

**MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL UNDER RERA Act**

No. AT006000000000257

UMESH PURSNANI & ANR
B/4-5, Pink Rose CHS Ltd.
MMC Road, Mahim,
Mumbai 400 016.

.. Appellant

Vs.

SSD ESCATICS PVT.LTD.
Through its Directors
Jayesh Vinod Kumar Tanna and Others,
1, Ramkrupa, Devji Bhimji Lane,
Mathuradas Road, Kandivali (West),
Mumbai 400 067.

.. Respondents

Adv. Shweta Merchant i/b Solicis Lex for Appellants

Adv. Karan Bhosale for Respondents

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

Heard on : 29th August , 2018

Dictated/Pronounced on: 29th August, 2018

Transcribed on : 30th August, 2018

:-ORAL JUDGMENT:-

Heard.

1. This is Allottees' appeal questioning the legality and correctness of Order of Ld. Chairperson dated February 28, 2018 whereby the Promoter is allowed to complete the project and hand over possession



with occupancy Certificate to the Complainants/ Allottee ending June 30, 2018 failing which the Promoter shall be liable to pay interest to the Complainant from 1st July 2018 till the actual date of possession.

2. The Allottee has purchased two flats in the scheme floated by the Promoter and as per the terms of the Agreement the possession was to be handed over on or before 31.12.2013. The inter se Agreement also provided release of interest of 9% if the project is delayed on any account in terms of Section 8 of Maharashtra Ownership Flats Act from 31/12/2013.
3. In the complaint, the Complainant has in para 5 sub clause d) urged the Adjudicating Authority that in the alternative and without prejudice if the Authority comes to the conclusion that the complainant is not entitled to monetary compensation as per provisions of Section 18(1) of RERA then the Respondent / Promoter be ordered and directed to refund the amounts with interest and compensation towards cancellation and withdrawal of allotment in respect of Flat No. 1402 – B Wing and Flat No. 1403 – B Wing in the said project of the Promoter.
4. During the course of submission, it emerged from the Ld. Counsel for the Complainant / Allottee and the Allottee himself that this was indicated before the Ld. Chairperson at the time of the matter but in order to bail out the Promoter the contents as can be seen in the matter was incorporated. The grievance now is even the deadline as indicated in the impugned order is not strictly adhered by the Promoter.
5. The dreams of the purchaser of the apartment thus is frustrated as the Ld. Counsel has urged to reconsider her pleadings for withdrawal from the project by receiving refund of the amount.
6. Mr. Bhosale for the Promoter says during the course of hearing before the Ld. Chairperson the Allottee has made a submission that he has accepted revised date of possession and consequently the Allottee cannot be permitted to wriggle out of the said solemn undertaking reinforced even in the affidavit before the Appellate Authority.
7. On hearing both the Ld. Counsel and visiting the order under challenge the aspect of refund or permitting withdrawal from the


project in terms of Section 18(1)(b) of RERA the Allottee wants to withdraw from the project. These aspects need appreciation of evidence and the documents by the Adjudicating Authority. Hence the matter warrants re-enquiry and remand.

:- ORDER :-

1. The order under challenge of the Ld. Chairperson dated February 28, 2018 is set aside.
2. The matter is remanded to the Ld. Chairperson, MahaRERA or the Adjudicating Officer to hear the parties afresh and decide claims and contentions on merits.
3. The parties are at liberty to amend rival pleadings owing to changed circumstances if any.
4. No costs in the Appeal.
5. Parties to appear before the Authority on 6th September, 2018.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 29th August, 2018


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