

BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT006000000010871

M/s Siddhivinayak Developers  
A partnership firm formed and  
Registered under the provisions of  
Indian Partnership Act, 1932  
Having its registered office at  
Survey No.22, Opp. Patidar Bhavan,  
Shahad Mohone Road,  
Shahad (W), Tal. Kalyan,  
Dist. Thane-421 103  
Through its Partner  
Shri Anil Girdharilal Chabria

Versus

... Appellant  
(Promoter)

Mr. Deepak T. Tejawani  
Age 38 yrs., Occ: Service,  
having address at 201, Murli  
Manohar Palace, Behind Kalani  
Chowk, Near Venus Chowk,  
Ulhasnagar-4

Tal. Ulhasnagar, Dist. Thane.

... Respondent  
(Allottee)

(Mr. Hemant D. Patil, Advocate for Appellant  
Respondent in person a/w Mrs. Asha Thakur, Advocate)

**CORAM : SUMANT M. KOLHE,  
MEMBER (J)**

**DATE : 19<sup>TH</sup> SEPTEMBER, 2019**

**JUDGMENT: (PER SUMANT M. KOLHE, MEMBER (J))**

The correctness, legality and propriety of impugned order dated 27.9.2019 passed by Member & Adjudicating Officer, MahaRERA in the complaint No. CC0060000000001644 is assailed in this appeal.

2. In brief, facts of the case are as under :-

**Status of the parties**

Appellant is Promoter. Respondent is an allottee. I will refer the parties as their status of "promoter" and "allottee".

**Case of Allottee**

The allottee had booked a flat No.506 in "C-2 Wing" of registered project namely "Siddhi" situated at Shahad, Kalyan. The promoter had assured the allottee to give possession of flat in July, 2016 as per online

advertisement of the said project. The allottee demanded the refund of the amount along with interest as possession of flat was not handed over as per agreed date. The allottee had paid Rs.3,50,000/- (Three Lacs Fifty Thousand) in cash to the promoter of which the promoter did not issue the receipt to allottee. So, allottee preferred the complaint No.CC0060000000001644 against the promoter.

#### **Defence of Promoter**

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The promoter denied that July, 2016 was the date of handing over possession of the flat as per online advertisement of the project. It is contended that online advertisement was lastly updated on 10.4.2017 in which the date of possession shown as July, 2016 is not at all advertised by the promoter. It is also contended that the promoter has not engaged any agency to make such advertisement of the project. It is further contended that at the time of registration of project, the date of possession is mentioned as 1.9.2020. It is denied that allottee paid Rs.3,50,000/- (Three Lacs Fifty Thousand) in cash to the promoter and the receipt thereof was not issued to allottee.

#### **Decision of MahaRERA**

3. After hearing both the sides and considering the evidence on record, Learned Member & Adjudicating Officer, MahaRERA allowed the complaint No.

CC0060000000001644 and directed the promoter to refund the amount as per form at Exhibit A along with interest and to pay the cost of Rs.20,000/-. The charge of said amount was kept on fiat booked by the allottee till satisfaction of claim of refund and interest and the allottee was directed to execute the deed of cancellation of the agreement for sale on satisfaction of his claim for refund and interest.

4. Feeling aggrieved by the order, the promoter has preferred this appeal.

5. Heard Learned Counsel of both the sides at length. Perused papers and impugned order.

6. The following points arise for my determination.

POINTS

1. Whether impugned order is sustainable under the law ?
2. What order ?

My findings to the above points for the reasons stated are as under –

1. Partly affirmative
2. As per final order.

### **REASONS**

#### **POINT Nos. 1 & 2**

##### **Material facts**

7. The promoter had launched the project namely "Siddhi" at Shahad, Kalyan. The allottee booked the flat No.506 in "C-2 Wing" of the said project. The promoter assured the allottee to give possession of the flat in July, 2016 as per online advertisement of the project. Admittedly, since the promoter failed to hand over possession of the flat to the allottee on or before July, 2016, the allottee decided to withdraw from the project and demanded the refund of the amount paid to the promoter along with interest.

##### **Liability of online advertisement**

8. The promoter has made out the case that he never assured the allottee to hand over possession of the flat on or before July, 2016. The promoter denied that he published online advertisement of the project in which July, 2016 was shown as deadline for handing over possession of the flat. According to the promoter, the alleged advertisement of the project was not published by the promoter nor given it for publication to any agency. The promoter admits that there

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was such online advertisement of the project in which the date of handing over possession of the flat is shown as July, 2016. The promoter also admits that the project shown in such advertisement is the project launched by the promoter. If online advertisement was there in respect of the project of the promoter then the promoter cannot absolve the liability in respect of correctness of such advertisement. The promoter has not taken any action against the agency which published such online advertisement of the project. If the promoter had not engaged any agency, the promoter would have definitely initiated legal action against such agency for publishing an advertisement of the project without obtaining the permission of the promoter. So, the promoter will have to take the responsibility of correctness and genuineness of contents of such advertisement of the project. The allottee is justified from withdrawing from the project once possession was not handed over as per agreed date i.e. July, 2016.

**Claim for refund with interest**

9 The particulars of amounts paid by the allottee from time to time along with the dates, receipts number and amounts are given in form at Exhibit A. So, the allottee is justified in getting the refund of the amounts of which the receipts, numbers are shown in form at Exhibit A. The

Learned Member & Adjudicating Officer, MahaRERA has correctly granted the relief of refund of the amount along with interest as per form at Exhibit A. I would like to point out that entry of Rs.3,50,000/- (Three Lacs Fifty Thousand) is also shown as cash paid on 2.4.2015 in form at Exhibit A. The promoter has disputed this cash payment of Rs.3,50,000/- (Three Lacs Fifty Thousand). The impugned order is passed on the basis of refund of amounts shown in form at Exhibit A which include cash payment of Rs.3,50,000/- (Three Lacs Fifty Thousand).

**Cash payment not substantiated**

10. If we carefully peruse the evidence on record, it is revealed that the allottee had not adduced the evidence to substantiate and prove the cash payment of Rs.3,50,000/- (Three Lacs Fifty Thousand). There is specific entry to that effect in the roznama of original proceeding of the complaint. The allottee intended to prove the claim of cash payment of Rs.3,50,000/- (Three Lacs Fifty Thousand) on the basis of evidence in electronic form i.e. recorded conversation between the allottee and the promoter in respect of cash payment of the said amount. However, the allottee decided to waive his liability of proving the claim on the basis of evidence in electronic form. Thus, there is absolutely no reliable and cogent evidence to show that the allottee

substantiated his claim of cash payment of Rs.3,50,000/- (Three Lacs Fifty Thousand) which is shown at the bottom in form i.e. Exhibit A. In fact, Learned Member & Adjudicating Officer, MahaRERA ought to have made it clear that the claim of cash payment of Rs.3,50,000/-(Three Lacs Fifty Thousand) is not substantiated and proved by the allottee.

**Refund excluding cash payment**

11. The amounts shown in form at Exhibit A except the entry of Rs.3,50,000/-(Three Lacs Fifty Thousand) dated 2.4.2015 shall be refunded along with interest to the allottee. Thus, impugned order is incorrect and improper as far as cash payment of Rs.3,50,000/-(Three Lacs Fifty Thousand) is concerned since form at Exhibit A containing the particulars of the amounts include cash payment of Rs.3,50,000/-(Three Lacs Fifty Thousand).

**Conclusion**

12. There is necessary to modify the impugned order to the effect that except cash payment of Rs.3,50,000/-(Three Lacs Fifty Thousand) dated 2.4.2015 as shown at the bottom of form A at Exhibit A, the rest of amounts mentioned in said form shall be refunded along with interest by the promoter to the allottee. Thus, impugned order is partly proper, correct and legal and it requires to be modified as



discussed above. So, I answer points No. 1 and 2 accordingly. In the result, I pass following order.

**ORDER**

- 1) Appeal No.AT006000000010871 is partly allowed.
- 2) Impugned order dated 27.9.2018 passed in complaint No. CC0060000000001644 by Member & Adjudicating Officer, MahaRERA is modified only to the extent of excluding cash payment entry of Rs.3,50,000/- dated 2.4.2015 from form at Exhibit A attached with impugned order.
- 3) Rest of the amounts shown in form at Exhibit A shall be refunded by promoter to allottee as per the impugned order.
- 4) In peculiar circumstances, parties to bear their respective cost.
- 5) Copy of judgement be sent to the parties and MahaRERA as per Sec.44 Sub Sec. 4 of the RERA 2016.

Date: 19.09.2019

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19-09-19.  
(SUMANT KOLHE)  
MEMBER(J)

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