

Sarnobat

MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL

APPEAL NO.006000000010750

Mr. Haresh Ishwar Manwani,
Residing at 603, Madhusudan Court,
Opp. Satguru Apt. Nr. U.M.C. Sector-17,
Ulhasnagar-421 003.

... Appellant.
(Allottee)

Vs.

Reliance Enterprise,
A partnership firm under the Partnership
Act, 1932 having its office at 8/35,
The Malad Co-op. Hsg. Soc. Ltd.,
Podar Road, Malad (East),
Mumbai 400 097.

... Respondent.
(Promoter)

Advocate Mr. B. M. Jain a/w Mr. V.B. Nimbalkar for the Appellant.
None for the Respondent/s.

CORAM : SUMANT M. KOLHE,(Member J.)

DATE : MAY 16, 2019.

Appeal Under Section 44 of RER ACT 2016.

ORAL JUDGMENT :

1. Correctness, legality and propriety of impugned order dated 10.09.2018 passed by Ld. Member and the Adjudicating Officer of MahaRERA Authority in Complaint No. CC0060000000043984 is challenged in this Appeal.

2. Complaint No. CC0060000000043984 was filed by the Allottee against the promoter for refund of amount along with interest. Allottee had withdrawn from the project and prayed for

refund of entire amount paid to the promoter and also the interest thereon as per Section 18 of RER Act, 2016.

3. After hearing both the sides and considering the documents on record the Ld. Member and Adjudicating Officer MahaRERA Authority passed impugned order dated 10.09.2018 and directed the promoter to refund the amount mentioned in Exhibit 'A' along with interest to the Allottee.

4. Feeling aggrieved by the said impugned order Allottee has preferred his Appeal.

5. Heard Ld. advocate for the allottee. Promoter failed to argue the matter even though sufficient opportunity was given. In such circumstances the following points arise for my determination;

POINTS

- i) Whether the impugned order needs interference in the Appeal.
- ii) What order ?

My findings on above points for reasons stated below are as under :

FINDINGS

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

REASONS :

6. Ld. advocate for the Allottee pointed out that Allottee

had made payment of Rs.3,60,000/- towards Car parking and Rs.21,000/- towards interest in cash to the promoter. He pointed out that the said amount is not refunded to the Allottee as per impugned. He pointed out another decision of the Ld. Member and Adjudicating Officer, MahaRERA Authority which was given in Complaint No.44065 in which the above mentioned amount was also given in cash by the Allottee in the said matter to the promoter and promoter was directed to refund the said amount to Allottee as per order passed in that matter. Complaint No.44065 is also filed by one of the Allottees against the present promoter in respect of this project only. Complaint No. 44065 and Complaint No. 43984 were heard by the same authority at the same time and direction was given by authority to Allottees in both Complaints to file their respective affidavits to prove payment of cash amount to the promoter. Accordingly, Allottees had filed affidavits in their respective Complaints. It appears that in Complaint No.44065 the said refund was granted on the basis of affidavit filed by the Allottee in the said matter. Now the present allottee had also filed affidavit for refund of the said cash amount in the present complaint but, inadvertently the impugned order is silent about the refund of the said amount to the Allottee. Since the present Allottee had filed affidavit to show that Allottee had paid Rs.3,60,000/- and also Rs.21,000/- in cash to the promoter, Allottee is entitled for refund of the said amount from the promoter. So, it is necessary to modify the impugned order by giving direction to the promoter to pay Rs.3,81,000/- to the Allottee in addition to the amount of refund along with interest as directed by the impugned order dated 10.09.2018 passed in Complaint No.43984. So, I answer the points

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accordingly.

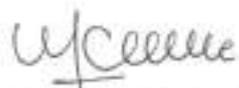
In the result, I pass the following order;

ORDER

- 1) The Appeal No.006000000010750 is allowed.
- 2) Impugned order dated 10.09.2018 in Complaint No. CC0060000000043984 is modified as under:-
 - (a)The Respondent-Promoter shall pay Rs.3,81,000/- to the Allottee along with interest thereon at the rate of 10.5 % p.a. from the date of payment of the amount till its realization.
 - (b)The above direction for payment of Rs.3,81,000/- along with interest by promoter to the allottee is in addition to the refund of the amount, along with interest to be paid by promoter to the Allottees as directed in impugned order dated 10.09.2018 passed in Complaint No.43984.
 - (c)Parties to bear their respective costs.

MS

16.05.2019.


16-05-19
[SUMANT M. KOLHE,]
JUDICIAL MEMBER,
Maharashtra Real Estate
Appellate Tribunal,(MahaREAT)
Mumbai.