

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

No.AT006000000000170

Shakun Realty Pvt. Ltd.
Through its Director Mr.Sachin K. Chokhani
102/103 A Wing, 1st floor,
Rizvi Park, S.V. Road,
Santacruz (W), Mumbai 400 054.

.. Appellants

Shri Pradeep Bedre
Smt. Smita Bedre
75/C-22 Ankita CHS Ltd.
SVP Nagar, MHADA, Andheri(W),
Mumbai 400 069.

..Respondent/s

Adv. Harshad V. Bhadbhade a/w Anwar Landge for Appellant.

Shri Pradeep Bedre and Smt. Smita Bedre the Respondents present

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 25th April , 2018
Dictated/Pronounced on: 25th April, 2018
Transcribed on : 26th April, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. Order dated 8th February, 2018 recorded by Ld Adjudicating Officer, MahaRERA is the cause of concern by the Promoter. There is no contest that the allottee has entered into an Agreement dated 2nd December, 2013 for purchasing a flat for Rs.25 lakhs and the date of possession was by December 2014. In order to meet financial exigencies, there was a Tripartite Agreement between Promoter, the allottee and financier HDFC dated 14.12.2014 whereby approximately

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an amount of 20,00,000/- was released to the credit of Promoter by deducting an amount of Rs. 2,57,593/- towards interest payable till February 2015 and disbursed only Rs.17,42,407/-.

2. Ld. Counsel for the Promoter has criticized the order on the point that the Ld. Adjudicating Member has recorded the order beyond the scope of complaint. The allottee did not initially urge from exiting from the project as his demand was for refund of interest and other incidental expenses. The Ld. Counsel says that no fault is attributable to the Promoter about delaying the project or handing over possession as building is complete with all amenities except grant of Occupancy Certificate by authorities which is hindered due to objection raised for erection fire fighting. Government of Maharashtra Letter addressed to the Commissioner, Vasai Virar Corporation has added to miseries of the Promoter to get the occupancy certificate in time. He says these features should have been considered in not adhering to the date of possession by December 14, 2014.
3. The Ld. Counsel also addressed referring to the Agreement which incorporates that if possession is not handed over by December, 2014 on failure to comply the interest as applicable to prevalent law, shall be paid. He has criticised the direction of the Authority in para 12 of the Order to release an amount to Rs.3,20,000/- and Rs.1,28,200/- purportedly received in cash on 1st April 2014 and 7th June 2014.
4. After hearing the Ld.Counsel coupled with examining the documents and the allottee in person, I find that the Order under challenge does not require any interference barring the directions of so-called payment of cash indicated hereinabove.
5. The argument that the complainant initially was silent as to the intention to withdraw is apparent. However that will not diminish the complainant's right to exit from the project if he establishes the failure on the part of promoter to complete the project in time schedule. Effect of Section 18 of RERA will have to be read coherently and it cannot be read in isolation. The cumulative effect is, if the allottee at the time of leading evidence before the authority makes his intention clear to withdraw from the project by pointing infirmities on the part of the promoter including deficiencies in the project, he is entitled to exist / withdraw from the transaction with interest component in tune and mandate of Section 18 of RERA Act.

6. The record illustrate after the complaint during exchange of affidavit in the matter, Authority is dealt with stand of the allottee who has clarified his intention to exit from the project. Hence it cannot be said that the promoter was taken by surprise. He knew the cost and consequences and also aware that the failure to adhere to deadline of giving possession, Law will take its course. This ground in the fact situation deflates.
7. The point of deducting the amount by HDFC agitated will not hold the field because the interest though was deducted but in the final order the Adjudicating Officer has saddled responsibility / liability upon the promoter to pay interest effective from March 2015. This is logically correct as the expected date of possession agreed upon was December, 2014 and since the project was delayed, the Authority has rightly saddled such interest component from March 2015.
8. The theory projected by the allottee OF releasing cash 3,20,000/-and Rs.1,28,200/- though tried to be supported by showing as Flat costing which illustrate cost as Rs.29,23,200/- cannot be acted upon. The flat cost to which the allottee gave reference does not flow in tune to the agreement between the parties and in particular dated 2nd Dec. 2013 and Tripartite Agreement 2nd Dec. 2013 specify the payment schedule and the cost of flat to be Rs.25 lakhs. The reference of handing over cheques and its return is an illusion divorced from legal proof. Even the circumstances will not suggest about such release of cash in the terms of schedule incorporated therein.
9. With all said and done barring the above deduction indicated referred in paragraph 12 of the order, the order does not call for any interference.

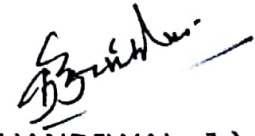
:-ORDER:-

1. The appeal is partly allowed.
2. The order dated 8th February, 2018 of Ld. Member and Adjudicating Officer, MahaRERA is modified.

3. The liability saddled of cash deposit of Rs.3,20,000/- and 1,28,200/- is negated.
4. The other part of compliances as indicated in the order to remain intact including charges of stamp duty.
5. No cost .

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 25th March, 2018


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