

**BEFORE THE MAHARASHTRA REAL ESTATE**

**APPELLATE TRIBUNAL, MUMBAI**

**Misc. Application No. 616/2019(Stay)**

**In**

**Appeal No. AT00600000052077/2019**

**In**

**Complaint No. CC006000000090012**

**1. M/s. Aditya Enterprises Pvt. Ltd.**

Having registered office at  
505, Ecstasy Business Park,  
JSD Road, Near City of Joy,  
Mulund, Mumbai-400 080.

**2. Mr. Satyendra Vishwakarma,  
Partner of M/s. Aditya Enterprises**

Having registered office at  
Satyadeep Realtors Pvt. Ltd.  
505, Ecstasy Business Pvt. Ltd.  
JSD Road, Near City of Joy,  
Mulund, Mumbai-400 080.

**... Appellants**

**Versus**

**1. Mrs. Mrunmai Mahesh Phadke**

**2. Mr. Mahesh Laxman Phadke**

Having address at  
Flat No. 106, Nisarg CHS,  
Lokmanya Nagar,  
Thane (West)-400 606.

**3. S.D. Bhalerao**

Having address at,  
501, 5<sup>th</sup> Floor, Samarth Arcade,  
Opp. Holy Cross High School,  
K. Villa, Old Agra Road  
Thane (W)- 400 601

**... Respondents**

*Geeta*

*Adv. Nesarikar for Appellants*

*Adv. Godfrey Pimenta for Respondent nos. 1 & 2*

*Adv. Rupali Padgulekar for Respondent no. 3*

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &  
DR. K. SHIVAJI, MEMBER (A)**

**DATE : 28<sup>th</sup> February, 2024**

**(THROUGH VIDEO CONFERENCING)**

**JUDGEMENT**

**[PER : SHRIRAM R. JAGTAP, MEMBER (J)]**

- 1) Feeling aggrieved by the Order dated 30<sup>th</sup> October, 2019, passed by the learned Member, MahaRERA (for short the Authority) in Complaint No.CC006000000090012 filed by allottees, the Appellants, who are the Promoters, have preferred instant appeal raising grievance that the Ld. Authority has violated the principles of natural justice by not extending an opportunity of being heard to the Promoters.
- 2) For the sake of convenience, the Appellants will hereinafter be referred to as "Promoters", the Respondent nos. 1 and 2 will hereinafter be referred to as "Allottees" and Respondent no. 3 will hereinafter be referred to as "Ex-Partner" of M/s. Aditya Enterprises, the partnership firm.
- 3) Brief facts, which led to file instant appeal, are that the appellant no. 1 is a registered partnership firm. The appellant

*Jagtap*

no. 2 is one of the partners of said firm. The respondent no. 3 is Ex-partner of said firm. Since 28<sup>th</sup> February, 2011, M/s. Aditya Enterprises, the partnership firm has been carrying on a business of the construction and development of land including redevelopment of land property and sale of flats/shops to the prospective purchasers. "**Shri Sandesh Hights**" is a project launched by the appellant no. 1 firm.

- 4) On 01.01.2014, the allottees booked a flat no. 1204 on 12<sup>th</sup> floor in B wing admeasuring 687 sq. ft. in the subject project for a consideration of Rs. 64,53,000/-. The allottees have paid Rs. 10,00,000/- by cheque to respondent no. 3, who was the then partner of appellant no. 1 firm. The allottees have further paid Rs. 12,00,000/- in cash to respondent no. 3. Pursuant thereto, the firm has issued allotment letter dated 01.01.2014 to allottees. Despite having received more than 20 percent amount of total consideration, the promoters have failed to execute an agreement for sale in favour of allottees. The conduct of the promoters caused disappointment to the allottees which redounded the allottees to file complaint and only relief sought by allottees in their complaint was to direct the promoter to execute an agreement for sale in their favour.



- 5) After hearing the parties, the Ld. Authority by impugned order disposed of the complaint and directed the respondent no. 1 (present appellant no. 1) to execute a registered agreement for sale in favour of allottees in accordance with allotment letter dated 01.01.2014 within a period of 30 days from the date of receipt of the order.
- 6) We have heard learned Adv. Nesarikar for Appellants, learned Adv. Godfrey Pimenta for Respondent nos. 1 & 2 and learned Adv. Rupali Padgulekar for Respondent no. 3.
- 7) While arguing the matter, to assail the impugned order, the learned Adv. Mr. Nesarikar for promoters has mainly urged following contentions.
  - I) The Ld. Authority did not give proper opportunity to promoters to tender their reply to the complaint and on oral submissions of the parties the impugned order came to be passed. The learned Authority has erred in passing the impugned order without appreciating factual matrix and arrived at a wrong conclusion that M/s. Aditya Enterprises the firm is liable to execute and registered an agreement for sale with the allottees.

*S. J. Patil*

- II) The Ld. Authority did not appreciate the contents of legal notice dated 08.03.2019 issued by allottees to promoters through their Adv. Nirmala Menon in its proper perspective, wherein, it has been categorically stated by allottees that they have paid Rs. 12 lakhs in cash to respondent no. 3 i.e. S.D. Bhalerao. It is seen from the said notice that the said amount was paid to meet with the urgent needs of the respondent no. 3. The Ld. Authority did not consider this aspect in judicious manner and arrived at a conclusion that the promoters have recourse to lodge complaint against the respondent no. 3.
- III) Ld. Authority has failed to appreciate that it is specific contention of allottees that they have paid Rs. 12 Lakh in cash to respondent no. 3 and in turn the respondent no. 3 issued receipt dated 22.01.2014. The allottees have produced two receipts on record, one is for Rs. 10 Lakh and another is for Rs. 12 Lakh allegedly issued by respondent no. 3. So far as the receipt issued for Rs. 10 Lakh is concerned, the promoters are not disputing the same but so far as another receipt issued for Rs. 12 Lakh

*Geetika*

is concerned, it is claimed to be a sham, bogus and fabricated receipt. A careful examination of both receipts would reveals that there are material discrepancies in both receipts. The disputed receipt dated 22.01.2014, does not have logo of M/s. Adity Enterprises. Besides the word "**ENTERPRISES**" is written as "**ENTERPRESS**". Moreover, the addresses appearing in both the receipts are different. Apart from this disputed receipt is signed by one Ashok Jha, who was neither partner of firm nor authorized representative of firm to pass on such receipt. The Ld. Authority did not consider the aforesaid factual matrix and has wrongly observed that promoters have legal recourse to take action against the respondent no. 3.

- IV) The deed of Retirement-cum-Admission clearly indicates that the appellant no. 2 became partner of appellant no. 1 the partnership firm on 25.02.2017 and on that day erstwhile partner Mr. S.D. Bhalerao had resigned from the said partnership firm. Clause 5 of the said deed talks about the liability of respondent no. 3. As per clause 5, the respondent no. 3 is responsible, liable for all

*S. Jha*

liabilities, statutory or otherwise, whether existing as on date or otherwise and whether aware of the same or not, for all periods up to 01.11.2016. It is not in dispute that the respondent no. 3 was partner of partnership firm for the period from 28.02.2011 to 01.11.2016. The transaction took place in 2013-14 when the respondent no. 3 was looking after the affairs of the firm. Therefore, only respondent no. 3 is liable for his wrongful act and the firm as well as appellant no. 2 are not liable to execute any agreement for sale in favour of allottees.

- V) Clause nos. 4 and 5 of the deed of Retirement-cum-Admission dated 25.02.2017 reveal that the continuing partners and respondent no. 3 agreed to make the good loss of the partnership firm and further agreed that incoming partner will be responsible for all liabilities arising out of the activities of partnership firm from the date of execution of the said deed. This signifies that the appellant no. 2 is in no way concerned with earlier transaction. Therefore, appellant no. 2 is not liable to execute and registered agreement for sale in favour of allottees.

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8) Learned Advocate Mr. Nesarikar placed reliance on the following citations.

A) AIR 1959 Calcutta 262

Gauri Shankar Sheroff v/s. Central Hindustan Bank Ltd;

**Section 31: Introduction of a partner.**

B) AIR 2003 Karnataka 143

B.M. Devaiah v/s. Canara Bank

(paras No. 10,12,13,14);

C) AIR 1998 Bombay 356

Vinayak K. Paranjape

V/s.

Dena Bank & Ors.

(Paras No. 12,13 & 14)

D) AIR 1963 Madras 302

Central United Bank Ltd;

V/s.

B.A. Venkataram

Section 32(3)

(Paras 7, 8 & 9)





With these contentions learned Adv. Nesarikar for promoters has prayed to set aside the impugned order.

- 9) To refute the contentions of promoters and while supporting the impugned order to have been correctly passed, the learned Adv. Mr. Godfrey Pimenta for allottees argued that it is not in dispute that when the allottees had booked the flat in the project of the promoters at that time respondent no. 3 was one of the partners of the appellant no. 1 firm. The appellants have not disputed the fact that the allottees have paid Rs. 10 Lakh to the firm and issuance of receipt to that effect by the firm. The promoters have disputed the receipt dated 22.01.2014. However, at the same time the promoters have not disputed the payment of Rs. 12 Lakh in cash to the respondent no. 3. It is not in dispute that before filing the complaint the allottees had issued legal notice through their advocate to promoters wherein, allottees have specifically contended that they have paid Rs. 12 Lakh in cash to respondent no. 3. There is no material on record to show that the appellants have replied the said notice. It was incumbent on the part of the promoters to reply the said notice and



refute the contentions of the allottees that they have paid Rs. 12 Lakh in cash to respondent no. 3.

- 10) Learned Advocate has further poignantly submitted that the appellants in their written submissions have not disputed the factum of payment of Rs. 12 Lakh in cash to the respondent no. 3. Section 4 of MOFA casts an obligation on the promoter that not to accept deposit of more than 20 percent without execution of an agreement for sale. In the instant case, the promoters, though they accepted Rs. 22 Lakh which is more than 20 percent of total consideration, have not executed an agreement for sale in favour of allottees till date and thereby they have violated the provisions of Section 4 of MOFA. The Ld. Authority has rightly directed the promoters to execute an agreement for sale in favour of allottees. With these contentions learned Adv. Mr. Godfrey Pimenta has prayed for dismissal of appeal with compensatory cost.
- 11) Succinct of argument of Adv. Rupali Padgulekar for respondent no. 3 is that no doubt the respondent no. 3 was one of the partners of appellant firm at the time of transaction but at the same time it cannot be ignored that when the complaint was filed at that time respondent no. 3 was not partner of the

*Godfrey*

appellant no. 1 firm. Apart from this, the promoters have registered the project with MahaRERA. Web Page of MahaRERA does not disclose the name of respondent no. 3 as promoter. Therefore, the respondent no. 3 is not liable to execute an agreement for sale in favour of allottees as he is no longer partner of the appellant no. 1 partnership firm. With these contentions, learned Adv. Rupali Padgulekar has submitted that the appeal be dismissed with cost.

- 12) From the pleadings of the parties, rival submissions of the learned advocates appearing for respective parties, documents relied upon by the parties and impugned order only point that arises for our consideration is "Whether the impugned order calls for interference in this appeal?" and to this our finding is in the negative for the reasons to follow.

### **REASONS**

- 13) It is not in dispute that the appellant no. 1 is a registered partnership firm. M/s. Adity Enterprises, the partnership firm is engaged in a business of the construction and development of land including redevelopment of landed properties and sale of flats/shops to the prospective purchasers. The respondent no. 3 (Mr. S.D. Bhalerao) is erstwhile partner of the appellant no.





1 firm. **Shri Sandesh Hights** is a project launched by M/s. Aditya Enterprises the firm. On 01.01.2014 the allottees booked subject flat in the project of appellant no. 1 firm for a consideration of Rs. 64,53,000/-. Out of this, the allottees have paid an amount of Rs. 10 Lakh by cheque and Rs. 12 Lakh by cash. It is significant to note that the appellants have not disputed the payment of Rs. 10 Lakh made by cheque. The appellants have not disputed the issuance of receipt for Rs. 10 Lakh by respondent no. 3. However, the appellants have seriously disputed the payment of Rs. 12 Lakh in cash and issuance of receipt dated 22.01.2014 by respondent no. 3.

14) The appellants have disputed the receipt dated 22.01.2014 allegedly issued by respondent no. 3 contending that it is a sham, bogus and fabricated receipt by pointing out following discrepancies in the receipts.

1. The disputed receipt dated 22.01.2014 does not have logo of M/s. Aditya Enterprises, the partnership firm.
2. The word "**Enterprises**" is written as "**Enterpress**" in the disputed receipt.
3. The addresses appearing in both the receipts are different.





4. The disputed receipt is signed by one Ashok Jha, who was neither partner of firm nor authorized representative of firm to pass on such receipt.
- 15) On considering the contentions of the appellants as above the pivotal question falls for our consideration is "whether allottees have paid Rs. 12 Lakh in cash to respondent no. 3?" It is significant to note that the respondent no. 3 was party to the complaint proceeding. He did not deny the allegations of making payment of Rs. 12 Lakh by cash to him by allottees. In the instant appeal also the respondent no. 3 has not denied the fact that the allottees have paid Rs. 12 Lakh in cash to him. Apart from this, on careful examination of written submissions of appellants reveal that the appellants have not disputed the factum of payment of cash Rs. 12 Lakh to respondent no. 3. The appellants have categorically stated in their written submissions (page no. 244, internal page no. 3 of written submissions para 8) as under.

*"Appellant further submit that Rs. 12,00,000/- paid in cash to Respondent No. 3 for his requirement and not to the Appellant No. 1. Moreover the receipt for Rs. 12,00,000/- is sham bogus."*

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The appellants have further averred in their written submissions (page no. 245 internal page no. 4 para no. 10) as under.

*"Appellant No. 2 submits that the said transaction took place in 2013-14; when Respondent No. 3 was in control of the firm. Respondent No. 1 and 2 booked the Flat No. 1204 and paid Rs. 22,00,000/- to Respondent No.3."*

16) On examination of the above contentions of the appellants reveal that the appellants have not disputed the factum of payment of Rs. 12 Lakh in cash to respondent no. 3. The appellants have not disputed the factum of payment of Rs. 22 Lakh to respondent no. 3 by allottees. It is specific contention of appellants that the allottees have paid Rs. 12 Lakh to respondent no. 3 for his requirement and not to appellant no. 1 firm and therefore, the appellant no. 2 is not liable to execute an agreement for sale in favour of allottees on behalf of firm.

17) The next contention of appellants is that the deed of Retirement-cum-Admission discloses that appellant no. 2 became partner of M/s. Aditya Enterprises, the partnership firm on 25.02.2017. Clause 5 of the said deed talks about the liability of respondent no. 3. As per clause 5 of the deed the respondent no. 3 is responsible, liable for all liabilities,

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statutory or otherwise, whether existing as on date or otherwise for all purpose up to 01.01.2016. Therefore, the appellant no. 2 is not liable for the liability of respondent no. 3. According to appellants the said transaction took place in 2013-14. The respondent no. 3 had control over the partnership firm. He misused the funds of the partnership firm and therefore, he is solely responsible for his wrongful act. We do not find substance in the contentions of the appellants.

18) The appellants no. 1 M/s. Aditya Enterprises, the partnership firm being a legal entity, it is being managed by its partners. The firm itself cannot transact its business. Section 27 of the Indian Partnership Act, 1932 talks about the liability of firm for misapplication by partners. Section 27 reads as under.

- (a) A partner acting within his apparent authority receives money or property from a third party and misapplies it, or*
- (b) A firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.*

It means if a partner in the course of some transaction connected with the business of the firm, or not within the





scope of such business, obtains money and then misapplies it, the firm is liable to make good the loss.

19) It is not in dispute that at the relevant time respondent no. 3 was partner of the firm and he was looking after the affairs of the firm. The allottees have booked the flats in the subject project of the firm and pursuant thereto, they have paid Rs. 22 Lakh to respondent no. 3. Therefore, we are of the view that though the respondent no. 3 had misapplied Rs. 12 Lakh as alleged by appellants, firm is liable for the act of respondent no. 3.

20) It is not in dispute and it transpires from the material on record that before filing of the complaint the allottees had issued notice dated 08.03.2019 through their advocate to appellants and respondent no. 3, wherein, the allottees have categorically contended that on 22.01.2014 on the request of respondent no. 3, they have paid Rs. 12 Lakh by cash to respondent no. 3 as the respondent no. 3 had some urgent needs to pay certain amount to the persons who were residing in the existing premises. These averments clearly indicate that the respondent no. 3 had received Rs. 12 Lakh in cash from the allottees in connection with the business of the firm. It is worthy to note that the appellants have





not disputed the factum of receipt of this notice. It was incumbent on the part of appellants to deny the averments made in the notice at an earliest opportunity. However, the appellants have not replied he said notice. This conduct of the appellants more particularly appellant no. 2 signifies that they are not disputing the factum of payment of Rs. 12 Lakh by cash to respondent no. 3 by allottees and that too towards consideration of subject flat.

- 21) Section 25 of Indian Partnership Act speaks about the liability of a partner for acts of the firm. Section 25 provides that every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. While the firm is incurring a liability it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the firm. Partners of a firm have unlimited liability to the creditors of the firm. Since liability of a firm is the liability of all its partners, an *inter se* arrangement between partners to discharge liability of the third person does not bind the third person, unless the third person is also a party to the *inter se* arrangement between the partners. Each partner shall be liable as if the "debt" of the firm has been

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incurred on its personal liability. In the instant case, there is nothing on record to show that allottees are parties to the *inter se* arrangement between the partners of the appellant no. 1 firm. Under such circumstances, an *inter se* arrangement between the partners as alleged by the appellants to discharge liability of the allottees does not bind the allottees. Apart from this, Section 25 does not make a distinction between a continuing partner and erstwhile partner or incoming partner and makes liable every partner for all acts of the firm done while he is a partner.

- 22) Section 26 of the Indian Partnership Act lays down that where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party or any penalty is incurred, the firm is liable therefor to the same extent as the partner. The principle of this section is a branch of the universal rule that everyone must answer for the acts and defaults of his servants or agents in the course of their employment. Liability of the firm for acts done by the partner would arise if such act is done in ordinary course of business of a firm. As indicated above at the relevant time, respondent no. 3 was looking after the affairs of appellant no. 1 firm. He had received Rs. 22 Lakh from

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the allottees and issued allotment letter to allottees. It means the respondent no. 3 was acting in the ordinary course of the business of the partnership firm. Under the circumstances the appellants are liable for all acts of the firm done.

- 23) We would like to observe that RERA Act, 2016 has been enacted for beneficial objective of safeguarding interest of purchaser/allottees with the overall aim to promote the Real Estate Sector. Section 13 of RERA Act, 2016 mandates the execution and registration of the agreement. This section imposes obligation on the promoter not to accept deposit of more than 10 percent sans agreement. Section 4 of MOFA also imposes similar obligation on the promoter that not to accept deposit of more than 20 percent without agreement. In the instant case, the allottees have paid amount more than 20 percent of the total consideration. Despite this, the firm has not executed a registered agreement for sale in favour of allottees. This is a sheer violation of provisions of Section 4 of MOFA and Section 13 of RERA Act, 2016 by appellants. Therefore, we are of the considered view that the Ld. Authority is right in directing the appellant no. 1, the partnership firm to execute the registered agreement for sale with the allottees in accordance with allotment letter dated

*S. J. Singh*



01.01.2014. The impugned order does not warrant interference in this appeal. Therefore, for the foregoing reasons we have come to the conclusion that the appeal is devoid on merits and thus, it is liable to be dismissed with cost. Consequently, we proceed to pass following order.

**ORDER**

- a) Appeal no. AT00600000052077 is dismissed with cost.
- b) The appellants shall pay cost of Rs. 20,000/- to allottees (Respondent nos. 1 and 2).
- c) Pending Misc. Application if any, also stands disposed of.
- d) Copy of this order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.

  
(DR. K SHIVAJI)

  
(SHRIRAM R. JAGTAP)

Ajit