

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

**Appeal No. AT006000000010746 of 2018**

**In**

**Complaint no. CC006000000054954**

**1. Smt. Durgavati w/o. Sabhajeet Yadav,**

**Age: 57 years, Occ.: Housewife,**

**2. Anil Sabhajeet Yadav,**

**Age 37 years, Occ.: Service,**

Both resident of 02, Swami Krishnanand Chawl,  
Caves Road, Adjacent to Jogeshwari Police Station,  
Jogeshwari East, Mumbai-400 060.

**...Appellants**

**Versus**

**1. Jangid Homes Pvt. Ltd.**

Jangid House, Jangid Complex,  
Mira-Bhayander Road,  
Thane-401 107.

**2. Om Prakash Jangid**

Director of Jangid Homes Pvt. Ltd.  
Jangid House, Jangid Complex,  
Mira-Bhayander Road,  
Thane- 401 107.

**3. Hasmukh Barvalia**

Director of Jangid Homes Pvt. Ltd.  
611, 6<sup>th</sup> floor, Neel Yog Square,  
R. B. Mehta Road, Station Road,  
Mumbai-400 077.

**4. The Member [Dr. Vijay Satbir Singh],  
RERA Authority,**

Administrative building, A.K. Vaidhya Marg,  
Bandra [East]  
Mumbai- 400051

**...Respondents**



---

*Adv. Mr. Sunilkumar Yadav for Appellants.*

*C.A. Mr. Sumit Kapure for Respondents.*

---

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &  
DR. K. SHIVAJI, MEMBER (A)**

**DATE : 03<sup>rd</sup> May 2024**

**(THROUGH VIDEO CONFERENCING)**

**JUDGMENT**

**[PER : SHRIRAM R. JAGTAP (J)]**

- 1) By this appeal, the complainants have challenged impugned order dated 13<sup>th</sup> August 2018 passed by learned Authority in the complaint filed by the appellants on the grounds set out in the memorandum of appeal.
- 2) For the sake of conveyance, parties to the appeal hereinafter will be referred as "Complainants" and "Promoters" respectively.
- 3) The brief facts culled out from the pleadings of the parties reveal that the promoters have launched the project known as "**Jangid Annex**". The Promoters undertook redevelopment of the property bearing Survey No. 65, Hissa No. 5 (part), Survey No. 70, Hissa No. 1(part), Survey No. 72, Hissa No. 6 and Hissa No. 8 corresponding to CTS No. 83/A, 83/B and 83/C situated at village Majas, Taluka- Andheri,

*S. Jagtap*

Mumbai. By virtue of the agreement of sale dated 18.07.2009, the promoters have allotted one industrial unit having a carpet area of 250 sq. ft. to complainants. Thereafter, parties to the agreement for sale have executed deed of confirmation dated 05.03.2011 and thereby confirmed the transaction enumerated in the agreement for sale. As per the agreement for sale, the promoters were supposed to hand over the possession of the subject unit to complainants within 24 months after obtaining the commencement certificate. The promoters have obtained the commencement certificate on 20<sup>th</sup> September 2010 and the same came to be renewed by the corporation on 19<sup>th</sup> September 2011. Therefore, the complainants were entitled to possession of the subject unit in the new redevelopment building on or before 21.10.2012. However, the promoters did not complete the development work and thereby failed to hand over the possession of the subject unit to complainants.

- 4) By notice dated 02.04.2013, the complainants asked the promoters to provide complete and eloquent details of the development progress of the subject project without any

*S. J. T. P.*



further delay. However, the promoters did not respond the notice and because of this conduct, the complainants had apprehension that the promoters may create third party interest and transfer the entire redevelopment work to other promoters. The complainants did several correspondences with the developer for handing over possession of the subject unit, but no positive action seems to have been taken yet by the promoters. On inquiry, the complainants came to know from the Building Proposal Department of MCGM that the MCGM had issued stop work notice to promoters due to unauthorized construction work of additional basement in the subject redevelopment project. After commencement of RERA Act, 2016, the redevelopment project being ongoing the promoters have registered it with MahaRERA and declared the date of completion of project as 31.12.2018 on the portal of MahaRERA. Since the promoters have failed to hand over the possession of the subject unit to complainants within the stipulated period, the complainants have filed the complaint and sought directions to the promoters to pay compensation of Rs. 1 Lakh per month to complainants from 21.10.2012 for

*Sgater*

the delayed period of possession till the actual date of possession.

- 5) The promoters have appeared in the complaint proceeding and remonstrated the complaint by filing reply contending therein that the complainants have suppressed material facts from the learned Authority. The complainants are lessees of the land in the project and by filing the complaint, they are seeking performance of the conveyance dated 30.10.2007 executed between the complainants and one Mr. Sunil Sabhajeet Yadav and the promoters. The complainants and other legal heirs of the owner of the property have sold disputed property to the promoters and accepted entire consideration of the said land from the promoters due to which the promoters have faced lot of litigation. The promoters are going to sue the complainants and other owners for damages. The complainants have not paid any consideration amount for the subject unit as the same was allotted to complainants in lieu of assignment of development rights with regard to the said land by virtue of conveyance deed. Therefore, the complaint is not maintainable. Besides



the complainants cannot seek interest under Section 18 of RERA Act, 2016, since there is no consideration amount paid by the complainants. With these contentions, the promoters have prayed for dismissal of the complaint.

6) The learned Authority heard the parties and passed the impugned order. It is recorded in the order by the learned Authority that the complainants are seeking specific performance of the conveyance deed dated 30.10.2007. Thus, the present matter is a civil dispute and MahaRERA has no jurisdiction to try and entertain dispute of this nature. Accordingly, the learned Authority has dismissed the complaint for want of jurisdiction.

7) We have heard learned Adv. Mr. Sunilkumar Yadav for complainants and C.A. Sumit Kapure for promoters. The submissions advanced by learned Adv. Sunilkumar Yadav is nothing but reiteration of the contents of memorandum of appeal. However, in addition to that the learned Advocate has submitted that complainants are allottees within the meaning of definition of Section 2(d) of RERA Act, 2016. By virtue of agreement for sale dated 18.07.2019, the promoters have

*Sy 29/10/19*



allotted the subject industrial unit to complainants. Definition of allottee makes it clear that the person to whom a plot, apartment, or building, as the case may be, has been allotted, sold or otherwise transferred by the promoter is an allottee. If the promoter otherwise transfers the unit to the person, then the person to whom the unit has been transferred by promoter is an allottee within the meaning of definition of Section 2(d) of RERA Act, 2016.

- 8) Learned Adv. Sunilkumar Yadav has poignantly submitted that no doubt no monetary consideration has been passed but at the same time it cannot be ignored that valuable consideration has been passed to the promoters by complainants. By virtue of deed of conveyance dated 30.10.2007, the complainants have sold the land to the promoters for development of the said land and in lieu thereof, the promoters have agreed to allot subject unit to complainants. Afterall, consideration of an agreement for sale, instead of money, may well be any valuable consideration, including satisfaction of the allottees share in the redevelopment project. It is nevertheless an instance of



allotment and sale of constructed premises with land, its consideration being satisfaction of the claim of complainants in the subject project. The project is very much a Real Estate Project. It is being developed by respondents as promoters. Thus, the complainants are allottees to whom subject unit has been allotted and agreed to be sold (freehold or leasehold) or otherwise transferred by the promoters. Therefore, complainants being allottees are entitled to the relief sought in the complaint. The learned Authority has committed an error in holding that MahaRERA has no jurisdiction to entertain the complaint filed by the complainants.

- 9) Learned Advocate has poignantly submitted that the learned Authority has erred in holding that the complainants are seeking specific performance of conveyance deed dated 23.10.2007. It is not the case of complainants that the promoters have committed breach of deed of conveyance and therefore, the complainants are asking the relief of specific performance of deed of conveyance. It is specific case of complainants that the promoters have failed to hand over the possession of the subject unit on the specific time stipulated





in the agreement for sale. Moreover, the learned Authority has not framed any issue on jurisdictional aspects and no opportunity was given to the complainants to lead their submissions and counter the issues. Therefore, the impugned order warrants interference in this appeal. The impugned order is liable to be set aside. The relief sought by the appellants/complainants do fall within the ambit of provisions of RERA Act, 2016. Learned Advocate has placed his reliance on following citations-

**A) Mumbai International Airport Pvt. Ltd. Vs. Edward alias Adward Paul Machado & Ors. Writ petition no. 9577 of 2013.**

**B) Second appeal (ST) No. 92626 of 2020 M/s Renaissance Infrastructure through its Partners and Others Vs. Shri Parth B. Suchak and Another.**

With these contentions, the learned Adv. Sunilkumar Yadav has prayed to allow the appeal with cost.

10) The submissions advanced by C.A. Sumit Kapure for respondents/promoters are nothing but reiteration of



contents of affidavit in reply. Mr. Sumit Kapure has placed his reliance on following citation-

**Newtech Promoters and Developers Pvt. Ltd. versus State of U.P. and others in civil appeal nos. 6745-6749 of 2021.**

- 11) We have given thoughtful consideration to the submissions advanced by parties. From the pleadings of the parties, rival submissions and documents relied upon by the parties, following points arise for our consideration and we have recorded our findings thereupon for the reasons to follow-

<b>Sr. No.</b>	<b>Points for consideration</b>	<b>Findings</b>
1.	Whether complainants are entitled to relief as sought in the complaint?	In the negative.
2.	Whether impugned order calls for interference in this appeal?	In the negative.
3.	What order?	As per final order.

**REASONS**

- 12) On ensembling the pleadings of the parties and material placed on record by the parties revealed that the predecessors-in-title of the complainants had leased out the

*gagtop*

land bearing Survey No. 65, Hissa No. 5 (part), Survey No. 70, Hissa No. 1(part), Survey No. 72, Hissa No. 6 and Hissa No. 8 corresponding to CTS No. 83/A, 83/B and 83/C and part municipal ward no. K-4670 and part state No. 2A situated at village Majas Tq. Andheri, Mumbai somewhere in the year 1972 to complainants. The complainants had constructed stable premises, residential house, go-down and one commercial premises admeasuring about 250 sq. ft. By registered deed of conveyance dated 30.10.2007, the complainants have transferred and conveyed all their rights, title and interest in respect of the above land along with stable premises, residential house, go-down and commercial premises in favour of promoters for a consideration of Rs.1,11,00,000/-.

- 13) Thereafter, parties to the appeal have executed a registered agreement for sale on 18.07.2009 whereby, the promoters have agreed to sale the commercial shop admeasuring 250 sq. ft. (carpet area) in the rehabilitation building free of cost to be provided under the obligations vide deed of conveyance dated 30.10.2007. By the deed of confirmation dated

*Copy*



05.03.2011 and by agreement for sale, the promoters have committed to hand over the possession of subject unit to complainants within 24 months after obtaining the commencement certificate. Despite obtaining the commencement certificate, the promoters have failed and neglected to hand over the possession of the subject unit to complainants within the stipulated period, as a result dispute arose between complainants and promoters. The complainants claimed that they are allottees within the meaning of definition of allottee as per Section 2(d) of RERA Act, 2016 and therefore, the dispute between complainants and promoters is governed by RERA Act, 2016. Thus, the complainants are entitled to reliefs sought in the complaint i.e. the complainants are entitled to interest from the promoters on account of delayed possession.

- 14) It is significant to note that by virtue of deed of conveyance dated 30.10.2007, the promoters have acquired interest in the said land for a consideration of Rs.1,11,00,000/-. Besides, the promoters have also allotted commercial unit to complainants pursuant to deed of conveyance dated

*Sg*

30.10.2007 in addition to consideration amount of Rs.1,11,00,000/- and that too free of cost. It means no consideration amount is paid by complainants to promoters for the subject unit. It is not in dispute that the promoters have started the development of land by obtaining necessary permissions from the competent authorities. Since the project was ongoing on the date of commencement of RERA Act, 2016, the promoters have registered the project with MahaRERA and declared the date of completion of project as 31.12.2018 on the portal of MahaRERA. Despite this, the promoters have failed to hand over the possession of subject unit to complainants till date.

- 15) On careful examination of averments made in the complaint would show that the complainants are seeking interest in the form of compensation on account of delay in handing over the possession of the subject unit. Therefore, pivotal question which falls for our consideration, is whether the claim of complainants falls within the ambit and scope of Section 18 of RERA Act, 2016. The whole case revolves around this issue.



- 16) Agreement for sale is a basic document under Section 18 of RERA Act, 2016 for the grant of relief such as:-
- i) Refund of paid amount with interest and/or compensation on withdrawal from the project.
  - ii) Interest on paid amount till actual possession in case promoter failed to deliver possession of the unit as per terms of agreement for sale or by the date specifically mentioned therein.
- 17) Section 18 of RERA Act, 2016 spells out that if promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of agreement for sale or to complete the project by specified date therein on account of discontinuation of his business as developer either on account of suspension or revocation of registration under the Act or for any other reason, allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf. If the allottee does not intend to withdraw from the project, he will be entitled to receive interest from the promoter for every

*Syng*



delay in handing over possession of the unit at such rate as may be prescribed.

- 18) On careful examination of averments made in the complaint would show that the complainants are seeking interest on account of delay in possession. It is not in dispute and material on record clearly indicate that no consideration amount is paid by complainants to promoters. Agreement for sale clearly stipulates that the promoters have allotted commercial unit to complainants in pursuance to the deed of conveyance dated 30.10.2007 and that too free of cost. Under such circumstances, we are of the view that the complainants are not entitled to reliefs as sought in the complaint.
- 19) It has been held by the Hon'ble Supreme Court of India in civil appeal no. 3302 of 2005-

*We may notice here that if there is a breach by the landowner of his obligations, the builder will have to approach a civil court as the landowner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for specific performance and/or damages. On the other hand, where the builder commits breach of his obligations, the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil court. Or he can approach the Forum under Consumer Protection Act, for relief as consumer, against the builder as a service-provider. Section 3 of the Act makes it clear*

Geeta

*that the remedy available under the Act is in addition to the normal remedy or other remedy that may be available to the complainant.*

Since no monetary consideration is passed with regard to the subject unit between the parties, we are of the view that the appellants are not entitled to reliefs as sought in the complaint i.e. they are not entitled to interest on account of delayed possession. Therefore, we are of the view that in the light of the ratio and dictum laid down by the Hon'ble Supreme Court as above, the complainants have an option to claim damages by approaching the civil court or he can approach the Forum under Consumer Protection Act, for relief as consumer, against the builder as a service-provider. Therefore, for the foregoing reasons, we have come to the conclusion that appeal is devoid of merit. The impugned order does not warrant interference in this appeal. Consequently, we proceed to pass the following order.

### **ORDER**


1. Appeal no. AT006000000010746 of 2018 stands dismissed.
2. Parties shall bear their own costs.



3. Copy of this order be communicated to learned Authority and respective parties as per Section 44(4) of RERA Act, 2016.

  
(DR. K SHIVAJI)

Pathrikar\_

  
(SHRIRAM R. JAGTAP)