

Interest for Delay in possession

Change of the planning authority prior to the execution of the agreement resulting in inordinate delay, cannot be a ground for extension of date of delivery of possession. Complaint filed by the Flat Purchaser, before MahaRERA, for interest for delay in possession was granted. Against that Appeal was preferred to MahaRERA Appellate Tribunal, said appeal was also dismissed and order of MahaRERA

MahaRERA Appellate Tribunal

Sanvo Resort Pvt Ltd v/s Sushil Kashiram Salvi

Girish Rao

Advocate & Solicitor

Cell No :- 91 9820626568

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

APPEAL NO. AT00600000031580

1) Sanvo Resorts Pvt.Ltd.]
2) Mr. Urvesh Virendra Mehta]
3) Mr. Dwarkanath Krishnamurthy Rao]
4) Mr. K.S. Raghavan]
5) Mr. Samyag Mayur Shah] **Appellants**
702, Marathon Max]
Mulund Goregaon Link Road Mulund (W)]
Mumbai 400080]

-VS-

Sushil Kashiram Salvi]
MA-4, Flat No-204, Manoj] **Respondent**
River side park, Takka,]
Old Panvel 410206]

Mr. Prasanna Tare, Advocate for Appellants.
Mr. Harshad Bhadbhade, Advocate for Respondent.

**CORAM : INDIRA JAIN J, CHAIRPERSON &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 13th APRIL, 2022
(THROUGH VIDEO CONFERENCE)

JUDGEMENT

[PER: Dr. K. SHIVAJI, MEMBER (A)]

Present appeal has been preferred under section 44 of Maharashtra Real Estate (Regulation and Development) Act, 2016 (in

short "the Act") against the order dated 29th May 2019 passed by learned Member and Adjudicating Officer, Maharashtra Real Estate Regulatory Authority, (MahaRERA) in Complaint No. CC 006000000056870.

2. Appellants are developers, who are constructing the said project. Respondent is flat purchaser and complainant before MahaRERA. For convenience, appellants and respondent will be addressed hereinafter as promoters and complainant respectively in their original status as referred before MahaRERA.

3. FACTUAL MATRIX:

- a) Complainant booked flat No. 2605, 26th floor in the building S1- in A-wing known as S1 in "A" wing of the building known as "Zodiac" in respondents project "Marathon Nexzone Zodiac" at village Kolkhe, Taluka- Panvel, District- Raigad, for total consideration of Rs. 66,24,224/-. Complainants paid Rs. 58,99,166/- towards part consideration, as mentioned in the complaint.
- b) Agreement for sale was executed between the parties on 2nd November 2015 and was registered on 12th January 2016. Agreed date of delivery of possession mentioned in Clause 15.1 of the agreement is December 2015 with reasonable extension of time of 6 months aggregating to 9 months subject to payment of all dues to promoter.
- c) As promoters failed to complete the project and hand over possession before the agreed date, allottee filed complaint on 10th November 2018 claiming *inter alia* interest for delay in delivery of possession, pay rental for actual accommodation, costs and compensations under section 18 of the Act of 2016.

- d) Promoters appeared before MahaRERA and resisted complaint by filing reply before the Authority.
 - e) Upon hearing the parties, MahaRERA passed order dated 29th May 2019 directing promoters *inter alia* to pay interest to complainant for the delay in delivery of possession, from 1st May 2017 till the date of actual possession on the marginal cost of lending rate plus 2% as prescribed under the provisions of section 18 of the Act and rules made thereunder.
 - f) Aggrieved by this order of MahaRERA, promoters have filed the instant appeal seeking various reliefs including to set aside the impugned order dated 29th May 2019 on grounds enumerated in the appeal memo.
- 4.** Heard learned counsel for parties at extenso.
- 5.** Promoters submit that
- a) Authority has failed to appreciate that change of the planning authority prior to the execution of the agreement resulting in inordinate delay, cannot be a ground for extension of date of delivery of possession. Project got delayed due to various unforeseeable events beyond the control of promoters, resulting in delays in receiving requisite approvals from various regulatory authorities and local bodies. These are detailed as under:
 - i. Change in the planning authority and amendment of the sanction plans: On October 20, 2012, District Collector, Raigad, being the planning authority, granted permission for development

up to 27th floor even though had applied up to 33rd floor and also granted commencement certificate up to plinth level. On 10th January 2013, Government of Maharashtra notified "The Navi Mumbai Airport Influence Notified Area" (in short NAINA) and CIDCO -NAINA, as a special planning authority for the area of Raigad district, where project is located. CIDCO - NAINA commenced its operations only in January 2014.

ii. Besides this, promoters faced delay in securing permissions from National Highway Authority of India for getting access to the project site, from water supply authority etc. which contributed delay in completion of the project.

b) Agreement expressly provides extension of delivery date of possession in case of any event beyond reasonable control of the promoter. MahaRERA has failed to comprehend the true understanding between the parties as set out in clause 15.1 of the agreement, which allows extension of time in delivering possession due to force majeure and reasons beyond the control of promoter.

c) It was further contended in clause 15.1 of the agreement, wherein, complainant has agreed that if promoter is unable to deliver possession by the stipulated date, promoter shall be entitled to receive extension of six months above due date, thereby aggregating to 9 months. It was further submitted that complainant has consented to amendment, revision and modification to sanction plans and relocation of amenities, if necessary for completion of project. Promoter tried to justify delay mainly on the

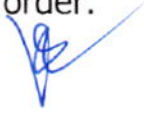
ground that plans have been sanctioned up to 27th floors though proposal is to construct up to 33rd floors. It was submitted that complaint is an abuse of process of law and deserves to be dismissed as promoter is not liable for delay in handing over possession.

- d) Complainant is aware, informed and has consented that promoter are proposing to construct in phase manner. Complainant was aware that construction of the said building was proposed up to 33rd floor or more and that the proposal of the promoters to construct beyond 27th floor was not an afterthought but was always part of the construction plan envisaged. Complainant has been kept informed through various letters about the delay of possession and the complainant did not object for the same.
- e) Complainant has not given any statutory demand notice to promoters, which is mandatory as per law of the land and as per settled principle of law.
- f) Based on the above grounds, appellants urged to set aside the impugned order dated 29th May 2019, awarding interest for delayed possession and pleaded to dismiss the complaint by allowing the appeal.

6. Per Contra, Complainant submits that

- a) In addition to grounds raised in reply before MahaRERA, complainant resisted grounds in appeal vide reply filled on 28th January 2020.
- b) According to complainant, he has made timely payments as and when demanded.



- c) Agreement for sale was executed on 2nd November 2015, whereas reasons for delay are said to be of the year 2012 to 2014. Promoters were fully aware these, while executing the agreement for sale and only after considering these, promoters have agreed for the date of possession.
- d) Delay in getting NOC from Civil Aviation also does not justify because the said flat is on 26th floor and promoters had already received permission up to 27th floor earlier
- e) There is no violation of the principle of natural justice during the proceedings before MahaRERA as it has been correctly and categorically recorded that complaint was heard in the presence of concerned parties. Impugned order is a speaking order supported by reasons.
- f) Delay in getting permissions from NHAI, water supply, delay in pipe laying permissions do not justify because, promoter was well aware of these factors before signing of the agreement for sale.
- g) Since the said flat is located on the 26th floor, delay in getting permissions for occupancy certificate, to increase in heights from 27th floor to 33rd floor, will not be applicable
- h) Complainant further submits that appeal be dismissed with costs and process may be started for recovery of the interest under section 18 (1) (b) proviso as correctly granted by the MahaRERA in the impugned order.
- i) 

POINTS FOR DETERMINATION

7. From the pleadings, rival submissions and documents relied upon by the parties, following points arise for our determination in this appeal and we record our findings against each of them for the reasons to follow:

<u>POINTS</u>	<u>FINDINGS</u>
1 Whether promoter establishes that due to reasons beyond his control, possession of flat could not be delivered as per agreement?	In the negative
2 (a) Whether complainants are entitled for interest as claimed under Section 18 of the Act of 2016?	In the affirmative.
(b) If yes, at what rate interest should be?	As per the prescribed rules.
3 Whether impugned order is sustainable in law?	In the affirmative.
4 Whether impugned order calls for interference in this appeal?	In the negative.

REASONS

POINTS 1, 2 (a) and (b)

8. The principal controversy between the parties revolves around the provisions of Section 18 of the Act. For ready reference, the same is reproduced here as follows: -

"18. Return of amount and compensation

*(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building –
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

9. On meticulous examination of Section 18, it can be seen that under Proviso to Sub section (1) of Section 18, if promoter fails to complete the project or is unable to deliver possession of apartment, plot or building, and allottee does not intend to withdraw from the project, promoter shall pay interest for the period of delay till handing over possession to allottee at such rate as may be prescribed.
10. The prime grievance of appellant is that Authority failed to consider the justifiable reasons for delay in: -
 - a] Highway Access Permission.;
 - b] Pipe laying Crossing and water supply permission;
 - c] Granting commencement certificate above plinth and sanction to revised plans in view of change in Planning Authority;
 - d] Granting Occupation Certificate.
11. Explaining these causes for delay in completion of project, learned counsel for appellant submitted that National Highway Authority of India

(NHAI) granted access permission on 11.03.2016 though appellant applied on 10.01.2008. It is submitted that permission for water pipeline crossing was applied on 01.11.2008 and was received on 17.6.2016. Learned counsel submitted that within three months of commencement certificate granted by erstwhile Planning Authority i.e., District Collector, Raigad on 20.10.2012 for 27 floors against original plan for 33 floors, new Planning Authority Navi Mumbai Airport Influence Notified Area (NAINA) under CIDCO was set up vide Notification dated 10.01.2013. It is submitted that NAINA took almost a year to become fully functional and granted commencement certificate for construction on 7.5.2014. Revised proposal was submitted to NAINA on 17.05.2014 was approved after 3 ½ years on 09.01.2018, which caused enormous delay in completing the project.

12. Learned counsel further submitted that appellant applied to Chief Fire Officer, CIDCO for grant of NOC, to obtain part Occupation Certificate up to 26th floor on 16th May 2019. Chief Officer, CIDCO granted NOC on 18th July 2019 for entire building. Regarding delay in issuing Occupation Certificate, submission of appellant is that on 2nd August 2019, appellant applied for full occupancy certificate, but Occupation Certificate was granted on 17th September 2019.

13. Relying upon sub-clauses 15.1.3 and 15.1.6 of clause 15.1 of agreement for sale, appellant submitted that complainant was aware that construction of building was proposed up to 33 floors and appellant made proposed amendment in sanctioned lay out and building plans, as initial proposal was for construction of 33 floors. It is submitted that period covered by sub clauses 15.1.3 and 15.1.6 and 15.1.8 of clause 15.1 of

agreement is required to be excluded from the period of alleged delay computed by complainants. It is contended that if the said period is excluded and grace period of 9 months in terms of clause 15 and be taken into consideration, then, there is no delay.

14. Learned counsel urged to consider multiple factors, which contributed to delay and urged dismiss the complaint by setting aside impugned order.

15. Per Contra, learned counsel for complainant submitted that complainant has made timely payment.

16. It is further contended by complainants in their written argument that said flat is on 26th floor and plan for construction up to 27th floor was already sanctioned. So, there was no hindrance in completing the construction and getting Occupancy certificate.

17. In addition to written submissions, learned counsel placed reliance on the following authorities in support of case of complainants regarding interest on delayed possession. The authorities relied upon are as follows:

- i] Beed District Central Co-operative Bank Ltd –vs- State of Maharashtra and Ors. [2006 (8) SCC 514]**
- ii] Shin Satellite Public Co. Ltd –vs- Jain Studios Limited AIR 2006 SC 963.**
- iii] Nahalchand Laloochand Pvt Ltd –vs- Panchali Co-operative Housing Society Ltd AIR 2010 SC 3607**
- iv] Vidhi Builders Private Limited –vs- Arenbee Media Consultants Ltd [2013 (2) Bom CR 232] (Bombay High Court).**
- v] Neelkamal Realtors Suburban Pvt. Ltd and Ors –vs- Union of India and Ors . 2018 (1) RCR (Civil) 298. (Bombay High**

Court)

- vi] Sanvo Resorts Private Ltd –vs- Ranveer Sharma and anr [Appeal No.000600000010751 dated 31st January 2020 by co-ordinate Bench of this Tribunal.]**
- vii] Sanvo Resorts Private Ltd –vs- Rahul Ghole and anr [Appeal No.006000000010658) dated 31st January 2020 by co-ordinate Bench of this Tribunal.]**

18. Now, the moot question arises as to, whether there was delay in handing over possession of flat to complainants as envisaged under Section 18 of the Act of 2016.

19. It is not in dispute that agreement for sale dated 2nd November 2015 was executed between the parties and the same was registered with the Office of Sub-Registrar on 12th January 2016. Booking of flat No. 2605 in Building "Zodiac" in respondent's project "Marathon Nexzone Zodiac" for total consideration of Rs. 66,24,224 /- is evident from agreement for sale. It is also not in serious dispute that complainant made timely payments of Rs.58,99,166/-

20. To explain delay, appellants have come with a case that reasons were beyond its control and therefore, possession could not be delivered as per agreement. The main grievance of appellant is regarding delay in granting commencement certificate above plinth level, sanction to revised plans and grant of occupation certificate in view of change in Planning Authority. The second reason assigned is regarding delay at the level of National Highway Authority of India (NHAI) in granting access permission on 11.3.2016 though applied on 10.1.2008. Third in the line is regarding water pipeline permission applied on 1.11.2008 and received



on 17.6.2016. Learned counsel has placed reliance on the government directives to Planning Authorities for time bound approvals.

21. According to appellants, within three months of commencement certificate granted by erstwhile Planning Authority i.e., District Collector Raigad on 20.10.2012 for 27 floors against original plan for 33 floors, NAINA under CIDCO was set up on 10.01.2013. NAINA took almost a year to become fully functional and granted approval to revised proposal almost after 3 ½ which caused enormous delay in completing project.

22. Referring to sub clauses 15.1.3 and 15.1.6 of clause 15.1 of agreement for sale, appellants submit that complainant was aware of construction of building proposed up to 33 floors and knowingly consented for revision in sanctioned plan. It is contended that period covered by above sub-clauses of clause 15.1 of the agreement needs to be excluded from the alleged period of delay computed by complainants.

23. Appellants stated that NAINA under CIDCO was set up vide Notification dated 10.1.2013. Undisputedly agreement for sale was executed between appellant and respondent on 2nd November 2015. It means, many months after the establishment of NAINA. As change in Planning Authority precedes the agreement for sale, it was expected on the part of promoter to properly and meticulously assess the material date of possession considering establishment of NAINA under CIDCO. Promoter, despite knowing the change in Planning Authority, promised



date of completion of project and delivery of possession. In this background, we do not find truth in the submission of appellants that change in Planning Authority contributed to delay in completing the project.

24. So far as grant of various other permissions by Authorities, NHAI, Jeevan Pradhikaran and Chief Fire Officer, are concerned, it can be seen from series of correspondence, that permissions were processed subsequent to the compliances made by promoter. It is evident from the NOC received from NHAI dated 11th March 2016 that NOC is received based on the letter dated 3rd November 2015 and 26th February 2016 and not as per the reference letter dated 10th January 2008. As appellants have failed to demonstrate delay on the part of other authorities, the second and third causes put forth by appellants are also not acceptable.

25. There is no violation of the principle of natural justice during the proceedings before MahaRERA as it has been categorically recorded that complaint was heard in the presence of concerned parties.

26. Promoters submitted in its written submission that the instant project is completely different from case of Neha Bagwe flat without specifying the nature of differences.

27. It is significant to note here that in similar set of facts and identical situation, co-ordinate Bench of this Tribunal in **Sanvo Resorts Private Limited –vs- Ranveer Sharma and another** in Appeal No.006000000010751 vide order dated 31st January, 2020 and in **Sanvo Resorts Private Limited vs. Rahul Ghole** in Appeal No.0060000000010658 vide order dated 31st January, 2020 has dealt



with the identical issue of delay in completion of project. The only distinguishing factor in the present appeal and appeals before the co-ordinate Bench is that in those appeals, complainants claimed withdrawal from project, refund and interest, whereas, in appeal on hand, complainants claimed interest on delayed possession, as they have to stay with the project.

28. It is further to note that another appeal No.006000000021475, having similar set of facts and identical situation in case of **Sanvo Resorts Private Limited –vs- Mrs. Neha Samir Bagwe and Ors.**, was dismissed by this Bench of the Tribunal vide Judgement dated 3rd February 2022.

29. In the light of the above, point Nos. 1, 2(a) and (b) are answered accordingly.

POINTS 3 AND 4:

30. Promoters' contention of not having received any demand notice from complainant for interest claim before filing the complaint is not acceptable because of the simple reason that Section 18 of the Act, does not make any provision for issuance of demand notice as condition precedent for filing complaint and complaint itself is as good as demand notice.

31. The upshot of the above discussion is that appellants have failed to establish their contention of the delivery of possession of subject flat on or before the agreed date due to the reasons beyond his control. Authority has recorded the findings of fact upon considering the material



placed on record and is a well-reasoned order. We do not find any reason to interfere with the same in this appeal. Appeal, therefore, being devoid of substance and merits, deserves to be dismissed. Hence, the following order.

ORDER

- i] Appeal stands dismissed.
- ii] No order as to costs.
- iii] Copy of this judgment be sent to MahaRERA and both the parties as per Section 44(4) of the Act.


(DR. K. SHIVAJI)


(INDIRA JAIN, J.)