

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

Appeal No. AT00600000052572 of 2020

In

Complaint no. CC00600000089924

1. Kakad Housing Corporation

A partnership firm, having its office at,]
Kakad House, B-wing, 1st Floor, 11,]
New Marines Lines,]
Mumbai-400 020] **...Appellant**

Versus

1. Rajkumari Singh

2. Ashutosh Singh

Both Adults, Indian Inhabitants,]
Residing at 38, Kirti Bhavan Building,]
Shradhaanand Road, Vile Parle (East),]
Mumbai-400 057.] **...Respondents**

Adv. Mr. Vikramjit Garewal for Appellant.

Adv. Mr. Alok Singh for Respondents.

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 03rd April, 2024

(THROUGH VIDEO CONFERENCING)

JUDGMENT

[PER : SHRIRAM R. JAGTAP (J)]

S. Jagtap

- 1) Feeling aggrieved by the order dated 4th March, 2020 passed by Ld. Authority in Complaint No. CC006000000089924 filed by allottees, the appellant, who is a promoter, has preferred instant appeal on the grounds enumerated in the appeal.
- 2) For the sake of convenience, parties to the appeal hereinafter will be referred as "Promoter" and "Allottees".
- 3) The brief facts culled out from the pleadings of the parties reveal that promoter undertook a project known as "**Kakad Paradise**" in a phased manner under Affordable Housing Scheme, which is duly registered with MahaRERA. The subject project consists of two wings. Wing "C" is comprising of two plinths, two stilts and ground plus 23 floors, and Wing "D" is comprising of one plinth and one stilt ground plus 23 floors. The allottees in or around June, 2015 approached the promoter and expressed their desire to buy two residential flats in the subject project. Accordingly, the allottees have booked a residential Flat No. 901 on the 9th Floor admeasuring 760 sq. ft. in Tower "C" of the subject project for a consideration of ₹50,67,000/-. Pursuant thereto, the promoter has issued Letter of Intent dated 10th July 2015 to



allottees. Pursuant to receipt of commencement certificate dated 4th December 2015, the promoter commenced the construction work of the subject project. As the area of Flat No. 901 was increased by 20 sq. ft. and consequential increase in sale consideration of the subject flat, the promoter issued a fresh Letter of Intent dated 7th January 2016 *inter alia* for booking of Flat No. 901 admeasuring 780 sq. ft. to allottees for the revised consideration of ₹52,01,000/-. The sale consideration was agreed to be paid in trenches as recorded in Letter of Intent.

- 4) The allottees have paid ₹16,22,111/- to promoter from time to time till 21st November 2016 towards part consideration of the subject flat. The allottees have claimed that the promoter had verbally agreed to hand over the possession of the subject flat on or before December, 2018. Despite having received ₹16,22,111/-, the promoter has failed and neglected to enter into an agreement for sale. The promoter sans executing an agreement for sale started demanding the balance amount from the allottees. By letters dated 10.09.2018 and 28.09.2018, the promoter has terminated the

S. J. S.

transaction, cancelled the Letter of Intent and forfeited the amount paid by the allottees. Thereafter, allottees met the promoter and expressed their desire to pay balance amount by obtaining loan from Pratap Co-operative Bank Ltd. The allottees were informed by promoter that the promoter did not prefer the Pratap Co-operative Bank Ltd. because of its poor track record in making timely payment and asked the allottees to avail loan from its approved lenders/bankers and thereby denied to refund the amount paid by allottees and further suggested the allottees to deposit amount of ₹26,57,157/- within a period of 3 days in order to secure the flat.

- 5) Feeling aggrieved by this conduct of the promoter the allottees decided to withdraw from the project and filed complaint and sought relief of refund of amount with interest and also compensation for losses suffered by them.
- 6) The promoter put his appearance in the complaint and remonstrated the complaint by filing reply contending therein that the complainants are not allottees because the allotment of subject flat has been terminated on 10.09.2018 much prior

Pratap

to filing of the complaint on account of breaches/defaults in paying the consideration amount and therefore, the complaint is liable to be dismissed on this ground alone. Besides, the parties have not entered into a valid and binding agreement for sale as per provisions of Section 13(2) of RERA Act, 2016. On this score also the complaint is liable to be dismissed.

- 7) The promoter has further contended that the complainants along with Mr. Ramchandra V. Singh, who is brother of complainant no. 2 in or around June, 2015 approached the promoter for booking of two residential flats in the subject project. The complainants were apprised by promoter that the possession of the subject flat would be given on receipt of the occupation certificate. The promoter has denied that the promoter had verbally agreed to hand over the possession of the subject flat on or before December, 2018.
- 8) The promoter has further contended that as per the terms and conditions enumerated in the Letter of Intent, if there was default in payment of installments of consideration on their respective due dates, and if the same remained unrectified within 15 days' notice, the allotment in respect of

Speaker