

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY MUMBAI

Complaint No. CC004000000030244

Ashishkumar Sopanrao Yesankar

.... Complainant

Versus

Dilip Agrawal

Manish Gaikwad

.... Respondents

MahaRERA Project Registration No. P50500010124

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/MahaRERA

The complainant appeared in person.

None appeared for the respondents.

ORDER

(Monday, 10th April 2023)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before MahaRERA on 22-02-2021 mainly seeking directions from MahaRERA to the respondents to refund the entire amount paid along with interest as prescribed under the provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of alleged twin bungalow no. 160 in the respondent's registered project known as "**Sandesh City Apartments-4**" bearing MahaRERA registration No. **P50500010124** located at Jamtha, Dist Nagpur.
2. This complaint was heard finally on 04-01-2023 as per the Standard

Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, the complainant appeared and made his submissions. However, despite the notice of hearing, the respondent remained absent. The MahaRERA heard the arguments of the complainant and also pursued the available record.

3. After hearing the arguments of the complainant, the following Roznama was recorded in this complaint -

"The complainant is present. Although the respondent is absent, he has filed his reply to the complaint as well as sur-rejoinder to the rejoinder of the complainant. The complainant is praying for refund of the amount of Rs.5,09,000/- paid in 2010 vide an allotment letter and agreement for sale was executed in 2011. Therefore, the complainant wishes for refund of the consideration amount with interest due to delay in possession. Both parties have filed their reply, rejoinder, sur-rejoinder in the complaint and the complainant has argued his case today. However, the respondent is absent despite notice of the hearing. Therefore, one week's time i.e. till 11-01-2023 is granted to both sides to file their written arguments in the matter. The matter is reserved for orders suitably after one week i.e. after 11-01-2023 based on the arguments of the complainant today as well as the reply, rejoinder, sur rejoinder, written arguments etc. of both sides."

4. However, despite specific directions being to both the parties, they have

not uploaded their written arguments on record of MahaRERA in this complaint within the stipulated time period granted by the MahaRERA. Hence, the MahaRERA has perused the available record.

5. It is the case of the complainant that he booked twin bungalow no.160 for total consideration of Rs. 27,75,740/- vide agreement for sale dated 6-4-2011 which is being constructed by respondent no.1. On enquiring with the agent of the respondent, he was told that they are waiting for the approval from Nagpur Improvement Trust. Further, he has paid Rs. 5,09,000/- to the respondent towards receipt without intimating the change in bungalow number from 160 to SD-185 and a registered agreement in Plot no. 186 in the said layout. Further, the respondent has received an amount of Rs. 1,11,000/- towards registration charges but actually paid Rs. 45,130/- and rest of the amount is grabbed by their Executive Manish Gaikwad. The original copy of the registered agreement has not been given to him till date. In fact, on visit of the site it, he came to know that the said area will be sold as a plot without any construction. And on verification of the Xerox copy of the agreement, he learnt that the documents are not in respect of bungalow but is in respect of plot. When he visited the site office the new Project Manager Mr. Shabbir Khan explained that the Executive Manish Gaikwad misled them and executed agreement in respect of plot and not the twin bungalow and suggested that he should pay additional amount for the twin bungalow as per current rate or cancel the deal and take back his amount or execute the sale deed with the current rate of the plot. Thereafter, on returning from Muscat, it was the same position. Hence he issued a legal notice to the respondent calling thereby to execute a Sale Deed of Twin

Bungalow no. 160 but the respondent has not taken cognizance of it. Thereafter, he filed complaint in the District Consumer Forum, Nagpur against the respondent. The respondents appeared in the matter and filed their written statement. The said matter is pending for rejoinder of the complainant.

6. The respondent has filed its reply stating that booking for Twin Bungalow was done through their business associate, Mr. Manish Gaikwad, but due to some technical issue with the sanctioning authority he was unable to take the booking of bungalow. Further, the option of booking of open plot was given which the customer agreed and as per his wish, a registered agreement to sale was done against the plot no 186 on 06/04/2011 for total consideration of Rs. 12,69,077/- out of which he paid Rs. 21000/- and Rs.2,96,269/ and agreed to pay the balance payment of Rs. 9,51,806/- within 8 months from the date of agreement which he failed to pay. For the booking of the bungalow Rs.2,12,731/- was taken as advance but when the company got the sanction of bungalow, it tried to contact the complainant for further transactions but since he was abroad (Oman) he never contacted it till 1st week of January 2021. Further, it was learnt from the complainant that every year he used to visit India for a short time but he never had time to visit them. Now he is asking to get the sale deed to be done of the said plot with the old agreement cost which is not possible for them as they are already in big loss due to late payment of balance amount. As per the registered agreement, the payment has to be made within 8 months from the date of agreement but the complainant failed to do so. After almost 10 years he is asking the sale deed to be made on old price which is not possible and

justified. In fact, the draft was given construction of the Twin Bungalow but it was later changed for the plot.

7. The complainant filed a rejoinder on record stating that the respondent deals in business of selling, purchasing of immovable properties by construction of flat schemes/row houses and bungalows etc. They advertised their scheme and promised thereby to provide several amenities as per brochure, by which they have intimated the public at large that they are going to construct flats, row houses, twin bungalows, villas and plots. Since the complainant is having his service at Oman he told his father to verify the details of the said scheme but he has visited the site office of respondents at Wardha Road, Nagpur when he came to India in January 2010 and the Executive of the respondent i.e. Manish Gaikwad attended him and complainant believing upon his words booked the twin bungalow no. 160 in the said project being constructed by them. The complainant made the necessary payments which have been acknowledged by the respondent towards booking of bungalow no. SD-185 without intimating about the change of the bungalow number. Further, the copy of the draft agreement was given to the complainant before execution of registered document. Further, when the complainant was called for signing of the agreement, the office of Registrar was overcrowded and the Executive of respondent i.e. Manish Gaikwad told that the agreement is same as per draft agreement and hence believing upon his words, he signed the agreement. The rest of the contentions are mere repetition of what has been stated in the complaint.
8. The MahaRERA has examined the submission made by both the parties

and also perused the available record. In the present case, the complainant by filing this complaint is mainly seeking refund of an amount of Rs. Rs.5,09,000/- paid by him to the respondent in the year 2010 on account of delay in handing over of the said unit to the complainant under the provisions of section 18 of the RERA.

9. However, the said claim of the complainant is refuted by the respondent by filing its reply on record of MahaRERA. The respondent has mainly contended that the complainant has failed to make the balance payment as per the terms and condition of the registered agreement for sale dated 05-04-2011 to which he was bound to pay within the period of 8 months from the date of execution of the said agreement for sale. Further there is consumer complaint bearing no. CC/274/ 2021 filed by the complainant for similar cause of action. Hence, the respondents prayed for dismissal of this complaint. The said fact has also not been denied by the complainant in this complaint.

10. Hence, before going into the merits of this case, the MahaRERA has perused the copy of complaint no. CC/274/2021 filed by the complainant before the District Consumer Dispute Redressal Forum, Nagpur, which is submitted by the respondent on record of MahaRERA. On bare perusal of the same, the MahaRERA prima facie noticed that the said complaint is filed by the complainant on 09-06-2021 i.e. after filing of this complaint before the MahaRERA on 22-02-2021. In the said complaint the complainant has prayed for following reliefs:-

“(i) To declare that the Opponent Company is indulged in Unfair Trade Practice in their day-to-day business.

(ii) The Opponent Company be directed to execute the Sale Deed of twin bungalow particularly described in para-3, in favour of the complainant within a period of one month from the date of order, or in alternate direct the Opponents to refund the cost of suit property as per today's rate of Government Ready Reckoner along with 18% p.a. thereon'

(iii) Be pleased to direct the Opponents to handover vacant physical possession of the suit twin bungalow to the complainant.

(iv) Further be pleased to direct the Opponents to pay interest @ 18% per annum on the amount of Rs' 6,40,000/- paid by the complainant to the Opponents till execution of Sale Deed of suit plot from the date of its payment.

(v) further be please to direct the Opponent jointly and severally to pay Rs. 5,00,000/- towards compensation and financial loss of the Complainant due to unfair act of Opponent; further be pleased to direct the Opponent to pay Rs. 50,000/-/- towards litigation expenses etc''

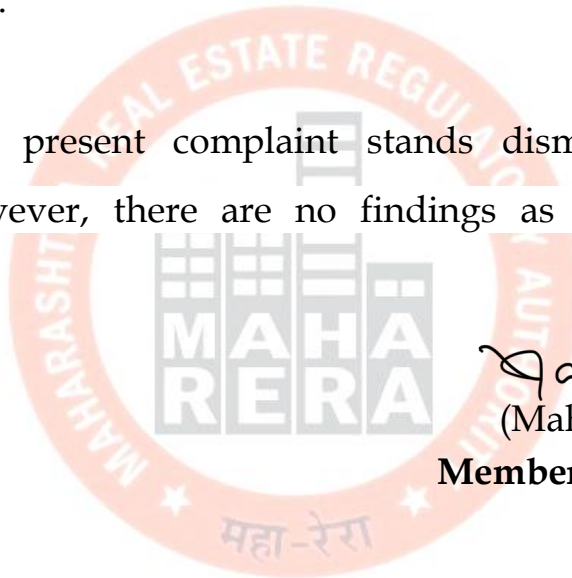
11. From the aforesaid reliefs sought by the complainant before the District Consumer Dispute Redressal Forum at Nagpur prima facie, it appears that the complainant in the said complaint filed before the Consumer Forum is seeking identical reliefs as sought for before the MahaRERA. Further, although the present complaint filed before the MahaRERA is filed prior in time, however from the website of the District Consumer Forum, prima facie it appears that the said complaint bearing no. CC/274/2021 is now kept for written arguments on 04-05-2023.

12. The aforesaid conduct of the complainant shows that he is trying for forum shopping, which is not permissible in law. The complainant if

so aggrieved should have withdrawn the present complaint and should have filed the said complaint before the District Consumer Forum. However, the complainant has not done so. It shows that the complainant is trying to abuse the process of law.

13. In view of these facts brought to the notice by the respondent, the MahaRERA is of the view that since parallel proceeding is pending before the District Consumer Forum, Nagpur for similar sort of reliefs, the present complaint cannot be entertained by MahaRERA being a parallel proceeding.

14. Consequently, the present complaint stands dismissed being not maintainable. However, there are no findings as to merits of the complaint





(Mahesh Pathak)

Member - 1/MahaRERA