BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000010873

Mr. Mohit Melwani
Adult Indian Inhabitant, residing at
142, Ashoka Apartments,
68 Nepean Sea Road,
Mumbai 400 006. ..Appellant

Versus

A.A. Estates Private Limited
RNA Corporate Park, Next to Collectors Office
Kalanagar, Bandra (East),
Mumbai 400 051. .. Respondent

Mr. Bharatkumar Jain a/w Jaisha Sabavala i/b Hariani & Co., Advocates for Appellant.
Ms. Dipashri Raorane, Advocate for Respondent.

CORAM : INDIRA JAIN J.,CHAIRPERSON
S.S. SANDHU, MEMBER(A)

DATE : 8th NOVEMBER, 2019.

JUDGMENT (PER : INDIRA JAIN, J.)

This appeal by an unsuccessful Allottee is directed against the order dated 22nd October, 2018 passed by the Learned Member-1, MahaRERA in Complaint No. CC006000000055294 thereby directing the

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Respondent / Promoter to execute Agreement for Sale with the Complainant on payment of statutory dues and refusing to refund the amount of consideration, ancillary charges with interest thereon and compensation as claimed by the Complainant for violation of the provisions of Sections 12 and 18 of 'The Real Estate (Regulation and Development) Act, 2016' (hereinafter referred to as "the Act").

2. For the sake of convenience, we would refer the appellant and respondent in their original status as complainant and respondent as referred before the Authority.

FACTUAL MATRIX:

COMPLAINANT'S CASE:

i] It is the case of complainant that in April 2010 he was interested in buying a residential flat and was exploring various projects. He came across respondent's project known as 'RNA Address' bearing MahaRERA Registration No. P51800004643 at Andheri (West), Mumbai. According to the complainant, after several meetings with the respondent's representative and assurances given to complete the project latest by June, 2014 he booked Flat No. 404 for the total consideration of Rs.1,79,72,225/-. Accordingly the Booking Form was executed between complainant and respondent on 19th April, 2010. Thereafter, on 28th June, 2010 respondent issued allotment letter in favour of complainant allotting the said flat in the project. In the letter of allotment, respondent confirmed that prior to execution of allotment letter 25% of the work had been completed and so a sum of Rs.43,84,116/- was payable by the complainant. Then complainant was continuously following up with the respondent between 2012-13 for execution of Agreement for

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Sale. He also made further payments from time to time as per the demands issued by respondent. It is contended that complainant paid total amount of Rs.1,07,11,535/- including service tax towards the flat. Despite continuous follow up respondent on some or other pretext kept on postponing the execution of Agreement for Sale;

ii] In view of substantial delay in the month of March, 2014 complainant intended to transfer his right, title and interest in the said flat in favour of Ms. Amrita Basu. For transferring the right, title and interest in the said flat, complainant requested the respondent its no objection but the respondent did not cooperate for the same;

iii] As complainant was left with no alternative and he was frustrated with respondent's attitude of neither permitting transfer nor completing the construction of the project within the assured time frame, complainant through his Advocate issued a letter dated 7th July, 2016 and called upon the respondent to refund the entire amount paid with interest @ 24% per annum thereon. It is alleged that respondent neither responded to the said letter nor refunded the demanded amount and therefore he was constrained to lodge a complaint with Economic Offences Wing on 29th May, 2017;

iv] Another grievance of complainant is that despite letter dated 7th July, 2016 clearly intimating the respondent that he is no longer desirous of continuing in the project, demand Notice was issued by respondent after two years thereafter in March 2018 intimating that 5th slab of the project is cast and complainant was required to pay sum of Rs.9,82,041/-. Immediately thereafter complainant contacted the representative of respondent and explained about his

election made way back in July 2016 to seek refund of the entire amount with interest thereon. However, representative of respondent explained the difficulties and requested complainant to consider continuing in the said project;

v] In view of the aforesaid, complainant on 13th April, 2018 called upon respondent to furnish sanctioned plans, commencement certificate, Intimation of Disapproval, details of registration of the project under RERA and copy of Agreement for Sale to be executed in respect of the flat. The said letter was never responded by the respondent;

vi] Complainant submitted that respondent had allotted the flat in April 2010 and committed to hand over possession by June 2014. Even according to respondent's demand Notice dated 29th March, 2018 the status of project was that only 5th slab of proposed 22 storied building was cast. At the time of registration of project with MahaRERA respondent stated the date of completion upto 13th floor of five Wings comprised in the said project as 31st August, 2022 i.e. after 12 years of commencement. Thus chronological events according to complainant are self explanatory to communicate that respondent not only neglected to comply with its initial commitment to complete the project by June 2014 but acted in an unreasonable manner by declaring the part completion of the project in the year 2022.

vii] The next grievance of complainant is that in the allotment letter respondent misrepresented to complainant that 25% construction has already been completed. Not only this, without the consent of complainant, respondent unilaterally increased the number of floors and changed the layout of the flat allotted to the complainant and

also reduced its area. It is contended that there is no flat on the fourth floor which matches the area of Flat No. 404 allotted to complainant. It is submitted that respondent has deliberately and inordinately delayed the development of the said project despite receipt of huge amount from complainant. Complainant even could not buy a new flat as hard earned monies of complainant have been blocked with the respondent since 2010. In this background, complainant alleged contravention of provisions of RERA and sought refund of the amounts paid by him together with interest and compensation.

DEFENCE:

i] The Promoter resisted the complaint and by filing written submissions stated that there is no violation of any provision of the Act of 2016 and complainant is not entitled to seek any relief from MahaRERA. It is stated that complaint has been filed just to harass the respondent as demand Notice dated 29.03.2018 after casting 5th slab in view of the terms and conditions of allotment letter was issued to complainant and complainant intended to avoid payments;

ii] Respondent then submits that in the allotment letter there is no agreed date of possession mentioned and therefore there is no violation of provisions of Section 18 of the RER Act. Regarding change in area of the flat, submission is that there is no change as alleged and respondent is still ready and willing to execute registered Agreement for Sale with complainant for Flat No. 404 in Wing 'C';

iii] With regard to refund, respondent submitted that no fault lies with the Promoter and so liability of refund cannot be fastened to Promoter. Respondent specifically submits that for the said project in which complainant has booked the flat committed date for possession as declared before MahaRERA Authority is December 2019 and not 2022 as alleged by complainant. It is stated that complainant has not made out any case for violation of any provisions of the Act and therefore complaint deserves to be dismissed;

3. Considering the rival submissions of parties, Authority declined to grant relief of refund, interest thereon and compensation and directed the parties to execute Agreement for Sale under Section 13 of the Act of 2016 as stated in para 1] above;

4. Being aggrieved complainant / allottee assails the order in the present appeal on the following grounds :

i] Appellant had withdrawn from the project on account of unreasonable and inordinate delay in handing over possession of the flat within the agreed date being June 2014;

ii] Complainant's withdrawal from the project was also on account of false statements, misrepresentations, change in plans and floors which have not been considered at all by the Trial Authority;

iii] There is a clear case of change of specifications of the project, change in building plans and change of plans in respect of flat which is evident from series of correspondence exchanged between the parties and documents uploaded on MahaRERA website and this crucial aspect has been completely overlooked by

the Authority. So far committed date to complete the project by June 2014 is concerned, it is stated by appellant that newspaper articles were published that project was to be completed by June 2014.

iv] An objection has been raised for not referring the matter to the learned Adjudicating Authority to adjudicate upon the aspect of quantum of compensation under Sections 12, 14, 18 and 19 of RER Act. It is contended that forcing a flat purchaser to stay invested in the project is nothing but putting a premium on the dishonesty of respondent. This is completely contrary to the aims and object of the Act of 2016. Based mainly on the above grounds appellant sought the following reliefs in this appeal :

a] to set aside the impugned order dated 22nd October, 2018 passed by the Authority;

b] direct the respondent to refund the entire amount paid so far by appellant together with interest thereon, compensation and costs;

c] any other order as deemed fit.

RESPONDENTS REPLY:

i] The respondent submitted affidavit in reply to the appeal memo and reiterated the points raised therein in written submissions placed later on record. According to respondent there is no breach of any of the provisions of RER Act including Sections 12 and 18. It is submitted that there was no oral assurance made to appellant of any date by which possession was to be handed over. It is contended that case of alleged oral assurances is based only on

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pleadings and complaint and the newspaper item published in the newspaper. In this connection, submission is that mere pleadings simpliciter without any contemporaneous material cannot be taken into consideration and so far as newspaper article is concerned it has no evidentiary value and cannot be the basis to suggest that June 2014 was committed by respondent to hand over possession. In support of the submission regarding evidentiary value to the newspaper article, respondent pressed into service judgement of the Hon'ble **Bombay High Court in Sunil S/o Ramdas Kotkar and Others V/s. State of Maharashtra & Ors. [(2005) 4 Bom. C.R. 117]** and particularly paragraphs 31 to 33 of the decision therein.

ii] So far as pleadings in complaint regarding commitment of respondent to hand over possession in June 2014 are concerned, respondent submitted that series of communications addressed by appellant to respondent are part of record. In those communications though complainant once sought relief of refund and later expressed his desire to continue with the project no where mentioned that respondent committed date of possession as June 2014. In this background, submission is that pleadings without being substantiated by any material cannot be taken into account.

iii] Relying heavily upon letter dated 13th April, 2018 sent by complainant to respondent it is further contended that complainant never sought refund in this letter as was claimed by a legal notice addressed to respondent by Advocate for appellant dated 7th July, 2016 and instead sought clear and unambiguous continuation in the project. The silence of complainant in this important correspondence clearly shows that June 2014 is a false and

fictitious date for possession stated by appellant and he had not approached the Authority and the Tribunal with clean hands.

iv] It is further submitted that letter dated 13th April, 2018 would demonstrate that complainant conditionally agreed to continue in the project and had also sought Agreement for Sale to be executed. The order passed by MahaRERA to execute Agreement for Sale is exactly in terms of letter dated 13th April, 2018 issued by complainant to respondent. It is alleged that conduct of complainant in issuing letters dated 7th July, 2016 and 13th April 2018 clearly shows that it is a case of approbation and reprobation which is impermissible in law. In this context judgement of the **Hon'ble Supreme Court in Rajasthan State Industrial Development & Investment Corporation V/s. Diamond Gem Ltd. & Anr. [(2013) 5 SCC 470]** is relied upon by respondent. It is further alleged that this was clearly done only to take advantage of newly introduced provisions under Section 18 of the RER Act which as a pre-condition to that Section requires that there is a fixed and agreed date of possession. Being aware of the fact that there was in fact no agreed date of possession, appellant narrated a false case to gain advantage of the newly enacted statutory legislation.

v] Another contention of respondent is that the project is Court-monitored and date of possession is fixed pursuant to orders passed by the Hon'ble Bombay High Court. In this regard, reliance is placed on the order dated 21st December, 2017 passed by the Hon'ble Bombay High Court.

vi] Respondent then submits that change in plans, layout of flat and change in area have been made the basis for refund under Section

12 of RER Act. In response to this, it is submitted that perusal of allotment letter would indicate that there is no fixed number of floors or height specified in the letter of allotment. Complainant has contended on the basis of slab-wise instalments set out in the Table regarding payments to be made by complainant on completion of certain slabs that height of the building was 16 floors. Respondent submits that payment schedule cannot be the basis to show the height of the building to be 16 floors. There is no whisper in the allotment letter that height of the building agreed was restricted to 16 floors. Replying to the alleged increase in carpet area, respondent submits that on account of amendment to The Development Control Regulations in 2012 respondent was required by law to amend the plans to accommodate for new regime of fungible FSI area. Respondent paid substantial premium to the Planning Authority and so converted some of the area initially shown as free of FSI being a portion of fungible FSI area. Thus revision was amended by law and respondent had no choice but to follow the same. The law is binding on respondent and any change in law with consequence thereon is equally binding on complainant too.

vii] Complainant was put to notice vide mail dated 11th September, 2018 and respondent provided all necessary details and documents including the draft Agreement for Sale to enable appellant to execute the same. Appellant was called upon to make necessary payment of stamp duty and registration charges to complete the process of execution and registration of the Agreement for Sale as sought in his letter dated 13th April 2018. Despite these genuine efforts on the part of respondent, appellant did not come forward for execution of Agreement for Sale and instead pursued the complaint before MahaRERA for refund of interest and compensation.

viii] Against the allegation of appellant that premises have been changed from two BHK to one BHK it is submitted that allegations are without merit. This contention was never raised before MahaRERA. It is submitted that flat allotted to appellant continued to have the same layout and number of rooms and only for the convenience one of the bedrooms has been shown as study room. In the plans sanctioned by the Planning Authority there is no restriction in law in using a room which has been shown in the plan as a study room for the purpose of bedroom or any other room. The only restriction in law is prohibition from using a dry area as a wet area.

ix] Respondent then refers to minutes of the meeting dated 18th August, 2018 of the flat purchasers to submit that the minutes were circulated also to the complainant with several other flat purchasers. There are in all 177 flats purchasers in the said project. The meeting was attended by around 76 flats purchasers. At this meeting agreed date for possession of December 2019 was specifically mentioned and agreed by the buyers. In this very meeting height of the building being 22 floors and the increase in the carpet area and increase in price thereof was discussed and agreed by the flat purchasers. Appellant was also invited for the said meeting. Those who were not present were also forwarded a copy of the minutes of meeting including the appellant. Respondent submits that appellant never disputed minutes of the meeting dated 18th August, 2018 which makes it further clear that there is no violation of Section 12 of RERA.

x] Responding to the objection raised by appellant that application ought to have been referred to the learned Adjudicating Officer, it is contended by respondent that the submission is based on erroneous reading of Section 71 of RER Act. According to respondent,

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reference to the Authority can also be made in cases where compensation is required to be adjudged. When the Authority has found no breach or violation of Sections 12 and 18 of RERA there is no question of adjudging compensation and referring the matter to the Adjudicating Officer.

xi] In the above background, respondent prays to dismiss the appeal as no interference is warranted in the first appeal.

5. i] Responding to the submissions made on behalf of respondent that date of completion of Wing 'C' as declared on MahaRERA website is December 2019 appellant stated that even then respondent failed to complete the project within reasonable time and failed to abide by the statutory duty to complete the project within reasonable time. In such a situation appellant cannot be forced to continue with the project and therefore he is entitled to refund with interest and compensation in accordance with the provisions of RER Act.

ii] In rejoinder, learned Counsel for complainant submitted that considering the past and as there is no substantial progress in construction of project, appellant is apprehensive that respondent may not be in a position to hand over possession by December 2019 as agreed before MahaRERA. In reply, respondent submits that in case any breach or violation of the date of possession fixed by the Hon'ble Bombay High Court and declared to the Authority is committed that would have its own consequence and on such breach appellant would be entitled to adopt whatever remedy is available in law. It is contended that committed date of December 2019 is not yet reached and the apprehension of appellant is just imaginary and without any basis.

6. Heard the Learned Counsel for parties in extenso. On perusal of pleading in complaint and defence raised by Promoter before the Authority and this Tribunal and considering the grievances of parties in present appeal, following points arise for our consideration in this appeal and we have recorded our findings against each of them for the reasons to follow:

	POINTS	**FINDINGS**
i]	Whether committed date of possession was June 2014 as alleged by complainant ?	In the negative.
ii]	Whether Promoter failed to deliver possession of the flat to complainant as per letter of allotment, without there being situation beyond his control ?	In the negative
iii]	Whether there has been change in the building plans / layout of the flat and height of the building attracting breach of Section 12 of the Act of 2016 ?	In the negative
iv]	Whether complaint was required to be referred to the Adjudicating Authority in view of Section 71 of RERA as the same being complaint under Section 12 read with Section 18 of the Act of 2016?	In the negative

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v] Whether impugned order dated 22nd October, 2018 is sustainable in law ? — In the affirmative

vi] Whether order under challenge calls for interference in this appeal ? — In the negative

REASONS

Points [i] and [ii] :

7. These two points are interlinked and therefore considered together. It is not in dispute that complainant booked Flat No. 404 in respondent's project known as 'RNA Address' situated at Andheri (West), Mumbai duly registered with MahaRERA. It is also not in dispute that allotment letter dated 28.06.2010 was executed between the parties. According to complainant the committed date for handing over possession was in June 2014. To substantiate this contention, appellant relies upon pleadings at three places in complaint reiterating the date of possession as June 2014 and newspaper article dated 1st August, 2016. Needless to state that pleadings and averments of facts even at multiple places in the complaint alone would not be enough to accept that respondent agreed the date of June 2014 for handing over possession particularly when respondent has controverted specifically in the submission advanced before MahaRERA, reply and written submissions in appeal.

8. On newspaper article submission of appellant is that grievance of the flat purchasers has been referred in the said Article dated 1st August, 2016 under the caption "Promised deliver deadline was mid to end 2014" The law is well settled when it comes to newspaper article that newspaper article has no evidentiary value and cannot be the basis to suggest that June 2014 was committed by respondent to appellant. The

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decision of the **Hon'ble Bombay High Court in Sunil s/o Ramdas Kotkar & Ors. Versus State of Maharashtra and Ors (supra)** reiterates the well settled propositions of law on evidentiary value of newspaper article. So mere pleadings simpliciter and the newspaper article referred by complainant would not be enough to indicate that respondent agreed or committed date of possession as June 2014. It is further evident from the various correspondence exchanged by appellant including two crucial communications dated 7th July, 2016 and 13th August, 2018 that appellant never mentioned the committed date for possession as June 2014. The silence of appellant in the series of communications speaks for itself and clearly demonstrates that the submission being without any base and support is devoid of merits.

9. Another grievance of complainant is that despite committed date of possession respondent unreasonably delayed completion of project and as laid down by the **Hon'ble Supreme Court in Kolkata West International City Pvt. Ltd. Versus Devasis Rudra [(2019) SCC Online SC 438]** buyer is not expected to wait for possession for an unreasonable period. In this case, letter of allotment and Agreement for Sale specified a date for possession as 31st December, 2008 with further grace period of six months ending on 30th June, 2009. In this context, the Hon'ble Supreme Court observed in paragraph 11 that there was a delay of nearly 7 years from the expected date of completion which date is beyond what is reasonable. In the case on hand apparently letter of allotment is silent on agreed or fixed date of handing over possession. There is no whisper in the series of correspondence exchanged by appellant with respondent showing the fixed date for handing over possession as June 2014. As no date of possession is fixed mere pleadings and news article would not assist the appellant to substantiate his case regarding committed date of possession as June 2014. In this

factual background, we are of the humble view that Authority relied upon by appellant would not be applicable in the facts of the present case.

10. On similar lines, appellant relies upon decision of the **National Consumer Tribunal in Alok Kumar Versus Golden Peacock Residency Private Limited and Anr. [(2019 SCC Online NCDRC 314]** in which the ratio in case of **Kolkata West International City Pvt. Ltd. Versus Devasis Rudra (supra)** came to be followed. The facts in the instant case are distinguishable from the facts in Alok Kumar and therefore this decision also does not support the case of appellant.

11. It can be further seen from the order passed by Hon'ble High Court on 21st December, 2017 that a revised date for completion of project came to be fixed on 31st December, 2019. This being so, we do not find substance in the grievance of complainant that committed date for possession was June 2014 and as NCDRC has ordered refund of paid 200% per annum in case of **Mithilesh Anand and Ors. Versus A.A. Estates Pvt. Ltd. MANU/CF/0449/2018** appellant is also entitled to such refund. It can be seen from the record that matter before the NCDRC was heard and reserved for order. Before the order could be delivered, the Hon'ble High Court passed the order dated 21st December, 2017 and fixed a revised date for completion of the project as 31st December, 2019. It appears that order of the Hon'ble High Court was not brought to the notice of NCDRC as the matter was heard and reserved for orders. As Hon'ble High Court has fixed the date of completion of project as December 2019 we do find substance in the submission of Promoter that project is a Court-monitored project enabling respondent to complete the same in a timely manner. Therefore on careful evaluation of the pleadings and documents including allotment letter we cannot find a grain of truth in the submission of appellant that

committed date of possession by respondent at the time of booking of flat in April 2010 was June 2014. Further as no fixed date for handing over possession could be established as June 2014 and the revised date for completion of project fixed as 31st December, 2019 by the Hon'ble High Court, we find no merit in the contention of appellant that the Promoter unreasonably and without there being circumstances beyond his control delayed handing over possession of the flat. We therefore answer Points [i] and [ii] accordingly.

Points [iii] and [iv]:

12. It is the contention of appellant that the building originally comprised of 16 floors and respondent has stated on MahaRERA website that building would comprise 22 floors. It is also contended that letter of allotment clearly showed that flat was two BHK flat and now respondent modified the plans converting the same to one BHK flat. Even area of flat has been revised by more than 145.74 sq.ft. as is evident from mail dated 11th September, 2018 produced by respondent. These changes to the Building Plans and also in respect of flat allotted to appellant were carried out without informing the appellant and without his consent.

13. In this connection, appellant relies upon payment schedule set out in the letter of allotment which indicates the percent of amount payable by appellant upon slab-wise construction and the highest floor showed in the payment schedule as 16 floors. Perusal of letter of allotment would demonstrate that there is no fixed number of floors or height specified in the said letter of allotment. The submission of appellant is based on slab-wise instalments set out in the Table recording payments on the completion of certain slabs. Except this payment schedule there is nothing on record to show that 16 floors was the height of building

agreed between the parties as in our view payment schedule cannot be decisive of the height of the building.

14. As regards increase in carpet area respondent has submitted that on account of amendment to Development Control Regulations carried out in 2012 respondent was required to amend the plans to accommodate new regime to fungible FSI area. The contention of respondent that he was required to pay a substantial premium to the Planning Authority so as to convert some of the area initially shown as free of FSI as being a portion of fungible FSI area is now controverted by appellant. It is also not in dispute that Development Control Regulations were carried out in 2012 and revisions mandated by law required the respondent and the appellant to follow the same.

15. As regards the allegation of the premises being changed from two BHK to one BHK it is apparent that contention was never raised before the Authority. For the first time in affidavit in rejoinder submitted in April 2019 in this appeal, this contention has been raised. Respondent has explained that there is no change in the layout or number of rooms of the said flat. According to respondent subject flat continues to have the same layout and number of rooms. It is only for the convenience that one of the bedrooms has been shown as a study room in the plan sanctioned by the Planning Authority. This is done without affecting the rights of appellant. Respondent submitted that there is no restriction in law in using a room which has been shown in the plan as study room for the purpose of a bedroom or any other room. The only restriction in law is using the dry area as a wet area. This explanation given by respondent has not been seriously controverted by appellant. Considering the fact that amendment of Development Control Regulations came into effect in 2012 and change of fungible FSI concept on the part

of competent authority empowered to issue approvals and permissions came to be introduced, respondent was required to amend the plans according to the amendment. In view of this subsequent change in law, we do not find substance in the submission of appellant that flat booked by him was changed from two BHK to one BHK thereby reducing the area.

16. Appellant then comes with a grievance that impugned order is liable to be set aside on the ground that matter was not referred to the Adjudicating Officer though reliefs under Sections 12 and 18 of the Act of 2016 were sought before MahaRERA. On perusal of Section 71 of RER 2016 it is apparent that reference to the Authority is to be made in a case where compensation is required to be adjudicated upon. In the case on hand, Authority came to the conclusion that there was no breach or violation of either Sections 12 or 18 of the Act. In view of the reasons assigned by us in the foregoing paragraphs we do find that there is no breach or violation of either Section 12 or Section 18 of the Act. There was nothing to be adjudicated upon and therefore Authority rightly refused to refer the matter to Adjudicating Officer. This point is thus answered accordingly.

Points [v] and [vi]:

17. Before we conclude, an objection raised by respondent needs to be addressed. It is submitted that vide letter dated 7th July, 2016 appellant sought refund and vide letter dated 13th April, 2018 unconditionally agreed to continue in the project. He also sought by letter of April 2018 for Agreement for Sale to be executed. Based on these two communications it is contended by respondent that complaint was filed in three months from the date of the second communication i.e. 13th April,

2018. By this letter appellant called upon respondent to furnish necessary details and certain documents though the documents were uploaded on RERA website. It can be seen from the specific defence raised by respondent that meeting of flat purchasers was held and minutes of the meeting were circulated to the flat purchasers including appellant. Appellant was called upon to attend the meeting but he did not. Copy of minutes of meeting dated 18th August, 2018 shows that at this meeting date for handing over possession as December 2019, raising height of the building to 22 floors and increase in the carpet area in view of the amendment to Development Control Regulations came to be discussed and agreed by 76 flat purchasers out of 177 flat purchasers in the project. Though minutes of the meeting were circulated to the appellant he did not raise objection to the same. Even if it is assumed that appellant was not present in the meeting and agreement by other flat purchasers cannot be thrusted on him, it is evident from the e-mail dated 11th September, 2018 that respondent had informed appellant regarding revision in the area. By this e-mail, appellant provided necessary details and documents and draft Agreement for Sale. Despite this communication appellant did not raise any objection to draft Agreement for Sale.

18. Referring to the communications particularly dated 7th July, 2016 and 13th April, 2018 respondent submitted that conduct of appellant amounts to a case of approbation and reprobation claiming refund at one point of time and continuation in the project on the other which is impermissible in law. In support thereof, judgement of the **Hon'ble Supreme Court in Rajasthan State Industrial Development & Investment Corporation V/s. Diamond Gem Ltd. & Anr. [(2013) 5 SCC 470]** is relied upon.

19. In the present case, complainant does not dispute communications dated 7th July, 2016 and 13th April, 2018. He does not deny that initially by the first communication he sought refund and by the later communication continuation in the project. As record shows complaint was filed within three months from the second communication seeking refund of amount, interest and compensation. These two letters clearly demonstrate the conduct of appellant in raising inconsistent and ever changing stand which in our considered view is hit by the theory of approbation and reprobation and impermissible in law.

20. Thus looked at from any angle, we find that complainant has no case on merits so far as the reliefs claimed in the complaint are concerned. As such appeal being meritless deserves to be dismissed.

-:ORDER:-

i] Appeal stands dismissed;

ii] No order to costs;

iii] In view of the provisions of Section 44(4) of the Act of 2016, copy of the order shall be sent to the parties and to the Learned Member of the Authority.

21. At this stage, learned Advocate for appellant seeks extension of interim stay so as to enable appellant to challenge the order in second appeal. Learned Advocate for respondent strongly objects the same and submits that considering the facts and circumstances, interim stay may not be continued. In the interest of natural justice, interim protection to continue till the statutory period for filing second appeal is over.

(S.S. SANDHU) **(INDIRA JAIN J.)**

ed.