

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

Complaint No. CC006000000089873

Mr. Ramkrishna Shridhar Phansekar & 9 Ors.

..Complainants

Vs

M/s. Re Built & 3 Ors.

..Respondents

MahaRERA Project Registration No. **P51800020602**

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

Adv. Anwar Landage appeared for the complainant.

None appeared for respondent nos. 1 & 2

Adv. Alvina Castellino appeared for respondent nos.3 & 4.

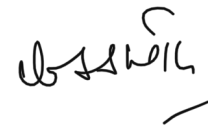
Adv. Rubin Vakil appeared for societies proposed respondent No. 5.

ORDER

(12th November, 2020)

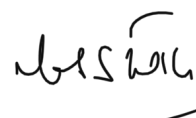
(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondent to execute and register the agreements for sale and also prayed for interest for the delayed possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of their respective flats in the respondent's registered project known as "**Ruparel Pride**" bearing MahaRERA registration No. P51800020602 at Kurla, Mumbai.
2. This complaint was heard on several occasions in presence of both the parties and same was heard finally on 26-10-2020 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 submit their written submissions, if any. Accordingly, both the parties appeared for the



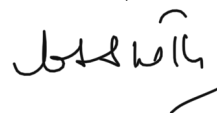
hearing and they have submitted their respective written submissions. After hearing the arguments of both the parties, one week time was granted to both the parties to upload their respective written submission on record of record of MahaRERA along with relevant documents. However, till date the parties have failed to upload the same as directed by the MahaRERA. Hence the MahaRERA has perused the available record.

3. In the present case, the complainant has filed this complaint against the respondent No. 1 who is erstwhile promoter and the respondent 2 who is the partner of the respondent No. 1 partnership firm. The respondent No. 3 is the present promoter who has registered this project with MahaRERA and the respondent No. 4 is the director of the respondent No. 3 company. During the course of hearing, on 7-09-2020, the complainant has filed an application seeking amendment in this complaint for joining Nehru Nagar Shanti Bhavan CHS Ltd as party respondent No. 5 to this complaint. A copy of the said application was served upon the said society and the said society filed its reply on record of MahaRERA on 20-09-2020. The same is taken on record.
4. It is the case of the complainant that the respondent No. 1 company had advertised its project namely "Ruparel Pride" by various hoarding, banners and brochures. Hence the complainants had approached the respondents for purchase of apartments in the said project. Being convinced by the representation of the respondent No. 1, the complainants booked their respective flats in the building known as "Ruparel Pride" and entered into Memorandum of Understanding dated 15/10/2007 between the Society and the Respondent no.1 to develop the property and give the possession to the complainants. Accordingly, few complainants have entered into an agreement with the respondent No. 1 which was registered dated

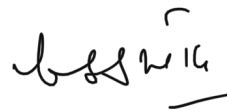


08/07/2010. The complainants further stated that they borrowed home loan for the payment towards the consideration amount and also paying EMI to the bank. Further as per Clause 8 of the agreement for sale executed with the few complainants, the respondent No.1 agreed to handover possession of their flats on or before November 2012. However, till today the possession is not been given to them. The complainants further stated that they were always ready and willing to pay the balance amount to the respondents and have followed up with the respondents questioning about the delay in possession through telephonic communication and by visiting the site which is futile. However, while registering the said project with MahaRERA, the respondent proposed the date of completion of the said project as 31/12/2023 which itself implies that the said project is delayed by more 10 years if calculated from the agreed date of possession and proposed date of possession. Further, the respondent no.1 & 2 changed the promoter without their consent by violating the provision of Section 15 of the RERA and the respondent No. 3 has registered this project with MahaRERA. The respondents have used their money from past so many years and the possession is also being not given as per the mentioned date. The complainants stated that they are ready and willing to pay the balance consideration to the respondent no.3 on execution of agreement but the agreement is not executed and registered yet after continuous follow ups. Hence the present complaint is filed seeking reliefs as sought for in this complaint.

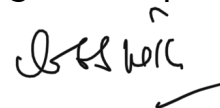
5. The respondent no.4 who is the Director of the Respondent No. 3 filed an affidavit on record of MahaRERA for the purpose of opposing grant of any relief to the complainants. The respondent nos.3 and 4 stated that the complainants with a malafide intent have made various baseless allegations against the Respondent Nos. 3 and 4 that are not only frivolous, but also



patently false to the complainants' own knowledge and the complaint is filed with a dishonest intention and ought to be dismissed. The complainants indubitably have no privity of contract with the respondent nos. 3 and 4 since the respondent nos.3 and 4 are not party to the MOU and/or purported agreement annexed to the complaint. The complainants are seeking to mislead the MahaRERA with a view to cause prejudice against it. The complainants have approached the MahaRERA with gross delay and laches since many of the events stated by the complainants have occurred several years ago and hence the complaint is barred by law of limitation. Further the documents relied upon by the complainants are not properly registered and stamped. The respondent no.3 is a private limited company engaged in developing the present project. The property in which the present project is being developed has been leased to one Nehru Nagar Shanti Bhuvan Co-operative Housing Society. The Society was also the owner of Building no.88. The respondent no.3 by virtue of development agreement dated 15th May, 2018 executed with the society is carrying out the development of the said property. The respondent no.4 is the promoter, shareholder and director of various entities forming the Ruparel group and the respondent nos. 1 and 2 are in no manner concerned with the said project. The respondent no.1 is the erstwhile developer who was appointed by the said society under a development agreement dated 9th December, 2010 which was subsequently cancelled by a Deed of Cancellation dated 12th January, 2015. The present complaint appears to be filed at the behest of respondent no.1 and 2 to create hurdles in the project who after having accepted the termination and cancellation of their agreement with the said society are seeking to make a backdoor entry by raising false and bogus claims to prejudice the said society who have been waiting for their homes for more than a decade. The facts leading to the appointment of respondent no.3 was that the society invited bids for the redevelopment of the said property since the said building of the said society was in a

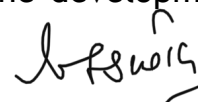


dilapidated condition and the general body in its meeting dated 15th January 2006 appointed the respondent no.1 as a developer and pursuant thereto an MOU was entered into between respondent no.2 and respondent no.1 imposing obligations on the respondent no.1 to provide free of costs redeveloped flats to the members of the society and a development agreement dated 9th December 2010 was entered into granting development rights to the respondent no.1. Thereafter the society vacated their premises in June 2011 and the building was demolished in September 2011. No substantial work was carried out by the respondent no.1 and since 2013 the respondent no.1 even stopped paying rent to the members of the society and in a meeting of the society held on 20th July, 2014 it was unanimously resolved to terminate the said development agreement. The same was informed to the respondent no.1 vide letter dated 22nd July, 2014. In a deed of cancellation the respondent no.1 admitted its inability to carry on further construction due to financial crisis and death of one of its partners. After the said termination, the society vide MOU dated 6th December, 2014 appointed M/s. Navkar Life Space Pvt. Ltd. as a developer who also failed to make payment of the compensation for temporary alternate accommodation and the society again by its resolution dated 27th September, 2015 resolved to terminate the appointment of M/s. Navkar Life Space Pvt. Ltd. and invited fresh offers for its redevelopment. In its meeting dated 27th July, 2016 the respondent no.3 was appointed as the new developer who after obtaining the consent letters of the society entered into a registered development agreement dated 15th May, 2018 and is presently acting as developer in the said project and making regular payment of rent to the society through its sister concern. Now the respondent nos. 1 and 2 are in no manner connected with the said project and are not promoters as defined under RERA. The complainants with a dishonest intention have sought to constantly refer to the parties as 'respondents' with a view to conjure a cause of action against respondent

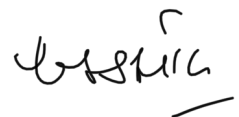


nos. 3 and 4 who have never made any representations nor sold or allotted any premises to them and hence the complainants' reliance on the MOU dated 15th October, 2007 is misconceived inasmuch as the respondent nos. 3 and 4 are not parties to the said MOU and cannot be bound by it. In fact the MOU has ceased to have any legal effect in view of the novated development agreement dated 9th December 2010 and by cancellation of the same by deed of cancellation. The respondent nos. 3 and 4 are not aware of any agreements annexed to the present complaint and the complainants have failed to produce any copies of the agreements/allotments referred to by them. Hence the complainants cannot claim any right in the redeveloped building. The alleged agreement is neither sufficiently stamped nor registered. The respondent nos. 3 and 4 deny that they received any amount from the complainants either for allotment of flats or otherwise. With regard to the issue that the complainants have followed up with them regarding the delay in possession, the respondent nos. 3 and 4 stated that they are merely bald statements with no proofs. Further there is no contract / agreement between them and hence there is no obligation upon them to allot any premises to the complainants since they have not sold or agreed to sell anything to them. The complainants have rights only against the respondent no.1 and have no contractual liability with respondent nos. 3 and 4. Hence the complainants have failed to make out any case for reliefs against respondent nos. 3 and 4.

6. The society viz Nehru Nagar Shanti Bhavan CHS Ltd has also filed reply to the amendment application filed by the complainants and denied the claim of the complainants mainly on the ground that there is no privity of contract between the complainants and the said society. Further the society had appointed the respondent No. 1 as their promoter to redevelop their building which was in dilapidated condition by executing the development

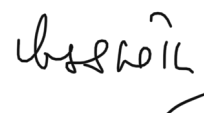


agreement with the respondent No. 1 dated 9-12-2010. However, the respondent No. 1 failed and neglected to comply with the terms and conditions of the said development agreement and hence the said development agreement was terminated by the society by executing the cancellation deed dated 12-01-2015, wherein the respondent No. 1 represented and declared that it has not created any third party rights with respect to the said land and if any claim is made, it shall be held responsible for the risk, damages, loss, penalty and it has indemnified the society against any such claim. Thereafter, after commencement of RERA, by following due process of law, the respondent No. 3 was appointed as promoter by executing the development agreement dated 15-05-2018. The complainant herein are claiming rights under the project which was to be undertaken by the respondent No. 1 under development agreement dated 9-12-2010, which was cancelled by deed of cancellation dated 12-1-2015 much prior to commencement of the RERA. Hence the MahaRERA has no jurisdiction to try and entertain this complaint as the complainants are not the allottees of the project registered by the respondent No. 3. Moreover there is no privity of contract between the complainants and the society. Further the agreements for sale dated 8-07-2010 relied upon by the complainants are executed with the respondent No. 1 and same are unregistered agreements and hence same cannot be create any rights / interest in immoveable property . Further the respondent No. 1 by executing the cancellation deed dated 12-1-2015 has indemnified the society against any claim arise out of the said development agreement dated 9-12-2010. Hence the society is not necessary party to this complaint. The complainant for joining the society as party to this complaint has relied upon the definition of “promoter” as defined under RERA. However, the purported transactions of the complainants was made much prior to RERA coming into force. Hence the society cannot be joined



as necessary party to this complaint. The society therefore prayed for dismissal of this amendment application.

7. The MahaRERA has examined the arguments advanced by both the parties and also perused the record. The complainants by filing this complaint are seeking reliefs under sections 13 and 18 of the RERA seeking directions to the respondent No. 3 to execute the registered agreements for sale with them and also to pay interest for the delayed possession to the complainants. To support their claims, the complainants have relied upon 3 documents i) MOU dated 15-10-2007 executed between the respondent No. 1 and the society. ii) agreement for sale dated executed between the complainants Nos. 5 and 6 and respondent No. 1. iii) Notarised MOU dated 24-02-2015 executed between the respondent No. 1 and one M/s. Navkar Life space Pvt Ltd. Admittedly, the respondent No. 1 is the erstwhile developer with whom the society has executed the development agreement dated 9-12-2010 and same was terminated due to non-performance of the respondent No. 1 vide deed of cancellation dated 12-1-2015. The complainants are claiming rights in the project registered by the respondent No. 3, wherein the society viz Nehru Nagar Shanti Bhavan CHS Ltd has not been joined as “co-promoter”. Admittedly, the complainants have not submitted any allotment letter / agreement for sale issued / signed by the respondent No. 3 promoter and there is no privity of contract between the complainants and respondent no. 3. The complainants therefore filed amendment application on record of MahaRERA for joining society as party respondent No. 5 to this complaint claiming that the society is also promoter and hence responsible for allotment of flats to the complainants by the respondent No. 1 by virtue of the development agreement dated 9-12-2010. However, the society also denied the said claims of the complainants by submitting the cancellation deed dated 12-01-2015 signed



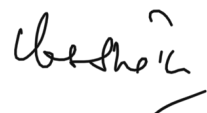
by the respondent No. 1. In clause No. 6 of the said cancellation deed, it is stated that:

“ 6. That the party of the second part hereby declares that he/ she/they/it, have/has not entered into any agreement towards the mortgage, lease, or took/raise/borrowed any loan, or created any third party interest pertaining to the said plot of land bearing Survey No. 229 & 267 corresponding CTS No. 6(part), in the registration sub-district of Kurla and district of Mumbai City admeasuring 931.87 sq.mtr plot area as per lease deed /sale deed and additional tit bit land area as per the actual demarcation on site along with building thereon admeasuring 1392.64 sq.mtrs in case anything happened or claim to the title of the said plot of land due to the act of the party of the second part, he shall himself or his firm through its partner/ proprietor or person through them held responsible for the risk , cost, damages , penalty ,loss , interest and consequences of whatsoever nature at his/ her/their /its cost”.

8. The aforesaid clause of the deed of cancellation dated 12-10-2015 clearly states that the respondent No. 1 declared that it has not created any third party rights with respect to the project land and if any such claim arose, it shall be responsible for such claim. Hence the MahaRERA feels that even if any rights have been created by the respondent No. 1 in favour of the complainants, in that event, the complainants have remedy to sue the respondent No. 1 by approaching the appropriate forum. Further in absence of any allotment letter / agreement for sale duly acknowledged by the said society, the complainants cannot seek any relief against the said society treating it as “promoter”. Moreover, the

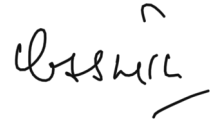
said society has not been joined as 'co-promoter' in the project registered by the respondent No. 3. Moreover, the MOU dated 24-07-2015 relied upon by the complainants is executed between the respondent No. 1 and one M/s. Navkar Lifespace Pvt Ltd and the society has not been joined as party to the said MOU. Hence the said MOU cannot be taken into consideration while deciding the claim of the complainants against the society. Even, the termination of the respondent No. 1 has been done in the year 2015 i.e. prior to commencement of RERA . Hence the MahaRERA feels that there is no violation of section 15 of the RERA by the society as well as the respondent No. 3 as alleged by the complainants. The MahaRERA, therefore feels that the society is not a necessary party to this complaint. Hence the amendment application filed by the complainants stands rejected.

9. With regard to the claims of the complainants, the MahaRERA feels that their rights are very well protected under the cancellation deed duly signed by the respondent No. 1, whereby the respondent No. 1 has taken responsibility of such claim. Hence the complainants have the only remedy to take action against the respondent No. 1 by filing the appropriate proceeding against it.
10. Considering the aforesaid facts of this case, the MahaRERA is of the view that the complainants have not produced any cogent documentary evidence such as allotment letter / agreement for sale duly acknowledged by the respondent No. 3 or the society to establish the facts that they are the allottees of this project registered with MahaRERA. Hence their claim cannot be considered by MahaRERA in absence of any evidence. Moreover, if the complainants have invested their monies in the year 2010, they have failed to sufficiently explain the



delay as to what action they have taken against the respondent No. 1 or the society till filing of this complaint if their claim was genuine.

11. In view of the aforesaid facts, the MahaRERA does not find any merit in this complaint. Hence the same stands dismissed with the above observation.



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

