BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Complaint No. CC006000000397402

S.D. Corporation Pvt. Ltd. ... Complainant

Versus

Jatinder Pal Singh and Anr. ... Respondents

MahaRERA Project Registration No. P51800019658

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

Ld. Adv. Shradha Birari appeared for the complainant-promoter.

None appeared for the respondent-allottees.

FINAL ORDER

(Order Pronounced on Thursday, 15th May 2025)

(Matter reserved for orders on 27-02-2025)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 13-09-2023 mainly seeking directions from the MahaRERA, to the respondent to declare the agreement for sale as terminated; in the alternative for refund as per the agreement for sale; and for costs, 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 no. 801 on the 8th floor (hereinafter referred to as the said flat) in the respondent's registered project known as "**SIENNAA WING B**" bearing MahaRERA registration No. **P51800019658,** located at CTS/Plot/S NO 840 A / 1, Taluka Borivali, Dist. Mumbai (hereinafter referred to as the 'said project').

2. This complaint was heard by MahaRERA on several occasions and the same

was heard finally on 27-02-2025 as per the Standard Operating Procedure dated 28-01-2020 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. On the said dates of hearing, the complainant appeared as per their appearances recorded in the Roznamas and made their respective submissions. The MahaRERA heard the submissions of the complainant as per their appearances and also perused the available record.

3. After hearing the arguments of the complainant, the following Roznamas were recorded in this complaint:–

i) **<u>On 04-12-2024 :</u>**

"The complainant-promoter is present. The respondent-allottee is absent. The complainant-promoter has filed this complaint for directing the respondent-allottee to pay the consideration amount along with interest as per the registered agreement for sale of July, 2017 since the OC for the project has been received on 17-10-2024. The complainant-promoter is directed to upload proof of service upon the respondent-allottee along with a legible copy of the agreement for sale in the complaint within a period of one week i.e. by 11-12-2024. The respondent-allottee may file a reply to the complaint along with written submissions within a further period of three weeks i.e. by 1-1-2025. Further four weeks' time i.e. till 29-1-2025 is granted to the complainant-promoter to file rejoinder to the reply of the respondent-allottee along with written submissions. The matter is adjourned to a suitable date after 29-1-2025 for final arguments by both sides. List the matter for next hearing on 27-02-2025."

ii) **<u>On 27-02-2025:</u>**

"The complainant - promoter is present. The respondent - allottees are absent. The complainant - promoter has uploaded the proof of service on the

respondent - allottees in the complaint on 30-01-2025. The complainant - promoter has prayed for direction to the respondent-allottees to pay the outstanding amounts along with interest since the OC for the flat of the respondent - allottees has been received in October 2024. The respondent - allottees are neither replying to the notices of the complainant - promoter nor have made any payments and are also not replying to this complaint. Therefore, the respondent - allottees are given one last chance to file their reply along with written submissions within a period of 1 week i.e. by 06-03-2025. The complainant - promoter may file rejoinder to the reply of the respondent - allottees along with written submissions within a further period of one week i.e. by 13-03-2025 and also upload the reply and written submissions of the respondent - allottees in case it is served. In case the respondent - allottees do not file any reply / written submissions, the MahaRERA will be constrained to decide this matter ex-parte against the respondent - allottees on merits. Accordingly, this complaint is reserved for order suitably after 13-03-2025 based on the arguments in the hearing as well as the reply, rejoinder and written submissions filed and the documents uploaded in the complaint."

4. Despite directions in the aforesaid hearing, both the parties have not uploaded any reply/rejoinder/written submissions on record. Hence, the MahaRERA has perused the available record.

5. It is the case of the complainant that it is a registered company and is a promoter of the said project. Based on the requirements intimated by the respondents, they were shown multiple flats, from which they agreed to purchase the said flat for a lumpsum consideration amount of Rs. 1,36,82,815/- along with other charges and statutory amounts. The respondents submitted a Booking Form dated 05-04- 2019 thereby booking the said flat in their own joint names. Thereafter, a registered agreement for sale dated 16-07-2019 was voluntarily executed and registered between the parties,

thereby crystallising the final and binding terms of sale of the said flat. The respondents have made payment in furtherance of the said agreement. In terms of clause 7 (b) of the said agreement, in the event that the respondents defaulted in payment of any amounts stated in Annexure 6, the complainant had the option either to terminate the said agreement and refund the monies after making deductions or recover interest for delay in payments. Clause 9 of the said agreement stipulated that possession of the said flat was to be given to the respondents by 31-12-2022, subject to reasonable extension on account of occurrence of mitigating events as specified therein including force majeure. The respondents had, until July 2020, paid a sum of Rs. 25,52,817 /- towards the said flat, that is 18.66 % of the total consideration. On 13-08-2020, as per the agreed milestones, the complainant issued a demand letter for dues on completion of the 14th slab in terms of Annexure 6 of the said agreement. As per the demand letter, the payment was to be made before 28-08-2020. Since no payment was received, the complainant sent reminders on 24-03-2021 and 15-04-2021, calling upon the respondents to make payment along with interest. On 15-04-2021, and after 8 months of receiving the demand invoice, the respondent No. 1 sent an email to the complainant requesting for an extension of 1 month, stating that due to the covid-19 pandemic, banks are responding very slow. Thereafter, due to non-payment from the respondent no.1 the complainant sent emails time and again however, the respondent no.1 gave excuses of the covid pandemic situation; medical emergency that his mother is on ventilator and thus, he could not make any payments. On 12-07-2021, the respondent No. 1 sent an email to the complainant suggesting two options, "***Option 1 : give him more time to sync up with banks and try for additional loan. Option 2 : If the complainant could help with a customer who can pay him what I paid plus the registration, he would be happy to move forward.***" Neither of the above options was acceptable to the complainant, but it considered giving the respondents further time for the reasons of medical emergency and the said pandemic. Since the respondents did not make any

payment even after 5 months, the complainant on 7-01-2022 issued a letter ("Pre-Termination Letter") to the respondents, requesting them to make the payment within 10 days, failing which their booking shall be terminated Despite much follow-up by the complainant's representatives, the respondents were not forthcoming with any payment, and accordingly, vide letter dated 21-03-2022 sent vide email dated 6-04-2022, the complainant terminated the said agreement and sale of the said flat. On the same day, the respondents reverted to the complainant stating that the termination is illegal. Further, they stated that they have made full payment for the other flat in the subject project, and that they will take legal opinion on the same. On 9-04-2022, the respondents sent an email to one Mr. Srinivas stating that as per their discussion, they are applying for further loan however, they have neither been able to procure any additional loan, nor been able to sell the said flat. However, no action has been taken by them. Hence, the complainant has filed this complaint seeking declaration that the said agreement for sale dated 16-07-2017 stands validly terminated in terms of section 11(5) of the RERA and to direct the respondents to come forward and sign the deed of cancellation, complete all formalities regarding cancellation/termination and collect the refund, if any, payable to the respondents, in terms of the above agreement for sale. It has also prayed that if the Authority comes to the conclusion that the said agreement for sale has not been validly terminated or if the respondents still wish to continue with the purchase of said flat then, in that event, this Authority be pleased to direct the respondents to pay the complainant the sum of Rs. 56,56,872/- and amounts payable against the milestones completed along with further interest until payment and realisation of the above amount of Rs. 56,56,872/-etc.

6. In the present case, the MahaRERA has observed that the complainant promoter has filed this online complaint before MahaRERA on 13-09-2023. However, till date the allottees have not bothered to file their reply to the

complaint, although the copy of the complaint and the link of virtual hearing was duly served upon them 0n 28-10-2023 through an email (as per the service praecipe uploaded by the complainant on 30-01-2025). Furthermore, the link for virtual hearings held in this complaint was duly served upon the allottees, on their registered email address provided by the complainant i.e. singhjp99@gmail.com. However, the allottees have failed to appear for the said virtual hearings held before the MahaRERA and before the MahaRERA Conciliation Forum on 16-10-2023,15-01-2024,29-02-2024,4-12-2024 and 27-02-2025 (as applicable). Further, on the last date of hearing held on 27-02-2025, one week's time was granted to them to file their reply as a last chance. However, despite specific directions being issued, they have failed to file any reply/written submission on record of MahaRERA. It shows that the allottees are not willing to contest this complaint filed by the complainant promoter. Hence, the MahaRERA has no other alternative but to proceed with this matter ex-parte against the respondent-allottees on merits.

7. The MahaRERA has examined the submissions made by the complainant-promoter and also perused the available record. In the present case by filing this complaint, the complainant (i.e. the promoter herein) has approached MahaRERA mainly seeking reliefs under section 11(5) of the RERA for violation of section 19(6) of the RERA viz. for directions to the allottees to come forward for execution of cancellation deed by permitting it to cancel the said agreement for sale dated 16-07-2017 executed with the allottees.

8. The complainant-promoter has mainly contended that the allottees have not paid the outstanding dues as per the stages of the construction mentioned in the said agreement for sale dated 16-07-2017. It has also contended that despite sending several demand letters as per the stage of the construction in the said project and that too, after obtaining OC for the said project on 17-10-2024, the allottees have failed to make the said payments to it and as on date an amount

of Rs. 56,56,872/- is still payable by them. Hence, it has issued several demand notices from July, 2020 till April 2024 (as per the complainant) to the allottees calling upon them to make the outstanding payments. However, they have failed to do so. Therefore, it has issued pre-termination letter as well as the final termination letter to the allottees on 7-01-2022 and 6-04-2022 respectively. However, the allottees have failed to comply with the terms mentioned in the said termination notices, hence it has approached the MahaRERA seeking cancellation of the said agreement for sale dated 16-07-2017. However, the allottees have failed to make the said outstanding payments since July ,2020, although it has also obtained OC for the said flat on 17-10-2024 (as per the complainant).

9. However, as far as the substantive issue of non-payment of outstanding dues by the allottees as raised by the complainant, the MahaRERA has noticed that the complainant - promoter has also served the copy of this complaint (on 28-10-2023) as well as the link for the virtual hearing to the allottees (on their registered email address) provided by the promoter in this complaint. However, the allottees have preferred to remain absent for the said final hearing held in this complaint and also failed to file any reply to the said complaint. Hence, all these contentions raised by the complainant-promoter in this complaint remain undisputed and unchallenged.

10. Be that as it may, in the present case, admittedly, there is a registered agreement for sale dated 16-07-2017duly signed by both the parties whereby the respondent-allottees have agreed to make the balance consideration towards the said flat booked by them in the complainant's registered project. However, despite receiving several demand letters issued by the complainant-promoter as stated hereinabove, the respondent allottees have failed to make the balance payment. Hence, the present complaint seems to have been filed by the complainant promoter.

11. In this regard, the provision of section 19(6) of the RERA is required to be perused, which reads as under :

"19(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

12. It is also necessary to peruse the relevant provisions of section 19(7) of the RERA. The said provisions read as under:-

"19(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)".

13. In n view of the aforesaid explicit provisions of the RERA, the MahaRERA is of the view that the respondents, being the allottees of the said project, are liable to make payments in accordance with the terms and conditions of the agreement for sale dated 16-07-2017. Failing such compliance, the complainant-promoter shall be entitled to terminate the said agreement for sale in accordance with the provisions of Section 11(5) of the RERA. Furthermore, by failing to obtain possession of the said flat through full and final payment, the respondent-allottees have also violated the provisions of Section 19(10) of the RERA. It is also noted that, despite the outstanding dues remaining unpaid by the respondent-allottees, the complainant has completed the construction of the said project, thereby demonstrating bona fides on the part of the complainant. Hence, the complainant is entitled to seek relief under the provisions of Section 11(5) of the RERA. However, in compliance with the

principles of natural justice, the MahaRERA is of the prima facie view that one final opportunity ought to be granted to the respondent-allottees to comply with the provisions of Section 19(6) of the RERA.

14. In view of the aforesaid facts, the respondent-allottees have failed to comply with their statutory obligation under Section 19(6) of the RERA, to make the balance payment to the complainant-promoter in accordance with the terms and conditions of the agreement for sale dated 16.07.2017, which is binding upon both parties. Accordingly, the respondent-allottees are liable to pay interest for the delayed period of payment to the complainant-promoter, as provided under Section 19(7) of the RERA.

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

    a. The present complaint is hereby allowed.

    b. In compliance of principles of natural justice, last opportunity is granted to the allottees to make necessary payment to the complainant towards the booking of the said flat as per the terms and conditions of the agreement for sale dated 16-07-2017 along with the applicable interest for the delayed period of payment at the rate prescribed under RERA and the relevant rules made thereunder i.e. Marginal Cost Lending Rate (MCLR) of SBI plus 2% within a period of 15 days from the date of this order.

    c. With regard to the payment of interest by the respondent-allottees (as directed in aforesaid para-no. (c) above) to the complainant-promoter, the MahaRERA further directs that the allottees are entitled to claim the benefit of "moratorium period" as mentioned in the Notifications/ Orders nos. 13 and 14 dated 2nd April 2020, 18th May 2020 and 6th August, 2021 issued by the MahaRERA and the Notification/ Order which may be issued in this regard from time to time (if applicable).

d. Failing to comply with the aforesaid directions at (c) above by the allottees, the complainant would be entitled to terminate the said agreement for sale dated 16-07-2017 in accordance with the terms and conditions of the said agreement for sale as per the provisions of section 11(5) of the RERA by exercising the forfeiture clause (for liquidated damages if any) as mentioned in the said agreement for sale dated 16-07-2017.

e. The said respondent allottees shall also be liable to execute and sign the registered cancellation deed for cancellation of the said agreement for sale dated 16-07-2017 within a further period of 15 days once they are called upon by the complainant-promoter. Failing which appropriate penal action would be taken against the said respondent allottees under section 67 of the RERA, if such non-compliance is brought to the notice of the MahaRERA by the complainant.

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

(Mahesh Pathak)

Member – 1/MahaRERA