BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI

Complaint No. CC001000000060308

Nizamuddin Rabbani Khatib .... Complainant

Versus

Viraj Estates Pvt. Ltd. …..Respondent

MahaRERA Project Registration No. P51600022659

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

Mr. Abedin Nizamuddin Khatib - Son (Authorized Representative) appeared for the complainant.

Ld.Adv.Kasle i/b. L.d Adv. R. D. Soni appeared for the respondents.

ORDER

(Wednesday, 25th October 2023)

(Through Video Conferencing)

1. The complainants above named has filed this online complaint before the MahaRERA on 18-03-2023, seeking directions from MahaRERA to the respondent to be ordered to disclose necessary details of pending litigation on MahaRERA webpage of the project and (ii) revocation of the project due to non-disclosure of litigation details required by the act being in violation of T&C point 3 of Registration Certificate prescribed under the provisions of sections 60 and 4 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the property bearing no S.No. 648/B2-P,F.P.NO.311-P in the respondent's registered project known as "**NIRVAAN RESIDENCY**" bearing MahaRERA registration No. **P51600022659** located at Rakka Colony, Nashik (hereinafter together referred to as the said "Row Houses").

2. This complaint was heard "as first hearing matter" on 19-06-2023 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, both the parties appeared for the hearing and made their submissions. MahaRERA heard the submissions of the parties and perused the available record.

3. After hearing the arguments of both the parties, the following Roznama was recorded -

"***First Hearing Matter"***

Both the parties are present. (The complainant joined the hearing later.) The prayers in the complaint are for non-disclosing the pending litigation on MahaRERA website, to which the respondent has pointed out that the said litigation is filed after the project was registered with MahaRERA. Therefore, the respondent agrees that it will upload the said information about the pending litigation i.e., Special Civil Suit No. 236 of 2020 on the MahaRERA website in the present project registration number within a period of 4 weeks i.e. by 17-07-2023. The complainant is directed to file his rejoinder to the said uploaded information as well as his arguments within a further period of one week i.e. by 24-07-2023. Accordingly, this matter is reserved for orders suitably after 24-07-2023 based on the arguments of both the parties today as well as the reply/rejoinder/ written arguments uploaded in the complaints by both the sides.

4. However, despite specific direction given to the complainant, she has not uploaded the rejoinder to the reply of the respondent uploaded on 17-06-2023. Hence, the MahaRERA has perused the available record.

5. In the present case, the complainant herein claiming to be the co-owner having undivided right, interest, title and ownership in the property bearing S.no. 648/B2-P,F.P.No.311-P in which the project 'Nirvaan Residency' has filed this complaint seeking reliefs under sections 4 and 7 of the RERA. The complainant has mainly contended that there is pending Special Civil Suit No. 236/2020 in the year 2020 filed by her against the respondents for partition and other ancillary reliefs in Nashik District and Session Court in respect of abovesaid property. However, the respondent has not disclosed the said pending litigation on the MahaRERA website. Thereby, the respondent has violated the provisions of section 4(2)(b) and section 11 of the RERA. Hence, the complainant seeks revocation of the MahaRERA project registration issued in favour of the respondent.

6. In reply to this complaint, the respondent has uploaded its reply on record of MahaRERA. It has stated that, by a registered sale deed dated 17-02-2016, the complainant through his POA has already conveyed his share in the subject property to the respondent. The registered sale deed bearing no. 2662 / 2016 NSK3 is still valid and even the 7/12 extracts in respect of the said property discloses the name of the respondent- Viraj Estate Pvt Ltd as the owner. Thus, the complainant has no locus whatsoever to file the present complaint. The respondent applied for RERA registration and registration certificate was issued to it on 10-10-2019. The Special Civil Suit No. 236/2020 which was filed by complainant in the court of Nashik was filed on 20-07-2020, which is after the registration certificate issued by the MahaRERA in its favour. However, it has received the suit summons on 12-10-2020 and prior thereto, the plans were sanctioned by the Nashik Municipal Corporation along with the revised plan on 21-08-2019, 21-05-2020 and 31-05-2021. The aforesaid dates would clearly indicate that all the events right from the MahaRERA registration upto sanction of the building

plans and revised plans are prior to the date of filing of the said suit. Furthermore, the complainant has not been able to get any interim relief whatsoever in the said suit and that the application for injunction as filed by the complainant was rejected by the court. Therefore, there is no impediment or any restraining order against the respondent from developing the said project. Moroever, the entire structure of the said project is fully complete and that only finishing work is in progress. All flat purchasers in the said project are fully satisfied and have not made any grievance. The complainant was all throughout aware of the aforesaid registration and the details displayed on the MahaRERA website and social media by the respondent. However, he has now filed the present complaint only in view of the fact that he has failed to get any relief from the Civil Court. An application for revision of the MahaRERA registration certificate was filed by the said company with a view to get the date of completion revised from 30-04-2024 to 30-04-2025. This was only revision sought for by it which was granted by the MahaRERA. Further, since the registration was done prior to the filling of the suit, the subsequent event was not required to be mentioned in the application for revision. There is no intentional suppression of any kind by it and the question of any breach as contemplated under section 4 and or section 60 of the RERA having been allegedly committed by the said respondent does not arise. Hence, it has prayed for dismissal of this complaint.

7. The complainant has not denied the aforesaid facts cited by the respondent in its reply by filing any rejoinder on record of MahaRERA despite specific direction given to him. Hence, all these contentions raised by the respondent remain unchallenged.

8. The MahaRERA has examined the submission made by both the parties

and also perused the available record. In the present case, the complainant claiming to be one of the co-owners, has approached the MahaRERA mainly seeking revocation of the MahaRERA project registration issued in favour of the respondent promoter. The complainant has mainly contended that the pending Special Civil Suit No. 236 of 2020 has not been disclosed by the respondent promoter while registering this project with the MahaRERA.

9. However, the respondent has assailed the said contention of the complainant and has contended that the summons for the said civil suit was received by it after this project registration was done with the MahaRERA. Hence, while applying for registration it was not aware of the same. Hence, it has contended that there is no wilful default on its part in disclosing the said pending litigation on the MahaRERA website. It has also contended that there is no stay granted by any court of law, whereby it has been restrained from carrying out construction in the project. Hence, it has prayed for dismissal of this complaint.

10. From the submissions made by both the parties, as far as the alleged violation of sections 4 and 11 of the RERA by the respondent as contended by the complainant, about the non-disclosure of the pending litigation on the MahaRERA website, the MahaRERA has noticed that admittedly, the said Special Civil Suit No. 236 of 2020 was filed before the Civil Court at Nasik on 20-06-2020 (as per the information downloaded from the website of the District Courts). However, the respondent herein has filed an application for registration of this project before the MahaRERA on 3-10-2019. Accordingly, the registration certificate was granted to it by the MahaRERA on 10-10-2019.

11. It shows that on the date of filing the application for registration by the respondent promoter, the said suit was not pending. Hence, there is no question of the disclosure of the same at that point of time. Hence, the MahaRERA does not find any merits in the allegation made by the complainant about violation of section 4 of the RERA by the respondent. Hence, the same stands rejected.

12. Moreover, after receipt of the said suit, now the respondent has uploaded and disclosed the said litigation on the MahaRERA website and the said litigation is visible in the public domain. Hence, the MahaRERA prima facie feels that the present complaint becomes infructuous.

13. In addition to this, on bare perusal of the order dated 20-04-2023 passed by the Hon'ble 3rd Jt. Civil Judge Senior Division, in the said Spl. Civil Suit No. 236 of 2020, it appears that the interim injunction sought by the complainant herein has also been rejected. It shows that there is no order passed by the Hon'ble Civil Court staying this project.

14. In this regard, it is pertinent to note that as per the provision of section 7 of the RERA, the MahaRERA registration may be cancelled if the promoter makes default in doing anything required by or under the RERA or if the promoter violates any of the terms or conditions of the approval given by the competent authority or if the promoter is involved in any kind of unfair practice or irregularities as specified under section 7(1)(a) to (c) and (A) and (B) of the RERA. However, in the instant case, the complainant has not produced any cogent documentary evidence to show that the respondent has violated any of the terms or conditions stipulated in the provisions of section 7 of the RERA. Therefore, the prayer for revocation of projects registered by the respondent with the MahaRERA sought by the

complainant is devoid of any merits. Even, the complainant has not established the fact that the respondent is involved in any kind of unfair trade practice or irregularities by submitting any order passed by the competent court of law. Therefore, the relief sought by the complainant under section 7 of the RERA for revocation of the MahaRERA project registration granted to the respondent stands rejected.

15. In view of these facts, the MahaRERA does not find any merits in this complaint.

16. Consequently, the present complaint stands dismissed for want of merits.

(Mahesh Pathak)

Member – 1/MahaRERA

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MAHA RERA
महा-रेरा