

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

**Appeal No. AT00500000031805**

**In**

**Complaint No. CC00500000022410**

**Mantri Dwellings Private Limited**

A company registered as per the provisions  
Of Companies Act, 1950

Having its regional office at Survey No. 16/4A,  
Kharadi, Behind Zensar Technologies,  
Pune – 411 014

**... Appellant**

**Versus**

**1. Mr. Subhasis Roy**

**2. Mrs. Sanjukta Roy**

Age :- Adult, Occupation : Service  
Correspondence R/at:- 401/4,  
Sunshine CHS, Mhada,  
Oshiwara, Andheri (w),  
Mumbai 40053

**... Respondents**

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*Advocate Abhijit Dixit for Appellant.*

*Mr. Subhasis Roy in person for Respondents.*

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**CORAM : INDIRA JAIN J., CHAIRPERSON &  
S. S. SANDHU, MEMBER (A)**

**DATE : 1<sup>ST</sup> JANUARY, 2021.**

**(THROUGH VIDEO CONFERENCING)**

**JUDGMENT**

**[ PER: S. S. SANDHU, MEMBER (A) ]**

Present Appeal arises against the order dated  
31.07.2019 passed by learned Adjudicating Officer (for short  
'AO'), MahaRERA in the above complaint filed by Respondents.

2. Appellant is a Promoter and Respondents are Allottees. For convincing, we will refer the parties as Promoter and Allottees respectively in this order.

3. As per facts of the case, Allottees booked flat No. 304, Wing-B in the project 'Mantri Vantage' situated at Kharadi, Pune for a total consideration of Rs. 86,94,800/-. As per agreement for sale (AFS) registered on 27.08.2015, possession was agreed to be delivered by December, 2017. Allottees made payment more than Rs. 55,92,564/- including part consideration, stamp duty, registration charges etc. Consequent to demand for payment after revising the date of possession thrice in 2017 ultimately to June 2020, Allottees demanded compensation for delay of 30 months or else refund of the above amount paid by Allottees with interest from the date of payment. Dispute between the parties remaining unresolved, Allottees filed the complaint seeking *inter alia* refund of their above amount along with interest. After hearing the parties, learned AO allowed Allottees to withdraw from the project and directed the Promoter *inter alia* to refund the amount of Rs. 55,92,564/- excluding stamp duty with interest from the date of actual payment till realisation of the amount subject to payment of stamp duty by Promoter in case Allottees are not entitled to take refund of stamp duty paid. It is the said order against which the present Appeal is filed.



4. Learned counsel for Promoter and Mr. Subhasis Roy appearing for himself and Allottee No. 2 submitted that the

matter may be decided by taking into consideration the written submissions filed on record by the parties. Mr. Roy also advanced oral arguments though briefly.

5. Learned counsel for Promoter challenged the legality and propriety of the impugned by arguing as follows:

(i) The AFS executed by the parties on 27.08.2015 pertains to the Maharashtra Ownership of Flats Act, 1963 (MOFA) period prior to the Real Estate (Regulation and Development) Act, 2016 (for short, the 'RERA'). As per Section 88 of RERA, provisions of RERA are not derogatory to the provisions of MOFA and therefore they do not supersede the terms of the AFS executed under MOFA.

(ii) Agreed date of possession was subject to *force majeure* Clause as expressly mentioned in sub-para 'b' of Para 5 of the AFS. The alleged delay in possession has occurred due to *force majeure* factors beyond control of Promoter as follows:

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- (a) Labourers left the project work due to abandonment of project by the main contractor;
  - (b) Refusal of work by laborers due to inability of Promoter to pay wages on account of demonetisation.
  - (c) Application of Provisions of GST Act.
  - (d) Recession in the real estate market.