

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

No.AT006000000010332

Goodtime Real Estate Development
Pvt. Ltd.
Peninsula Spenta,
Mathuradas Mills Compound,
Senapati Bapat Marg,
Lower Parel, Mumbai 400 013.

.. Appellant/s

V/s.

Gautamchand Salecha
1501/B Wing, Gundecha Garden,
Lalbaug, Mumbai 400 012.

..Respondent/s

Called out at 3.25 PM.

Adv. Ranjeev Carvalho a/w. Supriya Rele for the Appellant.

Shri Ganesh Salecha, s/o Gautamchand Salecha, the Respondent
present.

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

Heard on : 24th October, 2018

Dictated/Pronounced on : 25th October, 2018

Transcribed on : 25th October, 2018

:-:ORAL JUDGMENT:-

Heard extensively.

1. The Promoter has questioned the legality and correctness of order dated March 21, 2018 passed by the Ld. Chairperson, MahaRERA, Mumbai whereby the Promoter was directed to execute the Agreement for Sale as per provisions of Section 13 of RERA within 30 days from the date of the said Order and date of handing over



to possession was advanced to March 31, 2022. Failure to comply would result into fixing of liability.

2. The Promoter says that it was only an amount of Rs.11,50,000/- vide two cheques paid by the Allottee both dated 28th October, 2016 and a reminder was sent on 18th November, 2016 to the Respondents to pay next instalment of 68,23,956/- plus Service tax of Rs.3,10,180/-, TDS of Rs.68,929/- which would be due on 8th December, 2016. The Allottee by his communication dated 25th November, 2016 requested the Appellant to reverse the entire booking amount of Rs.11,50,000/- as the Allottee was unable to make further payments.
3. The Promoter by letter dated 20 December, 2016 accepted proposal of the Allottee and cancelled the allotment of the said flat to the Allottee and informed the Allottee that as per the terms agreed by the parties at the time of executing the Booking Form, the Allottee was liable to pay to the Promoter cancellation charges being 2% of the total consideration payable towards the said flat as the Allottees not only failed and neglected in making the payment of instalment of Rs.68,28,956/- due on 8th December, 2016 but also evinced his desire to cancel the allotment.
4. The parties had appeared before the Ld. Chairperson. Para 2 of the order of the chairperson informs that the Promoter had agreed to execute the Agreement for sale however with a rider that there are payments due from the Allottee and the Allottee ought to make the said payments at the time of registering. The Allottee also expressed their willingness to continue in the said project, however they submitted the interest being charged by the Promoter for the said payments is not reasonable. It was in this situation, the impugned Order was recorded.

5. The Ld. Counsel for the Promoter feels aggrieved with the observations and findings in respect of advancement of the date in view of contemplated date and I do not see any error in Authority doing so. The Ld. Counsel says, there was no justification for imposing interest by advancing the date of possession to 2020.
6. Both the sides were heard on the above score extensively. The son of Allottee who has argued the matter informs that he is satisfied if the amount of Rs.11,50,000/- is refunded to him as per rules of RERA.
7. As against these submissions the Promoter desires to deduct penalty that too of 2% on sale consideration. The deduction sought by the Promoter, is simply highlighting the pressed position of the Allottee and thereby illegal enrichment to him.
8. The provisions of RERA comprehensively deal with the welfare of the Allottee and equally concern of the Promoter. If the Promoter has, as could be seen in the present position, adhering to the norms and rules, before the Ld. Chairperson agreeing for Agreement, now the Promoter cannot be allowed to wriggle out of the same.
9. Since terms and text of order were virtually agreed upon I do not venture to grant adjournment as sought by Advocate for the Promoter.
10. The basic point repeatedly argued by the Promoter is about 2% deduction on cost of the flat which was due by the Allottee. Such exercise is erroneous in its character and cannot be acted upon. One sided terms need not be dictated. Consequently, the order under challenge needs to be modified, as the Allottee has desired to quit from purchasing the flat. The Allottee has agreed to grant a concession of levying interest of 6 months from the receivables.



11. In the above situation, following order is passed.

:- ORDER :-

1. Appeal is partly allowed.

2. Order under challenge is modified as under:

The Promoter / Appellant to refund Rs.11,50,000/- to the Allottee/ Respondent in the appeal, with interest @10.05% per annum effective from 1st April, 2017.

3. No costs.

4. This judgement shall not be treated as a precedent by other Allottees.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 24th October, 2018


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