

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

COMPLAINT NO: CC006000000055911

Rajendra Pawar ... Complainant.

Versus

Bright Sky Heights Builders and
Developers Private Limited ... Respondent.
MahaRERA Regn: P51700009788

Coram:
Hon'ble Shri Madhav Kulkarni.

Appearance:
Complainant: Present in person
Respondent: Representative Mrs.
Snehlata Salunkhe a/w
Adv. Deepali Patil

Final Order
26th February, 2019

1. The complainant who along with his wife booked a flat with the respondent / builder seeks withdrawal from the project and refund of the entire amount paid to the respondent with interest @ 18% p.a.
2. The complainant has alleged that along with his wife he booked a 2 BHK flat having carpet area of 611 sq.ft. in the project of the respondent. Agreement for sale was registered on 03.10.2014. Agreed date for delivery of possession was Dec. 2016. Despite complainant making all payments as demanded, the respondent has failed to deliver possession. As usual the name of the project, its location, flat No., the price that was agreed and the actual mount are all missing in the online proforma complaint. In the rejoinder filed on 24.01.2019 the complainant has added name of his wife as complainant No. 2. Necessary details are still lacking. From the written submissions filed by the respondent it

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26-2-19

can be made out that complainant booked flat in the project Saptashree Galaxy Phase-I. The price of the flat in the agreement is Rs. 47,00,000/-.

3. The matter came up before me on 20.12.2018. It came to be adjourned to 24.01.2019 for filing written explanation by respondent and plea of the respondent. On 24.01.2019 the respondent filed written explanation and arguments for the parties were heard. As I am working at Mumbai and Pune Offices in alternative weeks, this matter is being decided now.

4. The respondent has alleged that agreement dated 03.10.2014 was executed under provisions of MOFA. Date of possession was mentioned as Dec. 2016. However, while registering project under MahaRERA date of possession was revised to Dec. 2019 to the knowledge of the complainant. The complainants also continue to make payments towards purchase price. Construction of bldg. No.5 was completed up to 13th floor. Accordingly, letters for payments of instalments were sent. Now construction up to 16th floor is completed. As per Clause 20 and 24 of the agreement complainant agreed to pay amounts mentioned therein other than the purchase price. The details of the payments shown by complainant in Exhibit E are correct. Stamp Duty, Registration charges, VAT, Service Tax and GST are paid to the Govt. and not to the respondent and therefore respondent is not liable to the refund of amount mentioned in Exhibit F. The respondent had not delayed the possession without reasons. The delay is due to notices, orders, rules, notification from Govt., TMC and or other public local, Competent Authority, Courts, etc. and shortage of cement, steel, building materials, etc. The complainants were informed about it. The delay was not intentional. While registering the project with MahaRERA the date of possession is mentioned as Dec. 2019. It is the complainant who made default in making payments as per schedule. Vide demand

26.2.19

letter dated 4.11.14 payment of Rs. 4,50,425/- was demanded and the payment was delayed by more than 6 months. The complainant did not raise dispute after coming into force of RERA. By letter dated 7.11.2016 complainant raised dispute about payment of Service Tax. On 9.1.2017 complainant requested the respondent to confirm revised date of possession. Lastly on 22.2.18 the complainant again requested to confirm revised date of possession by raising dispute about liability to pay Service tax. The complainant was aware that name of respondent was changed to Bright Sky Height Builders and Developers Pvt. Ltd. and receipts Exhibit D-6 & Exhibit D-7 were issued in that name. The complaint therefore deserves to be dismissed.

5. On the basis of rival contentions, following points arise for my determination. I have noted my findings against them for the reasons stated below.

Points	Findings
1. Has the respondent failed to deliver possession Of the flat to the complainant as per agreement without there being circumstances beyond his Control?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order? order	As per final ✓ 26-2-19

Reasons.

6. Point no. 1 & 2 None of the parties placed copy of the agreement that was executed on record for the reasons best known to the parties. The complainant has not cared to give the details in his complaint which a basic necessity for deciding the dispute between the parties. The fact that agreement was executed on 3.10.2014 is not in dispute. It is the respondent who has given the price of flat as Rs. 47,00,000/-. The respondent has also admitted that the date of possession mentioned in agreement was Dec. 2016. It is alleged that while registering the project under RERA the date of possession has been given as Dec. 2019 which is to the knowledge of the complainant.

7. There is mail annexure A to rejoinder to complaint dated 27.11.2017 from the complainant enquiring when the construction of building No. 5 will restart. It has been reminded that assurance of handing over possession by Dec. 2016 has not been met with. There is nothing on record to show that the complainant had either agreed to the extension of the date for delivery of possession or conceded to the extend date for delivery of possession. Only a vague ground has been taken that the delay is caused due to notice, orders, rules and notifications of Govt., etc. and shortage of cement, steel and building materials, etc. If at all complainant had delayed payment of instalment respondent was entitled to recover interest for the delayed period. That is not the ground for extension for date of possession. The correspondence produced by the complainant is of no help to the respondent and respondent has failed to prove that delay has occurred due to reasons beyond his control. The extension of the date of delivery of possession is made by the respondent without the consent of the complainant. I therefore answer point No.1 in the affirmative.

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8. In view of finding on point No.1 as above complainant is entitled to withdraw from the project and refund of the amount paid with interest as provided under Rule 18 of Maharashtra Rules. At arguments stage the complainant has alleged that he has paid Rs. 33,70,810/- including Stamp Duty. All that is placed on record is statement of LIC housing finance showing disbursement of Rs. 4,50,425/- on 18.2.2105 and the statement of interest paid on EMI. The complainant will be entitled to refund of the amounts including taxes that were paid except the stamp duty which can be refunded as per rules. I therefore answer point no.2 in the affirmative and proceed to pass following order.

ORDER

- 1) The complainant is allowed to withdraw from the project.
- 2) The respondent to refund all the amounts received from the complainant including taxes except stamp duty which can be refunded ✓ as ✓ per ✓ rules ✓ & together with interest @ 10.70% p.a. from the date of payments till final realisation as provided under Rule 18 of MahaRERA Rules.
- 3) The respondent to pay Rs. 20,000/- to the complainant as costs of this complainant.
- 4) The complainant to execute cancellation Deed at the cost of the respondent.
- 5) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.
Date: 26.02.2019


(Madhav Kulkarni)
Adjudicating Officer,
MahaRERA

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

COMPLAINT NO. CC006000000055911

Rajendra Eknath Pawar

..Complainant

Verses

Bright Sky Height Builder& Developer Private Limited

..Respondent

MahaRERA Regn. No. P51700009788

ORDER

(05/12/2020)

Final order dated 26.02.2019 in this matter was challenged in appeal no. AT006000000021461. By order dated 04.11.2020, Hon'ble appellate tribunal has partly allowed the appeals. By setting aside the order matter has been remanded to authority to decide afresh.

Therefore, the complaint is sent to Hon'ble Authority.

Mumbai

Date: 05.12.2019

Madhav Vitthal
Kulkarni

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Madhav Vitthal Kulkarni
Date: 2020.12.06
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(Madhav Kulkarni)
Adjudicating Officer
MahaRERA

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC006000000055911

Rajendra Eknath Pawar

..Complainant/s

Vs

Bright Sky Height Builder& Developer Private ..Respondent/s
Limited

MahaRERA Project Registration No. P51700009788

Coram: Shri A. L. Alaspurkar,
Hon'ble, Adjudicating Officer, MahaRERA.

Appearance:
Complainant/s: Present in person
Respondent/s : None appeared.

ORDER
(20.04.2022)

The complainant has submitted that the order dated 26.02.2019 has been set aside and remanded before the Authority. It is also submitted that appeal against that order is pending. Since the order dated 26.02.2019 is not in existence it cannot be executed any further. Hence, the execution application dated 06.06.2019 is hereby stands disposed of. The complainant is at liberty to apply for execution of the order, as may be passed by Hon'ble Appellate Tribunal, as per the procedure and Law.

Date : 20.04.2022
Mumbai


(Ashok L. Alaspurkar)
Adjudicating Officer, MahaRERA

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

Complaint No. CC006000000055911

Mr. Rajendra Eknath Pawar

..Complainant

Vs

M/s. Bright Sky Height Builder & Developer Private
Limited

..Respondent

MahaRERA Project Registration No. P51700009788

Coram: Dr. Vijay Satbir Singh, Hon'ble Member - 1/MahaRERA

The complainant appeared in person.

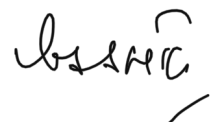
Adv. Bishwajeet Mukharjee appeared for the respondent.

ORDER

(29th December, 2020)

(Through Video Conferencing)

1. The complainant had filed this complaint seeking directions from MahaRERA to the respondent promoter to allow him to withdraw from the project and to refund the entire amount paid by him along with interest and compensation as provided under Section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") with respect to booking of a flat in the respondent's registered project known as "Galaxy Wing -5" bearing MahaRERA registration No. P51700009788 at Thane.
2. The complainant in this complaint was seeking refund along with interest and compensation under section 18 of the RERA. Hence after hearing the parties, this complaint was referred to Ld. Adjudicating Officer, MahaRERA/Mumbai to take appropriate decision in this case on merits vide interim direction of MahaRERA dated 29-10-2018.
3. Accordingly, the parties appeared and made their respective submissions before the Ld. Adjudicating Officer, MahaRERA/Mumbai and after hearing the arguments of both the parties and perusing the record, the Ld. Adjudicating Officer, MahaRERA/Mumbai was pleased to pass an order on



26-02-2019 and allowed the complainant to withdraw from the project and further directed the respondent to refund the entire amount paid by the complainant along with interest at the rate prescribed under section 18 of the RERA read along with relevant Rules i.e. Marginal Cost Lending Rate (MCLR) of State Bank of India plus 2%. The respondent was further directed to pay to the complainant an amount of Rs. 20,000/- towards the cost of the litigation.

4. Being aggrieved by the aforesaid order dated 26-02-2019 passed by the Ld. Adjudicating Officer, MahaRERA/Mumbai, the respondent preferred an appeal bearing No. AT006000000021461 before the Hon'ble Maharashtra Real Estate Appellate Tribunal. In the said appeal the Hon'ble Appellate Tribunal passed an order on 4-11-2020 and set aside the impugned order dated 26-02-2019 passed by the Ld. Adjudicating Officer, MahaRERA/Mumbai on the ground that the Ld. Adjudicating Officer, MahaRERA/Mumbai has no jurisdiction to order for refund and directed the MahaRERA to decide this complaint afresh within a period of 3 months. The parties were also directed to appear before the MahaRERA on 4-12-2020 for hearing.
5. Pursuant to the said order dated 4-11-2020 passed by the Hon'ble Appellate Tribunal, the Ld. Adjudicating Officer, MahaRERA/Mumbai again referred this complaint to MahaRERA to decide it afresh in view of its judgment dated 31.08.2020 passed in the case of Pankaj Kishore Agarwal and Anr, and connected matter in Appeal Nos. AT006000000052542 and AT006000000052543.
6. Accordingly, this complaint was scheduled for hearing on 18-12-2020 as per the Standard Operating Procedure dated 12-06-2020 issued by the MahaRERA for hearing of the complaints through video conferencing. Both the parties have been issued prior intimation of the said hearing



and they were also informed to upload their respective documents in digital form as per the SOP dated 12-06-2020.

7. Pursuant thereto, the complainant appeared in person and the respondent appeared through its advocate. During the course of hearing, the complainant made his submissions. However, the advocate for the respondent stated that in this case the parties have filed reply/ rejoinder before the Ld. Adjudicating Officer, MahaRERA/Mumbai at the time of hearing. However the same are not yet been uploaded on record of MahaRERA. Hence he sought time to upload the same on record of MahaRERA. Hence in compliance of principles of natural justice, two days time was granted to both the parties to upload their documents on record of MahaRERA. However, inspite of specific directions, the parties could not upload the same on record of MahaRERA till date. Hence the MahaRERA has perused the submissions made by the parties and also the available record.
8. In the present case, prima facie, it appears that the Ld. Adjudicating Officer, MahaRERA/Mumbai after hearing the arguments of both the parties and after perusing the record made available to him i.e. reply / rejoinder passed the said order under section 18 of the RERA. The said order is passed by considering the facts/merits of this case. Moreover, the Hon'ble Appellate Tribunal while passing the said order has referred the matter to MahaRERA to decide afresh merely on the technical grounds that the Ld. Adjudicating Officer, MahaRERA/Mumbai has no jurisdiction to order for refund as per the provision of RERA.
9. The complainant during the course of hearing has stated that till date he has paid an amount of Rs. 35,75,500/- to the respondent and the date of possession mentioned in the registered agreement for sale has already

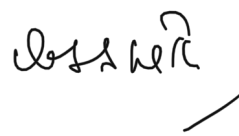
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been lapsed. Hence he prayed for similar reliefs as granted by the Ld. Adjudicating Officer, MahaRERA/Mumbai.

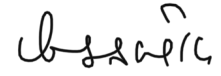
10. The respondent though appeared for the hearing through its advocate has failed to bring any new facts on record of MahaRERA. Even it has failed to upload the relevant submissions on record of MahaRERA within stipulated period of time granted by MahaRERA. Hence the MahaRERA has no other alternative, but to decide this matter on merits since it is to be decided on time bound manner.

11. Considering the aforesaid facts and available record, the MahaRERA has observed that the complainant has purchased the his flat in the respondent's project by executing the registered agreement for sale dated 3-10-2014. According to the said agreement, the respondent was liable to handover possession of the said flat to the complainant on or before 31-12-2016. Admittedly, the possession is not given to the complainant on the agreed date of possession mentioned in the said agreement. It shows that the respondent has violated the provisions of section 18 of the RERA. Even till date the project is incomplete and no occupancy certificate has been obtained for this project. Hence the MahaRERA feels that the refund claimed by the complainant under section 18 of the RERA is justified, since he waiting for 6 years to have possession after executing the agreement for sale with the respondent. Therefore, the MahaRERA agrees with the decision given by the Ld. Adjudicating Officer, MahaRERA/Mumbai dated 26-02-2019 in this complaint.

12. In view of these facts, the MahaRERA, directs the respondent to refund the entire amount paid by the complainant along with interest at the rate of MCLR plus 2% as prescribed under section 18 of the RERA read along with relevant Rules made thereunder.



13. With these directions, the complaint stands disposed of.



(Dr. Vijay Satbir Singh)
Member - 1/MahaRERA

