

**MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL UNDER RERA Act**

AT006000000010536

Sai Ashray Developers Pvt. Ltd.
Ground Floor, Rajpipla Building,
Op. Standard Chartered Bank,
Linking Road, Santacruz (West),
Mumbai 400 054.

.. Appellant/s

V/s.

Sachin Titkare
Room No. 406, Wadhwa Medows,
Near Icon Plaza, Kalyan (West)
Dist. Thane, Kalyan 421 301

..Respondent/s

Smt. Saira Mirzankar for appellant.
Shri Sachin Titkare, the Respondent present.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 5th December, 2018
Dictated/Pronounced on : 5th December, 2018
Transcribed on : 6th December, 2018

-:ORAL JUDGMENT:-

Heard finally.

1. This is promoter's appeal questioning legality and correctness of order dated 6th June 2018 recorded by Hon'ble Member and

Adjudicating Officer, MahaRERA, Mumbai whereby the promoter was directed to release in favour of the complainant, the amounts received by promoter with registration charges and simple interest @ 10.05 % p.a. from respective dates of their payments till they are refunded with costs of Rs.25,000/-.

2. The core point raised by Ld. Counsel for the Promoter is the inter se agreement entered into between the parties provide concession and extension in time. The said stipulations are in clause no. 10(5) whereby the developer is entitled to reasonable extension of time for making available the residential flat for fit out or completion of the said building. According to Ld. Counsel another Building 'Dwarka' is ready, however the flat which is booked in 'Triveni' i.e Flat 305 is wanting for necessary compliance from the Planning Authorities.
3. In the Appeal Memo on page 8, the Ld. Counsel for the Appellant / Promoter has indicated few suggestions carved out in para 2(k) of the appeal memo. One of the contention is Promoter is agreeing to sell the said flat on behalf of the Allottee on first priority to the prospective purchaser and thereafter the financial proceeds shall be directly transferred to the account of the Respondent. If the transaction is to be cancelled in tune with the agreement, the proceeds will be refunded in 12 equal instalments. Another suggestion is to accept the possession of the flat in the building 'Dwarka' on subsidized rental basis to the extent that he stays with nominal charges.
4. The canvass projected by the Promoter is not in tune with the spirit of RERA and the observations of Hon'ble Lordships of Bombay H.C. in the matter of Neelkamal V/s. State decided on 6th December, 2017. In the said judgement Hon'ble Lordships have observed that stipulation in the Agreement unilaterally effected contrary to the spirit of the statute will not obliterate the liability. Only concession that was extended, is for natural calamities. Wanting permission with the Planning Authorities or shortage of sand, cement or water was within the contemplation of the promoter and he should have organized his programme accordingly. Hence though the clauses of agreement are exhaustively explained by Ld. Advocate it will not impress to tilt the balance of the order under challenge.
5. During the course of hearing, it transpired that it is a huge project of the Promoter and there are around 50 such complaints seeking



withdrawal or otherwise. The Ld. Counsel says that the Promoter is facing financial crunch for the project and the project itself is stalled.

6. The Allottee was explained the situation in Marathi in presence of his brother and the Allottee accepted to wait for receiving the payment for the period of 10 months with interest. This suggestion is accepted by the Ld. Counsel for the Promoter / Appellant.
7. I do not see any error to comment in the order dated 6th June, 2018. Consequently following order is passed :

:- ORDER :-

1. Appeal is dismissed.
2. The Promoter shall release the balance amount in favour of the Allottee within 10 months from today with the interest as directed and cost including registration charges.
3. The Allottee / respondent shall be entitled to receive from the office of MahaRERA, 40% of the amount deposited by Promoter, pursuant to direction 9th October, 2018. After receiving the amount, the Allottee shall intimate to this effect to the Appellant /Promoter.
4. No costs in the appeal.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 5th December, 2018


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