

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO. 0006000000010827

M/s. Balaji Construction Company,]
Through its Proprietor,]
MR. ANIL THAKURDAS KURSIJA,]
Office-202, Abhimaan-H, Damani Estate,]
LBS Road, Nr. Teen Hath Naka Signal,]
Thane (W)-400 602.]... Appellant/s
(Promoter).

Vs.

HARISH AWTANEY,]
R/at-2404, Dheeraj Gaurav Heights,]
Link Road, Andheri, Mumbai-400 053.]... Respondents.
(Allottee)

Mr. Sunil Dongare, Authorized representative for Appellant/s.
Advocate Ms. Manisha K. Keswani for the Respondent.

CORAM : SUMANT M. KOLHE, (Member J.)

DATE : FEBRUARY 22, 2019.

Appeal Under Section 44 of MAHARERA ACT 2016.

ORAL JUDGMENT :

1. Being dis-satisfied with order dated 10.10.2018 passed by adjudicating officer, Mumbai in complaint No. CC006000000023409 regarding refund of amount along with interest and costs to the Allottee, promoter has preferred this Appeal under Section 44 of RERA Act, 2016.

2. The dispute arises out of the following facts :-

Appellant is the promoter. Respondent is the Allottee. I will refer the parties as per their original status as allottee and promoter.

Promoter had launched a project namely Trinity Oasis, Bhayanderpada, Ghodbunder Road, Taluka and District Thane. Allottee/Respondent had booked flat No. 2503 in building No. S3 in the said project. Promoter agreed to deliver possession of the flat on 31.12.2014 to the Allottee. Allottee had paid total consideration of Rs.20,00,000/- to the promoter on 15.04.2014. Project was delayed. Promoter failed to hand over the possession of the flat as per agreed terms to the Allottee. As the promoter failed to hand over the possession of the flat as per agreed date, Allottee filed complaint before MahaRERA authority under Section 31 of RERA Act, 2016 and claimed refund of total consideration amount paid to the promoter along with interest and costs by withdrawing himself from the said project.

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3. Promoter had made out a case before the Authority that Allottee is not the home buyer and they had made investment of Rs.20,00,000/- with the promoter. It is also the case made out by the promoter that by way of security for the said investment of Rs.20,00,000/-, agreement for sale of the flat was executed in favour of the Allottee and the said agreement for sale was nominal. It is also the case of promoter that project consists of 24 storeys building and agreement was executed on 23rd April, 2014 and the date of completion of the said project was mentioned as 31.12.2014 and the period of Eight months for carrying out completion of 24 storeys building is quite impossible and improbable in ordinary course of nature and the alleged agreement for sale is only by way of security of the investment of Rs.20,00,000/- for one year.

4. It is further contended that after one year, the promoter has refunded the consideration of Rs.20,00,000/- to the Allottee as per agreed terms. So the promoter has prayed for rejection of complaint.

5. After hearing both sides and considering the evidence on record, the Ld. Adjudicating officer, Mumbai allowed the complaint and directed promoter to pay consideration of Rs.20,00,000/- along with interest and costs to the Allottee and also permitted the Allottee to withdraw from the project.

6. Feeling aggrieved by the order of Ld. Adjudicating officer, Mumbai Appellant has preferred this Appeal. It is mainly argued that Allottee was not interested in purchasing the flat and Allottee wanted to invest amount of Rs.20,00,000/- for one year and agreement for sale was executed in favour of the Allottee only by way of security for the said investment amount of Rs.20,00,000/-. It is also argued that the said consideration of Rs.20,00,000/- is refunded to the Allottee after one year as per agreed terms. On the other hand, the Ld. Advocate for the Allottee argued that the case made out by promoter regarding execution of an agreement of sale by way of security for investment of Rs.20,00,000/- is not supported by any evidence. It is further submitted that the intention of the parties is quite evident from the contents of an agreement for sale clearly shows that the said transaction was of sale of flat and consideration of Rs.20,00,000/- was paid by the Allottee to the promoter and promoter had agreed to deliver the possession of the flat on 31.12.2014.

7. In view of rival contentions of both sides, the following points arise for my determination.

POINTS

- 1) Is it proved by the promoter that agreement for sale was executed in favour of Allottee by way of security for their investment of Rs.20,00,000/- with the promoter ?
- 2) It is proved by the promoter that he refunded the consideration amount of Rs.20,00,000/- to the Allottee ?
- 3) Whether Allottee is entitled for refund of the amount along with interest and costs as prayed?
- 4) What order ?

My findings to the above points are as follow :

- 1) Negative.
- 2) Negative.
- 3) Affirmative.
- 4) As per final order.

REASONS

8. It is not in dispute that promoter had received Rs.20,00,000/- from the Allottee. According to the promoter, Allottee had made investment of the said amount for one year and promoter had refunded the said amount to the allottee after one year. It is not in dispute that an agreement for sale is duly executed in respect of the transaction between promoter and allottee on 23.04.2014. Perusal of contents of agreement for sale clearly shows that promoter agreed to sale flat to the allottee for consideration of

Rs.20,00,000/- and also agreed to hand over the possession of the flat on 31.12.2014. It is very difficult to believe and accept the case made out by promoter that agreement for sale was executed by way of security for investment of Rs.20,00,000/- by the allottee with the promoter. In fact there is no rebuttal evidence with promoter to show that the agreement for sale dated 23.04.2014 is nominal and not to be acted upon by the parties. Thus, the agreement for sale is quite evident whereby promoter agreed to sale flat to the allottee for consideration of Rs.20,00,000/-. It is case of promoter that the promoter has refunded the said amount to allottee. However, allottee has made out a case that the said amount was accepted for and on behalf of his nephew namely Shri Amit Awtaney and amount of Rs.20,00,000/- which is refunded is received for separate transaction and by Mr. Amit Awtaney and not by Allottee.

9. Copy of letter dated 01.06.2015 produced on record clearly shows that consideration of Rs.20,00,000/- as paid by the promotee was actually paid to Mr. Amit Awtaney and the said amount was accepted by the Allottee Harish Awtaney for and on behalf of Amit Awtaney. So copy of letter dated 01.06.2015 is evident to show that promoter issued the said letter to Mr. Amit Awtaney and not to the Allottee and moreover, the amount of Rs.20,00,000/- was refunded to Amit Awtaney, though those amount was accepted by Harish Awtaney for and on behalf of Amit Awtaney. Now the case made out by promoter that Allottee got executed the said letter from promoter under pressure appears to be after thought. If at all the letter dated 01.06.2015 was executed by the promoter under pressure exercised by Allottee on him, promoter ought to have

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taken some legal action against the Allottee in respect of the said letter. Neither promoter has lodged complaint in police station nor filed criminal case against the Allottee for exercising alleged pressure on promoter for executing the letter dated 01.06.2015. In such circumstances, it is crystal clear that the alleged refund of Rs.20,00,000/- as made by the promoter to the Allottee is actually made to Amit Awtaney and Allottee simply accepted for and on behalf of Mr. Amit Awtaney. There is no separate and independent evidence with the promoter to show that consideration of Rs.20,00,000/- in view of agreement for sale dated 23.04.2014 is refunded to the Allottee. In this matter promoter has failed to hand over the possession of the flat to the Allottee as per agreed terms as mentioned in agreement for sale i.e. 31.12.2014 and Allottee has withdrawn himself from the project and claimed refund of the consideration amount along with interest from the promoter as per Section 18 of RERA Act, 2016. Section 18 RERA Act reads as follows :

Section 18 :Return of amount and compensation.

(1)If the promoter fails to complete or is unable to give possession of an apartment, plot or building –

(a)In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b)Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees,

in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Provided *that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

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(2) *The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.*

(3) *If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the matter as provided under this Act.*

10. It is quite evident from the above Section 18 of RERA Act

2016 that on failure of the promoter to hand over the possession of the flat to the Allottee as per agreed date and failure to complete the project as per agreed terms, Allottee can withdraw himself from the project and Allottee is entitled to claim refund of total amount of consideration paid along with interest from the promoter. Since promoter has not disputed the fact of payment of Rs.20,00,000/- to him on the part of Allottee, Allottee is justified for refund of the said amount along with interest which is provided under Section 18 of RERA Act, 2016. So, I answer point No.1 and 2 in negative and point No.3 in affirmative.

11. Ld. Adjudicating officer has correctly considered the submissions of both the sides and appreciated the evidence as well as spirit behind Section 18 of RERA Act, 2016 and directed the Respondent to pay the consideration amount of Rs.20,00,000/- along with interest to the Allottee and also the costs. Order passed by Ld. Adjudicating officer is quite proper, legal and just. It needs no interference in the Appeal. In the result, I pass the following order.

ORDER

- I) Appeal No. AT006000000010827 is dismissed.
- II) Impugned order is confirmed.
- III) Appellant to pay Rs.2,000/- towards costs of this Appeal to the Respondent and shall bear his own costs.

Wf Cellbe
22/02/19

[SUMANT M. KOLHE,]
JUDICIAL MEMBER,

Maharashtra Real Estate
Appellate Tribunal, (MahaRERA)
Mumbai.

22.02.2019.