

**MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL**

**APPEAL NO. 0006000000010828**

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.

**SURESH RAMCHAND VARLANI,** ]  
R/at-204, Lav-Kush Tower, Opp.Civil Court, ]  
Ulhasnagar-421 003. ]... Respondents.  
(Allottee)

Mr. Sunil Dongare, Authorized representative for Appellant/s.

Advocate Ms. Manisha K. Keswani for the Respondents.

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.CC006000000044235 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. Respondents 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. 1704 in building No. S3 in the said project. Promoter agreed to deliver possession of the flat in the month of March, 2015 to the Allottee. Project was delayed. Promoter could not complete the project. Promoter failed to hand over the possession of the flat as per agreed terms to the Allottee. Total consideration amount of Rs.22,50,000/- was paid by the Allottee to the promoter. 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.

3. Promoter had made out a case before the authority that Allottee is not the home buyer and they had made investment of Rs.22,50,000/- with the promoter. It is also the case made out by the promoter that by way of security for the said investment of Rs.22,50,000/-, 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 in August, 2014 and the date of completion of the said project was mentioned as 31.03.2015 and the period of Six 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.22,50,000/-.

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4. 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.22,50,000/- along with interest and costs to the Allottee and also permitted the Allottee to withdraw from the project.

5. Feeling aggrieved by the order of Ld. Adjudicating officer, Mumbai Appellant has preferred this Appeal. He mainly argued that Allottee was not interested in purchasing the flat and Allottee wanted to invest amount of Rs.22,50,000/- in the project of promoter and accordingly he invested the said amount and agreement for sale was executed in favour of the Allottee only by way of security for the said investment amount of Rs.22,50,000/-. On the other hand, the Ld. Advocate for the Allottee argued that there is absolutely no evidence to support the case of promoter on the point of execution of agreement for sale by way of security for investment of this Rs.22,50,000/-. Ld. Advocate for the Allottee further pointed out that the intention of the parties as evident from the contents of an agreement for sale clearly shows that the said transaction was of sale of flat and consideration of Rs.22,50,000/- was paid by the Allottee to the promoter and promoter had agreed to deliver the possession of the flat in the month of March, 2015.

6. In view of rival submissions of both sides, the following points arise for my determination.

#### POINTS

- 1) It is proved by the promoter that agreement for sale was executed in favour of Allottee by way of security for their investment of Rs.22,50,000/- with the promoter ?

2) Whether Allottee is entitled for refund of the amount along with interest and costs as prayed?

3) What order ?

My findings to the above points are as follow :

1) Negative.

2) Affirmative.

3) As per final order.

### **REASONS**

7. The most important piece of evidence in the present matter is an agreement for sale. Execution of agreement for sale is admitted by both the sides. Burden lies on promoter to show that said agreement for sale was nominal and was executed by way of security for the investment of Rs.22,50,000/- on the part of Allottee with the promoter. It is revealed from the contents of agreement for sale that promoter agreed to sale the flat to the Allottee for consideration of Rs.22,50,000/- and also agreed to hand over the possession of the flat in the month of March, 2015. In such circumstances, the case made out by the promoter that agreement for sale was nominal and was executed by way of security for investment of Rs.22,50,000/- on the part of Allottee is not acceptable and believable. As far as impossibility and improbability of completion of the project of 24 storeys building within six months as evident from the agreement of sale is concerned, the submission advanced by the Respondent that an agreement for sale is nominal cannot be accepted. It cannot be ignored that the agreement for sale is registered. Respondent has failed to adduce cogent and

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sound evidence by way of rebuttal to discard the contents of an agreement for sale and genuineness of the said registered agreement for sale. Admittedly, the project of the promoter is duly registered with MahaRERA. Promoter has failed to hand over the possession of flat to the Allottee as per agreed terms mentioned in an agreement for sale i.e. March, 2015. So Allottee are at liberty to continue with a project or to withdraw from the project as per Section 18 of RERA Act, 2016. In the present case Allottee has withdrawn himself from the project and claimed refund of the total consideration along with interest from the promoter. 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*

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*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.

(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 manner as provided under this Act.*

8. 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.22,50,000/- 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 Nos. 1 to 3 accordingly.

9. 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.22,50,000/- 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. AT006000000010828 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.

*W/Celleee 22/02/19.*  
[ SUMANT M. KOLHE, ]  
JUDICIAL MEMBER,  
Maharashtra Real Estate  
Appellate Tribunal, (MahaRERA)  
Mumbai.

22.02.2019.