

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL**

APPEAL NO.AT006000000010856

Mr. Deepak Shetty
B-Adharsh Nagar Cooperative Housing
Society,
Veer Nariman Road,
Century Bazaar, Worli,
Mumbai 400 025. ... Appellant

Versus

1. Sheltrex Smart Phone City
2. Gopi Resorts Pvt. Ltd.
3. Tanaji Malusare City

Sheltrex Karjat Pvt.Ltd.,
Second Floor, Art Guild House,
Phoenix Market City, LBS Road,
Kurla West, Mumbai 400 070
And Tanaji Malusare City,
Shirse – Akurle,
Karjat (West), Raigad 410201. ... Respondents

(Mr. Aniket Mokashi, Advocate for Appellant)
Ex-parte against Respondents)

**CORAM : SUMANT KOLHE, MEMBER(J)
S.S. SANDHU, MEMBER(A)**

DATE : 14TH NOVEMBER, 2019.

JUDGMENT:(PER SUMANT KOLHE, MEMBER(J))

Feeling aggrieved by the order dated 26.9.2018 passed by Learned Chairperson, MahaRERA in the complaint No.CC006000000055748, appellant has preferred this appeal.

2. Appellant is an allottee. Respondents are promoters.
3. The Complaint No.CC006000000055748 was filed by appellant against respondents before MahaRERA Authority for refund of the amount along with interest.
4. After hearing both the sides, Learned Chairperson, MahaRERA disposed of the complaint by passing following order.

“In view of the above facts, if the Complainant reconsiders his stand to continue in the project, the parties are directed to execute and register the agreements for sale, as per the provisions of section 13 of the Real Estate(Regulation and Development)Act 2016 and the rules and regulations made thereunder within 30 days from the date of this order.

Alternatively, if the Complainant does not intend to continue in the said project, the Respondent shall refund the amount paid by the Complainant as per the terms and conditions of the booking letter within 30 days from the date of this order”.

5. Heard Learned Counsel for the appellant. As the respondents remained absent, the appeal proceeded ex-parte.

Following points arise for our determination: –

POINTS

1. Whether the impugned order is sustainable under law ?
2. What order ?

Findings on the above points for the reasons stated are as under:–

1. Negative.
2. As per final order.

POINTS NO.1 AND 2

6. Appellant booked a flat in the project of the respondents. The appellant has paid to the respondents the substantial amount towards price of the flat. The respondents failed to hand over possession of flat to appellant as per agreed date. Since the project is incomplete, the appellant has decided to withdraw from the same. The complaint No.CC006000000055748 was filed for

refund of the amount paid to the respondents with interest.

7. The complaint was disposed of with directions to both the parties to execute and register the agreement for sale and alternatively to refund the amount to appellant as per terms and conditions of the booking letter.

8. The allotment letter is the only document between the parties. It is executed in the year 2011. The appellant filed the complaint against the respondents for refund of the amount with interest. As the respondents failed to hand over possession and complete the project for a considerable period of more than 8 years, appellant is entitled for refund of the amount with interest. The paragraph 11 of the allotment letter is not attracted to the present transaction.

9. Parties are governed by rights and obligations as per the RER Act,2016.

10. The respondents have failed to contest the appeal. The case made out in the appeal memo read with together the documents filed by the appellant remained unchallenged. We have no hesitation to believe and accept the case made out by the appellant together with the documents filed

in support to come to the conclusion that the respondents are liable to refund Rs. 6,59,524/- with interest as per Rule 18 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.

11. In view of above discussion, we are of the opinion that impugned order does not sustain under law and accordingly set aside. We answer point No.1 in the negative.

12. In the result, we pass the following order :-

:ORDER:

- 1) Appeal No. AT006000000010856 is allowed.
- 2) The impugned order dated 26.9.2018 passed by Learned Chairperson, MahaRERA in the complaint No.CC006000000055748 is set aside.
- 3) The complaint No.CC006000000055748 is allowed as under -
 - i) Respondents No.1 to 3 shall refund the amount of Rs. 6,59,524/- with

interest as per Rule 18 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 from the date of payment of the said amount till its realisation.

- 4) The respondents No.1 to 3 shall pay costs of Rs.10,000/- to the appellant and shall pay their own costs.
- 5) Copy of this order be communicated to the Authority and the respective parties as per Sec. 44 Sub Sec. 4 of the RER Act.


(S. S. SANDHU)
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(SUMANT KOLHE)