

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

**APPEAL NO. AT006000000052092 OF 2019  
IN  
COMPLAINT NO. CC00C000000057079**

**Ms. Prachi Lokam**

residing at 201, Om Asmita CHS,  
Near Jai Bharat Gym, Station Road,  
Kalwa (West), Thane-400 605.

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**...Appellant**

-VS-

**Mr. Sunil Hardas Tharwani**

M/s Tharwani Constructions Pvt. Ltd.,  
Having its Office at 310-313, 3<sup>rd</sup> floor,  
Persipolis Premises Co.Op. Society,  
Plot No.74, Sector 17, Vashi,  
Navi Mumbai-400 703.

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**...Respondent**

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*Adv. Mr. for Bhupesh Dhumatkar for Appellant.*  
*Adv. Mr. Prasad Keluskar for Respondent.*

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

**DATE : 4<sup>th</sup> August, 2023.**

**(THROUGH VIDEO CONFERENCING)**

**JUDGMENT**

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

Feeling aggrieved by the order dated 11<sup>th</sup> December 2019  
passed by the learned Member-1, MahaRERA (for short "the Authority")  
in the Complaint No.CC006000000057079, the complainant, who is an

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allottee, preferred instant appeal to raise grievance that the impugned order has not satisfactorily granted the relief as sought by the complainant in her complaint.

**2]** Appellant and respondent will hereinafter be referred to as "allottee" and "Developer" respectively for the sake of convenience.

**3]** Brief facts, which are necessary for disposal of the instant appeal, are that the respondent (developer) has launched a project known as **"Tharwanis Meghana Montana Phase-1"** at Ambernath, District- Thane comprising of 37 buildings having total 815 flats. The allottee has booked a flat bearing No.A-706 for a consideration of Rs.23,17,000/-. The allottee had paid entire consideration to the developer as per agreement for sale dated 15.12.2016. Despite having received entire consideration, the developer has failed to handover possession of subject unit to allottee, as result thereof the allottee filed a complaint seeking inter alia directions to developer to handover possession of the subject unit, to pay interest for delayed possession, to refund amount of Rs.50,000/- and to provide car parking space.

**4]** The developer appeared in the complaint and remonstrated the claim of allottee by raising several defences as stated in his reply. As per agreement for sale dated 15.12.2016 the developer had agreed to handover possession of the subject unit in June 2017. However, for

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the reasons beyond the control of the developer, the possession of flat could not be delivered on the agreed date. The developer received occupation certificate on 23.8.2018. Immediately thereafter the possession of unit was offered to allottee calling upon her to pay dues payable under the agreement for sale. In the month of October 2019 the allottee had paid development charges of Rs.1,46,409/- and maintenance charges of Rs.47,688/- to the developer. The complaint was filed after receipt of occupation certificate and even after offering of possession and therefore, the complaint is not maintainable. After filing of the complaint the developer had shown willingness to handover possession of the subject unit to allottee. The allottee instead of accepting the possession had raised unnecessary issues with regard to draft of possession letter. The developer had never at any point of time refused to handover possession. In fact the minor repairs or defects pointed out by the allottee were also carried out by the developer. The allottee has not challenged the deed of declaration before any competent Authority.

**5]** The developer has further contended that because of lackadaisical approach of the Government officials in granting approvals and issuing post completion certificate, the developer could not handover possession of the subject unit to allottee within stipulated

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period. It is well settled that the object of the RERA Act is to ensure completion of incomplete projects. The responsibility of completing the project is of the developer. It is just and proper to strike the balance between the statutory rights of the allottee to recover interest on amount paid to the developer on one-hand and the obligation imposed by the statute on developer to complete the project on given date.

**6]** The developer has further contended that after completing entire construction the developer has submitted requisite applications seeking NOC to install lifts in buildings. The requisite NOCs were issued in the month of March and May 2018. Without obtaining lift, drainage and fire NOCs, it was not possible for the developer to obtain OC. The developer had tried his level best to obtain said NOCs from the concerned Authorities. On 29.6.2018 the developer applied for part occupation certificate. On 23.8.2018 the Planning Authority issued part occupation certificate in respect of 9 buildings having total 280 flats. The project of the developer comprised of 37 buildings. The developer has to complete project in phase-wise manner. The common amenities like Club-house etc are to be construed along with remaining construction. The developer has also installed grills.

With these contentions, the developer has prayed for dismissal of appeal.

*S. J. Singh*

**7]** We have heard learned Advocate Mr. Bhupesh Dhumatkar for allottee and learned Advocate Mr. Prasad Keluskar for respondent/developer.

**8]** The submissions advanced by the learned counsel for respective parties are nothing but reiteration of contentions of memorandum of appeal and affidavit-in-reply. The appellant has placed reliance on the judgement of this Tribunal in Appeal No.AT006000000031618 of 2019 [M/s. Tharwani Constructions Pvt. Ltd. Vs. Shripad Todkar].

**9]** On examination of pleadings of the parties, documents relied upon by the parties, impugned order and submissions advanced by learned counsel for respective parties, following points arise for our consideration and we have recorded findings thereupon for the reasons to follow-

#### **POINTS**

#### **FINDINGS**

1) Whether the complainant/allottee is entitled to interest as per relief provided under Section 18 of RERA on account of delay in possession?

In the affirmative.

2) Whether impugned order calls for interference in this appeal?

In the affirmative.

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3) What order?

As per final order.

### **REASON**

**10]** On careful examination of averments made in the complaint, reliefs sought in the complaint and impugned order would show that the learned Authority is justified in directing respondent to handover possession of the subject unit to allottee, to provide car parking space and other amenities as specified in the agreement for sale entered into between the parties. Therefore, we do not find any legal infirmity in the view taken by the learned Authority with regard to grievances relating to possession, car parking space and other amenities. On considering the grounds of the complaint and relief sought therein with regard to interest on account of delay in possession, the Authority had a doddle task at hand to consider only the issue of delay in possession and decide entitlement of allottee in the light of provisions primarily of Section 18 of RERA. However, it is seen that the learned Authority has rightly come to the conclusion that the allottee is entitled to seek interest for delayed possession. However, at the same time the learned Authority has declined to grant such relief only on the ground that this Tribunal has stayed order dated 12.6.2019 passed in Complaint No.CC006000000057752 filed by Shripad Todkar, one of the allottees of the subject project, whereby the respondent i.e.

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the developer was directed to pay interest for the delayed possession under Section 18 of RERA from the date of possession mentioned in the agreement for sale.

**11]** Admittedly, till date the developer has not handed over possession of the subject unit to allottee. The developer has mentioned various causes for not completing the project. According to developer the project has faced numerous difficulties such as lackadaisical approach of the Government officials in granting approvals and issuance of post completion certificate. The developer has claimed that after completing the entire construction, he has submitted requisite applications seeking permission for installing lifts in the buildings. The requisite NOCs were granted in the months of March and May 2018. Without obtaining NOCs for lift, drainage and fire, it was not possible for the developer to obtain OC. Later on he obtained NOCs. However, because of lackadaisical approach of the Authorities he could not obtained NOCs in time. Being aware of time in obtaining NOCs with regard to lift, drainage, fire etc., the developer could have assessed timeline to be taken for clearance, approvals etc. and could have mentioned reasonable date of possession in the agreement for sale to avoid consequences of delayed possession. The due date of handing over possession of unit is to be fixed by the developer after ascertaining

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all favourable and unfavourable circumstances for completing construction of the building and post compliance i.e. for obtaining occupation certificate. So the developer is required to fix due date in anticipation for such adverse circumstances. It is significant to note that the developer has not given plausible explanation for not completing the project in time. In absence of any plausible explanation, it is difficult to digest that there is genuine reasons for delay in handing over possession. It has been held by the Hon'ble Bombay High Court in **Neelkamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India & Others** [(2017) SCC OnLine Bom 9302] that being expert in the open market, the promoters ought to have assessed the likely timelines for completing the project and provide the possession date accordingly. This being no concern of allottees, they cannot be held responsible or liable for any delay to suffer adverse consequences in case of delay.

**12]** We are of the view that even if it is taken for granted that there were genuine reasons which were beyond the control of the developer, the developer is not entitled to benefit of the same for the reason that the same are not attributable to allottee. While explaining the scope of Section 18 of RERA, the Hon'ble Supreme Court in para 25 of **M/s Newtech Promoter and Developers Pvt. Ltd V/s.**

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**State of Uttar Pradesh** [Civil Appeal Nos. 5745, 6749 and 6750 to 6757 of 2021] has held that-

25. *The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

**13]** In view of ratio and dictum laid down by the Hon'ble Supreme Court, in case of failure of developer to given possession on specified date regardless of "unforeseen events" or stay orders of the Court which is in either way not attributable to allottee, the promoter is liable to pay interest on the paid amount to allottee. Section 18 of RERA confers unqualified rights upon the allottee to get interest on amount deposited with developer at the prescribed rate if developer fails to complete the project or is unable to give possession of the

subject unit as per agreed date. We would like to reiterate that by executing agreement for sale the developer has committed to handover possession by June 2017. Under the circumstances, it was expected of learned Authority to grant interest from 1.7.2017 till the date of handing over possession of the subject flat to allottee. However, the learned Authority is not justified in not granting interest on flimsy ground.

**14]** For the foregoing reasons, it is crystal clear that the respondent/developer failed to handover possession of the subject flat to the allottee by specified date. It is not the case of the developer that allottee has committed default in making payment or committed breach of any of the terms of the agreement for sale. Despite this the learned Authority denied allottee's right to claim interest as per agreement for sale and as per Section 18 of RERA. Therefore, impugned order warrants interference in appeal to the effect of interest only. We, accordingly proceed to pass the following order-

### **ORDER**

- (i) Appeal No.AT006000000052092 is partly allowed.
- (ii) Impugned order dated 11.12.2019 passed by the learned Authority in the complaint No.CC006000000057079 is modified as under -

The respondent/developer is directed to pay interest to

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allottee on the amount paid by allottee at the rate of State Bank of India's marginal cost of lending rate plus 2% (simple interest) with effect from 1<sup>st</sup> July 2017 till the date of handing over possession of the subject unit.

- (iii) The developer is directed to pay a cost of Rs. 20,000/- (Rs. Twenty thousand only) to allottee.
- (iv) A Copy of this judgment be communicated to the learned Authority and parties as per Section 44(4) of RERA, 2016.

  
(DR. K. SHIVAJI)

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