BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

Virtual Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO. CC006000000439730

PARIJAT HILL VIEW REALTY LLP.
Through its Partner
1. B G Shirke Construction Technology Pvt Ltd.;
2. Vijay B Shirke &
3. Ajay M Pawar …COMPLAINANT

.

VS

1. CHETAN SURYAKANT PARAB &
2. SHRIYA CHETAN PARAB …RESPONDENTS

MAHARERA PROJECT REGISTRATION NO. P51800021747

Order

May 28, 2024
(*Date of hearing - 16.05.2024 matter was reserved for order*)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Akshay Shetty present for the Complainants.
Respondents present in- person.

1. The Complainant is the Promoter/Developer within the meaning of Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**said Act**") of Real Estate Regulatory Authority (hereinafter referred to as the "**RERA**") who has registered a Project namely "PARIJAT HILL VIEW REALTY LLP" under Section 5 of the said Act bearing **MAHARERA Project Registration No. P51800021747** (hereinafter referred to as the "**said Project**"). The Respondents are Allottees within the meaning of Section 2(d) of the said Act.

2. On the MahaRERA Project registration webpage the proposed completion date of the said Project is mentioned as 30.06.2024. The said Project has received a full Occupation Certificate ('OC') dated 04.08.2023 for wing A issued by the MHADA.

3. The Complainant is seeking the following reliefs:

"(a) The Hon'ble tribunal be pleased to cancel the Registered Agreement for sale dated 26th may, 2022, bearing registration no. BLR-3/6711/2022 at Borivali -3 and other prior and subsequent documents pertaining to the said Flat 2203 in the interest of justice;
(b) The Respondents be directed to pay a sum of Rs. 8,35,400/- (Rupees Eight Lakhs Thirty-Five Thousand Four only) alongwith 18% interest from the date of default till final disposal to the Complainant in lieu of statutory payment namely stamp duty (Rs. 3,92,900/-), Registration fees (Rs. 30,000/-), TDS (Rs.78,571/-) and balance part of GST (Rs. 3,33,929/-);
(c) Or in Alternative, the Respondents be directed to pay the outstanding amount of Rs. 66,78,571/- (Rupees Sixty-Six Lakhs Seventy-Eight Thousand Five Hundred Seventy-One only) alongwith 18% interest from the date of default till final disposal for every month of delay as per the provisions of Section 18 of the Real Estate (Regulation and Development) Act 2016 and the rules and to take the possession of the said flat thereof in compliance of the Agreement for Sale dated 26.05.2021;
(d) Pending the final disposal of the present complaint, the Respondent may be directed not to create any third party interest in the flats as mentioned in complaint;
(e) Cost of this Complaint may be provided for,
(f) Any other relief as this Hon'ble Authority may deem fit and proper."

4. The complaint was heard on 16.05.2024 wherein the following roznama was recorded by this Authority:

"The Complainant states that an Agreement for Sale was singed however, the Respondent has failed to pay his dues since last 7 to 8 months. Despite of the reminders the Respondent is not paying his dues. The Complainant has issued the termination notice, he seeks termination of the agreement. The Respondent states that they had certain problems and he intends to pay up his dues however, he seeks one month's time. The matter stands reserved for orders."

5. The brief facts and submissions of the Complainants are as follows:

a. The captioned complaint was filed on 20.03.2024.

b. Vide a registered agreement for sale dated 26.05.2022 the Respondents purchased a flat bearing No. 2203 on the 22nd floor in wing 'A' of the said Project (hereinafter referred to as "**said agreement**" and "**said flat**" respectively). The total consideration for the said flat was mentioned as Rs. 78,57,143/-.

c. It is observed that the Respondents (Allottees) have only paid Rs. 11,78,571/- towards the sale consideration amount and have executed the said agreement. No further amounts have been paid by them till date asper the said agreement. That the Respondents have defaulted in making further payments as per the schedule contained in the said agreement.

d. That the Complainants had, from time to time, issued demand notices as well as payment reminders calling upon the Respondents to pay the outstanding instalments.
e. As per the clause 5.4 of the said agreement, a termination notice dated 14.02.2023 with respect to the above mentioned flat has been issued against the Respondents for default in paying the further instalments.
f. In the present case the Complainants (Promoter) are seeking reliefs primarily because of the failure of the Respondents (Allottees) to pay the instalments as set out and agreed upon in the said agreement.
g. The Complainants seeks cancellation of the said agreement and necessary instructions be issued for the same to the sub-registrar office.

6. It is observed that the Respondents have not filed any written submissions/reply in the matter.

7. From the above facts and submissions of the Complainants herein the issue before this Authority for adjudication is *Whether the Complainants are entitled to reliefs under the said Act?*

8. The following observations are noteworthy.
a. It is pertinent to note that stage wise instalments towards the purchase of said flat became due and payable upon completion of the work as defined in the said agreement. Every project requires a regular cash flow and hence the monies in an under construction real estate Project are to be paid in predefined stages.
b. It is observed that the Respondents (Allottees) have only paid Rs. 11,78,571/- towards the said flat. No further amounts have been paid by them since then.
c. In view of the above observations the Respondents are duty bound to make the payments as per the said agreement and in accordance with the timelines mentioned therein. In case the Party to the agreement (*Respondents herein*) make a default the other Party (*Complainants Promoters herein*) has every right to act as per the terms for default mentioned in the said agreement.

9. Thus, since the matter is taken up *ex-parte* the Authority shall examine the obligations of the Allottees under the said Act. In this context it would now thus be imperative to examine Section 19 of the said Act which deals with the rights and duties of the Allottees. For ease of reference Section 19(6) is reproduced hereinbelow:

CHAPTER IV
19. RIGHTS AND DUTIES OF ALLOTTEES
"(6) Every allottee, who has entered into an agreement for sale to take an flat, 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."

10. From the submissions of the Complainants (Promoter) it is inferred that the Respondents have failed to perform their duties of paying instalments in time as envisaged in the Section 19(6) of the said Act. The Respondents (Allottees) are thus, in violation of Section 19(6).

11. Having said that the Respondents (Allottees) are in violation of Section 19(6) it would now be important to examine the mandate of the Authority in such cases. Here one would examine Section 34 i.e., Functions of the Authority and Section 34(f) is reproduced hereinbelow for ease of reference:

34. The functions of the Authority shall include—
"(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;"

12. Thus, one of the functions of the Authority is to ensure compliance of the obligations cast upon by the Allottees. Here as Respondents (Allottees) have failed to perform their obligations and the Authority is left with no option but to take steps to ensure compliance of the same. The Authority thus directs the Respondents to fulfil thier obligations in terms of payment of the instalments as due within three weeks from the date of this order together with interest at the rate as prescribed under Rule 18 of the *Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules 2017*. The interest shall be payable by the Respondents (Allottees) to the

Complainants (Promoter) from the date the instalments were due to the date till the instalment is paid.

13. In the event the Respondents fails to carry out the direction of this Authority as mentioned above within the specified time limit, Authority would then direct the Complainant (Promoter) to take recourse to Section 11(5) of the said Act which is reproduced hereinbelow for ease of reference.

Section 11-FUNCTIONS AND DUTIES OF PROMOTER:
"(5) The promoter may cancel the allotment only in terms of the agreement for sale:
Provided that *the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause."*

14. Thus, in the event the Respondents (Allottees) fail to pay the instalments together with interest for delay as due even subsequent to the direction of this Authority, the Complainants (Promoter) shall then proceed to cancel the allotment of the said flat in terms of the said agreement as envisaged in Section 11(5) of the said Act. In the event the Respondents (Allottees) fail to come forward to execute the cancellation deed, the Complainants (Promoter) shall file a non-execution application (non-compliance) against the Respondents (Allottees) in the captioned complaint before this Authority to take further action.

15. Thus, in view of the above observations the answer to the **issue at para. No.7** is answered **accordingly,** and the captioned complaint is **disposed of.** No order as to costs.

AJOY MEHTA
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Date: 2024.05.28 17:57:56 +05'30'

(Ajoy Mehta)
Chairperson, MahaRERA