BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI

Complaint No. CC006000000220981

Nitin Chandrakant Shinde .... Complainant

Versus

Mr. Sudhanshu Agarwal .... Respondent

MahaRERA Project Registration No. P51800020496

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

The complainant appeared in person.

Ld. Adv. Virali Punamiy appeared for the respondent.

ORDER

(Friday, 30th December 2022)

(Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from the MahaRERA to the respondent to refund the entire amount paid by him along with interest 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. 1104 in respondent's registered project known as **"Raghav One"** having MahaRERA project registration No. **P51800020496** located at Nehru Nagar, Kurla, Mumbai.

2. This complaint was heard finally on 16-11-2022 as per the Standard Operating Procedure dated 12-06-2020 issued by the 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 submissions.

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

"Both parties are present. The respondent has filed a reply to the complaint and the complainant has filed his rejoinder to the said reply. The complainant avers that the complaint has been filed admittedly six months after possession has been taken. However, this complaint is filed for the amounts charged by respondent at the time of handing over possession which the complainants contend were not due. However, the respondent avers that these amounts were as per the agreement for sale and the delay in making the stage-wise instalment payments by complainant which have attracted interest as well. One week time i.e. till 23-11-2022 is granted to both sides to file their written submissions in the matter. The matter is reserved for orders suitably after 23-11-2022."

4. Pursuant to the said direction, the complainant has filed his written submission on record of the MahaRERA on 23-11-2022. However, despite directions, the respondent has not filed any written submission on record of the MahaRERA.

5. It is the case of the complainant that he booked the said flat in the respondent's project when it was under construction and at the time of said booking the respondent promoter agreed to take Rs. 2.5 lakhs as booking amount (when the booking amount of Rs. 8 lakhs) and remaining Rs.5.5 lakhs to use for stamp duty registration / agreement of

flat and then to make payment after loan sanction/ disburse loan. Thereafter, while evaluating for loan eligibility he faced the difficulty to get the required amount of loan. Hence, in November, 2019) he requested the respondent to change his flat to smaller carpet area (from 426 sq. Ft to 407 sq. ft) so that he could have reduced loan burden to some extent. But unfortunately for a smaller size flat there was not much price difference and hence he decided to continue with the same flat. Further, since APF number was not provided to the bank, the loan was delayed. Thereafter, on 21/1/2020 stamp duty and registration charges of Rs. 4,83,780 was paid to the account details (through RTGS) which were provided by the respondent. Thereafter the registered agreement for sale was executed on 06-02-2020. In the meanwhile, on 18-07-2020, the respondent called him and asked for penalty of one year i.e. from 03-10-2019 (date before agreement) and suggested to process loan from other bank and if he would not pay penalty then he would terminate the said agreement for sale. Further, to avoid further unbearable mental harassment he paid extra charges of Rs. 4,23,146/- to the respondent on 21-11-2021 and finally took possession (only keys of flat) on 22-11-2021. Hence the complainants prays to direct the builders to refund an amount of Rs. 4,23,126/- along with interest @ 12 % p.a. from 21-11-2021 till date of actual payment to him along with compensation and cost of legal expenses.

6. The respondent has refuted the claim of the complainant and filed a preliminary reply stating that the present complaint is filed nearly 6 months after taking peaceful possession without raising any dispute. Such action on the part of the complainant is highly opportunistic and abuse of the process of the RERA. The respondent has further stated that

vide the said registered agreement for sale dated 3-02-2020 the respondent has sold the said flat to the complainant for the total consideration amount of Rs. 75,63,000/- including applicable taxes which was to be discharged as per clause no.5 of schedule 2 of the payments mentioned in the said agreement for sale. The time for payment being the essence of the contract as per clause 4 of the said agreement for sale. However, at the time of execution of the agreement for sale, three instalments were already due and payable by the complainant. Further, the date of possession of the flat was 31/12/2020 but due to Covid 19 situation, the extension granted to it by the MahaRERA was upto 31/12/2021 even without considering the grace period of 6 months whereas the possession was well within the extended time i.e. on 29/10/2021 post receipt of the occupation certificate. Further, total 7 demand letters for payment of due amount with applicable taxes were sent to the complainant but he did not make the outstanding payment on time and without any legal basis shifted the burden of obtaining loan from the financial institution on the respondent. Further since there was delay, the respondent vide letter dated 18-11-2021 called upon the complainant for clearance of the outstanding payment of Rs.12,17,261/- to be paid within 7 days of receipt thereof failing which he was entitled to initiate termination of the said agreement for sale after forfeiting the cancellation fees of 10% but he paid the legitimate dues including interest and took possession of the said flat on 23-11-2021. Moreover, this respondent is ready and willing to take back the said flat from the complainant and pay the amount so collected till date with interest as per clause no. 14(i) of the agreement and relieve him from his alleged pain and suffering. Hence the complaint is misconceived and is liable to be dismissed with costs.

7. The complainant has filed reply on record on 29-6-2022 to the respondent's preliminary reply stating that the MahaRERA gives rights to every authorised buyer to file a complaint even after possession and the reason for filing the complaint after 5 months from possession was that he had not received possession letter even after continuous follow up with the respondent's team which was given in the first week of March 2022. Further, the respondent got the advantage of Covid pandemic but did not consider his side, that loan could not be disbursed in Axis bank due to non-availability of APC no. which is the respondent's fault and due to closure of banks. Moreover, the intimation of termination from respondent is not maintainable at all and liable to be dismissed. Since APF approval is mandatory requirement to make loan cycle complete, it is the mutual responsibility of both buyer and seller. Hence the penalty charges under clause 14(i) of the said agreement deserves to be dismissed with costs.

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 complainant has approached the MahaRERA mainly seeking refund of an amount of Rs. 4,23,146/- paid to the respondent promoter towards the extra charges, allegedly taken by the respondent towards the interest for the delayed payment.

9. The said claim of the complainant has been refuted by the respondent mainly contending that i) the said claim is agitated after taking possession of the flat in the month of November, 2021 with OC, ii) the interest was charged on the outstanding dues of Rs.

Rs.12,17,261/ payable by the complainant as per the terms and conditions of the said agreement for sale.

10. From, the aforesaid submission made by both the parties, it is admitted fact that the possession was handed over to the complainant with OC dated 29-10-2021 in the month of November, 2021. The complainant by filing this complaint is mainly seeking refund of the interest amount charged by the respondent on account of the delayed payment as per the payment scheduled mentioned in the agreement sale. The complainant has not denied the said contention of the respondent; however, he has mainly contended that the loan disbursement got delayed due to default on the part of the respondent in providing relevant documents.

11. However, on bare submissions made by the complainant, prima facie it appears that the complainant has not cited any specific provision in which such reliefs towards waiver of the interest amount could be granted favourably to him. Moreover, such issue of the extra amount could have been raised by the complainant at the time of taking possession of the said flat in November, 2021. After 5 months from taking possession of the flat, the complainant cannot raise such issues about extra payment charged by the respondent. Needless to state that the MahaRERA has no jurisdiction to settle the dispute with respect to their accounts and it is for the parties to decide the same after verifying the actual ledger account. In addition to this the MahaRERA cannot suo moto direct the respondent to waive of the interest charged by him if any on account of delayed payment, which would be in contravention of the provisions of section 19(6) of the RERA.

12. Further as far as the contention raised by the complainant about holding an enquiry about the violation of clause no. 14(iii) of the agreement for sale about illegal termination of the said booking, the MahaRERA is of the view that such allegation is not acceptable, as the respondent being promoter of the MahaRERA registered project, is bound by the relevant provision of section 11(5) of the RERA while cancelling the said agreement for sale. Hence, such allegations seem to be after thought.

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

14. Consequently, the present complaint stands dismissed.

(Mahesh Pathak)

Member – 1/MahaRERA