

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

CORAM :- SHRI.W.K.KANBARKAR, ADJUDICATING OFFICER, PUNE

Non-Compliance Application in
Complaint No.CC004000000030474

Sandeep Dwellers Private Limited
Through its Authorized Signatory
Gaurav Agarwala

.. Complainant/s

V/s.

Amit Rahangdale
& Sarita Rahangdale
MahaRERA Project Registration No.P50500023552

.. Respondent/s

Appearance :-

Complainant : Mr. Aniruddha Rajaranka, A.R.
Respondent :- Absent

ORDER

(29.01.2024)

1. Vide order, dated 18.08.2023 passed in the present complaint by the Hon'ble Chairperson, MahaRERA, Mumbai, and thereby respondents/allottees are directed to fulfil its obligations in terms of payment of the instalments as due within three weeks from the date of the order together with interest at the rate 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 and the interest shall be payable by the respondents (allottees) to the complainant(promoter) from the date of instalments were due to the date till the instalment is paid. It is further directed by the said final order that in the event the respondents fails to carry out the directions of this Authority as mentioned above within specified time limit, the complainant to take recourse to Section 11(5) of the said Act to cancel the allotment of the said flat in terms of the said agreement and in the event the respondents (allottees) fails to come forward to execute the cancellation deed, the complainant (promoter) shall file a non-execution application (non-compliance) against the respondents

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(allottees) in the captioned complaint before this Authority to take further action.

2. Heard A. R. for the complainant, who submits that copy of the Notice sent to the respondent is furnished on record and prayed for suitable action. Respondents absent and hence there is no submissions on behalf of respondents.
3. Under Section 11(5) of the RERA Act, promoter may cancel the allotment only in terms of agreement for sale. Moreover, as per the aforesaid final order, dated 18.08.2023, observations are made as the complainant time to time issued demand notice as well as payment reminders calling upon the respondents to pay the outstanding entitlement, but they have defaulted in making timely payment in accordance with their respective agreement for sale and therefore, complainant issued termination notice to the respondents highlighting the default in making the payments. Further under Section 19 of the RERA Act, duties of allottees are incorporated including that every allottee shall responsible to make necessary payment in the manner and within the time as specified in the agreement for sale and shall pay at the proper time and place, etc.
4. In the light of the observations made in the said final order and further the directions are issued therein and the aforesaid provisions of RERA Act and the submissions made on behalf of the complainant, the present Non-Compliance Application is just, proper and suitable for cancellation of deed of agreement for sale as mentioned above. Obviously, the steps taken by the complainant for termination/cancellation of agreement for sale, as detailed above, is proper, legal and valid under law.
5. The provisions of Section 31 of the Specific Relief Act, 1963 reads as under :-

"31. When cancellation may be ordered – (1) Any person against whom a written instrument is voidable, and who has reasonable apprehension that such instrument, if left

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outstanding may cause serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908) the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

(Judgment delivered by the Karnataka Real Estate Appellate Tribunal, Bengaluru (Hon'ble Justice B Shreenivase Gowda, Chairman and Hon'ble K. P. Dinesh, Judicial Member and Hon'ble P. S. Somashekar, Administrative Member) in Appeal (K-REAT) No.351 of 2020 – M/s. L & T Construction Equipment Ltd. And 1. The Real Estate Regulatory Authority, Bengaluru, 2. Mr. Arun Kumar R.)

5. Under such circumstance, just, proper and legal to direct the jurisdictional sub-registrar to take appropriate entry/note in the concerned register that the agreement for sale concerned is terminated legally and validly under law. However, the respondents/allottees are at liberty to approach the competent authority for refund of amount, if any, and if permissible in accordance with law.
6. In the result, following order is passed.

ORDER

- (i) The present Non-Compliance Application is allowed.
- (ii) The jurisdictional Sub-Registrar is hereby directed to make appropriate entry/note in the concerned register to the effect that the

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agreement for sale, registered vide Serial No.4510/2021, dated 03.03.2021 in the office of the Sub-Registrar, Nagpur Rural No.10, Nagpur entered between the parties i.e. complainant/promoter and respondents/allottees as terminated and cancelled.

(iii) The office is directed to send copy of this final order along with Xerox copy of the agreement for sale to the jurisdictional Sub-Registrar to take appropriate compliance in accordance with law.

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(W.K. Kanbarkar)

Date :-29.01.2024

Adjudicating Officer, MahaRERA, Pune

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