

MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL UNDER RERA Act

No.AT006000000000120

Ashutosh Suresh Bag
Prachi Ashutosh Bag
Both residing at Flat No. S-3, Stilt Floor,
Building No. C-1, 'Tejwalay', Survey No.118/2C,
Warje, Near Cipla Centre, Pune – 411 058

.. Appellant/s

V/s.

1. The Member & Adjudicating Officer,
Maharashtra Real Estate Regulatory Authority
3rd floor, 'A' Wing, Slum Rehabilitation Authority,
Administrative Building, Anant Kanekar Marg,
Bandra (East), Mumbai 400 051
2. M/s. Darode Jog Kulkarni Venture
A Joint Venture having office at
Darode Jog House, 1212 Apte Road,
Deccan Gymkhana, Pune – 411 004.
3. Mr. Anand Dhundiraj Jog
Residing at Darode Jog House, 1212 Apte Road,
Deccan Gymkhana,
Pune – 411 004.
4. Mr. Sudhir Chandrakant Darode
Residing at Darode Jog House, 1212, Apte Road,
Deccan Gymkhana, Pune- 411 004.
5. Mr. Sunil Gajanan Kulkarni
Residing at 44/35, Nav Sahyadri Society,
Karve Nagar, Pune – 411 052



6. Mr. Shailesh Gajanan Kulkarni
Residing at 31, Nisarg, Kulashree Colony no.1,
Survey no. 1/7B+8/1+2, Karve Nagar,
Pune – 411 052

..Respondent/s

Appellant allottee in person for self and wife.

Shri Subit Chakrabarty i/b Vidhi Partners for Respondents.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.

Heard on : 2nd May, 2018

Dictated/Pronounced on: 2nd May, 2018

Transcribed on : 3rd May, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. The allottee has challenged order dated 18th January 2018 of the Ld. Member and Adjudicating Officer MahaRERA, Mumbai on two counts (a) non refund of VAT tax amount (b) compensation not awarded to the allottee.
2. Feeling aggrieved by the same order dated 18th January, 2018 it was questioned by the Promoter by preferring Appeal and for want of compliance of Section 43(5) – Proviso of RERA Act the appeal AT00600000000184 of the Promoter is dismissed today.
3. The short point in the matter is, entitlement of two components VAT and compensation. The allottee says the project is delayed on account of failure to comply the stipulations by the Promoter for no fault of the allottee. On the other hand, the Ld. Counsel for the Promoter says the project was delayed by the situation and in particular by directions of Pune Municipal Corporation dated 14th July 2014 inhibiting carrying further construction activities in the Pune City. The Ld. Counsel for the Promoter took recourse to Sections 71(3) & Sec. 72 of the RERA Act to impress that the factors to be taken in account incorporate that whether there was any disproportionate gain or unfair advantage, made as a result of default by the Promoter or the amounts of loss caused to the allottee as a result of the default.



4. I quite see that the imposition of Municipal Corporation Notice dated 14th July, 2014 will not operate as an impediment to the case of present project as the flat agreed to be purchased by the allottee was in Shrinivas Sinhagad County situated at Village Gorhe Budruk, Taluka Haveli, Dist. Pune. Thus it was beyond the purview and scope of the limits of Municipal Corporation Pune.
5. While deciding claims between the allottees and meeting with controversies, or the difficulties faced by the Promoter, a harmonious approach is imperative to be adopted. This is moreso the cumulative effect of the Statute coupled with Sections 71(3), 72, 38, Preamble and impetus of Section 18 of RERA Act is to be coherently considered. Going by these provisions and reading the order under challenge, it is apparent that refund of VAT could not be from the Promoter as the tax amount is credited to State Government at the credit / in the name of the allottee. Whatever would be the refund, would be available subject to termination of existing agreement between the parties and on an application to the concerned authorities by the allottees. In both these situations, the predominant role is of the allottee and for that the Promoter cannot be held responsible to refund the VAT payment.
6. Award of compensation, is not as of right flowing in tune with Section 18 of RERA Act. Several factors have to be put in acceleration for that element and on reading the provisions referred to above, it primarily does not apply that there was any disproportionate gain by the Promoter. This is moreso, no such evidence or document is tendered before the Adjudicating Officer by the allottee or not stated so on an affidavit. Thus the payment of compensation, will not be available to the allottee. The order under challenge, in the fact situation, does not call for any interference.
7. During the course of submission when the allottee realized that the appeal is going to fail, he has implored atleast to direct the Promoter to adhere a time schedule to release the payments.

-:ORDER:


1. The appeal AT006000000000120 of allottee Shri Ashutosh Bag is dismissed.



2. The payment as directed by the Ld. Adjudicating Officer in the order dated 18th January, 2018 shall be made by the Promoter / Respondent in the appeal within 60 days from today and then the obligations to execute Deed of Cancellation of Agreement to Sale will commence.
3. No costs.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 2nd May, 2018


(K. U. CHANDIWAL, J.)
President,
Maharashtra Revenue Tribunal, Mumbai
& I/c. Maharashtra Real Estate
Appellate Tribunal, (MahaRERA),
Mumbai