

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

**Appeal No. AT006000000031618 of 2019**

**M/s Tharwani Constructions Pvt. Ltd.**

310, Persepolis, Plot No. 74,  
Sector 17, Vashi, Navi Mumbai-400703 ... **Appellant**

Versus

**Shri Shripad Todkar,**

A/302, Sai Nagar Complex,  
Sector-13, Palm Beach Road,  
Navi Mumbai-400705 ... **Respondent**

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Shri Drupad Patil a/w Sangeeta Tharwani, Advocates  
for Appellant.

Respondent in person.

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**CORAM: SUMANT M. KOLHE, MEMBER (J)**

**S. S. SANDHU, MEMBER (A)**

**DATE : 16<sup>TH</sup> JULY, 2020**

**J U D G M E N T**

**[PER: SUMANT KOLHE, MEMBER (J)]**

Correctness, legality and propriety of impugned  
order dated 12<sup>th</sup> June, 2019 passed by Member No.1 of  
MahaRERA in complaint No. 57752 is challenged in this

appeal.

2. Appellant is promoter. Respondent is allottee. Promoter launched the project at Ambarnath. Allottee agreed to purchase and promoter agreed to sale flat in the project. Accordingly, agreement for sale took place on 25<sup>th</sup> January 2016 between promoter and allottee. Promoter agreed to hand over the possession of flat on or before June, 2017. Promoter failed to hand over the possession as per specified date.

Allottee filed complaint under section 18 of RERA and prayed for interest on delayed period of possession. Learned Member No.1 of MahaRERA passed impugned order and directed the promoter to pay interest for delayed period of possession of the flat on the total amount paid by the allottee to the promoter at the rate of marginal cost lending rate of SBI plus 2 percent. Promoter is also directed to pay cost of Rs.20,000/-.

3. Being aggrieved by the impugned order, promoter has preferred this appeal.

4. Heard Learned Counsel for the promoter. Heard allottee in person. Read the impugned order. Perused the documents filed on record.

5. Following points arise for my consideration:

(i) Whether the impugned order is just, proper and

correct?

- (ii) Is it necessary to modify impugned order?
- (iii) What order?

6. My findings on the above points for the reasons stated below are as under:

- (i) Partly affirmative.
- (ii) Affirmative.
- (iii) Appeal is partly allowed.

### **REASONS**

7. At out set, I would like to point out that the promoter had agreed to hand over the possession of flat to the allottee on or before June, 2017. Admittedly, promoter failed to hand over the possession of flat as per agreed date. So, allottee is entitled to claim interest for delayed period of possession.

Occupancy certificate is issued by the competent authority on 23<sup>rd</sup> August 2018. Promoter offered the possession of the flat to the allottee in September, 2018. It is matter of record that allottee paid development charges in the month of October, 2018 to the promoter and maintenance charges in the month of January, 2019. It is revealed from para-2 of impugned order that promoter handed over keys of the flat to the allottee during the hearing. Moreover, it is further revealed from the impugned order that allottee accepted the keys and asked for

possession letter without any other condition. At this stage I would like to point out that promoter has performed his duty by offering possession of the flat immediately after receiving occupancy certificate. Moreover, it is also obligation of the allottee as per section 19 sub-section 10 of RERA to accept the possession within two months. It appears that allottee did not accept possession within stipulated period of two months from the date of issuance of occupancy certificate. Once occupancy certificate is issued in August, 2018 and possession of flat was offered to the allottee in September, 2018, it cannot be said that there was delay in handing over possession on the part of the promoter after receiving occupancy certificate. Now, as far as period prior to issuance of occupancy certificate is concerned, it is evident that possession was agreed to be given in the month of June, 2017 and it was not accordingly given. So, delay in handing over possession in this case started from July, 2018. Delay continued till issuance of occupancy certificate. Delay in handing over possession of the flat is only for the period from July 2017 to August 2018.

Promoter has contended that there are reasons beyond his control due to which delay was caused. According to the promoter, there was delay in issuing necessary permission and no objection certificate from the various competent authorities for obtaining building permission, environment clearance certificate, revised building permission, lift no objection certificate, Fire no objection certificate, drainage no objection certificate. It cannot be

ignored that promoter was well aware of obtaining permission and no objection certificate of various authorities. Moreover, promoter could anticipate approximately the time that may be required to the various authorities to issue such a permission and no objection certificate. So, it cannot be said that delay from July 2017 to August 2018 in handing over the possession of flat was due to the reasons beyond the control of the promoter. In such circumstances, allottee is entitled for interest only from July 2017 to August 2018.

8. Impugned order is silent about exact delayed period of possession. It is necessary to modify the impugned order to the effect that delayed period of possession is from July 2017 to August 2018. In these circumstances, it is necessary to modify the impugned order by mentioning exact delayed period of possession. Rest of the impugned order needs no interference. So, I answer point Nos. 1 to 3 accordingly.

**PER: S. S. SANDHU, MEMBER (A)**

9. I have had an opportunity and the benefit of going through the draft judgment prepared by my learned brother and I am in complete agreement with the conclusion that delay in possession is not for reasons beyond control of Appellant and therefore the Respondent is entitled to interest for delayed possession. I wish to add few of my



observations on the issues that are contested by rival parties during appellate proceedings.

10. While arguing the matter, learned Counsel for Appellant contended that after scheduling the hearing on 16.03.2019 the hearing was adjourned to 16.04.2019 along with similar complaints filed by other flat purchasers. Subsequently, even though further hearing in other complaints was scheduled on 31.05.2019 and 25.06.2019, hearing in Respondent's complaint was preponed to 06.05.2019 and finally kept on 10.06.2019. On the said date, request of Appellant's representative for adjournment was declined and impugned order was passed on 12.06.2019 without giving sufficient opportunity to file written reply. Therefore, learned Counsel for Appellant sought remand of the case for denial of natural justice.

11. Learned Counsel for Appellant further argued that construction was already complete after receiving OC on 23.08.2018. Respondent was accordingly informed in September 2018 to take possession after paying necessary charges. In response thereto and also with reference to communication in December, 2018 Respondent has made necessary payment of charges/arrears on 04.10.2018 and 02.01.2019. These payments, after receipt of OC, are made without raising any protest or issue regarding delay in possession. In view thereof, Respondent was estopped from raising the issue of delay by filing complaint in March 2019



to claim interest. In such circumstances learned Member had no jurisdiction to deal with the complaint. Learned Counsel added that possession was offered in September 2018 and therefore even assuming that there was delay, in that case also, interest could be levied only for 13 months i.e. from July 2017 to August 2018 and that too on the amount that is paid towards consideration by excluding amounts paid for stamp duty, registration charges etc. At the same time, learned Counsel argued that Respondent is also liable to pay interest on the delayed payments demand for which is raised by Appellant vide Notice dated 15.06.2019.

12. Per contra, Respondent, who argued the case in person, contended by referring to his written submissions that he paid all due amounts not only without any delay but also before time. He paid the amounts from 2013 onwards even though agreement was executed only in 2016. He emphasised that payment made by him is in fact in excess as area of flat is less by 16 sq. ft. He also referred to documents pertaining to environment authorities to submit that Appellant changed the project proposals frequently and foundation constructed for 7 floors was found not suitable to sustain proposed vertical extension. He also asserted that Appellant was also convicted and imposed penalty for committing environment violations. Therefore, he contended that delay was caused by own doings of Appellant and there are no reasons for delay beyond control of Appellant. Respondent further contended that it was incorrect to say



that he never complained of delay. He submitted that he paid several visits to Appellant and his office to press for possession but to no avail. Respondent further argued that Appellant has not completed/provided many of the amenities he committed in the agreement. Society has not been formed and no security is provided. While resting his arguments, Respondent submitted that he is agreeable to interest/penalty for the period of delay in possession upto October 2018.

13. Considering the averments of the rival parties, it is noted that though the hearings are preponed at times by learned Member, no denial of natural justice is found as the facts necessary for deciding the case as submitted by parties have been duly considered before passing the impugned order. So, no question of remanding the matter. The only material issue before learned Member was to consider award of interest while facilitating possession which was not being given by Appellant despite the fact that necessary payments are made by Respondent. As rightly observed by my learned brother hereinbefore, there was delay in possession not for reasons beyond Appellant's control which entitles Respondent interest under Section 18 of RERA. There seems to be no reason to question conclusion drawn by learned Member in respect of delay in possession. From the averments of Appellant also, Appellant does not seem to be averse to paying of interest for amounts paid towards consideration of flat for the period of delay from July 2017 to





August 2018. In this regard, it is also noted that to counter the demand for interest by Respondent, Appellant has attempted to argue that interest is payable by Respondent too for making delayed payments as per details shown by Appellant in demand Notice dated 15.06.2019 sent to Respondent. It is felt that the said demand appears to be an afterthought exercise undertaken in retaliation by Appellant after the impugned order was passed on 12.06.2019. It is seen that in Appeal memo, Appellant has mentioned clearly in Para 2(K) that as per records maintained by Appellant, Respondent was still to pay only an amount of Rs. 2647. Besides, it is also noted that this amount and amount of alleged interest is never raised/reflected in communications sent on 30.09.2018 and 10.12.2018. No document prior to aforementioned Notice dated 15.06.2019 is submitted to substantiate the claim for interest on delayed payments. In such circumstances, appellant is now estopped from raising this afterthought claim to be considered at appellate stage.

14. Documents on record and averments reveal that on receipt of possession on 23.08.2018, Respondent was offered possession on 30.09.2018. Considering due date of possession as 30.06.2017, there is clear delay in possession from July 2017 to August 2018 when Occupancy Certificate was received and after which Respondent has made necessary payments as desired by Appellant. In view thereof, it can be safely concluded that Appellant is liable to pay interest for delayed possession from July 2017 to August

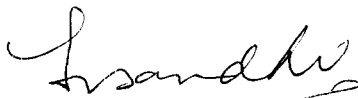


2018. With regards to contentions relating to formation of Society, provision of other amenities etc. I feel Appellant is required to take earnest steps to do the needful at the earliest as per terms of agreement. Respondent also should similarly comply with his part of obligations as and when need arises.

15. In the light of above discussion and observations, we pass the following order.

**ORDER**

- I) Appeal No. AT006000000031618 of 2019 is partly allowed.
- II) Order dated 12.06.2019 passed by learned Member-1 in complaint No. 57752 is modified only to the extent that allottee is entitled for interest for delayed period of possession from July 2017 to August 2018 on the amount paid to the promoter.
- III) Rest of the impugned order stands confirmed.
- IV) Parties to bear their respective costs.
- V) Copy of this order be sent to MahaRERA, Promoter and allottee as per Section 44(4) of the Real Estate (Regulation & Development) Act.

  
**(S. S. SANDHU)**

  
**(SUMANT M. KOLHE)**