

**BEFORE THE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL, MUMBAI**

**Appeal No. AT006000000010802**

**M/s. Unique Shanti Developers LLP**

Harsh Plaza, 1<sup>st</sup> Floor, 100 Feet Road,

Opp. Sector II, Mira Road (E),

Thane - 401 107.

**...Appellant**

**Versus**

**1. Mrs. Malaika Monis**

**2. Mr. Patrick Monis**

Both residing at A/204, Golden

Green CHS 2, Holy Cross Rd,

I.C. Colony, Borivali-(West),

Mumbai – 400 103.

**...Respondents**

*Adv. Namita Shirke i/b. Shri Suraj N. Naik, Advocates for Appellant.  
Shri Sunil Nadar a/w. Shri Akshay Pare, Advocates for respondents.  
Mr. Patrick Monis, respondent no.2 in person.*

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

**DATE : 19<sup>TH</sup> November, 2019.**

**JUDGMENT (PER SUMANT KOLHE, MEMBER(J))**

The impugned order dated 29<sup>th</sup> August, 2018 passed by the Learned Member and Adjudicating Officer in complaint No. 23760 of 2018 is challenged in this appeal.

2. The appellant is promoter. Respondents are allottees. We refer the parties as per their status of promoter and allottees.

3. 'Unique Signature' is the project launched by the promoter at Mira road. Allottees had booked flat no. 206 and flat no. 207 in the said project. Promoter agreed to hand over the possession of flats on 31<sup>st</sup> December, 2017. The project is registered with MahaRERA Authority under the RER Act, 2016. The promoter failed to hand over the possession as per agreed date. Allottees have withdrawn from the project and claimed refund of the amount paid to promoter along with interest under Section 18 of RER Act, 2016. Complaint No. 23760 was filed by allottees against the promoter before MahaRERA Authority.

4. Promoter has not disputed the delay. Promoter tried to justify the delay by assigning the reasons beyond his control. It is the case of promoter that the competent Authority did not issue Occupancy certificate though construction of the building was completed. According to the promoter, temporary injunction was granted by the Court in respect of some other property which is having no nexus with the property of present project but competent authority failed to appreciate this in proper perspective and incorrectly delayed the process of issuance of Occupancy certificate. It is denied that promoter deliberately delayed to hand over the possession to allottees. It is contended that building is duly completed and Occupancy certificate is awaited and claim for refund of the amount with interest as made by allottees should be rejected.

u/s

5. After hearing both the sides, Learned Member and Adjudicating Officer of MahaRERA Authority allowed complaint No. 23760 and directed the promoter to refund the amount along with interest and cost to the allottees.

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

7. Heard Learned Counsel of both the sides. Perused the impugned order and documents filed on record.

8. The following points arise for our determination :

**POINTS**

- W/S
- i] Whether the impugned order is just, proper and correct ?
  - ii] What Order ?

Our findings on the above points for the reasons stated below are as under :-

**FINDINGS**

- i] Affirmative.
- ii] Appeal is dismissed.

### **REASONS**

9. Agreement for sale between promoter and allottees was executed on 29<sup>th</sup> October, 2015. Promoter agreed to hand over the possession of flats on 31<sup>st</sup> December, 2017. Admittedly, promoter failed to hand over the possession of flats as per specified date i.e. 31<sup>st</sup> December, 2017 in an agreement of sale. Admittedly, promoter has not received Occupancy certificate. The project is duly registered with MahaRERA as per RER Act, 2016. Rights and obligations of both the parties are governed by RER Act, 2016. As per Section 18 of RER Act, 2016, if the promoter fails to hand over the possession as per the agreed date in an agreement for sale and as per terms and conditions of agreement for sale, the allottee is having an option to withdraw from the project and claim entire amount along with interest paid to the promoter or to stay in the project and claim interest for delayed period of possession. By filing present complaint, the allottees have preferred first option for refund of amount paid with interest. Therefore, the promoter is under obligation to refund the entire amount along with interest to allottee. Promoter has made an attempt to show that delay was not intentional and deliberate and delay is caused due to reasons beyond his control. Once agreed date for handing over the possession is crossed and the promoter fails to hand over the possession as per agreed date, the right accrues to the allottee to get refund with interest by withdrawing from the project. Efforts on the part of the promoter to complete the project and genuine reasons beyond control of the promoter to complete the project cannot be considered and accepted to limit the claim of allottees for refund of the entire amount along with interest. In Writ Petition No.

W/S

2737/2016, Neel Kamal Realtor case, the Hon'ble Bombay High Court has laid down that, -

"Provisions of Rera Act do not rewrite the clause of completion or handing over possession in agreement for sale. S.4(2)(1)(C) enables the Promoter to give fresh timeline independent of the time period stipulated in agreement for sale so that he is not visited with penal consequences laid down under Rera. In other words, by giving opportunity to the promoter to prescribe fresh time line u/s. 4(2)(1)(C) he is not absolved of the liability under agreement for sale."

So the allottees are justified in getting back the entire amount paid by them to the promoter along with interest.

10. Learned Member and Adjudicating Officer has correctly applied the spirit of Section 18 of RER Act, 2016 and allowed the complaint by directing the promoter to refund the amount along with interest. The impugned order is just, proper and legal. It needs no interference and appeal is liable to be dismissed.

WS

11. Allottees have submitted an application for permission to withdraw the amount which is deposited by the promoter as per proviso (5) to Section 43 of RER Act, 2016. Learned Counsel for allottees argued that allottees are entitled for withdrawal of said amount towards recovery of the amount as per the impugned order. We would like to point out that the impugned order is challenged by promoter in the first appeal before us. In order to entertain and hear the first appeal, mandatory condition of depositing the amount was

fulfilled by the promoter by depositing the said amount as per proviso (5) to Section 43 of RER Act, 2016. Now, the decision of first appeal may be further challenged by the aggrieved party in the second appeal. In fact, statutory period is also provided for filing such second appeal. In such circumstances, it is not just and proper to allow the application for withdrawal of the amount unless the period of second appeal is over. So the claim for withdrawal of the amount stands granted subject to condition that appellant is entitled to withdraw the amount after the period of second appeal is over.


12. So we answer point No. (i) in the affirmative and point no. (ii) accordingly. We, pass the following Order :

### **ORDER**

**[i]** Appeal No. AT/006000000010802 is dismissed.

**[ii]** Allottees are permitted to withdraw the amount deposited as per proviso (5) to Section 43 of RER Act, 2016 after the period of second appeal is over.

**[iii]** No order as to Costs.

  
(S. S. SANDHU)  
MEMBER(A)

  
(SUMANT KOLHE)  
MEMBER(J)

RMB/-