

MAHARERA

CA. Ashwin Shah, CA. Mahadev Birla

Real Estate (Regulation and Development) Act, 2016 (RERA,2016)

Case law study

Arun Parshuram Veer Vs State of Maharashtra & Ors.

In the matter of Arun Parshram Veer Vs State of Maharashtra and ors, Hon'ble Bombay High Court issued a direction to the promoter to prove that they are not in position to pay the amount due to the allottee.

In the present case the allottee filed a writ petition in the nature of mandamus directing the Collector-Thane and the Thasildar to take appropriate and expeditious steps for the recovery of arrear due to the allottee by attachment and sale of the property of the promoter and its partner.

Provisions:

Section 40 Recovery of interest or penalty or compensation and enforcement of order, etc.

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

Rule 3 - Manner of Recovery Of Interest, Penalty And Compensation

Any interest or penalty or compensation imposed on a promoter or an allottee or a real estate agent shall be recoverable under section 40 of the Act, from such promoter or allottees or real estate agent, as the case may be, as an arrears of land revenue under the provision Land Revenue Code of the respective state.

Fact of the Case:

The allottee, purchased a flat in the project known as Gaurav-Woods, Phase I from the promoter Ravi Development LLP for a price of Rs 62.77 Lacs. The agreement to sale was executed on 17.04.2013 and the promoter promised to give the possession by 31.05.2015. out of Rs 62.77 Lacs, the allottee paid Rs 61.58 lacs but promoter failed to give the possession.

The allottee filed a complaint before the MahaRERA seeking withdrawal from the project and refund of monies paid along with interest and the MahaRERA Authority passed the order for refund of amount along with the interest @10.05% p.a. and refund of Rs 3.76 Lacs paid for stamp duty and Rs 20,000/- legal cost.

On failure to pay the amount by promoter, the execution application filed by the allottee as per provision of Section 40(1) of RERA, 2016. The MahaRERA issued a recovery warrant which was forwarded to the Collector, Thane District. However, the promoter filed the appeal before the MahaRERA Appellate tribunal and the same was rejected. After that allottee approached for execution of order passed by MahaRERA however, there was no action for the same.

Meanwhile the promoter, entered into settlement agreement with the allottee for payment of dues in 12 EMI however the promoter failed to comply with the terms and conditions of the said agreement.

Aggrieved with the act of promoter and failure of the Statutory authority in execution and enforcement of the Recovery Warrant, the allottee filed a writ petition in the nature of mandamus before the Hon'ble Bombay High Court.

During the course of hearing it is found that the promoter and its partner have repeatedly brazenly breached the undertakings given to the Courts and further the statement of the learned counsel for the Promoter that promoter and its partner do not have any funds and they shall be in a position to pay only a sum of Rs. 10 Lacs only on 25.08.2021.

Order passed by the Hon'ble Bombay High Court

The Hon'ble Bombay High Court has passed the order wherein it is directed that the promoter and its partner shall give a complete disclosure of their movable and immovable, encumbered and unencumbered assets and properties on oath by filing an affidavit and/or directors; particulars of their standard of living, as indicated through their electricity bills, their credit card statement/s and the income tax returns that they have filed in the last three years.

This order was passed to establish that the promoter and its partner are virtually paupers not having funds in their bank accounts and their standard of living also bears out the same.