BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

COMPLAINT NO: CC006000000161407

RAJESH KAPOOR & ANJALI KAPOOR …COMPLAINANTS

VS

RAJESH ESTATES AND NIRMAN PVT. LTD. …RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P51700008352

Rectification Order
August 12, 2022
(*Final Order dated: 12.08.2022*)

1. A typographical error has been observed in the final order dated 12.08.2022 in the captioned matter the date of hearing is mentioned as 23.03.2022 instead of '**23.02.2022**' just below the date of the order and in para No.3.

2. The above typographical error in both aforesaid places is hereby rectified and be read as '**23.02.2022**' in the final order dated 12.08.2022.

3. Further, the remaining part of the final order dated 12.08.2022 shall remain the same and this rectification order (*suo-motu*) to be read along with the final order dated 12.08.2022.

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(Ajoy Mehta)
Chairperson, MahaRERA

BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO: CC006000000161407

RAJESH KAPOOR & ANJALI KAPOOR …COMPLAINANTS

VS

RAJESH ESTATES AND NIRMAN PVT. LTD. …RESPONDENT/S

MAHARERA PROJECT REGISTRATION NO. P51700008352

Order

August 12, 2022
(*Date of hearing – 23.03.2022 – matter was reserved for order*)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Aditya for the Complainants
Advocate Vinay Bhanushali for the Respondent

1. The Complainants are home buyers and Allottees within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") of Real Estate Regulatory Authority (hereinafter referred to as the "**RERA**") and the Respondent is the Promoter/Developer within the meaning of Section 2 (zk) of the said Act. The Respondent is registered as the Promoter of the Project namely "RAJ TORRES PHASE II WING A WING B WING C WING D WING E" under section 5 of the said Act bearing **MAHARERA Project Registration No. P51700008352** (hereinafter referred to as the "**said Project**"). On the MahaRERA Project registration webpage the proposed completion date of the said Project is mentioned as 31.12.2020 and the revised date is 31.03.2022.

2. The Complainants are seeking the following reliefs:

"2. In view of the facts mentioned above, the Complainants pray to the Authority for the following relief(s):

a) That the Respondents be directed to execute the Sale Agreement as per the Annexure 'A' model form of sale agreement given in the RERA Act 2016 with Maharashtra Rule & Regulation Act, 2017.
b) That the Respondents be directed to execute the sale Agreement as per commitments and assurances made at the time of booking the flat
c) That the Respondents be directed to The Sale Agreement should be fair and equitable and not one-sided in favour of the Respondent.
d) The Respondent be directed to pay compensation to our client due to unwanted delay and default by the Builder/Developer in completing the Project and providing the physical possession as per the provisions of RERA.
e) That the Hon'ble MahaRERA Authority may grant any other/further relief as permitted under Section 13, 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 as it may deem fit to provide justice and equity to the Complainants. Furthermore, the Respondent be punished for contravention of Section 7 of the Real Estate (Regulation and Development) Act, 2016."

3. The following roznama as passed by this Authority on 23.03.2022 whereby the complaint was reserved for order:

"The Complainants states that they were issued an allotment letter on 30.04.2016 against a payment of 40% of the consideration amount. The Complainant confirms that there is no possession date given in writing nor is there an Agreement for sale. The Complainant seeks possession together with interest for delay and compensation. The Complainant also seeks directions for execution of the Agreement of sale as per RERA and a specific date of possession to, be mentioned in the agreement.

The Respondent confirms that there is no Agreement of sale and the draft agreement which they have sent is strictly as per the conditions mentioned in the allotment letter. The Respondent avers that the Complainant is not agreeing to the clauses set out and hence they are not able to sign the agreement. The Complainant brings to the notice of this Authority that the RERA completion date is 31.03.2021. The parties are at liberty to file their written submissions if any by 07.03.2022, subsequent to which the matter will be Reserved for orders."

4. The relevant brief facts of the captioned complaint as submitted by the Complainants are as follows:

a. The complaint has been filed by the Complainants on 15.11.2019.

b. A flat No. 1516 on the 15th floor of D Wing was allotted to the Complainants vide an allotment letter dated 30.04.2016 (hereinafter referred to as "**the said apartment"** and "**the said allotment**" respectively) in the said Project.

c. The possession of the said apartment was assured by the Respondent as 30.06.2019 with delay of 3 months in case of any shortcomings.

d. The total consideration of the said apartment is Rs.1,22,32,240/- and Rs.48,92,896/- is paid till date together with service charge of Rs.2,16,510/-.

5. The submissions of the Respondent are taken on record and only relevant submissions are noted which are as follows:

a. That the said allotment contains a clause which restrains the Complainants from objecting to the standard form of agreement to be executed (*ref. clause No.4 of the said allotment page 26 of the complaint*).

b. The standard form of agreement has been signed by many other purchasers and only the Complainants herein have objections.

c. That the completion date of the said Project is March 2021 as per MahaRERA website and hence there is no delay in handing over possession.

6. From the above facts and submissions, the only issue that requires consideration is *Whether the Complainants who do not have a registered agreement for sale are entitled to reliefs under section 18 of the said Act for delay in possession for an allotment which is pre-RERA?*

7. In this regard, it is pertinent to examine "**possession**" as contemplated under section 18 of the said Act:

"***18. (1)*** *If the promoter fails to complete or is unable to give* ***possession*** *of an apartment, plot or building, –*
(a) in accordance with the ***terms of the agreement for sale*** *or, as the case may be, duly completed* ***by the date specified therein****; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that ***where an allottee does not intend to withdraw from the project****, he shall be paid, by the promoter,* ***interest for every month of delay, till the handing over of the possession****, at such rate as may be prescribed."*

8. From the plain reading of section 18 it is very clear that if the Promoter (*Respondent herein*) fails to handover possession as per the terms of the agreement for sale or as the case may be by the specified date therein, the Allotees (*Complainants herein*) have a choice either to withdraw from the said Project or stay with the Project. Further, in case the Allotee (*Complainant herein*) chooses to not withdraw and stay in the said Project, they are entitled to claim interest for every month of delay, till the handing over of the possession from the Promoter (*Respondent herein*) at such rate as may be prescribed.

9. In the present case, the Complainants have not entered into a registered agreement for sale though offered for execution by the Respondent for the said apartment booked in the said Project on account of the draft of the agreement for sale so shared being one-sided and arbitrary. Thus, as on date there is no registered agreement for sale for the said apartment. In this context it is pertinent to note that since there is no agreement for sale then the only contract that is binding between the Parties herein is the said allotment dated 30.04.2016 which is a pre-RERA contract, and the same contract does not mention any possession date in it. With this binding contract the Parties have now stepped into the era of RERA. Thus, at this juncture none of the Parties can use RERA as an instrument to open up and rewrite contracts which by either omission or commission have come into effect pre-RERA. Also, the Parties cannot now use the said Act to travel beyond what was agreed to pre-RERA. This Authority cannot re-write a contract which was executed before the commencement of MahaRERA and that which was entered into between the Parties with complete awareness. Further the said allotment letter which is pre-RERA also stipulated the format of the agreement for sale. At this juncture since RERA cannot rewrite contracts the stipulations regarding the agreement for sale in the said allotment letter will also hold ground. The agreement for sale between the Parties will hence be executed as envisaged and stipulated in the said allotment letter. This Authority shall refrain from passing any orders on the format of the agreement for sale. Needless to say, this Authority will only mention that the agreement for

sale should be fair and in line with the other agreement for sale signed in the said Project with different buyers.

10. The provisions of section 18 are clear that if the Respondent fails to handover possession by the specified date which in the present case there is no date of possession mentioned in the said allotment and thus, in such a situation the date which this Authority shall consider as the completion date is that which is mentioned on the MahaRERA project registration webpage i.e. 31.03.2022. Further the Respondent is duty bound to execute an agreement for sale for the said apartment and liable to interest for delay in possession from **01.04.2022** onwards till the handover of the said apartment is done.

11. In view of above, it is clear that the Parties are mandated to register an agreement for sale for the said apartment and the Complainants are entitled to seek possession of their said apartment with occupation certificate (OC) at the earliest. Further, the Complainants are also entitled to interest for delay in possession from **01.04.2022** at the rate prescribed herein below till the handover of possession of the said apartment and hence the **issue at para No.6** hereinabove is answered in **affirmative**.

12. While perusing the submissions of the Respondent and the details updated by the Respondent on the MahaRERA Project registration webpage it is observed that the said Project has **lapsed** since 31.03.2022 and the Respondent has not taken any steps to revive the same. The Respondent is directed to take necessary steps for seeking extension of the said Project within 30 days from the date of this order failing which the Respondent shall be liable to a penalty under section 63 of the said Act. However, the aforesaid is not appliable in case the Respondent has received OC for the said Project. In such case the same needs to be updated on the MahaRERA project registration webpage at the earliest with intimation to MahaRERA.

FINAL ORDER

Thus, the present complaint is **disposed of** and the following order is passed:

a. The Parties are directed to register an agreement for sale as observed in para No.9 of the order for the said apartment within 30 days from the date of this order.

b. The Complainants are entitled to claim interest from **01.04.2022** at the rate as prescribed *under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017* till the handover of possession of the said apartment with OC. Needless to say the amount of interest may be adjusted towards outstanding amounts to be paid by the Complainants towards the balance total consideration of the said apartment.

c. The Respondent is directed to take necessary steps for seeking extension of the said Project within 30 days from the date of this order failing which the Respondent shall be liable to a penalty under section 63 of the said Act of Rs.5,00,000/-. The said penalty is to be paid to MahaRERA. However, the aforesaid is not appliable in case the Respondent has received OC for the said Project the same needs to be updated on the MahaRERA project registration webpage at the earliest with intimation to MahaRERA.

d. No order as to cost.

AJOY MEHTA
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(Ajoy Mehta)
Chairperson, MahaRERA