BEFORE THE MAHARASHTRA

REAL ESTATE REGULATORY AUTHORITY, MUMBAI

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

COMPLAINT NO. CC004000000020107

Manoj Namdeo Shende ...Complainant/s

V/S

Rajesh Navranglalji Agrawal & Hardik Rajesh Agrawal
Partners of M/s. Radha Madhav Developers ...Respondent/s

MAHARERA PROJECT REGISTRATION NO. P50500002672

Order

October 08, 2021
(*Date of hearing – 02.06.2021 matter was reserved for order*)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Complainant was present a/w Advocate Bharat Chandraka Pure
Advocate Harsh Kesaria a/w Vivek Bharadwaj for the Respondent

1. The Complainant is a home buyer and an Allotee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 and the Respondents are Promoters/Developers within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project "VRINDAVAN PHASE 1" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("**said Act / RERA**") bearing MAHARERA **Registration No. P50500002672** (hereinafter referred to as the "**said Project**").

2. On 02.06.2021, the following roznama was passed by this Authority:

"Both parties present.
The contention of the complainant is that an agreement for sale was drawn up on July 11, 2012 and a booking amount of over INR 11,00,000 was paid. As the promoter changed, a new agreement for sale was drawn up on March 3, 2015 and the earlier agreement was merged in this.
The Complainant contends that possession was to be given on March 31, 2015, however, the apartment was not complete till 2019.

The Complainant further contends that the area being offered has now increased and an additional amount of about INR 15,500 and additional amounts towards registration and stamp duty are being sought. He contends that the agreement has been violated on the count of not giving possession on time and also the area having increased putting additional financial burden without his consent.
The contention of the Respondent is that on September 9, 2013 a new agreement was executed between the parties as they stepped into the shoes of the erstwhile promoter.
The Respondent contends that on June 25, 2014 they received the fresh sanction of the planning authority amending the plans and wherein the areas of the individual apartments had increased. He contends that they then obtained the sanction of 2/3 of the allotee to the amended plan, the increased area, and also obtained their consent for a revised possession date namely December 31, 2017. The Respondent contends that they have been offering all documents for the inspection of the apartment and has been ready to handover possession provided the remaining amount is paid. They contend that there is no liability on their behalf.
The Complainant has sought to amend the Respondent to implead Radha Madhav Developers, a partnership firm. The said party consents to being impleaded as a Respondent.
Liberty is granted to the Respondent to upload two documents namely 2/3 consent to the revised plans and the completion certificate by June 16, 2021. The copies of the same to be served on the Complainant and the Complainant would be at liberty to file any further say limited to those documents by June 23, 2021.
Subsequent to which the matters be reserved for Orders."

3. The reliefs sought by the Complainant is as follows:

"a) declare that the action on the part of the respondent demanding excess amount under the guise of increase of Super Built-up area is per se void and illegal;
b) direct the respondent to execute sale deed in favour of the complainant in respect of the well-furnished flat mention in paragraph No.4.5 of the instant complaint as per agreement to sale Dt. 11.09.2013 on accepting the balance consideration and other admissible charges as agreed between the parties, as early as possible vide Section 17 of the Real Estate (Regulation & Development) Act, 2016;
c) direct the respondent to pay compensation to the tune of Rs.10,00,000/- to the complainant towards the mental agony and monitory loss vide Section 18 of the Real Estate (Regulation & Development) Act, 2016;
d) direct the respondent to pay interest @Rs.18% P.A. for every month of delay from the date on which flat was agreed to be handed over to the complainant till the date of handing over of the same.
e) grant any other suitable relief to which to which the petitioner is entitled."

4. The submissions of the Complainants during the hearing dated 02.06.2021 and in the compliant are as follows:

a. Vide an agreement for sale dated 11.07.2012 between the Complainant and Suflam Infra Project Ltd., an apartment (flat) No. 101 was purchased in Aspen

A building of the said Project for a total consideration of Rs.11,54,475/- (hereinafter referred to as the **"said apartment"**) whereby a booking amount of Rs.21,000/- was paid and the balance payments were made from time to time. However, an amount of Rs.43,434/- remains to be paid towards the purchase cost of the said apartment till date.

b. On 30.04.2013, the said Project was taken over by the Respondent herein from erstwhile Promoter, Suflam Infra Project Ltd.

c. On 11.09.2013, a fresh agreement for sale was executed between the Respondent herein and the Complainant wherein the terms of the earlier said agreement merged and the date of possession was mentioned as 31.03.2015.

d. However, on 06.02.2016, the Respondent informed vide an email about increase in the carpet area of the said apartment and thus, demand for additional amount of about Rs.2,61,021/- a/w expenses of Rs.15,500 stamp duty and Rs.2,810/- towards registration charges were being sought thereby putting additional financial burden without any consent.

e. On 16.08.2018, the Complainant called upon the Respondent to execute a Sale Deed with regard to the said apartment vide a legal notice.

5. The submissions of the Respondent (M/s. Radha Madhav Developers) during the hearing dated 02.06.2021 and in their reply are as follows:

a. On 09.09.2013, a new agreement was executed between the Parties as they stepped into the shoes of the erstwhile Promoter, Suflam Infra Project Ltd.

b. On 25.06.2014, the Respondent received the fresh sanction of the planning authority amending the plans and thus, the areas of the individual apartments had increased.

c. The sanction of 2/3rd Allottees was obtained for the amended plan, the increased area, and also for a revised possession date namely 31.12.2017. Since there were only 3 Allottees at that point in time, hence the 2 Allottees namely Mr. Vikas Farkase and Mr. Shubhangi Awhad already signed and executed the correction agreements dated 21.04.2017 and 29.03.2017 respectively but the Complainant refused to give his consent to the change in the plan. Thereafter

sale deeds were also executed in favour of the aforesaid 2 Allottees and possession is handed over to both the aforesaid Allottees.

d. That all documents for the inspection of the apartment were available for inspection and that the said apartment has been ready for handover of possession subject to the remaining amount being paid by the Complainant.

e. The sale deed is pending only on account of non-payment of balance amount towards the said apartment and thus, the possession has not yet handed over.

f. The undertaking given to MahaRERA for completion of the said Project is 31.12.2027.

6. From the submissions of the Complainant and the Respondent herein the only issue that arises for consideration is that *whether the present complaint is maintainable for seeking relief of delayed possession as on the date of filing the complaint i.e. 22.07.2019?*

7. From the facts and the submissions of the present complaint in hand, the following observations are noteworthy:

a. The issue that arises in the present complaint is that of execution of the Sale Deed for the said apartment and handover of possession. In this context it is pertinent to note that since the Respondent herein was brought in as the new Developer / Promoter of the said Project in whose name the MahaRERA registration is made and that there was a revision in the sanction plan of the building which was duly permitted by the competent authority which resulted in increase in the carpet area for each individual apartment. This increase / change in carpet area of individual apartments was also informed to the then Allottees and passed after taking consent from 2/3rd of the Allottees as mandated under the provisions of the said Act. The relevant portion of the said Act is reproduced for ready reference which mandates that in case of any alterations or additions in the sanctioned plans a written consent of at least 2/3rd of the Allottees is necessary:

"*Section 14 - Adherence to sanctioned plans and project specifications by the promoter*

(1) -----
(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make –
(i) ----
(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project ***without the previous written consent of at least two-thirds of the allottees****, other than the promoter, who have agreed to take apartments in such building."*

b. The Respondent herein has submitted that at that point in time there were only three Allottees of which two agreed and executed a correction agreement with regard to the increase in the carpet are of their respective apartments and also executed a Sale Deed to that effect and sought possession of their respective apartments. This fact is not disputed by the Complainants with any documents of proof placed before this Authority. Thus, the change was adopted by 2/3rd majority of the Allottees existing during that period of time.

c. The Complainant was also requested to execute the correction agreement and make necessary payments towards the said increase in the area of the said apartment and execute a Sale Deed in-order to handover possession of his apartment like the other two Allottees but the Complainant refused to do the same.

d. Also. admittedly there is a delay in possession from what was committed in the agreement for sale dated 11.09.2013 but the fact that the new Developer was brought in and that 2/3rd Allottees consented to the said change by executing correction agreement for additional area and also made necessary additional payments subsumes the consent of the Complainant too. Once the majority ~~is~~ has agreed, individuals cannot be permitted to raise individual reliefs on the same grievances. This would never allow for uniformity and subsequently jeopardise the life of a real estate project. Thus, the Complainant is left with no choice but to accept the additional area and make necessary payments and execute a Sale Deed in respect to the same and take possession of the said apartment. The question of delayed possession cannot be

entertained as the Respondent herein in whose name the MahaRERA Project registration stands as on date has sought the proposed date of completion of the said Project as 31.12.2027. The answer to the issue hereinabove is in negative.

FINAL ORDER

The Parties herein are directed to execute the Sale Deed for the said apartment forthwith. The Respondent is directed to obtain OC of the said building and facilitate the lawful completion of the said building at the earliest and inform MahaRERA. No order as to cost.

(Ajoy Mehta)
Chairperson, MahaRERA