

**MAHARASHTRA REAL ESTATE APPELLATE
TRIBUNAL UNDER RERA Act**

No.AT00600000010365

Sunil Pius Dias
A-2, Aashiana Society, LBS Marg,
Kurla West, Opp. Fauziya Hospital,
Mumbai 400 070.

.. Appellant/s

V/s.

Omkar Ventures Pvt. Ltd.
Omkar House, Off. Eastern Express Highway,
Sion East, Sion Circle,
Mumbai 400 022.

..Respondent/s

Mr. Pawar with the Appellant Mr. Sunil Dias.

Adv. Hamid Mir for the Respondent for Omkar Ventures Pvt. Ltd.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.
Heard on : 12th December, 2018
Dictated/Pronounced on : 12th December, 2018
Transcribed on : 13th December, 2018

:-ORAL JUDGMENT:-

Heard finally.

1. The order of Ld. Chairperson dated June 1, 2018 is subject of challenge by the Allottee, Sunil against the Promoter Omkar Ventures.
2. The Ld. Counsel for the Promoter repeatedly harped by placing reliance to the agreement annexed at Pg.9 of the Appeal Memo, informing that it was an investment agreement and the complainant was not the genuine apartment purchaser. The Ld. Counsel for the Respondent read the text of order of Ld. Chairperson, MahaRERA, Mumbai in particular paras 3 and 4 thereof. This was to explain that there was settlement between the parties amicably and the complainant has agreed to continue in the project as an Allottee and parties were directed to execute a registered agreement for sale.



3. Basically one will have to travel through the pleadings made by the party. The complainant in unequivocal terms has illustrated his intention while filing the complaint, in terms of Section 18 of RERA Act, he has in the prayer clause urged for refund of the amount with compensation / interest.
4. Reading paragraphs 3 and 4 of the order by the Ld. Counsel or the Promoter shall not mean that there was consensus between the parties. This is moreso in para 3 of the order itself the Ld. Chairperson has used the terminology 'in case' which means that all the points for the Allottee were kept open. Thus it reflects that there was no amicable settlement among the parties.
5. In the set of above facts, at this stage it cannot be said that by virtue of investment agreement as on 27th May, 2013 the original complainant became such investor. This is moreso since the subsequent receipts issued by the Promoter to the Allottee to illustrate that it was towards purchase of apartment as an Allottee. Branding the Agreement as Investment Agreement will not eclipse the rights of Allottee under RERA Act.
6. In the light of this situation, the order of Ld. Chairperson calls for interference and matter is remanded either to Chairperson or Adjudicating Officer, MahaRERA, Mumbai to give audience to the parties and based on the nature of complaint and response from the promoter to adjudicate the complaint in legal terms.

-: ORDER :-

1. Appeal is partly allowed.
2. The order in Complaint Case No. CC/0600000023145 of the Ld. Chairperson dated June 1, 2018 is set aside. The parties to appear before the Ld. Chairperson or the Adjudicating Officer, MahaRERA, Mumbai for deciding the complaint on its merits in the light of text of the complaint filed by the complainant, Sunil Dias.



3. No costs in the appeal.

Dictated and pronounced in open Court today.

Place: Mumbai
Dated: 12th December, 2018



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