

BEFORE THE MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL, MUMBAI

Appeal No.AT00600000010544 of 2018

Kapil Dharmakumar Kapadia,

Having its residential home at

Flat no.7, 4th floor, Sudama Bldg.

Walkeshwar Road,

Walkeshwar,

Mumbai-400 006

..... Appellant

V/s

Ashwin Kumar Jain,

Having his address at:

5/83, New Shastrinagar,

Mulund Colony (W),

Mumbai 400 082

..... Respondent

Advocate Mr.Vikramjit a/w Jyoti Rajguru and Appellant in
person.

Respondent in person.

CORAM : SUMANT KOLHE, MEMBER (J)

S. S. SANDHU, MEMBER (A)

DATE : 17th February, 2020.



JUDGMENT

(PER S.S.SANDHU, MEMBER (A))

Appellant has filed this appeal against the order dated 20.06.2018 passed by learned Chairperson of MahaRERA (hereinafter referred to as 'the 'Authority') in complaint No. 23419.

2. Short facts of the case are that the Appellant an allottee booked two apartments bearing Nos. 6001 and 6002 in the Respondent's project 'GEBI PRERNA' situated at Bhiwandi through letter of allotment dated 02.01.2016. According to Appellant, full payment was made of Rs.18.95 lacs between 2013-2015 as demanded by Respondent. Possession was to be given within 12 months from letter of allotment dated 02.01.2016 and in case of delay Respondent was liable to pay rent of two flats until possession. Respondent did not execute the necessary deed as promised. According to Appellant, on intervention by the advocate of appellant the Respondent issued three separate cheques for total amount of Rs. 32 lacs. The cheques got bounced consequent to which Appellant filed the criminal proceedings. As the Respondent failed to give possession as agreed, Appellant approached the Authority by filing aforementioned complaint to seek withdrawal from the project and refund of amount of Rs. 32 lacs paid by him. On an understanding reached during complaint proceedings, the Authority disposed of the matter and passed order directing thereby the parties to execute and register agreement for sale within 45 days from the order and further to handover possession of the apartments within 18 months from signing the agreement. As Respondent has failed to comply the order, Appellant has filed the appeal on following grounds:

i) As per mutual understanding in the complaint proceedings and as directed by the Authority in the impugned order, Respondent did not execute the deed and in the draft deed sent for execution the Respondent reduced the area of apartments from the agreed 670 sq.ft. to 570 sq.ft. which is not acceptable to Appellant.

ii) Respondent though agreed as per allotment letter and in the proceeding before the Authority to pay rent for the period of delay Respondent did not comply and refused to pay the same.

4. In relief the Appellant has sought withdrawal from the project and refund of the entire amount paid by him along with interest @ 12% for delay in possession.

5. Heard the Appellant through his learned Counsel whereas the Respondent argued the matter in person.

6. Learned Counsel for Appellant reiterated the facts as have been mentioned in para 2 hereinabove. He submitted that Respondent was not able to hand over possession within 12 months from the date of letter of allotment as agreed. There is not even a commencement certificate for the project till today. Appellant further submitted that as the project failed to take off the Appellant and Respondent mutually and orally agreed to terminate the transaction on payment of Rs.32 lacs. Respondent issued 3 cheques which got bounced. In result, Appellant filed criminal proceedings and order dated 27.11.2018 passed therein upholding the claim of Appellant is submitted on record. He admitted that criminal proceeding is also filed by Appellant against the Respondent under the MOFA. It was further argued that land under the project is lying barren and it is unlikely that Respondent would