project in a time schedule. The Hon'ble Lordships of High Court in Writ Petition No. 1737 of 2017 in Neelkamal v.s. State indicated that the Court litigation or any stay will not be any excuse for extension of time to be entertained by the Authority.
9. Drawing a balance sheet of the facts, since the solemn affirmation and undertaking from the developer was to hand over the tenement in all respect upto 31st March 2017 in natural consequence, the appellant as purchaser should be compensated from 1st April 2017.
10. Even if at the time of registration a new date of completion of project is earmarked, however, by that itself will not be providing an elbow room and an excuse to the developer to wriggle out from the commitments of the appellant purchaser. Thus the overall effect is, the order under challenge of Ld. Member-1 needs little modification as indicated in Order:

ORDER

1. Appeal is partly allowed.
2. The Respondent / Developer shall pay interest to the Appellant / Purchaser effective from 1st April, 2017 till possession of the said flat is handed over to the Appellant.
3. No costs.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 20th March, 2018


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