

MAHARERA

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Dinesh R Humane Vs Piramal Estate Private Limited

This article attempts to discuss the issues in respect of right of allottee to withdraw from project without applicability of forfeiture clause.

Issues:

Whether allottee can withdraw from the project and his right to withdraw from the project is equal to right to reserve the flat?

Whether promoter can forfeit the amount, paid by the allottee, as per form of "request for registration"?

Provisions:

Section 18 Return of amount and compensation

18(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Fact of the Case:

In the present case the allottee booked the flat no 807 in the project called "Vaikunth Cluster-2" for a consideration of Rs 1,05,04,060/- on 29.01.2019 and paid the booking amount of Rs 1,12,393/- and after that amount of Rs 4,49,574/- was paid on 01.03.2019. later on, due to some medical reason, the allottee decided to cancel the booking and written an email on 18.05.2019 requesting the promoter to cancel the booking and return the amount paid i.e. Rs 5,61,967/- without the interest. However, the promoter replied vide email dated 20.05.2019 that amount paid by allottee has forfeited due to cancellation of booking.

Aggrieved with the response from the promoter, allottee filed the complaint before MahaRERA Authority seeking refund of amount without interest. During the course of hearing the promoter raised the objection with regards to maintainability of the complaint but the MahaRERA Authority passed the order directing the promoter to refund the amount as per the booking form signed by the parties.

Aggrieved with the order of MahaRERA Authority, allottee filed the appeal before MahaRERA Appellate Tribunal. The MahaRERA Appellate Tribunal observed that the order passed by the MahaRERA Authority is without considering the correct facts of the case. It is observed that MahaRERA authority directed to refund in accordance with the "booking form signed by both the parties" however, there is such documents exist on the records and the booking was made as per request form signed only by the allottee and not the promoter.

Further, it is observed that agreement to sale is not executed between the allottee and promoter and only documents signed by the allottee i.e. request for reservation containing the 33 terms and conditions and one of condition restrict the allottee to withdraw the request for reservation.

The MahaRERA appellate tribunal observed that **"Allottees cannot be restrained from exercising their right of withdrawing the request. Right to make request for reservation of flat includes the right to withdraw such request for reservation of flat"**.

Further, it is observed that unreasonable and unfair transaction with the one-sided favourable terms cannot be enforced and Promoter cannot take undue advantage of such one sided and unreasonable condition.

Order of Hon'ble High MahaRERA Appellate Tribunal:

Promoter shall pay Rs. 5,61,967/- (Rupees Five Lacs Sixty-One Thousand Nine Hundred Sixty-Seven) to Allottees.

Conclusion:

though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the allottee on his withdrawal from the project

Right to reserve a flat includes the right to cancel the reservation. Therefore, a builder cannot ask an allottee to forfeit the booking amount for withdrawing his reservation.