BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI

Complaint No. CC006000000196689

1. Maimoona Yakub Coatwala
2. Iqubal Yakub Coatwala ... Complainants

Versus

1. M/s Damji Hari Infrastructure Private Limited
2. Mahadev Damji Patel
3. Paresh Damji Bhanushali
4. Sunil Premji Patel .... Respondents

MahaRERA Project Registration No. P51700010181

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

Ld. Adv. Hafeez Coatwala appeared for the complainants.

Ld. Adv. Nilesh Gala appeared for the respondents.

ORDER

(Friday, 28th April 2023)

(Through Video Conferencing)

1. The complainants above named have filed this online complaint before MahaRERA on 31-05-2021 mainly seeking directions from MahaRERA to the respondents to execute and register the agreement for sale with them, to handover the possession and also to pay 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 a flat

bearing no. 403, situated on 4th Floor in the respondent's registered project known as **"Pentagon Enclave"** bearing MahaRERA registration No. **P51700010181** located in Asangaon (CT), Dist. Thane.

2. This complaint was heard on 12-01-2023 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, both the parties appeared and made their respective submissions. The MahaRERA heard the arguments of the parties and also pursued the available record.

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

"Both the parties are present.

Both the parties have argued the matter at length. The respondent has filed its reply to the complaint as per the directions in the previous hearing dated 26-12-2022. The complainant avers that they are ready and willing to execute the agreement for sale and have also paid necessary stamp duty and registration charges for the purpose. The complainant also avers that as per the order of MahaRERA in the previous complaint filed by the respondent bearing No. CC006000000044278 decided on 23-10-2020, he has fulfilled his necessary part, however, the respondent has not come forward to sign the agreement for sale. The complainant also contends that as per the vicarious liability the Directors in the company have also been made respondents.

The respondent has refuted the contention of the complainant and avers that the complainant is using the order passed in its complaint before the MahaRERA bearing No. CC006000000044278 decided on 23-10-2020 against it. Also the complaint suffers from joinder of unnecessary parties. Moreover, the complainant has not even challenged the termination of his allotment which the respondent has done long back. However, the complainant is filing a fresh complaint although it had been informed about the stage wise payments as well as the necessary interest due. Therefore, the respondent did not sign the agreement for sale as such payments as above were not made by the complainant.

In view of the above, the complainant is given two weeks' time i.e. till 26-01-2023 to file a rejoinder to the reply of the respondent along with his written arguments. The respondent may upload sur-rejoinder (if any) to the rejoinder of the complainant along with its written arguments by subsequent one week i.e. by 02-02-2023.

The matter is reserved for order suitably after 02-02-2023 based on the arguments made today as well as the reply, rejoinder, sur-rejoinder and written arguments."

4. Accordingly, the complainants have uploaded its rejoinder to the reply of the respondent on record of MahaRERA on 31-01-2023. The same is accepted and taken on record.

5. It is the case of the complainants that they purchased the said flat in the respondent's project for the total consideration of sum of Rs. 14,04,000/- out of which the complainants have paid a total sum of Rs. 11,58,102/- to

the respondents and a sum of Rs. 98,280/- towards stamp-duty and registration charges in respect of the said flat. However, the respondents have wilfully neither issued "Letter of Allotment" nor executed "Agreement for Sale"in respect of the said flat. Further, on 23/10/2020 during the virtual hearing respondent's employee named, Sagar Patel had misguided the MahaRERA by making a false and incorrect statement that the matter has been amicably settled and the said matter was disposed of. The complainants' stated that in the absence of letter of allotment and / or agreement for sale between the complainants and respondents, the alleged demand for interest by the respondents is illegal and bad in law. Further, the complainants are ready and willing to pay the legitimate balance sum of Rs. 2,42,298/- and not the exorbitant demands towards alleged claim of interest as falsely claimed by respondents. Hence, the complainants have filed this complaint mainly seeking direction to the respondents to execute and get registered the agreement for sale with them for the said flat and also to direct the respondents to handover the possession of the said flat to the complainants by 30/06/2021 as per the date mentioned by them on the RERA website without seeking any extension and for compensation and cost of the complaint and to direct the respondent not to create any third party right in the said flat.

6. The respondent no. 1 is the company of the promoter, which has registered this project with the MahaRERA and the respondent nos. 2 to 4 are the directors of the respondent no. 1 company (hereinafter referred to as the respondent). The respondent has refuted the claim of the

complainants by filing its reply stating that a previous complaint filed by it against the complainants was amicably resolved in view of the assurance given by the complainants that they shall pay the outstanding amounts due and payable by the complainants to respondent no.1 along with interest thereon which was disposed of vide order dated 23-10-2020. Further the respondent no.1 is ready and willing to execute an agreement for sale if the complainants are ready and willing to pay the balance outstanding consideration along with interest thereon. The respondent has dealt with the complaint para-wise and denied the contents thereof in toto.

7. The complainant has filed its rejoinder on record on 31-01-2023 stating that despite receiving more than 80% the total costs of the said flat, the respondent with a malafide intention and ulterior motive are harassing 76 year old senior citizen lady and the respondents are just harping upon the alleged interest amount which the complainants are not liable to pay in the absence of Letter of allotment and/or agreement for sale. The respondents are now hiding behind the reason of Covid 19 pandemic which is nothing but a regular tactic adopted by the respondents just to cover up their own act of omission and commission.

8. The MahaRERA has examined the rival submission made by both the parties and also perused the available record. In the present case by filing this complaint, the complainants claiming to be the allottees of this project have approached the MahaRERA mainly seeking relief under section 13 of the RERA for execution of registered agreement for sale

with them and also seeking possession of their flat as per the date of completion mentioned on the MahaRERA website by the respondent while registering this project under the provisions of RERA i.e. 30-06-2021.

9. The complainants have mainly contended that they are ready and willing to execute the agreement for sale and have also paid necessary stamp duty and registration charges for the purpose of the registration of the said agreement for sale. Even, as per the order of MahaRERA in the previous complaint filed by the respondent bearing No. CC006000000044278 decided on 23-10-2020, they have fulfilled their necessary part, however, the respondent has not come forward to sign the agreement for sale.

10. The respondent promoter on the other hand has refuted the claim of the complainants by filing its reply on record of MahaRERA. It has mainly contended that the complainants are taking into consideration the order passed by the MahaRERA in its earlier complaint filed before the MahaRERA bearing No. CC006000000044278, which was decided on 23-10-2020 against it. It has also raised an issue that the present complaint suffers from joinder of unnecessary parties. Further, the complainants have not even challenged the termination of their allotment which has been done long back. However, the complainants are filing this fresh complaint although it had been informed about the stage wise payments as well as the necessary interest due. Therefore, the respondent did not sign the agreement for sale as such payments as above were not made by

the complainants.

11. On bare perusal of the record, it appears that the respondent herein had filed a complaint bearing no. CC006000000044278 before the MahaRERA on 25-04-2018 against the present complainants mainly seeking directions to the complainants herein (respondent therein) to make the balance outstanding dues. The said complaint was dismissed for default by the MahaRERA vide an order dated 30-08-2018. Thereafter, the respondent herein (complainant therein) had filed a non-execution application in the said complaint. The said application was decided by the MahaRERA on 23-10-2020 with the observations that ***" During the course of hearing, the complainant has informed MahaRERA that the dispute was amicably settled with the respondents and hence nothing is required to be done in this application***". Accordingly, in view of the said submission made by both the parties the said non-execution application was disposed of by the MahaRERA.

12. However, despite the aforesaid order, the complainants by filing this complaint have again approached the MahaRERA seeking relief under section 13 of the RERA. In this regard, the MahaRERA is of the view that admittedly, there is no allotment letter been issued by the respondent promoter in their favour although the said booking was done under the MOFA regime in the year 2015. However, the complainants have produced the payment receipts duly issued by the respondent promoter acknowledging the said payments made by them. Further, the said payment receipts also mention the said flat no. 403 booked by them for

total consideration amount of Rs. 14,04,000/- and till date the complainants have paid substantial money towards the said booking. The respondent although has not denied the said payment made by the complainants, however, it has issued the termination letter to the complainants cancelling the said booking by issuing various legal notices to which the complainants have given replies. Even, in the year 2020, the matter was amicably settled between the parties as the same was recorded in the order dated 23-10-2020 passed by the MahaRERA, however till date the agreement for sale has not been executed by and between the parties. The respondent in its reply has stated that it is ready and willing to execute the registered agreement for sale with the complainants subject to the payment of outstanding by the complainants although it has pressed for termination of the said booking done by the complainants during the hearing held on 12-01-2023.

13. It is seen that there is a dispute between the parties with respect to the payment of the consideration value. However, the MahaRERA is not going to verify the actual amount paid and payable by the complainants out of total consideration of the said flat which is Rs. 14,04,000/-. It is for both the parties to settle their own account and whatever amount is due and payable by the complainants towards the said flat, they are bound to pay the same as provided under section 19(6) of the RERA, failing which they are also liable to pay interest for the delayed payment as provided under section 19(7) of the RERA.

14. As far as the other reliefs sought by the complainants about the

mentioning the date of possession in the agreement for sale as 30-06-2021, the MahaRERA is of the view that such prayer sought by the complainants cannot be granted since the said date is already over and the agreement for sale cannot mention any date which is in contravention of the information uploaded by the respondent on the MahaRERA website. Moreover, section 13 of the RERA does not provide such reliefs about the mention of the backdated date of possession. Hence, the said prayer of the complainants stand rejected.

15. In view of the above, since both the parties are ready and willing to execute the registered agreement for sale, the following order is passed:

    a. The present complaint is partly allowed.
    b. The prayer sought by the complainants about execution of the agreement for sale with the date of possession as 30-06-2021 stands rejected.
    c. Both the parties are directed to settle their own account after exchanging the ledger accounts with each other within a period of 15 days.
    d. Both the parties are directed to execute the registered agreement for sale within a period of 30 days from the date of this order as per the agreed terms.
    e. The complainant is also directed to pay the outstanding dues payable by it as per the construction in the project. It shall be liable to pay interest if any on account of the delayed payment as per the stage of the construction at the rate prescribed under RERA and the relevant Rules made thereunder i.e., SBI's

Highest Marginal Cost Lending Rate (MCLR) plus 2%.

f. Any non-compliance of the aforesaid direction at para (c) to (e) by either party is brought to the notice of the MahaRERA, the same would be viewed seriously and appropriate penal action would taken against such party under the applicable provisions of the RERA.

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

(Mahesh Pathak)
Member – 1/MahaRERA