

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

**1. Appeal No. AT00600000052653/20
In
Complaint No. CC006000000089761**

M/s. Neelkanth Constructions

Through its' Partner
Mr. Bhagchand C. Khubhchandani
Plot No.365/1-2, 7th Floor,
Neelkanth Landmark,
Mumbai Pune Highway,
Near New Panvel Flyover,
Tal: Panvel, Raigad-410206

... Appellant

Versus

Mr. Deepesh S. Singh

H-304, Shivam CHS,
Vichumbe, Tal Panvel,
Raigad-410206

... Respondent

**2. Appeal No. AT00600000052654/20
In
Complaint No. CC006000000089864**

M/s. Neelkanth Constructions

Through its' Partner
Mr. Bhagchand C. Khubhchandani
Plot No.365/1-2, 7th Floor,
Neelkanth Landmark,
Mumbai Pune Highway,
Near New Panvel Flyover,
Tal: Panvel, Raigad-410206

... Appellant

Versus

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Mr. Sujay Rajan Joshi

K-2906, Balaji Symphony,
Panvel Matheran Road,
Sukapur, Tal-Panvel,
Raigad-410206

... Respondent

3. Appeal No. AT00600000052655/20

In

Complaint No. CC006000000120996

M/s. Neelkanth Constructions

Through its' Partner
Mr. Bhagchand C. Khubhchandani
Plot No.365/1-2, 7th Floor,
Neelkanth Landmark,
Mumbai Pune Highway,
Near New Panvel Flyover,
Tal: Panvel, Raigad-410206

... Appellant

Versus

Mr. Nikhil Narayan Bare

4/25, BIT Chawal,
Dr. Maheshwari Road,
Nr. Sandhurst Road Station,
Mumbai 400009

... Respondent

4. Appeal No. AT00600000052656/20

In

Complaint No. CC006000000161317

M/s. Neelkanth Constructions

Through its' Partner
Mr. Bhagchand C. Khubhchandani
Plot No.365/1-2, 7th Floor,
Neelkanth Landmark,
Mumbai Pune Highway,
Near New Panvel Flyover,
Tal: Panvel, Raigad-410206

... Appellant

Versus

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Mr. Vaibhav Prabhakar Ballal

Room No.304, B-Wing,
Yanubai Apartment,
Vitawa Koliwada,
Near Fish Market,
Old Belapur Road,
Thane-400605

... Respondent

Adv. Mr. Vikramjit Garewal for Promoter

Adv. Mr. Nilesh Garde for Respondent/s

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
SHRIKANT M. DESHPANDE, MEMBER (A)**

DATE : 1st October, 2024

(THROUGH VIDEO CONFERENCING)

JUDGEMENT

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

1] These captioned Appeals emanate from the common Order dated 30.07.2020 passed by the learned Member I, MahaRERA (for short the "Authority") in the Complaints filed by the Allottees whereby the learned Authority has directed the Promoter to pay interest to Allottees, to form society of homebuyers, to execute the deed of conveyance in favour of the society. Apart from this the learned Authority has granted relief to the Promoter that the Promoter is entitled to claim benefit of 'moratorium period' as per Notification/ Order Nos. 13 and 14 dated 02.04.2020 and 18.05.2020 and the Promoter is also entitled to sale only the

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covered car parking spaces. Besides the above reliefs, the learned Authority by an Order of injunction restrained the Promoter from carrying out any construction on site without the consent of 2/3 of the Allottees.

2] The Appellant is a partnership firm. The Appellant has assailed the impugned Order on the grounds set out in the memorandum of Appeal.

3] For the sake of convenience, parties to the Appeals will hereinafter be referred to as "Promoter" and "Allottees" respectively. As the facts, issues and reliefs involved in the Complaints and Appeals challenging the impugned Order passed in the Complaints are more or less identical and in view of legal issues involved in these Appeals being identical, the same are heard together to be decided by this common judgment.

4] The brief facts culled out from the pleadings of the parties, impugned Order and material on record reveal that **Neelkanth Vihar**, Phase 1, a residential building project is launched by Promoter. The project consists of building nos.1 to 7. Each building consist of G+3 floors. The subject project is situated on a larger piece of land bearing Gat No.195/2, 196, 197, 200, 201/1 at Village Vichumbe, Panvel, District Raigad. The Allottees have also entered

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into an agreements for sale with the Promoter. The position regarding flat numbers, date of agreement for sale, due date of possession and total consideration agreed between the parties are shown in the table below:

Table of selective relevant details

Name of Allottees	Flat No.	Total consideration	Date of agreement	Date of possession
Deepesh Shyambhadur Singh	305	20,16,630/-	27.12.2017	31.03.2019
Nikhil Narayan Bare	306	36,16,600/-	04.08.2018	31.03.2019
Suraj Rajan Joshi	204	44,30,000/-	19.03.2018	31.03.2019
Vaibhav Prabhakar Ballal	205	34,78,200/-	28.09.2018	31.03.2019

5] The Promoter was supposed to handover the possession of the flats to Allottees on or before 31.03.2019. However, the Promoter did not adhere to his commitment and failed to handover the possession of the flats to Allottees on the date specified in the agreement for sale. Even after the Promoter sold more than 50% of the units, the Promoter failed to form the association of allottees/society of allottees till date. The Promoter has also failed to execute the deed of conveyance in favour of Allottees. Apart

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from this, the Promoter is yet to handover and allot the parking spaces to respective Allottees. Despite this the Promoter is seeking consent of the Allottees for utilizing additional FSI for construction of additional floors. The aforesaid conduct of the Promoter redounded the Allottees to file Complaints against the Promoter. The Allottees sought the following reliefs in their respective Complaints.

(i) to direct the Promoter to obtain valid Occupation Certificate for the subject project

(ii) to direct the Promoter to handover the possession of the subject flats alongwith one car parking space to Allottees.

(iii) to restrain the Promoter by an Order of injunction from making any alteration/modification in the approved building plan and lay out except for some minor deviations.

(iv) to direct the Promoter to pay interest to Allottees on the paid amount from 01.04.2019 till the date of possession.

(v) to direct the Promoter to form association/ society of home buyers within three months.

(vi) to direct the Promoter to execute the deed of conveyance in favour of society of Allottees.

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(vii) to direct the Promoter to pay Rs.1,00,000/- to Allottees towards the damages for mental agony and legal costs.

6] The Promoter appeared in the Complaints and disputed the claim of Complainants by filing affidavit in reply contending therein that although the specified date of possession was March, 2019 however, there has been an inadvertent delay for reasons beyond the control of the Promoter. There has been delay of approximately 5-6 months from the specified date of possession. The delay was not caused due to any non-compliance or defaults or evasions on the part of the Promoter. There are some minor deviations from the plan approved by the Collector of Raigad to the final and amended plan as approved by CIDCO-NAINA. These deviations have been made in the best interest of the Allottees in terms of the agreement for sale. Due to such deviations in lay out plan, the area of the flats has been in fact increased. The Promoter has made appropriate payment to CIDCO-NAINA to the tune of Rs.1,34,21,800/- for the said increased area of the flats of the home buyers. The deviations in the plan have been made by Promoter within the authority granted by Allottees in agreement for sale. The said deviations in lay out plan is beneficial only to the

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Allottees and that too without any extra costs or additional payment.

7] The Promoter has further contended that although the specified date of possession was March, 2019, but due to occurrence of events, which were beyond the control of the Promoter, the Promoter did not adhere to his commitments. The delay in handing over possession of the flats was not on account of non-compliance or defaults or evasions on the part of the Promoter. In fact, the project was completed way back in September, 2018. On 12.09.2018 the Promoter had applied to CIDCO for grant of Occupation Certificate. As per provisions of Maharashtra Regional Town Planning Act, 1966 the competent Authority is bound to either grant or reject the application filed for Occupation Certificate within 60 days from the date of receipt of such application. However, the application filed by Promoter for grant of Occupation Certificate was rejected by CIDCO Authority vide its letter dated 25.01.2019 on the following grounds:

(i) the Recreational ground as shown in the approved site is not developed on site.

(ii) one out of two access roads is not developed on site.

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(iii) boundary wall is not constructed as per commencement certificate.

(iv) trees on site were not found as per commencement certificate granted by Collector Raigad

8] Because of lackadaisical approach of CIDCO Authority the Promoter could not deliver the possession of the flats to Allottees on the specified date mentioned in the agreement for sale. Soon after receipt of letter dated 25.01.2019 the Promoter paid all requisite charges amounting to Rs.1,34,21,800/- to CIDCO-NAINA for regularizing of the deviations. Accordingly, CIDCO-NAINA has granted full and final Occupation Certificate to Promoter on 28.11.2019. Thereupon the Promoter has handed over the possession of flats to Allottees on 14.12.2019.

9] The Promoter has further contended that when the project was launched at that time all the approvals, compliances, permissions, including commencement certificate were required to be obtained from the Collector Raigad. The commencement certificate for the subject project was obtained from Collector Raigad on 14.02.2013. Based on approved plan and commencement certificate, the Promoter started construction of the subject project. However, at later stage the Promoter was

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informed by CIDCO Authority that the special planning Authority for approving constructions and granting permissions thereto has been transferred from Collector Raigad to CIDCO-NAINA. Therefore, the Promoter immediately applied to CIDCO-NAINA for amending Commencement Certificate on the basis of as-is the building plans. The Promoter has also carried out all requisite compliances as per the terms and conditions of CIDCO-NAINA and paid additional premium to the tune of Rs.1,34,21,800/-. The Promoter has complied with the legalities and technicalities for obtaining the necessary approvals/ permissions from the new Authority as a result thereof there has been a delay in completion of project. By virtue of agreement for sale the Allottees have agreed that the delay in completing the project may happen due to force majeure factors/ mitigating circumstances set out in the agreement for sale.

10] The Promoter has further contended that due to increase in FSI the Promoter has already obtained necessary permissions and approvals for construction of 4,617.23 sq. mtr. from CIDCO-NAINA to be constructed on the said project. By virtue of agreement for sale the Allottees have accorded consent to Promoter for utilizing the FSI. After taking possession of the flats

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the Allottees cannot restrain the Promoter from consuming the FSI of the entire land. The Promoter had started the process of formation of society, but the Complainants were obstructing the Promoter for their ulterior motive of extracting money from the Promoter. Therefore Promoter has stopped the process of formation of the society. Promoter has further contended that agreement for sale stipulates that the Promoter may make construction of additional floors for consuming the FSI of the entire land. The Promoter has further contended that there is no arrangement for allotment of car parking spaces if the Complainants need car parking spaces they have to pay for it. As per provisions of RERA, the Promoter is allowed to sale car parking spaces since it is property of the Promoter. With these contentions Promoter has prayed for dismissal of complaints.

11] After hearing the parties, learned Authority has disposed of the Complaints by granting reliefs to Complainants as mentioned in paragraph no.1.

12] We have heard learned Advocate Mr. Vikramjit Garewal for Appellant/ Promoter and Advocate Mr. Nilesh Garde for Complainants/ Allottees. The submissions advanced by Advocates

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appearing for respective parties are nothing but reiteration of contents of Complaints, affidavit in reply and appeal memo.

13] Learned Advocate Mr. Nilesh Garde has placed reliance on the following citations.

i. **Sanvo Resorts Pvt. Ltd. Vs. Rahul Harish Gole** [Order of MahaREAT in Appeal No.10658 on 31.01.2020]

ii. **Arifur Rahman Khan Vs. DLF Southern Homes Pvt. Ltd. & Ors.** [Civil Appeal no.6239 of 2019]

iii. **Vitthal Laxman Patil Vs. Kores (India) Ltd. & Ors.** [2019 (3) Mh.L.J. 857]

14] On examination of pleadings of the parties, submissions advanced by Advocates appearing for respective parties, material on record and impugned Order following points arise for our consideration and we have recorded our findings thereupon for the reasons to follow.

Sr. No.	Points	Findings
1.	Whether impugned Order warrants interference in this Appeal?	In the affirmative

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2.	What Order?	As per final Order
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15] On careful examination of the impugned order dated 30th July 2020 reveals that the impugned order contains several directions to the promoter. It is not in dispute that promoter has complied with some of the directions. Therefore, during the course of argument learned counsel Mr. Vikramjit Garewal has sorely submitted that though the impugned order contains several directions, but the appellant is restricting this appeal to the extent of only two directions viz. (i) to pay interest on account of delayed possession and (ii) to execute conveyance of the property in three months from the date of the order.

16] The appellant claims that there was change in Town Planning Authority. Earlier the Collector of Raigad was the Planning Authority. On 14.02.2013 Collector of Raigad had sanctioned the plan and issued Commencement Certificate to appellant. Pursuant to the sanctioned plan appellant has completed the project way back in September 2018 and applied for grant of Occupation Certificate on 12.09.2018 to the City and Industrial Development Corporation of Maharashtra Limited. CIDCO-NAINA being the Planning Authority in

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the jurisdiction of Raigad has rejected application due to minor deviations in the construction from the sanctioned plan. Thus it has become necessary for the appellant to comply with requisitions. The appellant has paid premium along with charges as imposed by CIDCO and filed intimation letter dated 01.04.2019. As per Agreement for Sale promoter was supposed to complete the project by March 2019. However, the project got delayed due to lackadaisical approach of CIDCO-NAINA in issuing Completion Certificate. Thus, there is delay of one day only. However, this aspect was not considered by the learned Authority therefore the impugned order warrants interference in this appeal. We do not find merit in the above contentions of the appellant.

17] It is not in dispute that Collector of Raigad had accorded sanction to the plan submitted by the promoter and issued Commencement Certificate on 14.02.2013. It is not in dispute that thereafter the Government has appointed NAINA-CIDCO as the New Planning Authority by Notification dated 10.01.2013. The said Notification came to be published on 20.02.2013.

18] The material on record clearly revealed that Architect of appellant had submitted a proposal to CIDCO-NAINA on 11.09.2018 for Occupancy Certificate. On 24.09.2018 a proposal for grant of



Occupancy Certificate submitted by the appellant was rejected by CIDCO-NAINA for want of compliance of necessary documentation. On 08.10.2018 revised proposal for Occupation Certificate was submitted to CIDCO-NAINA. It further transpires that on 25.01.2019 CIDCO-NAINA sent letter to appellant in reference to joint site visit dated 22.01.2019, wherein it has been specifically mentioned that construction is not found as per commencement certificate dated 14.02.2013. As a result thereof the proposal for occupation certificate could not be approved by CIDCO-NAINA on account of major deviation and non-compliance by appellant. Therefore, the appellant has submitted a fresh proposal for revised commencement certificate. After several correspondence and payment of Rs.1,0328,900/- to NAINA-CIDCO towards FSI linked premium and payment of Rs.13,84,900 to NAINA-CIDCO towards penalty, NAINA-CIDCO has issued amended commencement certificate to appellant on 24.10.2019. Thereafter on 28.11.2019 NAINA-CIDCO issued occupation certificate to appellant subject to compliance of conditions mentioned in the commencement certificate.

19] The above circumstances do not justify the contentions of promoter that because of change in the Planning Authority and because of lackadaisical approach of NAINA-CIDCO project got

delayed. As an experienced promoter in the market, it is the promoter who is well aware of the factors that may endanger prospects of timely completion of project. So being domain expert and considering likely time to be consumed by various activities, promoter is the best judge to estimate the likely timelines for completion of the project. On the contrary the home buyers having no domain knowledge are neither aware nor are expected to be aware of the nature of mitigating factors which may delay the project. The home buyers execute the Agreement for Sale based on the trust and commitment given by the promoter to hand over the possession by a certain date.

20] The force majeure factors as demonstrated by the promoter for delayed possession do not fall within the ambit of explanation to section 6 of RERA Act 2016 which clearly clarifies that "force majeure" shall mean a case of war, flood, draught, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project. None of the ground as demonstrated by the promoter fall within the scope of explanation to section 6 of RERA Act 2016 which could have justified the delay. Therefore, we are of the considered view that delay in grant of approval/ sanction cannot be construed as force majeure.

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21] We have considered the grounds put forth by the promoter which allegedly caused delay. The ground of delay due to policy paralysis of the government statutory officers cannot be considered as force majeure factors. Such hurdles are neither unknown nor unanticipated but are very much foreseeable and expected to arise during completion of the project. Therefore, every developer having sufficient experience in the market is expected to be prepared before hand for not only to deal with such eventuality but also to act professionally by assessing the time by which promoter, after overcoming likely mitigating factors, would be able to complete the project. The promoter accordingly has to commit the reasonable date of possession while executing the agreements. However it is often seen that instead of acting professionally, there is tendency that promoter indicates an early date to induce buyers to purchase real estate and bind them to face consequences of delay by making allottees to sign agreement for sale containing vague and general terms for extension of possession period to wriggle out of their own liabilities for delay in possession. In our considered view, it is the promoter who had the liability to assess the likely date of completion of project, considering all likely factors that could delay the project. The promoter can neither expect allottees to be aware of likely delay

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nor can make the allottees to bear the brunt of its own failure to act professionally by assessing the reasonable date for possession.

22] The material on record clearly indicate that the Promoter did not carry out the construction as per the sanctioned plan and there are some deviations in the construction from the original plan. Therefore, the Promoter was required to re-submit the plan for sanction to CIDCO. CIDCO has accordingly issued amended Commencement Certificate on 24.10.2019 and further issued Occupation Certificate to Appellant on 28.11.2019. It means the Appellant was at fault. The Appellant could not complete the project within stipulated period as per the sanctioned plan which resulted in delay in completion of the project. Allottees have very limited liability of discharging their own obligations as per the terms of agreements for sale *inter alia* relating to primarily to make payments from time to time so that the project is not starved of funds to cause delay in completion. Allottees can be held responsible only if failure to discharge their obligation as per the agreements for sale which caused delay in completion of project. If the Allottees are not responsible for the reasons for delay, they are entitled to reliefs under Section 18 of RERA and cannot be saddled with consequences for delay in completing the project. It has been held by the Hon'ble

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Supreme Court in **M/s. Imperia Structures Ltd. Vs. Anil Patni & Ors.** [in Civil Appeal No.3581-3590 of 2020] that-

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)."

23] The plain language of Section 18(1)(a) of RERA Act, 2016 makes it clear that Promoter is obligated to handover possession as per agreements for sale by the dates specified therein. The dates so specified in the agreements for sale in any other manner is sacrosanct. Even if *force majeure* factors as demonstrated by Promoter are given some consideration, we are of the view that the Promoter is not entitled to get benefit for the reasons that the same are not attributable to the allottees nor is the case of the Promoter that the allottees in any way caused delay in possession. While explaining the scope of Section 18 of RERA Act, 2016, the Hon'ble

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Supreme Court in **M/s. Newtech Promoter and Developers Pvt. Ltd. V/s. State of Uttar Pradesh** [2021 SCC Online 1044] dated 11 November, 2021 held that;

"Para 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.

24] Therefore, for the forgoing reasons we have come to the conclusion that the Appellant has miserably failed to adhere to his obligation to handover possession of the subject flats to Allottees on specified dates. Under the circumstances, the Allottees are entitled to relief of interest on the paid amounts from the Appellant as per the provisions of Section 18 of RERA Act, 2016. Therefore, we are of the view that there is no perversity in the impugned Order to the

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extent of grant of interest to Allottees on account of delayed possession.

Directions to execute conveyance of the property

25] It is specific case of Promoter that the Promoter has carried out the construction in a phase-wise manner and there is no change in the sanctioned plan and lay out plan of the units of the Allottees. There is no obligation on the Promoter to take consent from the Allottees to carry out phase-wise development of the project site as per the provisions of RERA Act, 2016. The subject project is to be executed in a phase-wise manner and the same has been disclosed to Allottees when they had booked the flats in the project. Until the completion of construction of entire subject project in phase wise manner, the Promoter is not able to convey the property to the society.

26] To refute the above contentions of the Promoter and while supporting the impugned Order to have been correctly passed, the Allottees have contended that the spirit of RERA is to bring complete disclosure and transparency of all vital information of the project and to make it available to the prospective buyers before entering into the agreement for purchase of flats. Once the plans and

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specifications of the buildings and project are disclosed to the Allottees while entering into the agreement, the Developer is restrained from making any additional construction or changes in approved plan, without specific known consent of at least 2/3 Allottees. The application of Promoter to MahaRERA for registration of the project and the information of the project available on website of MahaRERA discloses that there are only total four buildings of stilt plus three storey which are sanctioned and same are constructed. There are no proposed buildings or proposed further phases in this project. The total FSI is 3248.82 sq. mtr. and the same is approved. There is no proposed FSI. In the light of above mentioned facts on MahaRERA website it is evident that Promoter has falsely claimed that the project is to be constructed in phase-wise manner and he is entitled to make additional construction. It is specific contention of Allottees that CIDCO-NAINA has issued full Occupancy Certificate on 28.11.2019 in respect of the entire project. There was no balance development as per amended Commencement Certificate and Occupation Certificate. Therefore, the Promoter has to execute conveyance of the whole property in favour of the society of the Allottees.

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27] On ensembling the rival contentions of the parties, the moot question falls for our consideration is whether promoter is liable to execute conveyance of the whole property or part of the whole property. It is not in dispute that at the relevant time the Collector of Raigad was the planning authority. Accordingly, lay out plan with respect to the subject project was submitted to the Collector Raigad for sanction. On 14.02.2013 Collector Raigad has sanctioned plan and issued Commencement Certificate to Promoter. Pursuant to the sanctioned plan Promoter has commenced the construction of the buildings. It is not in dispute that the Allottees (Respondents in Appeals) have booked their respective flats somewhere in 2017-2018. It means when the flats were booked by these Allottees the sanctioned lay out plan was disclosed to these Allottees. Besides, it is not the case of allottees that promoter did not disclose the sanctioned layout plan to them while entering into agreement.

28] A careful examination of sanctioned lay out plan dated 14.02.2013 (Page No.448) would show that there would be A, B, C, D, E, F, G type Buildings. Buildings A, B, C, D and F type consist of three storey whereas Buildings E and G type consist of two storey. It further transpires from the said sanctioned lay out plan that

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Building A, B, C, D, E and G type consist of one building each (total seven buildings) whereas Building F type consists of two buildings. It means there would be eight buildings. It further transpires that proposed built-up area of A to D type buildings is 3,248.825 mtrs. The proposed built-up area of E, F, G type buildings is 1607.83 mtrs. It means total proposed built-up area is 4,856.65 sq. mtrs.

29] It is not in dispute that the Promoter has completed construction of the seven buildings and applied for grant of Completion Certificate on 12.09.2018 to CIDCO. On 28.11.2019 NINA-CIDCO has issued occupancy certificate to appellant. A perusal of occupancy certificate (page no.198) reveals that CIDCO has issued full occupancy certificate with respect to the seven buildings mentioning therein that the construction of tenements pertaining to full occupancy has been carried out in accordance with the building plans approved and the conditions stipulated in the amended commencement certificate issued vide letter No. CIDCO-NAINA/Panvel/Vichumbe/V.P.-392/ACC/2019/1/49/SAP/1416 dated 24.10.2019. Therefore, we have no hesitation to conclude that as per sanctioned layout plan dated 14.02.2013 promoter has

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completed the construction of seven buildings out of eight buildings. Only one building is remained to be constructed.

30] It transpires from the written submissions filed by promoter that promoter is ready and willing to execute the conveyance deed in favour of society in accordance with the provisions of RERA Act, 2016 and rules framed thereunder. Reference is made to section 17 of RERA Act read with Rule 9 (2) (III) (b) of the Maharashtra Real Estate (Regulation and Development) (registration of Real Estate projects, registration of Real Estate agents, rates of interest and disclosures on website) Rules, 2017 (**MahaRERA Rules, 2017**).

The aforementioned Rules stood amended vide notification dated 06.06.2019 which was published on MahaRERA website on 11.06.2019 known as the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of interests and disclosures on website) (Amendment) Rules, 2019 (for short "**MahaRERA Amendment Rules, 2019**").

31] Rule 9 (2) (III) talks about the period for conveyance of title by promoter to organization of allottees in case of layout. The said rule reads as under:

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Period for conveyance of title, by promoter, to organization of allottees in case of layout:-

"(a) In the case of a building or a wing of a building in a Layout, the Promoter shall (subject to his right to dispose of the remaining apartments, if any) execute the conveyance of the structure of that building or wing of that building (excluding basements and podiums) within three months from the date of issue of occupancy certificate.

"(b) In the case of a layout, the Promoter shall execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly or otherwise, within three months from the date of issue of occupancy certificate to the last of the building or wing in the layout."

By virtue of Rule 9 (2) (III) (b) of MahaRERA Amendment Rules, 2019 promoter has to execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly within three months from the date of issue of occupancy certificate to the last of the building or wing in the layout. We have already observed that the promoter has constructed seven buildings out of eight buildings. It means one more building is yet to be constructed. Therefore, considering the provisions of Rule 9(2)(III)(a) of MahaRERA Amendment Rules, 2019, we are of the view that the promoter has to execute conveyance of title in favour of allottees as per provisions of Rule 9(2)(III)(a) of MahaRERA Amendment Rules, 2019.

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32] We would like to reiterate that as per sanctioned layout plan dated 14.02.2013, promoter is entitled to construct eight buildings. It is not in dispute that the promoter has not commenced the construction of 8th building. It transpires from the sanctioned layout plan dated 14.02.2013 that the total built up proposed area of eight buildings is 4856.65 sq. mtrs. Amended commencement certificate dated 24.10.2019 (page No.449) discloses that the total built up area of seven buildings is 4617.23 sq. mtrs. It means still there is a balance built up area of 239.42 sq. mtrs. ($4856.65 - 4617.23 = 239.42$). In case the promoter wants to make construction of the 8th building more than 239.42 sq. mtrs. by utilising balance FSI, in such circumstances promoter is required to obtain consent of 2/3 allottees. Therefore, considering the peculiar circumstances of the case, we are of the view that the association of allottees cannot be made wait till the completion of the construction of the last of the building i.e. 8th building. Therefore, as indicated above promoter shall execute the conveyance of the property as per Rule 9(2)(III)(a) of MahaRERA Amendment Rules, 2019. We would like to reiterate that promoter has not commenced construction of 8th building as per sanctioned layout plan dated 14.02.2013. Therefore, it is expected of promoter to complete the construction of 8th

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building within reasonable period. The reasonable period would be of three years from the date of this order i.e. today. As soon as promoter completes the construction of 8th building within reasonable period, the promoter shall execute the conveyance of the entire undivided or inseparable land underneath all buildings jointly within 3 months from the date of issue of occupancy certificate to the last of the building in the layout dated 14.02.2013, as per provisions of Rule 9(2)(III)(b) of MahaRERA Amendment Rules, 2019, failing which the association of allottees will be at liberty to take recourse of law to get execution of conveyance of title of the whole property.

33] For the foregoing reasons, we have come to the conclusion that the impugned order warrants interference in this appeal to the extent of execution of conveyance deed in favour of society by promoter. Consequently, we proceed to pass following order.

ORDER

-  1. Appeal Nos. AT00600000052653, AT00600000052654, AT00600000052655, AT00600000052656 are partly allowed.

2. Impugned order dated 30.07.2020 is modified as under to the extent of directions to promoter with regard to execute the deed of conveyance in favour of the society:

a) The promoter is directed to execute the conveyance of the structure of the seven buildings within 3 months from today to organization of allottees as per provisions of Rule 9 (2) (III) (a) of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of interest and disclosures on website) (Amendment) Rules, 2019.

b) The promoter is further directed to execute the conveyance of the entire undivided or inseparable land underneath all eight buildings jointly or otherwise within reasonable period i.e. within 3 years from today or within 3 months from the date of issue of occupancy certificate to the last of the building i.e. 8th building in the layout dated 14.02.2013 as per provisions of Rule 9(2)(III)(b) of Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate Agents, Rates of interest and disclosures on website) (Amendment) Rules, 2019 whichever is earlier.

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c) Rest of the reliefs granted by the learned Authority vide impugned order dated 30.07.2020 stand upheld.

3. Parties shall bear their own costs.

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


(SHRIKANT M. DESHPANDE)


(SHRIRAM R. JAGTAP)

Ajit_