

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

No.AT006000000000251

Ashish Rajkumar Bubna
Residing at 602 Tulip Salasar Garden,
Near G.C.C. Hatkesh, Mira Road (East),
Thane 401107

.. Appellant/s

V/s.

S.R. Shah Developers
A Partnership firm having its principal
Place of business at 1st Floor,
Rajdeep Building, above PP Jewellers, Station Rd.
Vasai (West), Palghar, and administrative office
At Building No. 22, Flat no. 104, 1st Floor,
Sector No.1, Shanti Nagar, Mira Road (E)
Mumbai 401 107.

..Respondent/s

Smt. Smita Vora for the Appellant.

Shri Hitanshu Bagga for the Respondent / Promoter S.R. Shah
Developers and Others.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 21st August, 2018
Dictated/Pronounced on: 23rd August, 2018
Transcribed on : 23rd August, 2018

:-ORAL JUDGMENT:-

Heard

1. This is Allottee's appeal questioning order dtd. April 9, 2018 of Ld. Chairperson, MahaRERA whereby the Ld. Chairperson directed the parties to execute and register the Agreement for Sale as per the provisions of

Section 13 of the Real Estate (Regulation and Development) Act, 2016 – RERA and the rules and regulations made thereunder, within 30 days from the date of the order till the possession dated on or before December 31, 2019.

2. The complainant in his complaint and particularly in para 20 clauses a) to h) sought several reliefs from the Authority under MahaRERA. For that purpose the complainant has in the body of complaint indicated the grounds elaborating the payments made from time to time totalling to Rs.20,72,250/- or Rs.21,97,750/- which includes the initial deposit of Rs.11,000/- dtd.15.02.2013 paid by allottee at the time of booking of the flat.
3. The complainant's advocate says if one proceeds to rely on the Letter of Allotment which specifies possession to be within 24 – 30 months then by stretching, the possession should have been given to the complainant / allottee by 15th August, 2015. Thus there is already a delay of 3 years.
4. The Ld. Counsel for the Promoter / Respondent says there was no covenant between the parties. Agreement necessarily presupposed its registration with competent authorities and whatever investment that has been made by Allottee / Complainant is mere investment, willingly deposited without any demand from Promoter.
5. The order of Ld. Chairperson on the above background of the factual scenario and in particular the script of complaint necessarily warrants interference. Two options are left, one to remand the matter to the Ld. Chairperson or Adjudicating Officer or to deal with the complaint as a whole. On the submissions from the Promoter, considering the spirit of RERA, I prefer to choose the latter part and instead of remanding the matter, I prefer to modify the order under challenge dated April 9, 2018.
6. I do not subscribe to the canvass projected by the Promoter that it was an investment by the Complainant or that without any demand the Complainant has deposited huge amount of Rs.. 21,97,750/-. This is an illusion in its character. It is not that the Complainant or the Promoter are inter se friends or in relationship which made the Complainant to part with such huge amount without creation of an obligation. There is no escape provided under RERA for accepting deposit towards purchase of price to be an investment and thereby excluding the applicability of statutory provisions contemplated either under Sections 18, 19, 31 or as the case may be of RERA. After revisiting the complaint as a whole, the Complainant has made multi-faced prayers one of which is directing the Promoter / Allottee to release rent of Rs.7000/- p.m. for the investment made by the Complainant. Using such terminology by the Complainant

will not exclude him from applicability of RERA. It will be an unfortunate screening of the Complainant for using the terminology as investment which indeed refers to the general trend of investment and getting the rewards therefor.

7. The contention that there was no agreement is fallacious, from available records, it should not be disputed, but the routine contemplation and Allotment Letter dtd. 15th February, 2013 read from any angle complies legal requisition mandated even under MOFA or RERA for a Promoter to adhere as a part of obligation.
8. To start with, there is specific reference of Flat No. 704 adm. 437 sq.ft. carpet area in the project Anand Kirti Tower situate at HDIL Layout Sector 7, Bldg. No. 1, A Wing. The consideration of the flat portrayed and agreed was Rs.21,97,750/-. The amount paid initially was Rs.21,86,750/-. Purchasers locking period for sale / transfer was one year from the date of allotment. The balance amount also includes the S.T., VAT, Society charges, Development charges and other charges. It also provides that Agreement for Sale can be executed between the parties after making the payment mentioned in the Letter of Allotment.
9. In the above situation, no other colour can be imposed to this booking confirmation and Allotment Letter reached by an Agreement between the parties to sell a flat perpetually in favour of the Allottee / Complainant. Nomenclature of such letter will not be allowing an elbow room to the Promoter to escape from rigours of RERA Act and the applicable laws then prevalent. The Allotment Letter indeed covers basic terms of the parties. One should not obliterate with definition of Agreement of Sale (Sec.2(c) and allottee (Sec.2(d) of RERA. The parties were under an obligation to adhere the letter.
10. The submission of Ld. Counsel for the Promoter that for want of registration such Allotment Letter will not be free to be accelerated, does not carry any weightage. If any responsibility is to be carved for non payment of stamp duty for such Agreement, the burden will have to be shared by the Promoter as seller of the property in the absence of specific Agreement to the contrary. The conjoint effect of prayer and the complaint necessarily indicate that the project is delayed by the Promoter and the Allottee/ Complainant cannot be made to suffer losses for no fault on his part. Import of Section 18 needs to be properly applied to. Moreso, the Hon'ble Lordship of High Court of Judicature at Bombay in a group of Writ Petition, being Writ Petition No. 2737 of 2017 in Neelkamal Realtors Vs. Union of India and others decided on December 6, 2017 elaborately discussed contingencies in which such Allotment Letter are executed or if the project is delayed the obligations cast on the Promoter when he gets his project registered with MahaRERA. The judgement of Hon'ble High

Court in the situation could not have been skipped from its operation and hence the order of Ld. Chairman calls for interference and modification.

-: ORDER :-

1. The directions of Ld. Chairperson in clause 3 of the order dt. April 9, 2018 of entering into an Agreement for Sale by the parties remains unaltered.
2. The Promoter / Allottee shall release an amount of Rs.7000/- per month in favour of the Complainant / Allottee from 13th February, 2018.
3. So far as arrears of Rs.7000/- till this date are concerned, the Promoter / Appellant is permitted to adjust the same towards recoverables from the Complainant / Allottee. Excess amount if any to be released in favour of the Allottee.
4. The Promoter / Respondent to release Rs.10,000/- in favour of the Complainant / Allottee, as cost of the appeal.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 21st August, 2018


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