

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL, MUMBAI.

AT006000000010897

M/s, Gagan Horizon Ventures ... Appellant

V/s
Ms. Jyoti V. Pinjarkar & Ars. ... Respondents

AT006000000041853

Smt. Jyoti Vidyadhar Pinjarkar & Anr. .. Appellants

V/s
M/s. Gagan Horizon Ventures .. Respondent

C.A. Mr. Milani for Appellant.
Mr. Nilesh Borate, Advocate for Respondent.

CORAM : **SUMANT KOLHE, MEMBER (J)**
S. S. SANDHU, MEMBER (A)
DATE : **29th JANUARY, 2020.**

COMMON ORDER

(PER SUMANT KOLHE)

Both appeals are directed against the impugned order dated 20.08.2018 and rectification order dated 01.11.2018 passed by Learned Adjudicating officer in complaint No. 10933.

2- Heard Learned Counsel of both the sides. Perused the impugned order as well as rectification order.

3- Complaint No. 10933 was filed by allottees for withdrawal from the project and for refund of total amount paid to the promoter along with interest and compensation. As per impugned order dated 20.08.2018, promoter is directed to pay interest on the amount paid by allottees to the promoter from 20.04.2017 till the possession is delivered or notice to take possession is served.

4- Thus, Impugned order dated 20.08.20 is not for refund along with interest and compensation as prayed in the complaint. So, learned adjudicating officer rectified the impugned order on 08.11.2018 and passed order that the promoter is directed to refund the amount. Accordingly, order of refund of amount was incorporated in para of operative part of impugned order dated 20.08.2018. Now if we read impugned order after rectification, it states that the promoter shall refund the amount received from allottees with interest from 20.04.2017 till possession is delivered or notice to take possession is served on allottees. Impugned order dated 20.08.2018 even after rectification is not according to the reliefs which are sought in the complaint. More over if we peruse observations made and reasons assigned in the judgment those are in respect of payment of interest for delayed period of possession and not for refund of amount along with interest and compensation. In short, operative order dated 20.08.2018 even after carrying out rectification as per order dated 01.11.2018, is not proper and correct as per reasons and findings in the judgment. In such circumstances, both parties submit that in the interest of justice the impugned order dated 20.08.2018 with rectification as per order dated 01.11.2018 to be set aside and matter should be remanded back for fresh hearing.

We invoke the power under order 41 rule 23 and 23(a) of Civil Procedure Code and remand the matter to the Learned Adjudicating Officer for fresh hearing after giving opportunity to both the sides.

W/S

Ultimately, we set aside the impugned order dated 20.8.2018 with rectification order dated 01.11.2018.

5- In the result, we pass the following order: -

ORDER

Appeal No. 10897 and Appeal No. 41853 are partly allowed as under:-

- WPS
- a) Impugned order dated 20.08.2018 with rectification order dated 01.11.2018 passed by Learned Adjudicating officer in complaint No. 10933 are set aside.
 - b) Complaint No. 10933 is remanded to Learned Adjudicating officer for fresh hearing after giving opportunity to both the sides.
Parties are present before us agree to appear on 05.02.2020 before Learned Adjudicating officer at Pune.
Fresh notices to the parties for appearance before Learned Adjudicating officer after remand are dispensed with.
 - c) Learned Adjudicating officer shall decide the matter within two months from the date of this order.
 - d) Original order be kept in Appeal No. 10897.
Copy of the order be maintained in Appeal No. 41853
 - e) Parties to bear their respective costs.
 - f) Copy of the order be sent to parties and the Learned Adjudicating officer, Pune.


(S. S. SANDHU)


(SUMANT KOLHE)