

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI**

Complaint No. CC004000000030311

Mahendra S. Sirsat and Suryakant S. Sirsat

... Complainant/s

Versus

M/s. Universal Drinks Pvt. Ltd.

... Respondent/s

MahaRERA Project Registration No. P50500004022

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

Ld. Adv. Vivek Bharadwaj appeared for the complainants.

None appeared for the respondent.

ORDER

(Thursday, 07th March 2024)

(Through Video Conferencing)

1. The complainants above named have filed this online complaint before the MahaRERA on 09-11-2021, mainly seeking directions from MahaRERA to the respondent to declare the termination of booking form as void, execute registered sale deed, interest on delayed possession and compensation as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of the apartment/penthouse nos. 1102 and 1202 on 11th and 12th floor admeasuring built-up area of 2603.91 sq ft. (hereinafter referred to as 'the said flat'), in the respondent's registered project known as "ENRICO HEIGHTS" bearing MahaRERA registration No. **P50500004022** located at Nagpur (M Corp.), Dist. Nagpur. ("said flats").

2. This complaint was heard on several occasions and the same was heard finally on 21-11-2023 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 complainants appeared and made their submissions. However, the respondent, despite notice, remained absent. The MahaRERA heard the submission of the complainants and also perused the available records.

3. After hearing the submission of the complainants, the following Roznama was recorded in this complaint-

"The complainants are present. The respondent is absent. In fact the respondent has never appeared before the MahaRERA and it has also not filed any reply to the complaint. The arguments of the complainants have already been recorded in the previous hearings and the respondent is directed to file its reply to the complaint along with its written arguments within a period of 2 weeks i.e. by 05-12-2023 as a last chance. The complainants may file their rejoinder within a further period of one week i.e. by 12-12-2023 along with written arguments, even if the respondent does not file its reply. Accordingly, this matter is reserved for orders suitably after 12-12-2023 based on the arguments of the complainants as well as reply, rejoinder and written arguments filed in the complaint. In case the respondent does not file any reply, the MahaRERA would be constrained to decide this matter ex parte against the respondent on merits."

4. Despite the specific directions given above by the MahaRERA, both the parties have not uploaded any submissions on the record of the MahaRERA. Hence, the MahaRERA has also perused the available record.

5. It is the case of the complainants that in 2016 they have booked the said flat for a total consideration of Rs. 3 crores, out of which they have paid Rs. 20 lakhs at the time of booking to the respondent. The respondent has promised to handover the possession of the said flat to them within 2 years i.e. in 2018. However, no sale deed was executed between the parties, even after many reminders. The complainant no. 1 has executed power of attorney in favour of complainant no. 2. The respondent halted the progress of the constructions and evaded the complainants on one pretext or the other. The respondent registered the said project with RERA on 07/08/2017 and immediately demanded Rs. 50 lakhs in cheque and Rs. 25 lakhs in cash. The respondent assured that it has complied with all the requirements of RERA. Therefore, the complainants have paid the amount as demanded. The respondent gave receipt of the Rs. 50 lakhs however, failed to give receipt of Rs. 25 lakhs which was paid in cash in Euros. The respondent revised the sanctioned building plan and thus changed the area of the said flat from 5000 sq ft to 2603.91 sq. ft. for which no consent has been obtained from the complainants. Thereafter, the respondent sent demand notice of the balance amount of Rs. 1,46,50,681/-. From the demand notice, the complainants got to know that the allotted flats has been changed from 1102 and 1202 to 901 without obtaining the consent of the complainants. On questioning the changes of the said flat, the respondent falsely conveyed that the said change was made on oral request of the complainant no. 1. The complainants thereafter, filed FIR bearing no. 259 against the respondent. The complainants further submitted that the respondent continuously extended the possession timeline on MahaRERA portal without the consent of the allottees and still there is no progress in the construction. Being aggrieved by the actions of the respondent, the complainant approached the MahaRERA and filed the present complaint under the provisions of RERA to declare the termination of booking form as void, direct the respondent to execute registered sale deed in respect of the

said flats, pay interest on delayed possession and compensation.

6. In the present case, the MahaRERA has observed that the complainants have filed this online complaint before MahaRERA seeking execution of the agreement for sale, possession and interest and compensation for the delay on 9-11-2021. However, till date the respondent has not bothered to upload its reply to this complaint, even though the complaint was visible to the respondent in its project login. Even as per the SOP dated 12-06-2020, the respondent was liable to upload its reply in digital form in this complaint however, till date the respondent has not complied with the said direction. Furthermore, though the notices for virtual hearings held before the MahaRERA on 20-12-2021, 30-05-2023, 08-08-2023 and 21-11-2023 have been duly served upon it, however, it has failed to appear for the said hearings. Further, on the last date of hearing held on 21-11-2023, one week's time was granted to it to file its reply as a last chance. However, despite specific directions, the respondent has failed to upload any reply/written submission on record of MahaRERA. Furthermore, the respondent although has uploaded its application on records of MahaRERA on 21-11-2023 seeking suitable time to file its written submissions, however, till date it has not uploaded its reply. Hence, as recorded in the roznama dated 21-11-2023, the MahaRERA has no other alternative but to decide this complaint ex-parte against the respondent on merits.
7. The MahaRERA has examined the submissions made by both the parties and also perused the available record. In the present case, the complainants claiming to be the allottees of this project have approached the MahaRERA mainly seeking reliefs under sections 13 and 18 of the RERA towards the execution of agreement for sale and also for payment of interest and compensation on account of delay. The complainants have agitated their

claims by virtue of the payment receipts dated 31-01-2016, 31-08-2016 and 30-10-2017 duly issued by the respondent wherein the flat numbers are mentioned as 1102 and 1202. Admittedly, no allotment letter seems to have been issued by the respondent towards the said booking. The complainants have contended that they have paid an amount of Rs. 95,00,000/- towards the said booking of two flats, out of total consideration amount of Rs. 3 Crores. However, the respondent has changed the building plans and modified the flat area/ flat numbers allotted to them from 5000 sq ft to 2603.91 sq. ft and flat nos. 1102 and 1202 to 901. Without executing the registered agreement for sale, the respondent has raised the demand for further payments. Hence, they have prayed to allow this complaint.

8. All these contentions and the documents submitted by the complainants in support of their claims remain undisputed and unchallenged as though the respondent sought time to file its reply, it has failed to submit the same.
9. From the payment receipts submitted by the complainants it is seen that the complainants have paid an amount of Rs. 15,00,000/- on 31-01-2016, Rs.5,00,000/- on 31-08-2018 and Rs. 50,00,000/- on 30-10-2017. It shows that the complainants have paid total amount of Rs. 70,00,000/- through cheques and the said payment is acknowledged by the respondent by issuing the payments receipts as stated above. However, the complainants have also claimed that they have paid an amount of Rs. 25,00,000/- in cash. In this regard it is pertinent to note that the MahaRERA cannot take into consideration the said cash transaction (if any) between the parties. Hence, the MahaRERA has considered the total consideration amount paid by the complainants as Rs. 70,00,000/- towards the said booking.

10. In the present case, it is pertinent to note that the complainants have not submitted any booking application form or allotment letter duly issued by the respondent towards the said booking of flat nos. 1102 and 1202. However, as per the demand letter dated 13-08-2018 issued by the respondent (Exhibit- D submitted by the complainants), it appears that the respondent has mentioned that the complainants have booked the flat no.901 for a total consideration amount of Rs. 2,10,17,000/- and admitted that the complainants have paid an amount of Rs. 70,00,000/- (excluding GST and Service Tax it comes to Rs.63,66,319/-). Hence, the respondent sought balance consideration amount of Rs. 1,46,50,681/- from the complainants. On bare perusal of the said demand letter dated 13-08-2018, it also appears that the respondent has also called upon the complainants to clear all dues and also get the agreement for sale registered without any delay. However, the complainants have not paid the same, hence, it seems that the respondent is seeking cancellation of the said booking.
11. In the present case on bare perusal of the webpage information uploaded by the respondent on MahaRERA website, the MahaRERA has prima facie noticed that the captioned project registered with the MahaRERA is complete and the respondent has obtained occupancy certificate for the project on 28-06-2021 from the Nagpur Municipal Corporation. It shows that the project was complete on the date of filing of this complaint before the MahaRERA on 9-11-2021 and also despite the non-payment of substantial amount towards the said booking by the complainants to the respondent, the respondent has completed this project. It shows the bonafide act on the part of the respondent. Further, the complainants in this case have not cited any valid reasons for non-execution of the agreement for sale despite the fact that they have been called upon by the respondent for execution of the agreement for sale in the year 2018 itself. More so, on the date of filing of this complaint before the MahaRERA on 9-11-2021, the project was complete and the OC for the project was already

obtained by the respondent on 28-06-2021. Hence, the MahaRERA prima facie is of the view that there is no violation of section 18 of the RERA by the respondent as alleged by the complainants. Hence, the claim of interest / compensation sought by the complainants under section 18 of the RERA is devoid of any merits. Hence, the same stands rejected.

12. As far as the substantive relief sought by the complainants under section 13 of the RERA towards the execution of agreement for sale, it is pertinent to note that as stated hereinabove, the respondent despite notice has neither appeared for the hearings held before the MahaRERA nor has disputed the said relief sought by the complainants by filing any reply/ written submissions on record of MahaRERA. Hence, the said relief sought by the complainants remain undisputed and unchallenged. Also, vide demand letter dated 13-08-2018 issued by respondent, it appears that the respondent has accepted the booking of the flat done by the complainants and also acknowledged the payment made by the complainants. Hence, the MahaRERA sees no objection in granting the relief sought by the complainants under section 13 of the RERA. Needless to state here that the complainants are liable to make the balance payments towards the consideration of the said flat along with applicable interest for the delayed period of payment at the rate prescribed under the RERA and the relevant Rules made thereunder.

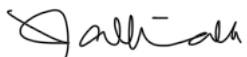
13. In view of these facts, the following order is passed:-

- a. The present complaint is partly allowed.
- b. The claim of interest/compensation sought by the complainants under section 18 of the RERA stands rejected in view of the observations made in the aforesaid para no. 11.
- c. The respondent is directed to execute the registered agreements for sale with these complainants as per section 13 of the RERA in

accordance with the terms agreed between the parties towards the said booking within a period of 2 months from the date of this order as per the observations made in aforesaid para nos. 10 and 12.

- d. The complainants allottees are also directed to adhere to the terms and conditions of the said booking and make the balance payments alongwith applicable interest rate as prescribed under the provisions of RERA and the relevant Rules made thereunder i.e. SBI's Highest Marginal Cost Lending Rate plus 2%.
- e. The complainants are also directed to complete all the necessary formalities for execution of the agreement for sale. The respondent shall cooperate with the complainants for the same.
- f. If any non-compliance of aforesaid directions at para (c) , (d) and (e) on the part of either party is brought to the notice of MahaRERA, in that event, appropriate penal action would be taken against such party under the applicable provisions of the RERA.

14. With these directions, the present complaint stands disposed of.


(Mahesh Pathak)

Member - 1/MahaRERA