BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY MUMBAI

1. Complaint No. CC006000000261936

Dr. Jayaben S. Charania .... Complainant

Versus

Ruparel Realty .... Respondent

Alongwith

2. Complaint No. CC006000000292477

Dr. Jayaben S. Charania .... Complainant

Versus

Ruparel Realty .... Respondent

Along with

3. Complaint No. CC006000000303109

Dr. Jayaben S. Charania .... Complainant

Versus

1.Santokben Charania

2. Jamuna Charania

3. M/s. Ruparel Realty .... Respondents

MahaRERA Project Registration No. P51800020602

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

The complainant appeared in person.

None appeared for the respondent nos. 1 & 2 (in Sr No. 3)

Ld. Adv. Alvina Castellino appeared for respondent promoter in all 3

complaints.

ORDER

(Thursday, 16th February 2023)

(Through Video Conferencing)

1. The complainant above named has filed these 3 separate complaints seeking directions from MahaRERA to the respondent for re-registration of the flat in her name or to refund of the money along with interest 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. 301 in 'A' Wing in the respondent No. 3 's registered project in the building known as **"Ruparel Pride"** bearing MahaRERA registration no. **P51800020602** located at Kurla (East), Dist. Mumbai.

2. In the present case, the complainant has filed these 3 separate complaints before the MahaRERA on various dates seeking identical relief for either to re-register the agreement for sale in her name or to refund the money paid by her towards the booking of the said flat No. 301 in Wing -A of this project registered by the respondent promoter.

3. From the record it appears that the complainant has filed the aforesaid complaint at Sr No. 1 i.e., Complaint No. CC006000000261936 before the MahaRERA on 15-07-2022 against M/s. Ruparel Realty (hereinafter referred to as the 'respondent promoter'). The said complaint was heard by the MahaRERA on 01-08-2022 being first hearing matter, when both the parties were present. After hearing the submissions made by both the parties the following roznama was recorded:

"***Both the parties are present. Both the parties' consent to explore the possibility of conciliation. The matter is referred to Conciliation Forum. In the event the conciliation fails, the parties are at liberty to approach this Authority. However, seniority of the matter shall not be disturbed".***

4. Accordingly, this complaint was referred to MahaRERA Conciliation Forum for further necessary action. However, the parties could not arrive at any mutually agreeable terms and hence this complaint was transferred to MahaRERA on 23-11-2022 for taking decision on merits.

5. However, during the pendency of the aforesaid complaint, the complainant has filed another complaint bearing No. CC006000000292477 (at sr no.2) before the MahaRERA on 26-08-2022 seeking similar reliefs. The said complaint was heard by the MahaRERA on 10-10-2022 in presence of both the parties. On that date, after hearing the submissions made by both the parties, the following roznama was recorded:-

"First Hearing Matter.
Both the parties are present. The complainant desires that the matter be fixed for hearing on merits. However, the complainant is directed to add the necessary respondent (i.e. complainant's mother) to this complaint as the allotment and the agreement for sale is in the name of the said respondent. In view of the above, the matter is to be fixed for hearing on merits strictly as per seniority".

6. Pursuant to the aforesaid direction, instead of carrying out necessary

amendment in the said complaint by adding the name of her mother as party respondent to the said complaint, the complainant proceeded to file 3rd complaint bearing No. CC006000000303109 (at Sr No.3) before the MahaRERA on 19-10-2022 seeking similar reliefs for re-registration of the agreement for sale in her name or to refund the money paid by her. In the said complaint, the complainant has joined the names of her mother and sister as party respondent nos. 1 and 2.

7. The said complaint was heard by the MahaRERA on 05-12-2022, along with other connected complaints filed with respect to this project 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.

8. Accordingly, the complainant and the respondent No. 3 promoter appeared and made their submissions. After hearing the submissions made by them, the following roznama was recorded by the MahaRERA:-

"First Hearing Matter.

The complainant and the respondent no.3 are present. Admittedly, the complainant has earlier filed two other complaints in the matter i.e. CC006000000261936, and CC006000000292477. The registry is directed to tag all the 3 matters together (including this complaint). The respondent is directed to file reply to the grievances of the complainant in detail along with all other necessary documents within a period of two weeks i.e. by 19-12-2022. Subsequently, the

complainant may file her rejoinder to the said reply within next subsequent week i.e. by 26-12-2022 along with all necessary documents explaining the fact as to how she can be treated as an allottee of this project since her locus-standi has been questioned by the respondent no.3 promoter. Subsequent to that, respondent no. 3 may file sur-rejoinder to the rejoinder of the complainant within one week i.e. by 02-01-2023. Since both parties have argued the matter at length, it is reserved for orders suitably after 02-01-2023 based on such arguments and all documents uploaded along with reply, rejoinder and sur rejoinder."

9. Pursuant to the directions given in the previous hearing held on 05-12-2022, all 3 matters which are filed by the complainant on the same cause of action were tagged together and taken up for final decision.

10. Further, pursuant to the directions given in the hearing dated 05-12-2022, the complainant has filed her written submissions on record on 23-12-2022. The respondent no. 3 promoter has also filed its reply (on record of MahaRERA) to the complaint. However, despite the copy of the complaint being duly served upon the respondent no. 2 through email, the said respondents (viz respondent nos. 1 and 2 i.e., mother and sister of the complainant have failed to file any reply to this complaint. The said submission filed by the parties are accepted and taken on record.

11. It is the case of the complainant that she had booked a flat no. 2005 in Ruparel Nova project, Parel of Ruparel Realty on 30-03-2019 but later, she

shifted to their Pride project for flat no. 301, A Wing, Ruparel Pride on 13-07-2019. Further, before registration of the said flat, she had enquired with Ruparel team through e-mail and personally, if she could register the flat in her mother's name and related rules, to which the respondent of the respondent promoter in her mail dated 28-09-2019 replied that she could register the said flat in her mother's name. Hence on 11-10-2019, the said flat was registered in her mother and sisters' name i.e. respondent nos. 1 and 2 (in complaint at sr no. 3). Thereafter, a month later in November 2019, she was informed by her CA of a newspaper article on Benami Transaction (Prohibition) Act 2016 according to which, the person funding the property must be a co-owner in the property. Since she was funding the said flat, she requested the respondent promoter to re-register the said flat by adding her name to which the respondent promoter agreed and was informed that the previous contract will be terminated and new registration would be done in her name. Later, in March 2020 lockdown was announced due to which the process of re-registration could not be completed. Even after the lock down till date the process has not been completed. Hence, due to misleading information provided by registration team of respondent promoter, she was facing difficulty since last two and half years though she has paid around Rs. 40 lakhs to respondent promoter. Thereafter, she appeared for the first hearing which took place on 01-08-2022 but the promoter did not respond to her conciliation request hence she has filed the complaint again. Hence, she has prayed to re-register the flat in her name or to refund the money paid by her with interest.

12. The complainant has filed her written submissions on record on 23-12-2022 which is mere repetition of what has been stated in the complaint above.

13. The respondent promoter on the other hand has filed its reply on record of MahaRERA stating that these complaints are not filed as per Form A nor Form B prescribed under RERA, but by merely filling up the description box available on the MahaRERA website in a synopsis form and hence these complaints in the present form are not maintainable. The complainant has been creating complaint after complaint. She has initially filed the complaint no. CC006000000261936 for the relief that the flat to be re-registered in her name. Thereafter, she filed another complaint no. CC006000000292477 seeking the same relief that she wants the said flat to be registered in her name. Thereafter, she filed third complaint no CC006000000303109 alleging that she has been asked to add respondents' mother and sister in the case but she is unable to add on the MahaRERA website so she is filing fresh complaint to add respondents. Further, she has no locus standi in the present case as she is the daughter of the allottee i.e. Santokben Charania (respondent No.1) who had entered into and executed an agreement for sale dated 11-10-2019 with Shree Siddhivinayak Classic Construction Pvt. Ltd. Moreover, the complainant is not a party to the said agreement for sale. The complainant by her own submission confirmed that she is not an allottee in the said agreement for sale dated 11-10-2019 and hence she fails to fall within the definition of an 'aggrieved person' under the RERA. The agreement for sale has been

executed by Shree Siddhivinayak Classic Construction Pvt. Ltd and the same has not been made party to the present complaints and hence the complaints are not maintainable on the ground of non-joinder of party. Further, there is no cause of action mentioned in the present complaint under which she is seeking relief. Besides, that there is no violation of the provisions of the RERA by the respondent promoter. In view of the above, the respondent has stated that the present complaints be dismissed with exemplary costs including compensatory costs payable to it.

14. The MahaRERA has examined the submission made by the complainant as well as the respondent promoter and also perused the available record. In the present case, admittedly, the complainant by filing these 3 separate complaints is merely seeking similar sort of reliefs for execution of agreement for sale in her favour for flat no. 301 in the present project registered with MahaRERA. The complainant has raised such claim mainly because of the fact that the money for booking of the said flat was paid by her. The respondent has not denied the said fact about the payment made by the complainant, however, it has raised various technical issues with respect to the filing of these complaints that the complaints are not filed in proper format and there is non-joinder of necessary parties as the money has been paid to M/s. Shree Siddhivinayak Classic Construction Private Limited (which has registered this project with MahaRERA), however the complainant has not joined the said promoter as respondent. It has further stated that the complainant is not party to the said agreement for sale dated 11-10-2019 and hence she is not

an aggrieved party as per the provisions of RERA. Hence, the respondent promoter prayed for dismissal of these complaints.

15. From the rival submission made by both the parties and without taking into consideration the technicalities pointed out by the respondent promoter, the MahaRERA has noticed few relevant facts viz. the complainant has made the said booking and paid an amount of Rs. 39,78,068/-. The said fact has not been denied by the respondent promoter. However, while entering into a registered agreement for sale dated 11-10-2029, as per the consent of the complainant, the said agreement for sale was done in the name of the complainant's mother and sister (respondent nos. 1 and 2 in complaint at sr. no.3). It is not the case of the complainant that the said registration is done fraudulently by the respondent promoter with the help of her mother and sister and in connivance with them. However, now the complainant wants to re-register the said agreement for sale in her own name by virtue of the new Act viz Benami Transaction (Prohibition) Act, 2016 Revised Rules or to refund the money paid by her.

16. With respect to such specific reliefs sought by the complainant prima facie it appears that there is no explicit provision under the RERA in which the MahaRERA can issue direction to re-register the fresh agreement for sale, when the earlier agreement for sale dated 11-10-2019 is valid and subsisting and not yet cancelled. More so, the said agreement for sale is validly done with the consent of both the parties and has not yet been

cancelled by the parties thereto viz the respondent nos. 1, 2 and the respondent promoter. Hence, for want of any valid reason for cancellation of the said agreement, the MahaRERA cannot order to cancel the said agreement. The complainant should have taken appropriate steps at the relevant time for securing the money paid by her before execution of the said agreement for sale in the name of her mother and sister. Hence, the re-registration of fresh agreement for sale in the name of the present complainant does not arise. The mother and sister of the complainant have neither appeared nor filed any say before the MahaRERA despite notice.

17. As far as the second relief sought by the complainant for refund of the money paid by her, the MahaRERA is of the view that there is a family arrangement between the complainant and her mother and sister, due to which the said agreement for sale was registered in the names of her mother and sister with the consent of the complainant. Further, admittedly, the complainant is not party to the said agreement for sale and even the money paid by the complainant is utilised for the project by virtue of the said agreement. Hence, the complainant who is not a party to the said agreement for sale cannot seek refund of the money paid by her. However, it is for the complainant to settle such dispute of refund with her mother and sister by exploring appropriate legal remedy against her mother and sister if she so desires. The MahaRERA has no jurisdiction to try and entertain matter about such family arrangement. However, the respondent promoter may cooperate with the complainant since the consideration has been paid by her.

18. In view of these facts, the MahaRERA does not find any merits in these 3 complaints. Consequently, all 3 complaints stand dismissed for want of merits.

(Mahesh Pathak)

Member – 1/MahaRERA