

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL UNDER RERA Act

No.AT006000000000256

1. Reshma Nitin Rankhambe
2. Nitin Ashok Rankhame,
Both adults Indian Inhabitants,
Residing at Flat No. 1305, 13th Floor,
Guru Ataman, D Wing, Gauripada,
Near Yogidham, Kalyan (W),
Thane 421 301. .. Appellant/s

V/s.

1. M/s. Patel Group & Co.
A partnership firm having its address
At Shop Nos. 9 & 10, HIG 93, MHADA Colony,
Konkan Vasahat, Opp. Birla College,
Kalyan (W), Thane 421 301.

2. Mr. Hasmukh Patel
an authorized signatory of
M/s Patel Group & Co.

3. Mr. Rittu Wasnik,
Partner of M/s Patel Group & Co.
Both having their address at
Shop Nos. 9 & 10, HIG 93, MHADA Colony,
Konkan Vasahat, Opp. Birla College,
Kalyan (W), Thane 421 301. ..Respondent/s

Adv. Rajesh B Jain for the Appellant.

Adv. Abir Patel for the 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 Complainant's appeal questioning the legality and correctness of order dated 3rd April, 2018 recorded by Ld. Member & Adjudicating Officer, MahaRERA whereby refusing to entertain the complaint basically moved in terms of Section 18 (1) (b) of RERA Act for refund of the amount deposited by the Appellant / Complainant.
2. The Ld. Counsel for the Appellant / Complainant minutely dealt with provisions of Section 18 and earlier orders dtd. 13/12/2017 and dtd. 6/6/2018 passed by Ld. Adjudicating Officer of MahaRERA in other matter wherein also the case propagated was of withdrawal and the Ld. Adjudicating Officer gave benefit in favour of such complaint in terms of section 18 (1) (b) Proviso permitting quitting from the project and entitlement of the allottee for refund with compensation / interest.
3. The Complainant booked Flat no. 702 in Building no. A-4 in Respondent's project Patel Colossus, which was to be completed by December, 2017 and possession was to be given on or before March 2018. In order to meet the requirement of purchase of flat, the Complainant alleged that they have sold their other property and paid an amount of Rs.12,55,358/- to the Promoter in between as part consideration followed by a Letter of Allotment dt. 20th October, 2014. The case projected by the Complainant is, since there was no progress on the site even after enquiry hence the Complainant sought cancellation of the booking and the Promoter paid an amount of Rs. 12,55 358/- whereupon the Complainant released original receipts of the Promoter. It is admitted position that so far Rs.4,50,000/- released by the Promoter in favour of the Complainant / Allottee and a cheque of Rs.11 Lakhs dtd. 30th June 2017, issued was dishonoured. Feeling aggrieved by such dishonour of the cheque and loss of interest made, the Complainant / Allottee sought jurisdiction of MahaRERA in terms of Section 18 (1) (b) of RERA directing refund of amount from the Promoter.
4. The Ld. Counsel for the Allottee says the order under challenge is per se illegal. It is not in consonance given to earlier order dtd. 13.12.2017 passed in Jalaja Menon V/s. Ayyas Abdul Sayyed and order dated 6.6.2018 passed in the matter of Sachin Titkare V/s. M/s. Sai Ashray Developers Pvt. Ltd.
5. There is no contest to the afore referred pronouncement of the Ld. Adjudicating Officer. Since the Ld. Counsel had vociferously referred to the order in the two matters before the Ld. Adjudicating Officer, indeed they were succinctly dealing with withdrawal of the Allottee therein after

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implementation of RERA effective from May 2017. In the instant case the contract between the parties by virtue of the Letter of Allotment dtd. 20.10.2014 has commenced and by virtue of Complainant's seeking cancellation and the Promoter accepting the terms ultimately has concluded on 2nd July 2016 in terms of termination. It was only a question of adjustment of the amounts payable by the Promoter to the Allottee. The impact and impetus of RERA in such contingency will not flow to generate effect of Section 18(1) (b) or 18 (1) (b) Proviso as well in advance, prior to coming into force of RERA the conclusion between the parties of determination reached finality. To repeat, in the two referred Judgements the project was ongoing. It was duly registered. The action initiated by the Complainant was after registration of the project and since the Complainant noticed that the project was delayed they thought it better to quit / withdraw and take shelter of Section 18(1) (b) Proviso.

6. There is no quarrel that quoting of Section will not vitiate exercise of powers or deter and preclude a person from rights. The facts projected cannot be obliterated to squeeze the rights accrued to the Promoter's contractual obligations. Bouncing of cheque is a matter of concern. However for that purpose taking scope and shelter of RERA and in particular effect of Section 18 or Section 19 will not run to favour of the Complainant for redressal. The exploration of facts with legal concept in the order under challenge, in the above scenario, cannot be branded to be dealt with in a tearing hurry by the Ld. Adjudicating Officer since the reasoning being sound and just, warrants no interference.

-: ORDER :-

1. Appeal dismissed.
2. No costs.

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