

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. AT006000000010453

M/s. Aditya Enterprises,]
A Partnership Firm, having its]
Principal Place of Business at]
Ground floor, Kambodhi CHS]
Building No. 106, Tilak Nagar,]
Mumbai 400 089.]
[RERA Registration No. P51800009006]]... Appellant/s.
Vs.	
Mr. Mohan Gavankar,]
An adult, Indian Inhabitant of Mumbai,]
having his address at Flat No.B-102,]
Kambodhi CHS Building No.106,]
Tilak Nagar, Mumbai 400 089.]... Respondents.

Advocate Mr. V. Mannadiar for the Appellant/s.
Advocate Mr. Avinash for the Respondent/s.
Respondent present in person.

CORAM : SUMANT M. KOLHE, (Member J.)

DATE : FEBRUARY 12, 2019.

Appeal Under Section 44 of RERA ACT 2016.

ORAL JUDGMENT :

1. In this appeal, Appellant-original Respondent has challenged the impugned order dated 09.05.2018 passed by Chairman MahaRERA Authority in complaint No.CC006000000023311 whereby Appellant and Respondent are directed to execute and register agreement for sale as per Section 13 of RERA Act, 2016 and Rules and Regulations made thereunder within 30 days from the date of said order.

2. In brief the facts are as under :-

Appellant is the original Respondent and promoter. Respondent is original complainant and Allottee. I will refer the parties as per their original status in the complaint.

3. Promoter had launched the project namely Om Shri Shanti Kunj at Chembur, Mumbai. Complainant had booked flat No. A-1004 in the said project. Promoter issued allotment letter dated 29.04.2010 to the Allottee. It is stated by Allottee that he had paid full consideration amount of the said flat to the promoter and promoter has failed to execute and register the agreement for sale. So complainant had prayed for giving direction to the promoter to execute and register agreement for sale as per Section 13 of RERA Act, 2016.

W/S
The promoter has made out a case that the allotment of the said flat to the Allottee had been terminated and communicated to the complainant as per notice issued on 22.08.2017. Allottee had not raised any objection regarding the termination of allotment of the said flat at that time. It is also the contention of the promoter that Allottee failed to perform his obligation as per allotment letter and for valid and justifiable reasons, the allotment letter of the flat issued in favour of Allottee was terminated by the promoter.

4. After hearing both the sides and after considering the documents produced on record, the Ld. Chairman of MahaRERA Authority disposed of the complaint by giving direction to both the parties to execute the agreement for sale as per Section 13 of RERA Act, 2016 and the Rules and Regulations made thereunder

within 30 days from the said order.

5. Feeling aggrieved by the order of the Ld. Chairman MahaRERA, promoter has challenged propriety and correctness and legality of the order in this Appeal. The Ld. Advocate for the promoter mainly argued that the Allottee failed to discharge his obligation in respect of transaction of the said flat and moreover, the promoter has terminated the said allotment for just and proper reasons and accordingly informed the Allottee by a letter to that effect. He further submitted that once the allotment of the flat to the Allottee is validly and legally terminated, the complaint filed by the Allottee is not tenable and the relief sought for execution and registration of an agreement for sale as per the said allotment letter cannot be granted. On the other hand, the Ld. Advocate for Allottee supported the impugned order passed by Ld. Chairman of MahaRERA Authority. According to him the alleged termination letter issued by promoter to cancel the transaction is fabricated and said letter was never served on the Allottee. According to him promoter received full consideration of the flat and avoided to execute an agreement for sale in favour of the Allottee without justifiable reason. According to him impugned order is correct and legal and need no interference in the Appeal.

6. In such circumstances, the following points arise for my determination :

POINTS :

- 1) Whether the impugned order directing both the parties to execute and register an agreement for sale is proper

and legal?

2) What Order ?

My findings to the above points with reasons stated below are as under :-

- 1) Affirmative.
- 2) As per final order.

REASONS :

7. Admittedly, Allottee had booked flat No.A-1004 in Building No.107 admeasuring 404 Sq.ft. carpet area (607 Sq.ft. built up area) in the project namely Om Shri Shanti Kunj situated at Chembur, Mumbai. Copy of allotment letter dated 29.04.2010 is on record. It is revealed from the said allotment letter that promoter agreed to sale the flat for total consideration of Rs.22,50,000/- to the Allottee. It is further mentioned in the said allotment letter that Allottee had paid lumpsum amount of Rs.4,50,000/- to the promotee and agreed to pay balance amount of Rs.18,00,000/- within three months from the date of said allotment letter and further agreed to pay interest at a rate of 25% per annum on a due amount in case, delay is caused in making payment to the promoter. In clause 7 of the allotment letter, the promoter has specifically mentioned that the promoter shall enter into said purchase agreement with Allottee as per the allotment letter. Other terms and conditions of the transactions are also mentioned in the said allotment letter. Now promoter has made out a case that the said allotment is terminated as per letter dated 22.08.2017 issued by the promoter to the Allottee. It is revealed from the said termination letter that there was also another transaction between the parties in which promoter agreed to purchase the flat No.B-102/106 of

W/S

Allottee situated at Tilak Nagar, Kambodhi Co-operative Housing Society, Chembur for total consideration of Rs.60,00,000/-. It is further revealed that the promotee informed by letter dated 22.08.2017 that Allottee can retain his flat B-102/106 and flat No. A-1004 in building No. 107 will be cancelled and will not be handed over to the Allottee. Now Allottee has made out a case that this letter of termination dated 22.08.2017 is fabricated and bogus. According to the Allottee such a letter of termination was never served on him by the promoter. It is alternatively submitted on behalf of allottee that such termination is unilateral and without justifiable reason and cannot be relied upon. Copy of the letter dated 22.08.2017 is on record.

8. Both the parties have filed some copies of letters exchanged between them from time to time as well as copy of receipt of payment as well as copy of one page of Memorandum of Understanding and copy of letter issued by Kambodhi CHS, Chembur, Mumbai to the promoter for not purchasing the flat from the Allottee in view of notice issued by the wife of Allottee through her advocate to the said Society and claiming her own interest and right in the said flat. It is revealed from the pleadings as well as copies of documents on record that initially, Allottee agreed to purchase the flat bearing No. A-1004 of Om Shree Shanti Kunj project at Chembur, Mumbai from the promoter for total consideration of Rs.22,50,000/-. Copy of allotment letter shows that Rs.4,50,000/- were paid in lumpsum and balance of Rs.18,00,000/- was to be paid within three months. Now it is further revealed from copy of receipt as well as copy of one page of MOU between the

w/s parties that the promoter agreed to purchase the flat No B-102/106 situated at Tilak Nagar, Kambodhi CHS Ltd. Chembur for total consideration of Rs.66,00,000/- from the Allottee and paid Rs.16,00,000/- in cash of which the copy of receipt is on record. It is further seen from copy of one page of MOU between the parties that the Allottee had agreed to receive Rs.7,00,000/- in cash on 18.07.2014 and promoter agreed to pay Rs.43,00,000/- to the Allottee on or before 18.09.2014. It was agreed between the parties as seen from the copy of one page of MOU that out of Rs.43,00,000/-, promoter agreed to pay Rs.10,00,000/- in cash and Rs.33,00,000/- by cheque and promoter also agreed to pay 12% interest to the Allottee for delay in making the payment as mentioned above. Copy of the receipt dated 18.06.2014 is duly signed by the Allottee. Similarly, the copy of one page of MOU is duly signed by promoter as well as allottee on 18.06.2014. Now it is revealed from the copy of notice issued by one Pushpa Mohan Gavankar to Kambodhi CHS Ltd. Chembur that she is wife of Allottee and she had right and interest in flat No. B-102 situated in the said Society and Allottee has no right to sale the said flat and Society should not give consent for the said transaction to sell of flat No.B-102 of Allottee. It is also revealed from letter of Society dated 16.08.2017 addressed to promoter that in view of legal notice issued by wife of Allottee i.e. Pushpa Mohan Gavankar, that the promoter should not complete any deal regarding purchase of flat B-102 in the said Society. Genuineness of the documents, it is revealed that there are two transactions of two different flats owned by promoter and Allottee respectively. One flat is being sold by promoter to the Allottee whereas another flat is being sold by

W/S
Allottee to the promoter. Considerations of both the flats in both the transactions are different. Allottee has filed the complaint in respect of transaction of purchase of the flat from promoter. Flat to be purchased by Allottee is situated in the project registered with MahaRERA. The Ld. Chairperson of MahaRERA Authority allowed the said complaint by giving direction to both the parties to execute and register an agreement for sale as per Section 13 of RERA Act, 2016 and Rules and Regulations thereunder. Now promoter wants to come out of the responsibility of executing an agreement by making out a case that he had already terminated the allotment letter which was issued in favour of the Allottee in respect of flat for valid reasons. It appears that there is a dispute between the parties on account of sale and purchase of two different flats as well as the amounts paid to each other in respect of sale and purchase of the said two flats. After perusing the alleged letter of termination it is revealed that the promoter informed the Allottee to retain his flat i.e. B-102 and further cancelled the sale of flat A-1004 to Allottee and the amounts paid to each other were adjusted against the prices of the said flats. In fact Allottee is not ready to accept the service of said termination letter on him and he has alleged that said termination letter is fabricated and bogus. There is no material evidence with Allottee to support his allegations that the alleged termination letter is fabricated and bogus. It is revealed from copy of alleged termination letter that promoter issued said letter as promoter received copy of notice issued by wife of Allottee to Society and also letter of Society. Thus, wife of Allottee raised objection for transaction of purchase of flat by promoter from Allottee. Moreover, it is also seen from said letter of termination that

mys
promoter demanded interest on consideration paid by promoter to Allottee for purchase of Flat to which Allottee refused. Then, promoter informed Allottee in letter of termination that amount paid by Allottee will be adjusted against amount paid by promoter to Allottee for purchase of flat of Allottee. In fact, purchase of flat by promoter from Allottee is separate transaction which has no nexus with transaction of purchase of flat by Allottee from promoter. Moreover, transaction of purchase of flat by Allottee from promoter is governed by provisions of RERA Act 2016 as said project is duly registered with MahaRERA. However, ^{action} transfer of purchase of flat by promoter from Allottee is not governed by provisions of RERA Act, 2016 and project in which flat of Allottee is situated is not registered with MahaRERA. So, promoter is not justified in giving the reasons arising out of his transaction of purchase of flat from Allottee for terminating the disputed transaction of purchase of flat by Allottee from promoter. So, the alleged letter of termination dtd. 22.08.2017 is unilateral and moreover the alleged termination is without valid and sufficient cause. Moreover, such termination is not in accordance with terms and conditions mentioned in Allotment letter dt. 29.04.2010 by the promoter. So, promoter has failed to discharge the obligation as per Section 11(5) of RERA Act 2016 while issuing alleged letter of termination dated 29.04.2010. In such circumstances, considering the agreed position that the promoter had issued a letter of allotment of flat No.A-1004 in favour of Allottee as per allotment letter dated 29.04.2010 and agreed to sell the said flat to the Allottee, I am of the opinion that Allottee is justified in seeking the relief of execution and registration of an agreement of the said flat as per the allotment letter dated

W/S
29.04.2010 from the promoter. In fact Section 13 speaks about the execution and registration of an agreement for sale between promoter and Allottee as well as the mandatory terms and conditions of such transaction between the parties which are to be mentioned in such agreement for sale. So Section 13 of RERA Act, 2016 empowers the adjudicating officer to give direction to parties regarding execution and registration of an agreement of sale. Since Allottee had also agreed to sale his flat bearing No.B-106 to the promoter as revealed from receipt dated 18.06.2014 and one page of MOU dated 18.06.2014 on which signatures of both the parties are evident, I am of the opinion that promoter is at liberty to initiate Legal action before appropriate forum for getting executed the sale-deed of B-106 from the Allottee as per receipt dtd. 18.06.2014. Thus the impugned order passed by the Ld. Chairman of MahaRERA directing both the parties to execute and register an agreement is quite proper and legal and it needs no interference in Appeal. So I answer the issues accordingly.

In the result I pass the following order.

ORDER

- I) Appeal is dismissed.
- II) Impugned order dated 09.05.2018 passed by Ld. Chairman Authority in complaint No. CC005000000023311 is hereby confirmed.
- III) Parties to bear their own costs.

W/Collee 12-2-19.
[SUMANT M. KOLHE,]
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal, (MahaRERA)
Mumbai.