

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL UNDER RERA Act

No. AT006000000010448

Aparna Arvind Singh
Arvind Rajdeo Singh
Ida Villa, Unity Nagar Stop,
Chulna Road, Manikpur,
Vasai West, Palghar 401 202

.. Appellants

Vs.

Shri Nitin Chaphekar,
Panchmukhi Builders and Developers
104, Sun Shine Apat. Sandor, Bhabala,
Vasia, Palghar 401 202

..Respondent/s

The Appellant Arvind and Aparna Singh present.

Partner Mr. Chaphekar of Panchmukhi Builders present.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.

Heard on : 5th September , 2018

Dictated/Pronounced on: 5th September, 2018

Transcribed on : 6th September, 2018

:-ORAL JUDGMENT:-

Heard.

1. The Allottee / Complainant feels aggrieved by order dated May 4, 2018 passed by Ld. Chairperson, MahaRERA, Mumbai declining to direct payment of interest from the dates of payment however accepting the date of handing over possession 31 December, 2018 and fix the liability of promoter to pay interest from January 1, 2019 till the actual handing over of possession.
2. The grievance of the complainant is, he did not accede to the proposal that was projected or canvassed before the Ld. Chairperson. He did not



agree to the time period mentioned for completion of the project or that he accepted the time to be reasonable.

3. Ordinarily whatever is recorded in a judicial order has to be adhered to in its letter and spirit. If the litigant is allowed to address so called anomaly before superior Forum declining of making particular statement it will open floodgates for litigations and accusations. The clarification has to be sought from that Authority alone. This appeal is entertained on peculiar facts and circumstances as reflected hereinafter, bypassing / ignoring, grievance of no audience or no admission.
4. An Agreement for Sale was registered between the parties to the Appeal on 6th May 29, 2015 (6th June 2015) for Apartment bearing no. 603 in the project "VICTORY HEIGHTS" situated at Vasai Thane. The principal ground raised and agitated is, the Agreement for Sale did not incorporate date of possession and consequently the Promoter asserted absolvment from liability to release any interest or compensation. While registration of the project with MahaRERA, the Promoter has registered the date of handing over possession to be 31st December, 2018. It is in this situation, to repeat the order calls for interference.
5. Before actual commencing dictation both the parties were suggested and in particular the Promoter, to release interest for 18/19 months till December 31, 2018 the complainant reluctantly agreed to the proposal. The Promoter has declined to accept.
6. The Agreement of Sale dated May 29, 2015 (6th June, 2015) necessarily will have to be in tune with Maharashtra Ownership Flat (Regulation of the Promotion of Construction Sale Management and Transfer) Act ,1963 (for short MOFA). The said Act interalia provides in Section 4 that the Promoter before accepting advance payment or deposit to enter into agreement and the Agreement to be registered. Sec. 4(1) start with a nonabstante clause referring to any other law in force or prevalence. Sec. 4(1A) deals with the mode of the Agreement, to direct that the Agreement to be prescribed under sub section shall contain interalia the particulars as specified in clause a) and to such Agreement there shall be attached copies of the documents specified in clause b). The particulars mandatory indicated in clause a) are:-
 - i) If the building is to be constructed the liability of the Promoter to construct it according to the plans and specifications approved by



the local authority where such approval is required under any law for the time being in force.

ii) The date by which the possession of the flat is to be handed over to the purchaser.

Sec. 4(1) contemplates that such Agreement shall necessarily be registered under the Registration Act, 1908. Rule 3(1) (f) of MOFA says: *It is liability of promoter to "specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly)".*

7. Section 8 of MOFA deals with refund of amount paid with interest for failure to give within specified time or further time allowed. If the Promoter fails to give possession in accordance with the terms of his Agreement of a flat duly completed by the date specified or any further date or dates agreed to by the parties. Section 8(b) states that the Promoter for reasons beyond his control is unable to give possession of the flat by the date specified or the further agreed date and a period of three months thereafter or a further period of three months if those reasons still exist, then in any such case the Promoter shall be liable on demand to refund the amount already received by him in respect of the flat (with simple interest at 9% per annum from the date he received the sums till the date the amount and interest thereon is refunded) and the amounts and interest shall be a charge on the land and the construction if any thereon in which the flat is or was to be constructed to the extent of the amount due but subject to any prior encumbrances.

8. The Maharashtra Real Estate (Regulation and Development) Act, 2016 (RERA) has come into force in the State of Maharashtra effective from 1st May, 2017. Under the Authority the Govt. of Maharashtra has promulgated Rules. The relevant rule for the purpose of the registration is Maharashtra Real Estate (Regulation & Development) Rules, 2017. Rule 10 deals with Agreement for Sale. It says sub sec. 2) of Section 13, the Agreement for Sale shall be in conformity with the provisions, rules and regulations made thereunder and shall be in accordance with the model form of Agreement at Annexure 'A'. Rule 10(2) provides any application letter, allotment letter or any other documents in respect of the apartment, plot or building, prior of the execution and registration of the Agreement for Sale for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interest of

11

the allottee under the Agreement for Sale under the Act or the rules or the regulations made there under.

9. Sec. 72 of RERA requires factors to be taken into account by Adjudicating Officer, In tune with Section 71, it expects the Adjudicating Officer shall have due regard to a) the amount of disproportionate gain or unfair and advantage, wherever quantifiable, made as a result of the default, b) the amount of loss caused as a result of the default, c) the repetitive nature of the default and d) such other factors which the Adjudicating Officer, considers necessary to the case in furtherance of justice.
10. The conjoint effect of the afore referred legal position read with the Judgement of Hon'ble High Court of Judicature at Bombay in Writ Petition No. 2737 of 2017 Neelkamal Realty v/s. State decided on December 6, 2017 indicates this is a fit case wherein the Chairperson, MahaRERA, Mumbai should have come with a stern and heavy hand to deal with the fraudulent aspect of the Promoter to deceive the Allottee.
11. The cause of action for claiming possession even if date of possession is not mentioned in the Agreement and the project being registered with MahaRERA becoming a recurring cause of action. The allottees right to claim money back or claim interest or compensation is a recurring action and will not be eclipsed if date of possession is suppressed. The ongoing projects bring with them the legacy of rights and liabilities created under the statute of the land under general and MOFA in particular. Appellate Tribunal can take cognizance of the agreements executed under MOFA also as adequate component to grant relief of it. This view gets support from script of Section 88 of RERA which contemplates that its provisions shall be in addition to, and in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. Thus cumulative effect of Section 71(1), 72(d), Section 79, 88 will have to be given effect and naturally needs to be accelerated in favour of cause propounded by the afflicted Allottee. This is moreso the project is belated taking umbrella of non-mentioning of specific date for possession. To repeat non mentioning of date of possession is violence deliberately created to Section 4(1A) of MOFA and the beneficial legislation cannot be extended in favour of a deceit than the docile flat purchaser / allottee.



12. It is alleged by Allottee that inspite of litigation prevalent on 12th July, 2016, suppressing the same, Promoter has collected Rs.5,32,500/- on 10th August, 2016. The Respondent / Promoter collected payments inspite of litigation and uncertainty in completion of project. The Allottee says at the time of booking Flat in 2014, the Promoter falsely represented to deliver the flat after two years. The Allottee has parted huge amount of Rs.55,26,500/-.
13. I quite see if the Promoter fails to tune the Agreement of Sale to Section 4(1A) of MOFA, he is bound to face criminal consequences of breach under Section 13 of MOFA which on conviction provides imprisonment of three years or fine or both. MOFA is not repealed, hence will operate in addition to provisions of RERA.
14. The Promoter blatantly committed mischief with section 4(1A) of MOFA and intentionally obliterated its impact. However, it will not defuse rights of Allottee. The Statute will not crawl at the whims of the Promoter. The Liability of the Promoter calls for consideration of the facts necessary to the case as indicated in Section 72 (d) of RERA, for the Adjudicating Officer.
15. The Allottee desires to continue with the project of the Flat No. 603 however at the same time he should not be sandwiched on the ground of non specification of the date of possession.
16. Drawing balance sheet of above facts having scanned the legal position, the Allottee having parted with consideration prior to August, 2016, the impact would be liability of the Promoter to release the amount. The obligation cast on the Promoter having deceitfully avoided, the allottee is entitled to receive interest at 10.05% by way of compensation which is quantified at Rs.25,000/- per month from the last date of releasing payment till handing possession.

:- ORDER :-

1. The Appeal is partly allowed.
2. The Complainant / Allottee is entitled to receive interest as compensation at Rs.25,000/- per month effective from 1st September, 2016 till actual date of handing over possession to him.



3. The complainant shall be entitled to cost of Rs.25,000/- of the appeal.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 5th September, 2018


(K. U. CHANDIWAL, J.)
President,
Maharashtra Revenue Tribunal,
Mumbai
& I/c. Maharashtra Real Estate
Appellate Tribunal, (MahaRERA),
Mumbai