

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

Complaint No. CC006000000055765

1. Manvi Computech Private LimitedComplainants

Complaint No. CC006000000056081

2. Samsung Overseas LimitedComplainants

Complaint No. CC006000000056086

3. Ashok MindaComplainants

Versus

Shreeniwas Cotton Mills Limited & 15 Ors Respondents

MahaRERA Registration No. P51900008345

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

The complainants appeared in person a/w Adv. Tanuj Lodha
Adv. Sunil Raja Nadar a/w Adv. Ankita Singania
appeared for respondent no. 1.
Representative of respondent no. 4
Mr. Bagare for respondent no. 7
Mr. Bhide, representatives of respondent no. 8
Shilpa Kapil representative of respondent no. 10
Adv. Sana Khan appeared for respondent no. 15 appeared

ORDER

(30th April, 2019)

1. The complainants in the above complaints are allottees in World One, a residential project being developed by the respondent no. 1. They executed agreements for sale in the year 2012 and paid substantial amount of money towards the consideration value of their respective units. They have filed these complaints alleging several violations of the provisions of the Real Estate (Regulation and Development) Act 2016 (herein-after referred to as RERA) by the respondent no. 1 who is the developer of this project. They have

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demanded penal action against him, revocation of the registration and refund of their money with interest and compensation.

2. The complainants were heard in the presence of the concerned parties on various dates fixed for hearing. The parties were also given adequate time on their request to make arguments and give their written submissions. An inspection of the project by a government agency also consumed time.

3. The present dispute is essentially between the complainants and the respondent no. 1 (developer). Other respondents are mostly the government agencies and sanctioning authorities to grant project related approvals. The complaints were heard as per the provisions of RERA and also exercising the powers given to authority under Section 38.

Brief facts

4. The respondent no. 1 launched the project 'World One' in 2010 with the plan to have 117 storeys in Upper Worli Mumbai. The developer company also obtained approvals of various government agencies such as Mumbai Fire Brigade, Technical Committee of High Rise Buildings, Municipal Corporation of Greater Mumbai (MCGM) and Environment Department, Government of Maharashtra for the project. Since the project is in the vicinity of the Mumbai airport, it requires the clearance of the Airport Authority of India to allow construction for a height of 501.339 meters Average Mean Sea Level (AMSL) which is required for 117 storeys. However, the Airport Authority of India (AAI) gave the height clearance for 180.89 metres AMSL in July 2010 which was revised in appeal to 284.29 meters on October 1, 2010. The respondent no. 1 represented before the appellate authorities and Government of India to get the height clearance for 501.339 meters. Despite the best of his efforts, he could get No Objection Certificate (NOC) from the AAI for 285.06 metres AMSL in January 2017. He also filed a Writ Petition before the Hon'ble Delhi High Court and got orders directing the AAI to conduct an aeronautical study

through the International Civil Aviation Organisation (ICAO) for this purpose. All this resulted in a delay in the project and restriction of the height of construction to 284.29 meters only.

5. The entire project is being developed in three different phases or tiers as RERA allows phase wise registration of the projects. The first phase of the project having ground part and from 6th to 43 floors got occupancy certificate on July 29, 2017 and hence, it was not registered. The second phase or tier 2 of the project having 44th to 80th floors was registered under RERA as an ongoing project with registration no. P51900008345 having the proposed date of completion as September 30, 2018. This was recently extended to September 30, 2019 by MahaRERA. The units belonging to the complainants fall in this tier 2 project.

Pleadings by the complainants

7. The complainants booked their respective flats in the project in 2012. They got allotment letters and later on executed the agreements for sale with respondent no. 1. They were allotted spacious apartments on different floors, i.e., 67th, 63rd and 66th respectively. The date of fit out possession in the agreement was December 2015. However, the respondent no1 has failed to complete the project and hand over the possession of their apartments as per the agreement.

8. The complainants also pointed out several violations of MOFA by the respondent no. 1. The area of the unit in the agreement was less than that in the allotment letter. He had taken an amount that was more than 20 percent of the consideration value of their apartments before executing agreements for sale in 2012. The draft of the agreement was never shared with them before registration. The terms and conditions in the agreement and specifications of the project were different from the ones in the brochure. The

agreement didn't match with the model agreement under MOFA. Various clauses in the agreement were contrary to the provisions of MOFA.

9. In view of the above violations, the complainants have demanded action under section 12 of RERA and refund of their money along with compensation. They also alleged violations under Section 4, 5, 7, 10, 11, 12, 14 and 18 of RERA and demand revocation of the project.

10. The complainants also submitted that the respondent no. 1 had violated the height restriction imposed by the AAI and constructed 10 illegal floors. He was in the process to construct more illegal floors. They demanded the verification by the AAI/MIAL and suitable action on the basis of the report.

11. The complainants also alleged that the respondent had not uploaded the required documents while registering the project with MahaRERA and prayed for action against him for violating the provisions of Section 4. They demanded the revocation of the project under Section 7 due to these violations and unfair trade practices by respondent no. 1.

Pleadings by the respondents

12. The respondent no.1 submitted that the complaints were frivolous, misconceived and disclosed no course of action. He denied that there was any violation of the provisions of RERA on his part. In the year 2010, he had planned to construct the building having 117 floors and prepared the brochure advertising the same. However, he never claimed to have got all approvals necessary for the project. His brochure also carried a disclaimer which stated that the plans, specifications, images and other details were only indicative and the Developer/ Owner reserved the right to change any or all of these in the interest of the project. Moreover, the agreements were executed with the complainants subsequently which superseded and cancelled all previous oral and written agreements, brochures,

advertisements etc. He also pointed out that Section 12 can't be applied retrospectively on the transactions that transpired before RERA came into effect.

13. It's wrong to say that Section 14 has been violated because the respondent no. 1 didn't change sanctioned plan, layout plan or amenities with respect to the apartments or the project. There were two plots of land at the project site which were merged in 2013 resulting in an increase in the total constructed area. However, this had no effect on the structure or area of the flat. Furthermore, the respondent no. 1 had the rights to amend and modify the plans without making any change in the flat area. Hence there is no violation of Section 7 of MOFA. According to clause 4.1 of the agreement, the complainants had agreed with all documents, plans and approvals of the project.

14. According to the respondent no. 1, there is no violation of Section 18 of RERA. Although the date of fit out possession was 31st December 2015, the date of occupancy certificate was one year after this date. These dates were subject to further extension and grace period of one year in accordance with the provisions of clause 12.2 of the agreement to sale. Provisions in clause 12.5 entitle the owner to further extend this period on account of non-availability of building material, force- majeure, economic hardship or delay in getting approvals. Taking into consideration all these mitigating factors, there is no delay in the completion of the project.

15. The respondent also submitted that he had to take necessary approvals again in 2012 due to the changes in the plans necessitated by the amendments in the Development Control Regulations (DCRs) by the MCGM. This immeasurably affected the timelines for construction. He also issued letters dated 20th May 2016 and 19th July 2017 to the complainants giving revised timelines for the completion of the project.

16. On the issue of the carpet area, the respondent no 1 has stated that it was clearly stipulated as 4729 sq. ft. In the allotment letter and the agreement. The complainants never raised any dispute with respect to the carpet area during the last six years.

17. The respondent no. 1 also submitted that he had obtained the occupancy certificate on 21st January 2019 and informed the complainant about the same by its letter dated 22nd February 2019. The provisions of Section 18 of RERA apply only if the promoter is unable to give possession. He cited the case of Vinod Kumar Roongta vs Propel Developers Pvt. Ltd. decided by MahaRERA on 16th July 2018 in support of his arguments.

Findings

Registration of project under section 4.

18. The complainants have submitted that the respondent no. 1 had not uploaded all the documents as required for the registration. After hearing the arguments of the rival parties and going through their written submissions, it emerges that the respondent had registered tier-2 component of his original project as a separate project. Since RERA provided for the phase wise registration of the projects, this registered project covered 44 to 80 floors. He also uploaded the relevant documents including commencement certificate, sanctioned layout plan, litigations, encumbrances, legal title reports and other approvals/permissions necessary for the purpose of registration. MahaRERA granted the registration certificate under Section 5 and also gave extension under Section 6. All the uploaded documents are available in public domain. Hence, violations of sections related to registration of project couldn't be established.

19. The complainants have also challenged various permissions given by the government agencies such as MCGM, Fire Brigade, Environment Clearance Committee etc. alleging that these agencies ignored the height restrictions

imposed by the AAI. However, it was observed that these agencies had given these permissions subject to the clearance of height by the AAI. MahaRERA can't go into the issue of due diligence exercised by them while granting permissions. Moreover, all these permissions had been given before the RERA came into effect.

Violations of MOFA

20. The complainants have accused the respondent/ developer of making several violations of MOFA particularly while registering the agreement for sale in 2012. However, they could not explain why they didn't take any action by filing complaints before the competent authorities under MOFA. If they felt that the agreement for sale was different from the model agreement under MOFA or did not provide the same units or facilities as were advertised in the brochure or promised in allotment letter, they should have sought legal action under MOFA rather than keeping silent for almost six years.

21. The complainants want action for violation of section 12 of RERA which came into force on May 1, 2017. The provisions under this section are reproduced below:

Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act.

22. It is therefore clear that section 12 can't be applied retrospectively for the events which had taken place before RERA came into effect. Recently, MahaRERA has given several rulings in which this issue was addressed and clarified. In the complaints of Rohit Chawla and others vs The Bombay Dyeing and Manufacturing Company Ltd., dated Jan 9, 2019, compensation under



Section 12 was denied on the similar grounds. Similarly, the provisions of Section 10 or 14 can't apply retrospectively on the agreements registered under MOFA.

23. Moreover, once the agreement is registered, the parties are bound by the terms and conditions of the contract and it is not possible to enforce earlier documents like letter of allotment or information in the brochure particularly after a gap of six years. In clause 28 of the agreement for sale, the following provisions also endorse the same.

'the terms and conditions of this agreement overrides, supersedes, cancels any prior oral or written all agreements, negotiations, commitments, writings, discussions, representations and warranties made by the owner in any documents, brochures, advertisements, hoardings, etc...'

Height restrictions

24. During the hearing on 31st Oct. 2018, the complainants argued that the respondent no 1 had violated the height restrictions imposed by the Airport Authority of India resulting in unauthorised construction. The Mumbai International Airport Pvt. Ltd. (MIAL), was therefore directed to measure of the height of World One Building.

25. Accordingly, MIAL carried out a joint inspection on 28th November 2018 to verify the height and submitted its report to MahaRERA. According to this report, the height of the building is 284.25 meters AMSL which is within the permissible limit of 284.29 meters AMSL given by the AAI. Thus the allegations of the complainants regarding the violations of the height restriction by the respondent no 1 could not be substantiated.

26. The complainants disputed the joint inspection report and alleged that the report was not based on facts as the concerned agency has acted in a

partisan manner. However, this contention was found to be unsupported baseless. The MIAL is a reputed agency having the expertise to conduct inspection and prepare the technical report. As such, there are no reasons to doubt the veracity of the report.

Date of completion/ possession

27. According to the registered agreement for sale, the date of fit out possession was Dec 31, 2015. However, clause 12 of the agreement provides an additional time of one year for occupancy certificate with possession. In clause 12.2, the owner is entitled to a grace period of one year over and above these time lines. This effectively fixes the date of final possession as Dec 31, 2017. The respondent no. 1 registered the project with MahaRERA and proposed a new date of completion. Now, he has been able to get the occupancy certificate on January 21, 2019 and offered possession of the flats to the complainants. The provisions of Section 18 of RERA can apply only if the project is incomplete or the promoter is unable to give possession. This view is reflected in several rulings of MahaRERA in which penal provisions of this Section were not applied when orders were passed after the completion/ occupancy certificate of the project. Some examples are: Dr Samita and Amul Rawal vs Keystone Realtors Pvt. Ltd. in complaint no. CC006/44483 dated July 26, 2018; Prashant B Bhadra and others vs AAP Realtors Ltd. in complaint no. CC 006/56686 dated November 26, 2018; and Dr Ashwini Hirlekar & others vs Vihang Enterprises in complainant no. CC 006/56406 dated November 16, 2018.

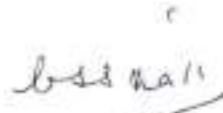
27. Another important observation in this case is that the complainants didn't raise their grievances before the appropriate forum when they could not get fit out possession in Dec 2015 to enforce their rights under MOFA or later on when the project got further delayed. Even when the project was registered under RERA and new timelines were given by the respondent-promoter, the complainants showed no urgency to file the complaints. It was only in Oct 2018 that they complaints before MahaRERA. By that time, the respondent

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had nearly completed the project spending the entire money given by the allottees. One of the main objectives of RERA is the completion of projects which was not envisaged in MOFA. The Hon'ble Bombay High Court has noted this in the judgement delivered in the Writ Petition No 2737 of 2017 Neelkamal Realtors Suburban Pvt. Ltd. VS Union of India & Ors. decided on December 6, 2017. Allowing the allottees to withdraw and take back their money when the project is getting completed can jeopardize the project defeating this very objective. RERA has to balance the rights of all stakeholders and take appropriate decisions which are just and fair, and don't harm the project or adversely affect other home buyers. Since the developer has already got occupancy certificate for the flats belonging to the complainants, it would be more appropriate and reasonable to ask the promoter to pay interest to the complainants for the period of delay till the date of occupancy certificate of the project i.e., from 31st December 2017 to 21 January, 2019.

28. In view of the above discussion and the provisions of RERA construed harmoniously, the respondent no. 1 is directed to give possession of the apartments to the complainants in accordance with the agreement along with interest for the period of delay in handing over the possession at the rate prescribed by MahaRERA, ie, MCLR plus 2%, on the money paid by the complainants. The complainants are advised to take possession of their units.

29. Consequently, the complaints stand disposed of.


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