

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

No.AT006000000000245

Apl. Yashomangal Developers
ARK Prem Developers
C 1/2 Srishti Centre,
Pune Nagar Road, Ramwadi,
Opp. Novotel, Pune

.. Appellant/s

V/s.

Yashwant Dashrath Sawant
Building No.1, Flat No. 402,
Amarante, Sector 9E, Kalamboli,
Navi Mumbai 410 218

..Respondent/s

No.AT00500000010541

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.. Appellant/s

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..Respondent/s

Adv. Vivek Salunke for the Appellants.

Adv. Pankaj Sutar for Respondents.

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 finally.



1. This is Promoter's appeal challenging order of Ld. Member and Adjudicating Officer, MahaRERA dtd. 18th January 2018, whereby the Promoter has been directed to pay interest @ 10.05 % from the respective dates of receipt of amount till they are repaid together with Rs.20,000/- towards the cost of the complaint. The Ld. Adjudicating Member has given concession of six months for the delay in completion of the project.
2. The allottee has booked Flat no. 204, Building No. 1, D Wing of Promoter's registered project Alfa Greenfield, situated at Wadgaon, Mawal, Pune. The allottee has released more than 92% of the sale price. The sale price is specified as to be Rs. 22,39,410/- and the complainants have till now paid of sum of Rs.23,11,212/- which includes stamp duty, service tax, VAT, registration charges and MSEB charges to the Promoter / Appellant. The Agreement inter alia provided that the Promoter to hand over possession of the flat by December, 2013. Since the Promoter failed to complete the project the allottee has, by invoking provisions of Section 18 of RERA urged for refund of the moneys paid / deposited to the Promoter.
3. Mr. Salunke, Ld. Counsel for the Promoter / Appellant says that the Ld. Adj. Officer erred in applying Section 8 of MOFA which is by way of a surprise to the appellant. The complainant was seeking recourse under Section 18 of RERA Act. However, there was no justification for the Adjudicating Officer to travel to Section 8 of MOFA. According to Mr. Salunke when the Ld. Adj. Officer records a positive finding about the causes for delay to be beyond the control of the Promoter, because of this though substantial construction was made, the remaining work was stopped, it was not imperative for the Ld. Adj. Officer to have directed release of interest and refund of the amount. According to Mr. Salunke, impact of clause 21(5) of the inter se agreement between the parties could have been given its due weightage. The Ld. Counsel has referred to the show cause notice issued by (Pg.154) the Environment Department dated 22/07/2013 and even subsequent notice dtd. 21.5.2014 (Pg.157-158).
4. The sum and substance from Mr. Salunke is that the project was stalled by Authorities of Environment clearance virtually from 22/7/2013 till 1/3/2017 and its concession should have been generated to the credit of the Promoter / Appellant while recording the impugned order.
5. In the above backdrop of submissions, one should not be oblivious to the impact of RERA as a whole. The Preamble of the Statute needs a harmonious reading to the applicability of Section 18 or other relevant provisions of RERA Act. Section 88 of RERA conceives application of other laws not barred, - the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. Section 71 deals with powers to adjudicate compensation under Sections 12,14,18 and 19 of RERA – Proviso informs that if any complaint is pending before Consumer Disputes



Redressal Forum or Consumer Disputes Redressal Commission or the National Consumer Redressal Commission established under Section 9 of the Consumer Protection Act, 1986 on or before the commencement of this Act, such complainant with the permission of such Forum or Commission may withdraw an complaint pending before it and file an application before the Adjudicating Officer under RERA. Sec. 71(3) enlarges the scope of Authority to the Adjudicating Officer to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub section (1) he may direct to pay such compensation or interest as the case may be, as he thinks fit in accordance with the provisions of any of those sections. Thus conjoint reading of Section 71 the powers of the Adjudicating Officer and impact of Section 88 does not exclude powers of Adjudicating Officer to refer to Section 8 of MOFA which has been rightly done by the Adjudicating Officer. Even otherwise, the very Agreement upon which the Promoter / Appellant is banking inter alia provides to applicability of MOFA to the transaction between the parties. In the situation the submission of Mr. Salunke being not within the bracket of legal terms needs to be overlooked and will not be weighing in favour of the Appellants to brand the order under challenge to be illegal or perverse.

6. Section 18 of RERA Act to which reference is given by both the sides, naturally will have to be read in tune with Preamble and Section 19(4) of RERA, 2016. In the instant case if the complainant / allottee, wishes to withdraw for the project, then in terms of Section 18 (1) and the proviso he is entitled for interest including compensation in the manner as provided under the statute.
7. Reading the notices of Environment Dept., it is obvious the Promoter has played a jugglery about the area of construction. At some places he says his project is not crossing limits of 20,000 sq.mtrs. however the clearance and the Commencement Certificate from competent Town Planning Authority is more than 20,880 sq.mtrs. It may be the Promoter feels that the project is developed into phases but the clearances were applied for and received for the project as a whole. One should not be oblivious to the fact that the Agreement of the Allottee to purchase was on 30th November, 2011 and the stay by Environment (Pg.158) was effective from June 2014 there was no injunction for the Promoter / Appellant to atleast complete the project within the deadline to the extent of phase wherein the interest of allottee is involved. If the Promoter was facing problems with Environment Dept., again it was expected of him to have indicated so in the Agreement. However there is suppression of facts when the Promoter entered into agreement.
8. The Ld. Counsel for the allottee says there are other complaints against the Promoter wherein the Promoter has faced action for contravening the

permission and carrying illegal alteration to the tenement however, it will not influence to the import of order under challenge or in the appeal.

9. Taking stock of entire material, the Ld. Adjudicating Officer has rightly extended 6 months concession to the Promoter and it cannot be further extended beyond a certain limit to the detriment of the Allottee. Analysis of facts of each case is pre-requisite of Section 18 of RERA. The ultimate sufferer is the Allottee who has from the relevant record appears to have procured home loan and was compelled to release home loan and interest to the financer.
10. Incidentally the appeal of the allottee challenging the same order will not survive and dismissed.
11. In the situation the order does not call for interference.

-: ORDER :-

1. Appeal no. AT00600000000245 and AT00500000010541 dismissed.
2. The Promoter / Appellant to pay cost of Rs.10,000/- to the allottee.

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