

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

No.AT006000000000096

Smt. Manju Mahendra Joshi
A/11/102 Runwal Plaza CHS Ltd., Kores Road
Vartak Nagar, Thane 400 606.

.. Appellant/s

V/s.

Lavasa Corporation Ltd.
Hincon House, 247 Park, LBS Marg,
Vikhraoli, Myumbai 400 083.

..Respondent/s

No.AT006000000000143

Mr. Girish Panjwani & Anr.
B-504 Raheja Solitaire,
Off S.V. Road, Goregaon (West),
Mumbai 400 062.

.. Appellant/s

V/s.

Lavasa Corporation Ltd.
Hincon House, 247 Park, LBS Marg,
Vikhraoli, Myumbai 400 083.

..Respondent/s

On behalf of Appellant Smt. Manju, Sumit M. Pandey is authorized to attend the hearing in present appeal. She has informed she has left India. In the situation Shri Sumit Pandey is allowed to argue the appeal.

Girish Punjwani with Adv. Shweta Merchant i/b Solicis Lex Advocates & Solicitors for the appellant in Appeal no. 143 present.

In both the appeals, Adv. Kaustav Talukdar a/w Shri Ruturaj Bankar i/b Lex Legal and Partners appears on behalf of M/s. Lavasa Corporation Ltd.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 17th April, 2018
Dictated/Pronounced on: 17th April, 2018
Transcribed on : 18th April, 2018



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:-ORAL JUDGMENT:-

Heard finally.

1. The order dated 30th January 2018 and 1st February, 2018 in the two appeals by the Ld. Adjudicating Officer, MahaRERA, are questioned by the allottees / complainants. The Ld. Member and Adjudicating Officer, MahaRERA by the impugned order dismissed the complaint for want of jurisdiction.
2. In earlier round of similarly placed appeals and particularly Appeal no. AT005000000000008 of Jitendra Tulsiani V/s. M/s. Lavasa by order dated 15th March 2018, the appeal of allottee / complainant was allowed holding that MahaRERA has the jurisdiction to entertain the complaint.
3. Whatever points were argued by Mr. Talukdar in the said appeal were elaborately dealt with. Today Mr. Talukdar conveys that this Tribunal shall look into the prominent aspect of the term "Sale" which has been reflected in the definition of 'Promoter' in Sec. 2(zk) of RERA Act. Same is the position in (zn) which deals with real estate project and according to Ld. Counsel since Sec. 18(1) accelerates when a promoter fails to complete a project. Cumulative effect thereof needs to be noted. Hence he has submitted complaint under Section 18 could not have been filed. Even Section 31 shall not come to the rescue of the complainant. The Ld. Counsel says Lavasa has a development of a township and in order to avoid saddling of penalty, loss of reputation, the project was registered, however that will not necessarily bind Lavasa to toe in furtherance of RERA, to meet complaints under Section 18 of RERA Act.
4. The Ld. Counsel for the appellant and the authorised representative Shri Sumit Pandey reiterated the findings recorded by this Tribunal on 15th March, 2018 and added to the definition of 'allottee' indicated in Sec 2(d) of RERA which encompass freehold and leasehold property. Smt. Merchant also dealt with Sec. 4 of RERA which contemplates registration of a project which according to her has been so done by Lavasa. She states there is no segregation of the project as to differentiate leasehold, freehold or rental properties.
5. Having heard the respective sides referred to above and having gone through the earlier order dated 15th March 2018, following points arise for my consideration :

Whether the orders under challenge dated 30th Jan. 2018 and 1st Feb. 2018 dismissing the complaint for want of jurisdiction calls for interference ?

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My finding to the aforesaid point is that the order of Ld. Member and Adjudicating Officer, MahaRERA calls for interference and I hold the Adjudicating Officer, MahaRERA has jurisdiction to entertain the complaints.

The term 'Promoter' indicated in Sec. 2(zk), the Agreement of Sale referred in Section 2(c), the Real Estate Project referred in Sec. (zn) admittedly refers to 'Sale'. How far the term 'Sale' will be beneficial to accelerate the ground raised by Lavasa is the new question.

6. It cannot be said that Lavasa who are developing a township as a special project were not conscious of effect of RERA or in particular Section 4 thereof which mandated registration of Real Estate Project and the formalities of furnishing application. Section 4(1) conceives "Every promoter shall make an application to the Authority for registration of the Real Estate Project." The term 'promoter' used herein necessarily is in tune with the definition to 2 (zk) or the definition of real estate project 2(zn). It was thus nakedly open to Lavasa not to toe in tune with requirement of registration when the Act was put in force. They consciously were aware that with all said and done the project of developing a township may be given different names to the Agreement or to the Title document is a transaction of perpetual lease on a premium which connote acceptance of consideration. In the light of this situation, Lavasa naturally got its project registered as mandated u/s. Sec. 4 of RERA Act. At this belated stage, it is not open for Lavasa to dilute effect of its registration or wriggle out the confirmation indicated at the time of registration including date of completion of project, stages of project liabilities to the project name of Architect, name of authorities according permission and the litigations if any. It cannot be said to be an invited trouble by Lavasa but since they knew that the Project is and the particulars of the complainant was for an absolute 'sale' defined under the banner of premium was attracting provisions of RERA.
7. In the light of above discussion Sec. 18(1) when deals with promoter, necessarily it will have impact of Section 4 coupled with Sec. 2(zk), 2(zn) and Sec. 2(d) of the RERA. 2(d) in material terms and exhaustively deals with the term allottee which is as under :

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or buildings, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or buildings, as the case may be, is given on rent;



8. The terminology used in the section as to where freehold or lease necessarily has an impetus to be adhered to. There should not be violence to the statutory provisions to the whims of an individual or of a litigant. This is moreso preamble of this Act deals with the intent of promotion of real estate sector and to ensure an efficient and transparent manner of transaction and to protect the interest of consumers in real estate sector. The preamble according to Section 2(d) and 4 indicate that the central point in the matter is the project of Lavasa was in terms and within the ambit of RERA.
9. There should not be a ransacking of the statute for merely user of a term of rent of Re.1/- as indicated in the Lease Agreement which incidentally was registered by the parties. Had it been a case of mere rental Agreement, the Govt. of Maharashtra or the Registration Authorities would not have saddled the stamp duty and registration charges which are necessarily fixed, ascertained in respect of sale of immovable property or a flat. Additionally it was pointed that the rent of Re.1/- that has been referred is yet to be signed and the document is wanting such enforcement by the allottee or by Lavasa.
10. The long lease of 999 years with the clause of tenure, consciously signed by the parties was giving an impression and rather agreed upon between the parties that it was an absolute sale. The terms 'Lease' used was with a view to come within the bracket of developing a township and to meet the requirement of Special Planning Authority.
11. The perpetual lease connotes lasting for ever, for indefinitely long period. The term 'premium' is indeed total cost to buy a property. In each of the complaint huge amount is parted by allottee covering price of flat as was settled. In the case of Joshi, there was a housing loan of HDFC. Financer will not release moneys for a Rent Agreement. The entire Agreement between parties need to be read harmoniously. Thus, in the fact situation only, on the point of term 'Sale', the rights and liabilities arising under RERA, need not be diluted and fractured.
12. Taking stock of above facts, I have no hesitation to hold same view as I have indicated in Appeal No. AT005000000000008 dtd. 15th March 2018 coupled with additional points argued by Mr. Talukdar. I hold MahaRERA or the Adjudicating Officer has jurisdiction to entertain the complaint.



-:ORDER:-

- 1 Appeal is partly allowed. No costs.
2. It is held that the Adjudicating Officer, MahaRERA has the jurisdiction to entertain the complaint of appellant / allottee on its merits;

Dictated and pronounced in open Court today.



Place: Mumbai
Dated: 17th ~~March~~ April 2018

(K. U. CHANDIWAL, J.)
President,
Maharashtra Revenue Tribunal,
Mumbai
& I/c. Maharashtra Real Estate
Appellate Tribunal, (MahaRERA),
Mumbai