

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

**Appeal No.AT006000000010456**

Bhailal Danabhai Parmar

Age \_\_\_\_ years, Occupation : Retired

Residing at C/o 66/520, Motilal Nagar,

No.3, M.G. Road,

(Allottee)

Goregaon (W)Mumbai 400 014.

... Appellant

Versus

1) Member & Adjudicating Officer,

Maharashtra Real Estate

Regulatory Authority,

having office at 3<sup>rd</sup> Floor,

A Wing, Slum Rehabilitation

Authority,

Administrative Building,

Anant Kanekar Marg,

Bandra (East),Mumbai 400 051

(Authority)

2) Mr.Rajesh Arvind Surti

Residing at 501/601,Duplex

Heights CHS Ltd.,

Parasram Puria,T-6,Lokhandwala,

Andheri West,  
Mumbai-400 053

(Promoters)

3) M/s Raj Builders and Developers  
having office at Ground Floor,  
Raj Pantheon, Hanuman Nagar,  
Near Bharat Hotel,  
Goregaon (West),  
Mumbai-400 104.

... Respondents

(Mr. Manoj Jaiswal, Advocate for Appellant  
Exparte against Respondents)

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**CORAM : SUMANT M. KOLHE,**

**MEMBER (J)**

**DATE : 30<sup>TH</sup> SEPTEMBER, 2019**

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

The legality, correctness and propriety of order dated 9.5.2018 passed by Learned Member, MahaRERA in complaint No. CC006000000022836 is assailed in this appeal.

### **Status of the parties**

2. The appellant is allottee. The respondent No.1 is Authority. Respondent Nos.2 and 3 are the promoters. I will refer the parties as "allottee" "authority" and "promoters" .

### **Details of transaction**

3. The allottee had booked flat No.601 in B wing of saleable component of SRA project launched by the promoters. The allotment letter was issued in favour of allottee. The promoters failed to execute an agreement for sale even though more than 10% of consideration of flat was paid to them. The promoters executed registered agreement for sale in favour of Mr.Ramesh Trivedi and Mrs. Yashoda Trivedi in respect of flat No.601 and the promoters indulged into unfair trade practice.

4. The complaint No.CC006000000022836 came to be filed by allottee against the promoters. The allottee had prayed for relief of execution of agreement for sale in respect of flat No.601 in his favour and for possession of flat.

### **Defence of the promoters**

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The promoters had filed reply and contended that they had provisionally issued allotment letter dated 16.3.2009 in favour of allottee and allottee had assured to strictly comply with terms and conditions of allotment letter. It is also contended that allottee made initial payment of Rs.4,11,000/- (Rs.Four Lacs Eleventh Thousand) and thereafter, did not pay any amount to the promoters. It is further contended that allottee is in arrears of payment of price of Rs.6,85,000/-(Six Lacs Eighty Five thousand) towards fourth instalment on completion of work of slabs. It is contended that the promoters issued several reminders but allottee did not respond to them. It is also contended that allottee had demanded the refund of his paid amount. The allotment letter issued in favour of allottee stood cancelled for non-payment of price as per the schedule of payment. The allottee was the Secretary of the Society and used to visit the office of the promoters. The draft agreement was handed over by the promoters to allottee some time in or about September, 2013 and told the allottee to pay stamp duty, service tax, VAT. It is further contended that the promoters issued the cheques of Rs.1,00,000/- in the name of allottee and also of Rs.1,00,000/- in the name of wife of

allottee as allottee had demanded the refund of paid amount. The allottee and his wife received the payment as per the cheques. The allottee had collected the remaining amount of Rs.5,500/- in cash. The promoters had forfeited the rest of 50% amount. It is contended that allottee has lost the status of allottee and not entitle to get any refund of the amount from the promoters.

5. After hearing both sides and considering the documents on record, the Learned Member & Adjudicating Officer, MahaRERA directed the promoters to pay Rs.4,11,000/- with simple interest at the rate of 10.50% per annum from the date of payment of the amount till its refund. The promoters were also directed to pay Rs.20,000/- towards the cost to the allottee. The promoters were warned that they should not indulge into unfair trade practice.

#### **Decision challenged**

6. Feeling dissatisfied with the order, the allottee has preferred this appeal.

#### **Hearing of Appeal**

7. Heard the learned counsel for allottee. Perused the papers on record. Read impugned order. The Respondents

failed to appear and argue this appeal in spite of sufficient time was given to them.

8. In such circumstances, following points arise for my consideration.

### **POINTS**

1. Whether impugned order is sustainable in law ?
2. Is it necessary to modify impugned order ?
3. What order ?

My findings on the above points for the reasons stated below are as under.

### **FINDINGS**

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

### **POINTS NO.1 AND 2**

9. At the outset I would like to point out that provisional allotment letter was issued in favour of allottee in the year 2009. Allottee had paid Rs.4,11,000/- (Four Lacs Eleventh

Thousand) to the promoter. Allottee did not pay any amount towards the price thereafter to promoters. The amount of Rs.6,85,000/- (Six Lacs Eighty Five Thousand) was due towards the balance price against the allottee. The promoters have made out the case that they told the allottee for several times to pay the balance amount of the price of flat but the allottee did not pay any heed. Admittedly, there is no execution and registration of agreement for sale between the parties. The promoter cancelled the allotment of allottee by issuing the letter as the allottee has failed to pay the balance price of flat. Admittedly, the promoters had issued the cheques of Rs.1,00,000/- each in favour of the allottee and his wife separately and thus paid total amount of Rs.2,00,000/-. According to the promoters, an amount of Rs.5,500/- was also paid in cash and the promoters had forfeited the remaining 50% amount on account of cancellation of allotment of the allottee. It is pertinent to note that the promoters had given the draft agreement to the allottee even after cancellation of allotment letter in favour of the allottee. So, the conduct of the promoters in handing over the draft agreement to the allottee clearly shows that the promoters had given up the letter of cancellation of allotment of the allottee and handed over the draft agreement to the allottee for execution of an agreement for

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sale. Admittedly, transaction could not proceed further and there was no execution and registration of sale agreement between the parties. According to the promoters, the allottee failed to arrange for stamp duty and registration charges for execution of an agreement for sale. It is also alleged that the allottee failed to pay the balance price of flat. The promoters have specifically made out the case that the allottee demanded the refund of amount paid to the promoters on cancellation of allotment of the allottee. It cannot be ignored that it is a redevelopment project. The promoters had issued the letter in favour of the allottee and his wife as the promoters had taken possession of their respective rooms in old building which was demolished for the purpose of launching a project. So, it is crystal clear that the amount of Rs.1,00,000/- paid by the promoters by separate cheques to the allottee as well as to the wife of allottee is pertaining to compensation in respect of acquisition of their respective rooms in old building which was demolished for development purpose. So, the payment of total amount of Rs.2,00,000/- by two different cheques to the allottee and his wife has no nexus with the refund of the amount which was paid by the allottee towards the price of flat to the promoters. In such circumstances, the promoters are liable to refund the total amount of Rs.4,11,000/- to the



allottee along with interest as per the provisions contemplated under RERA, 2016. It is true that impugned order is passed in favour of the allottee directing the promoters to pay Rs.4,11,000/- with simple interest at the rate of 10.50% per annum from the date of payment of amount till its refund. However, the allottee has challenged the said order in this appeal and prayed for relief of execution of the agreement in respect of flat No.601 in favour of the allottee. The allottee has brought to the notice of Learned Member & Adjudicating Officer, MahaRERA in this matter that flat No.601 which was allotted to the allottee has been sold out by the promoters to Mr. Trivedi and Mrs. Yashoda Trivedi and accordingly executed the registered agreement for sale in their favour. Thus, flat No.601, of which provisional allotment letter was issued in favour of the allottee and which was cancelled thereafter, is already sold out to Mr. Trivedi and Mrs. Trivedi on the basis of registered agreement for sale. So, flat No.601 is not available for executing its agreement for sale in favour of the allottee, as prayed. Moreover, cancellation of allotment letter in favour of the allottee as per the letter has become final and both the parties do not dispute about cancellation of letter. The ratio of case law in **Hansa V. Gandhi vs. Deep Shankar Roy (AIR 2013 SC 2873)** is not helpful to the allottee in the

present case as correctly and properly observed by the Learned Member & Adjudicating Officer, MahaRERA while passing the impugned order. It cannot be ignored that relief of specific performance of agreement was claimed in respect of flat on the basis of allotment letter only and said flat was already sold out to third party. The Hon'ble Apex Court laid down in Hansa Gandhi case that relief of specific performance cannot be granted in absence of an agreement for sale. So, in the present matter also prayer for execution of agreement for sale i.e. prayer for specific performance is rejected by Learned Member. The Learned Member has correctly applied ratio of Hansa Gandhi case law in this matter. Hon'ble Apex Court had confirmed the order of refund only and not prayer for specific performance. So, in absence of agreement for sale, the Learned Member has correctly rejected prayer for specific performance and granted refund of the amount. In fact, in the present matter also, flat in question is already sold out to Mr. and Mrs. Tiwari and allottee is not justified in claiming the relief of execution of agreement for sale of said flat in his favour. Moreover, allottee is justified in getting back the amount paid to the promoters for purchase of said flat along with interest. As per impugned order, the amount along with interest is directed to be paid to allottee. So, the ratio of case law of

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**Hansa Gandhi (supra)** is not helpful to allottee in the present case.

10. In view of above discussion, I am of the opinion that the impugned order passed by the Learned Member and Adjudicating Officer, MahaRERA in Complaint No. CC006000000022836 is quite just, proper and legal and it is sustainable in law and it needs no interference in the appeal. So, I answer points accordingly. I pass following order.

**ORDER**

- (1) Appeal No. AT006000000010490 stands dismissed.
- (2) Impugned order dated 9.5.2018 passed by Learned Member & Adjudicating Officer, MahaRERA in Complaint No. CC006000000022836 stands confirmed.
- (3) No order as to costs.
- (4) Copy of judgement be sent to the parties and

MahaRERA as per Sec.44 Sub Sec. 4 of the  
RERA 2016.

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Date: 30.09.2019

*U/Celle* 30-09-19.  
**(SUMANT KOLHE)**  
**MEMBER(J)**

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