

Sarnobat

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO.0006000000010601

Vasant Ramkrishna Dhamale,
B-1505 Nirmal Galaxy Polaris LBS Marg,
Mulund (W), District Mumbai.

... Appellant/s.

Vs.

Ajit Marathe & Rajendra Sawant,
Nirman Realtors Developers Limited.
14 NYAY Sagar Apartment, next to BJP
Office, Old Nagardas Road,
Andheri (E) , Mumbai 400 069.

... Respondents.

Appellant present in person.

Advocate Ms. Hima Khumani for the Respondent/s.

CORAM : INDIRA JAIN J. (Chairperson)

SUMANT M. KOLHE,(Member J.)

S. S. SANDHU (Member A)

DATE : 10th June, 2019.

Appeal Under Section 44 of RER ACT 2016.

JUDGMENT (PER S.M. KOLHE, MEMBER(J)

Order dated 01.08.2018 passed by Chairperson of MahaRERA Authority in Complaint No. CC006000000023550 is assailed in this Appeal.

2. Appellant is an Allottee. Respondent is promoter. Parties are referred as per their original status as allottee and promoter.

3. Promoter launched the project namely "Valeri" at Kurla, Mumbai. Allottee booked flat in the said project in the year 2010. Allottee paid Rs. 3,00,000/- on 04.07.2010, Rs.7,00,000/- on 17.07.2010. Rs. 10,00,000/- on 01.08.2010 Rs.5,00,000/- on 05.08.2010 Rs.1,85,012/- on 24.01.2013 by cheques to the promoter towards price of the flat. Thus a total amount of Rs.26,85,012 was paid by Allottee to the promoter.

4. Allottee waited for four years. Promoter did not commence the construction of the project. No agreement of sale was executed. Promoter gave option to either continue with or to withdraw from the project on account of delay by issuing letter to the allottee and also agreed to refund the amount at the rate of 18% p.a.

5. Allottee chose to withdraw from the project and demanded the refund amount alongwith interest and compensation. Promoter paid Rs.5,00,000/- in the month of July, 2015, Rs.5,00,000/- in the month of November, 2015, Rs.5,00,000/- in the month February, 2016 and Rs. 5,00,000/- in September, 2016. Thus, promoter repaid a total amount of Rs.20,00,000/- as mentioned above to the allottee.

6. Allottee filed complaint against promoter for refund

along with interest and compensation for mental agony and harassment caused to him.

7. After hearing both the sides and considering the papers on record, the Ld. Chairperson of MahaRERA passed impugned order and directed the promoter to refund the balance amount paid by the Allottee as per the terms and conditions agreed between the parties.

8. Being dissatisfied with the order, Allottee has preferred this Appeal. Heard allottee in person. Perused the reply filed by Promoter.

9. The following points arise for determination;

POINTS

- i) Whether the impugned order is just, proper and legal?
- ii) Is it necessary to modify the impugned order ?
- iii) What order ?

Findings on above points for reasons stated below are as under :

FINDINGS

- i) Partly Negative.
- ii) Partly Affirmative.
- iii) As per final order.

REASONS :

10. Allottee has mainly challenged the impugned order on the ground that, entire refund along with interest and compensation was not awarded.

11. Admittedly, allottee paid total amount of Rs.26,85,012/- to the promoter towards price of the flat by cheques of different dates and amounts on different dates. Similarly, promoter also has repaid total amount of Rs.20,00,000/- by cheques with different amounts on different dates. As per impugned order neither interest on refund amount nor compensation is awarded.

12. Flat was booked in 2010. The project, by remaining incomplete as on 01.05.7.2017 is now governed by the provisions of RER Act 2016 which came into force with effect from 01.05,2017. Allottee filed complaint before MahaRERA and thereafter preferred this appeal against decision of MahaRERA. Parties were governed by MOFA Act,1963 prior to 30.04.2017 and by the provisions of RER Act,2016 with effect from 01.5.2017. Dispute will have to be adjudicated as per provisions of MOFA Act,1963 and RER Act,2016.