

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

**APPEAL NO. AT006000000053369 of 2022  
IN  
Complaint No: CC006000000195199**

**Mrs. Sayed Shaheen Aliuddin**

Residing at Flat No. 101, Kalash Bhavan,  
Plot No. B/68, Sector-23, Seawoods Darave,  
Nerul (East), Navi Mumbai – 400 706.

**... Appellant**

**~ versus ~**

**M/s. Arihant Aashiyana Pvt. Ltd.**

Office at Arihant Aura, B-wing, 25<sup>th</sup> Floor,  
TTC Industrial Area, Thane-Belapur Road,  
Turbhe, Navi Mumbai – 400 705.

**... Respondent**

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*Mr. Avinash Ovhal, Advocate for Appellant.*

*Ms. Vijaylaxmi Ruikar, Advocate for Respondent.*

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**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (J) &**

**DR. K. SHIVAJI, MEMBER (A)**

**DATE : 01<sup>st</sup> FEBRUARY, 2024**

**(THROUGH VIDEO CONFERENCE)**

**JUDGMENT**

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

Being dissatisfied with Order dated 10<sup>th</sup> August, 2021 passed  
by learned Chairperson, MahaRERA (for short the Authority) in



Complaint No. CC 006000000195199, the Complainant, who is an Allottee has preferred instant appeal to raise grievance that the impugned order has not granted the reliefs as sought in the complaint.

2. The parties to the appeal hereafter will be referred to as "Allottee" and "Promoter" respectively.

3. The brief facts culled out from the pleadings of the parties reveal that Allottee has purchased 2 BHK flat bearing no. A1-303 on 3<sup>rd</sup> floor in the project of Promoter known as "**Arihant Anshula**", situated at Village Ghot, Taluka Panvel, District Raigad for a consideration of Rs.47,75,000/-. On 13<sup>th</sup> January 2020 the Allottee booked the subject flat and paid earnest amount of Rs.50,000/- to Promoter. Allottee has made further payments to Promoter as follows:-

Date of payments	Amounts	Cheque Nos.
11.02.2020	3,00,000/-	204033
25.08.2020	1,00,000/-	204039
06.09.2020	1,25,000/-	204040
11.09.2020	1,73,300/-	Towards stamp duty and registration charges

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4. After payment of 10% of total consideration by Allottee, the Promoter executed the registered agreement for sale on 11<sup>th</sup> September, 2020 in favour of Allottee.

5. The Promoter committed to handover the possession of the subject flat to Allottee after payment of balance consideration by Allottee within a month. Thus, the Allottee has paid Rs.1,00,000/- to Promoter by cheque on 16<sup>th</sup> September, 2020.

6. The Allottee has availed loan of Rs.41,00,000/- from HDFC bank and the same has been disbursed to Promoter on 01<sup>st</sup> October 2020 and thereby Allottee paid entire consideration amount of Rs.47,75,000/- to Promoter. Despite having received entire consideration the Promoter has failed and neglected to handover possession of the subject flat to Allottee. On 17<sup>th</sup> November, 2020, the Promoter issued notice to Allottee and asked the Allottee to pay Rs.4,38,352/- towards the interest. Thereafter, on 27<sup>th</sup> November 2020 the Allottee issued legal notice through her advocate to Promoter for possession of the subject flat. The Promoter has neither replied the said notice nor handed over the possession of the subject flat to Allottee. Being aggrieved by the conduct of Promoter, the Allottee filed complaint and sought the relief of possession and

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compensation.

7. Promoter appeared in the complaint by filing reply remonstrated the Complaint contending therein that the Appellant Allottee was searching for ready possession flat in vicinity of Village Ghot, Taluka Panvel, District Raigad. The Allottee learnt about the project of Promoter and approached the Promoter through broker namely M/s. Square Yards. Allottee visited the office of Promoter, inspected the subject flat and agreed to purchase the subject flat for a consideration of Rs.47,75,000/-. The Allottee signed the booking form on 13.01.2020. The Allottee was supposed to pay the consideration amount within 45 days from the date of booking. As per the terms and conditions annexed to the booking form, the Allottee was supposed to pay 10% amount of the total consideration within 15 days from the date of booking. The Allottee was supposed to obtain loan sanction letter and NOC within 30 days from the date of booking and first loan disbursement has to be made within 45 days. In case a delay in payment due towards the flat beyond 30 days, the Promoter was entitled to cancel the booking and also entitled to forfeit entire amount. However, the Allottee did not adhere to the terms and conditions and failed to make payment of

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10% amount of total consideration within 15 days from the date of booking of subject flat. The Allottee committed default in making the payments from 13.01.2020 till 25.08.2020. There is delay of 237 days in making payment of 10% amount of total consideration to the Promoter by Allottee.

8. It is further contention of the Respondent/ Promoter that since the Allottee has paid Rs.1,25,000/- towards stamp duty and registration charges, the Promoter has executed a registered agreement for sale on 11<sup>th</sup> September, 2020. The agreement for sale stipulates the condition that the Allottee shall pay entire consideration amount on booking itself, but the Allottee failed to pay entire consideration within stipulated period. Thereafter, Allottee has paid entire consideration to the Promoter. Promoter issued notice to Allottee on 15<sup>th</sup> September 2020 and asked the Allottee to pay interest of Rs.3,08,913/- for delayed payment. Since the Allottee has failed to pay interest of Rs.3,08,913/- for delayed payment, the Promoter has not handed over the possession of the subject flat to the Allottee. Complaint was sought to be dismissed on the above grounds.



9. After hearing the parties, learned Authority dismissed the complaint and directed the parties to resolve the issue of payments as per the terms of the agreement for sale and/ or the booking/ allotment letter of the said apartment.

10. We have heard learned Advocate for the respective parties. The arguments advanced by the learned counsel for the respective parties are nothing but reiteration of their contentions in Complaint and reply. After considering the submissions advanced by the learned Advocate for respective parties, material on record and impugned Order, following points arise for our determination and we have recorded the findings thereupon for the reasons to follow.

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether Respondent is entitled to interest on account of delayed payments for the period from 13.01.2020 to 01.10.2020 as claimed by Respondent?	In the negative
2	Whether Respondent is entitled to maintenance charges form Allottee?	In the affirmative
3	Whether Appellant is entitled to relief of possession of subject flat?	In the affirmative

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4	Whether Promoter/ Respondent is entitled to charge interest on the amount of Rs.41,00,000/- for 16 days i.e. form 16.09.2020 to 01.10.2020	In the affirmative
5	Whether Appellant is entitled to interest for delayed possession?	In the negative
6	What order?	As per final order

### **REASONS**

11. On careful examination of pleadings of the parties reveals that the Respondent has completed the project known as **Arihant Anshula** and obtained the Occupancy Certificate (OC) on 10.06.2019. Allottee was in search of ready possession flat. The Allottee learnt about the project of the Promoter and purchased the flat through broker namely M/s. Square Yards. On inspection of the subject flat, the Allottee booked the flat for a total consideration of Rs.47,75,000/- and paid earnest amount of Rs.50,000/- It is not in dispute that both the parties have signed booking form dated 12.01.2020. It is also not in dispute and it transpires from the material placed on record that both the parties have also signed the

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payments schedule and terms and conditions annexed to the booking application form. It is also not in dispute that after payment of 10% amount of the total consideration by Allottee, the Respondent has executed the registered agreement for sale in favour of Allottee on 11.09.2020. It means the parties are governed by the terms and conditions enumerated in booking application form and agreement for sale dated 11.09.2020.

12. It is specific case of Respondent and as per the terms and conditions annexed to booking application form, the Allottee was supposed to pay 10% amount of total consideration within 15 days of booking. The Allottee was supposed to avail the loan and Non-objection Certificate (NOC) within 30 days from the date of booking. The Appellant was supposed to disburse the first loan to Promoter within 45 days from the date of booking. According to Respondent since the Allottee did not make payments as per the terms and conditions of booking application form, the Promoter/ Respondent is entitled to charge interest for delayed payments. Learned Advocate Ms. Vijaylaxmi Ruikar has invited our attention to agreement and sorely submitted that Clause 21 of agreement for sale stipulates the right of Promoter to charge interest for delayed payments.

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Accordingly, Respondent had issued Demand notice for outstanding amount to Allottee on 15.09.2020 and 17.11.2020 and asked the Allottee to pay delayed payment charges from 13.01.2020 which comes to Rs.3,08,913/- till 15.09.2020 and Rs.4,38,352/- till 17.11.2020. The transactions between the parties are governed by the terms and conditions of the agreement for sale. Therefore, Appellant is liable to pay interest to Respondent/ Promoter for delayed payments. We do not find substance in the said submissions of learned Advocate Ms. Vijaylaxmi Ruikar for Respondent/ Promoter.

13. On ensembling the terms and conditions annexed to booking form dated 12.01.2020 reveals that there is a Clause which talks about the payments schedule. By the said Clause the Appellant was supposed to pay 100% amount (i.e. total consideration) on agreement. On going through the terms and conditions of booking form dated 12.01.2020 reveals that the Appellant was supposed to pay booking amount, stamp duty and registration charges of the subject flat to Promoter within 15 days from the date of booking. Besides the Allottee/ Appellant was supposed to obtain loan and NOC within 30 days from the date of booking. Apart from this, the Appellant was supposed to disburse only the first loan amount to

*S. J. Patil*

Promoter within 45 days. The condition no.2 empowers the Promoter/ Respondent to cancel the booking and to forfeit the amount paid by Allottee in any case payments due towards the flat beyond 30 days. There is no Clause which empowers the Promoter/ Respondent to charge interest for delayed payments. It is not in dispute that Appellant had failed to make the payments as per the terms and conditions of booking form. However, at the same time it cannot be ignored that the Respondent/ Promoter is not entitled to charge interest for delayed payments. The terms and conditions of booking form provides clause by which the Promoter can cancel the booking on account of delayed payments. We would like to reiterate that according to Respondent the Promoter is entitled to charge interest on account of delayed payments from 13.01.2020 to 11.09.2020. However, as indicated above, the terms and conditions of booking form are silent on this point. Therefore, we are of the view that Respondent/ Promoter is not entitled to charge interest for delayed payments for the period from 13.01.2020 to 11.09.2020 as claimed by Respondent/ Promoter.

14. It is not in dispute that on payment of 10% amount of total consideration and stamp duty and registration charges, the



Respondent/ Promoter has executed registered agreement for sale on 11.09.2020. Booking application form discloses payment schedule. According to payments schedule the Allottee was supposed to pay total consideration at the time of execution of the agreement for sale. Apart from this, the agreement for sale also stipulates payments schedule and according to payments schedule, the Appellant/ Allottee was supposed to pay entire consideration on agreement to Promoter. It is not in dispute that the Appellant has paid only Rs.5,75,000/-. The Appellant did not pay balance consideration of Rs.42,00,000/- on the date of execution of agreement for sale. It further transpires that on 16.09.2020, the Appellant/ Allottee had paid Rs.1,00,000/- to Promoter. It is significant to note that on 01.10.2020, the loan availed by Appellant/ Allottee from HDFC bank came to be disbursed to the account of Promoter. It means the Appellant has paid balance consideration of Rs.41,00,000/- on 01.10.2020. Thus, we are of the view that there is delay of 16 days in making the balance consideration of Rs.41,00,000/- to Promoter/ Respondent by Allottee. We would like to reiterate that Clause 21 of agreement for sale empowers the Promoter/ Respondent to charge interest for delayed payments. On



calculation of interest for the delayed payment of Rs.41,00,000/- by 12% p.a. for 16 days, it comes to Rs.21,567/-. Therefore, we are of the view that the Respondent/ Promoter is entitled to charge interest for delayed payment of Rs.41,00,000/- for the period from 16.09.2020 to 01.10.2020. In other words, the Appellant/ Allottee is liable to pay interest of Rs.21,567/- for delayed payment of Rs.41,00,000/- to Promoter.

15. It is not in dispute and it transpires from material placed on record by Respondent/ Promoter that by the Demand notices dated 15.09.2020 and 17.11.2020, the Respondent/ Promoter asked the Appellant/ Allottee to pay delayed payment charges from 01.07.2017 amounting to Rs.3,08,913/- till 15.09.2020 and Rs.4,38,352/- till 17.11.2020. These demands are contrary to the agreement for sale as well as to the terms and conditions enumerated in booking form. It is significant to note that the Appellant/ Allottee booked the flat in the subject project on 13.01.2020. As indicated above, by the Demand notices dated 15.09.2020 and 17.11.2020, the Respondent/ Promoter asked the Allottee/ Appellant to pay delayed payment charges from 01.07.2017 which is illegal. However, as indicated above, the

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Respondent/ Promoter is entitled to interest for delayed payment on the amount of Rs.41,00,000/- for 16 days.

16. It is not in dispute and it transpires from the material on record that Appellant/ Allottee has paid Rs.48,000/- towards maintenance charges to Promoter. Learned Advocate Ms. Vijaylaxmi Ruikar has submitted that the Promoter has formed Society of allottees and executed the Deed of conveyance in favour of Society. Considering this submission of Advocate Ms. Vijaylaxmi Ruikar, learned Advocate Mr. Avinash Ovhal appearing for Appellant/ Allottee has poignantly submitted that Promoter is not entitled to receive Rs.48,000/- towards maintenance charges from Allottee. We do not find substance in the contention of learned Advocate Mr. Avinash Ovhal.

17. On going through booking form reveals that it is specifically mentioned in the booking form that Appellant is liable to pay maintenance charges for two years. Under the circumstance, we are of the view that Respondent/ Promoter is entitled to receive maintenance charges for two years from Appellant/ Allottee. We would like to reiterate that it is not in dispute that Appellant has already paid Rs.48,000/- towards maintenance charges to Promoter.



Under the circumstances, we are of the view that the Respondent/ Promoter is not entitled to get further maintenance charges from the Appellant/ Allottee as the Promoter has already formed the Society of allottees and executed Deed of conveyance in favour of Society.

18. The Appellant has claimed interest for delayed possession however, the material on record clearly indicates that the Appellant/ Allottee committed default in making payments as per the schedule of agreement for sale. Besides after the impugned order, the Appellant has paid Rs.48,000/- on 17.08.2021 to Promoter towards maintenance charges. Under circumstances, we are of the view that the Appellant is not entitled to interest for so called delayed possession.

19. For the foregoing reasons, we have come to the conclusion that the Respondent/ Promoter is liable to handover the possession of the subject flat to Allottee on payment of Rs.21,567/- by Allottee to Promoter towards interest. We therefore answer the points accordingly. Consequently, we proceed to pass the following order.



**ORDER**

1. Appeal No. AT006000000053369/2022 is partly allowed.
2. The impugned Order dated 10.08.2021 passed by the learned Authority, MahaRERA in the Complaint No. CC0060000000195199 is set aside.
3. The Respondent/ Promoter is directed to handover the possession of the subject flat to Allottee/ Appellant within 8 days from the date of payment of Rs.21,567/- by Allottee/ Appellant towards interest.
4. Parties shall bear their own cost.
5. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.

  
**(DR. K. SHIVAJI)**

  
**(SHRIRAM R. JAGTAP)**

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