

UPDATE ON REAL ESTATE (REGULATION & DEVELOPMENT) ACT , 2016

Recent Pronouncement by Maharashtra Real Estate Appellate Tribunal

In the matter of Rohit Chawla & others Vs Bombay Dyeing & Mfg Co.Ltd

Various allottee have booked flats in the “ Island City Center.”at Wadala ,Mumbai in the scheme of 20 : 80 wherein 80 % of the consideration was to be paid by allottees at the time of possession. Promoter have issued allotment letters.

Promoter have assured date of possession in 2017 as per advertisement material but has failed to provide the possession in time. This itself is false information u/s 12 of the Act.

Before Authority relief was claimed for violation of Section 12 of the Act and thereupon refund of principal with interest is claimed.

However, Authority declined the relief to the allottees stating that Section 12 of the Act cannot be applied retrospectively or retroactively.

MahaRera authority provided alternative remedy for withdrawal from project as per terms of allotment but without any interest on refund and directed allottees to execute the agreement with promoter, if not agreed upon.

The MahaRera Authority order dated 09-01-2019 & 25-01-2019 was challenged by the allottees on correctness and legality.

The main issue before Tribunal was whether section 12 of the RERDA, 2016 is retrospective or retroactive and whether allottees are entitled to refund of consideration paid with interest ?

Various Supreme Court decisions were analysed and put forward by allottees and promoter in support of their respective claim.

Conclusion :

1. It is held that Section 12 is compensatory in nature as it compensate the allottees for any false information provided by the promoter at the time of booking.
2. It is held that Section 12 has the retroactive effect and even for transactions entered into prior to enactment of RERDA , 2016 , RERA has the jurisdiction.
3. The impugned order dated 09-10-2019 & 25-01-2019 are set aside.
4. It is held that allottees are entitled to refund of principal paid with interest for violation of Section 12 an 18 of the Act by the promoter.
5. It is further held that interest is not penalty hence can be retroactive.