

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

Complaint No. CC006000000192573

Mr. Ajay Hemmady

Mrs. Jyotirmayee

..Complainants

Vs

M/s. L &T Parel Projects

M/s.L & T Realty Ltd

3.M/s. Chennai Visions Developers Pvt Ltd

..Respondents

MahaRERA Project Registration No. **P51900005188**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – 1/MahaRERA

Adv. Anwar Landage i/b Adv. Harshad Bhadbade appeared for the complainants.

Adv. Mithil Sampat appeared for the respondent No. 1.

ORDER

(5th February, 2021)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions to the respondent promoter to execute the registered agreement for sale with them and also to pay interest under the provisions of sections 13 and 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect to the booking of flat no. 3204 on the 32nd floor, having area admeasuring 1082.34 sq.ft. along with 41.26sq.ft. aggregating to 1123.6sq.ft in the respondent's registered project known as "**Crescent Bay-T3**" bearing MahaRERA registration No. **P51900005188** at Parel, Mumbai.
2. This complaint was heard on several occasions when the parties sought sufficient time to file their respective submissions on

record of MahaRERA and in compliance of principles of natural justice it was granted. Thereafter the same was heard finally on 04-02-2021 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. On the said date of hearing, both the parties appeared through their respective advocates and made their submissions. After hearing the oral submissions, the parties were allowed to file their respective written submissions on record of MahaRERA. The MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainants that the respondents promoters had advertised this project namely "Crescent Bay – T3. In the year 2015, they approached the respondents for purchase of an apartment in the said project and booked the said flat on 8-07-2015 measuring carpet area of approx. 1082.34 sq.ft. along with 41.26 sq.ft. aggregating to 1123.6 sq.ft. i.e. 104.39 sq.mts.in the building known as "T3" for total consideration amount of Rs.4,35,27,430. At the time of booking, the respondents have promised the date of possession as December, 2018. They further stated that they continuously requested the respondents for issuance of allotment letter and finally it was issued to them in the year 2017, mentioning the area of the said flat as is 100.55 sq.mts equivalent to 1082.34 sq.ft. including enclosed balcony. They further stated that out of the total consideration of Rs.4,35,27,430/-, they have paid an amount of Rs.86,31,462/- to the respondents towards part payment of the flat cost. However, at the time of the said

booking of the flat in the year 2015, the total carpet area of the said flat promised was approx. 1082.34 sq.ft. along with ancillary area 41.26 sq.ft. Thus aggregating to 1123.6 sq.ft. i.e. 104.39 sq.mts. for total consideration of Rs.4,35,27,430/-. But as per the Annexure 'B' provided to them by the respondent in the month of October 2018, there is a change in carpet area to 1022.36 and ancillary area to 111.3 sq.ft. aggregating to 1133.6 sq.ft. i.e. 105.31 sq.mtrs. The complainants therefore filed this complaint mainly seeking compensation for the unexplained delay caused by the respondent in handing over of possession from December, 2018, due to change in the area of the flat without their consent and for execution of the agreement for sale.

4. The respondent no. 1 has filed an affidavit in reply cum written statement on record of MahaRERA and has stated that the date of completion of the tower of the complainants is 30/09/2022 on the MahaRERA website which has not yet lapsed. Hence, the complaint is premature and not maintainable. It has further stated that the relief of compensation is not maintainable before RERA and that the complainants are playing fraud upon the MahaRERA and they are taking advantage of their own wrongdoing and hence prayed for dismissal of this complaint. It has further stated that it has sent various reminders to the complainants for payment of dues of Rs. 75,17,561/- on 07/10/2015, 16/11/2015 & 21/12/2015. However, the complainants have failed to pay the instalments as per the payment schedule and have paid an amount of Rs. 74,48,760/- on 10/06/2016 after a delay of nine months. It has further stated that it was always willing to execute the agreement for

sale and therefore had sent the revised agreement value to the complainants by letter dated 03/02/2018 thereby reducing the agreement value. However, the complainants have till date not sent any confirmation email back to it. Even, it has sent the draft agreement for sale dated 21/03/2018 to the complainants vide email dated 02/04/2018 on request of the complainants. However, the complainants have failed and neglected to execute the same.

5. To support its contentions, the respondent no. 1 has further relied upon the judgement of the Hon'ble Supreme Court of India in Civil Appeals No. 6656 of 2010 in matter of Meghmala & Ors. Versus G. Narasimha Reddy & Ors. dated. 16/08/2010 wherein the Hon'ble Supreme Court has held various principles with regard to fraud being played upon the Court. It has also relied upon an order passed by the MahaRERA in complaint no. CC00500000022957 wherein the complainant was denied compensation since he was willing to continue in that particular project. It has further stated that it has never promised the date of possession to the complainant as December 2018 and that details regarding the project as well as completion are mentioned in the MahaRERA registration page. The respondent no. 1 further stated that it had sent two copies of allotment letters to the complainant to duly sign and return it in February 2017 and an email was also sent on 17/04/2017. However, the complainants have till date failed to send the signed copies of the allotment letters to it.

6. With regard to the change in flat area as alleged by the complainants, it has stated that there is no change in the area of the flat and the variation is owing to the change in method of

calculation after commencement of RERA and the change in carpet area is just in compliance with the law. Further, since the complainant no.1 is an architect, he must be aware of the issue of the carpet area. Hence, it has denied the applicability of sections 12, 14 & 18 of RERA in the present case and contended that the complainants have approached the MahaRERA with unclean hands. In addition to this, it has further stated that it has full right to terminate the booking of the complainants since they have failed to comply with its bona fide demands for outstanding dues. Hence, it has prayed for dismissal of this complaint with costs.

7. The MahaRERA has examined the arguments advanced by both the parties and also perused the available record. In the present case, the complainants claiming to be allottees of this project registered by the respondent no.1, have approached MahaRERA mainly seeking relief under section 13 of the RERA and they are further seeking ancillary reliefs of interest under section 18 of the RERA and also compensation for violation of sections 12 and 14 of the RERA. The respondent nos. 2 and 3 are formal parties to this complaint as they are the directors of the respondent no.1. Hence the respondent no. 1 promoter filed reply and has shown its willingness to execute the registered agreement for sale with the complainants, however, it has denied their claims towards interest and compensation stating that it has not committed any violation of sections 12 , 14 and 18 of the RERA.

8. With regard to the relief sought by the complainants under section 13 of the RERA, the MahaRERA has noticed that the

complainants have booked the said flat under the MOFA in the year 2015. The allotment letter is submitted on record of MahaRERA. It appears that the consideration of the said flat is fixed at Rs. 4,35,27,430/- excluding other charges as per the allotment letter is Rs. 4,65,19,826/-) out of which the complainants have paid an amount of Rs.86,31,426/-, which amounts to more than 10% of the total consideration amount. The respondent no. 1 promoter filed its reply and showed its readiness and willingness to execute the registered agreement for sale with the complainants. Therefore the MahaRERA is of the view that nothing is required to be done, with regard to the claim of the complainants sought under section 13 of the RERA.

9. However, with regard to the contention raised by the complainants regarding change in carpet area from 1123.6 sq.ft equivalent to 104 .39 sq.mtrs to 1133.6 sq.ft equivalent to 105.3 sq.mtrs. It appears from the record that the complainants are disputing the area of the flat as well as the consideration value .However, the complainants have not produced any cogent documentary proof on record of MahaRERA to substantiate their claim towards the lesser area of a flat is provided by the respondent, such as booking application form, allotment letter duly signed by both the parties, amended plan duly sanctioned by the competent authority after commencement of RERA. In absence of these documents the MahaRERA cannot decide the claim of the complainants for violation of sections 12 and 14 of the RERA. Hence, the reliefs sought under the said provisions stands rejected.



10. With regard to the relief towards compensation for the delayed possession raised by the complainants under section 18 of the RERA, the MahaRERA is of the view that there is no allotment letter nor any agreement for sale entered into between the parties showing any agreed date of possession, which has lapsed. The complainants have contended that the respondent promoter agreed to handover possession of the said flat to them on or before December, 2018. Mere statement to that effect without any collaborative evidence cannot lead the complainants to seek relief under section 18 of the RERA. Moreover, after commencement of RERA, the respondent no. 1 has registered this project MahaRERA by declaring the proposed date of completion of this project as 31-08-2021 and the said information was available in public domain including the complainants. Hence, if the complainants were aggrieved by the said declaration by the respondent no.1, they should have taken appropriate steps at the relevant time. However, no such steps seem to have been taken by the complainants. Hence, the MahaRERA is of the view that in absence of any document signed by the respondent no. 1 committing any specific date of possession to the complainants which has lapsed, the MahaRERA cannot proceed to grant any reliefs under section 18 of the RERA in favour of the complainants. Hence, the said claims stands rejected.

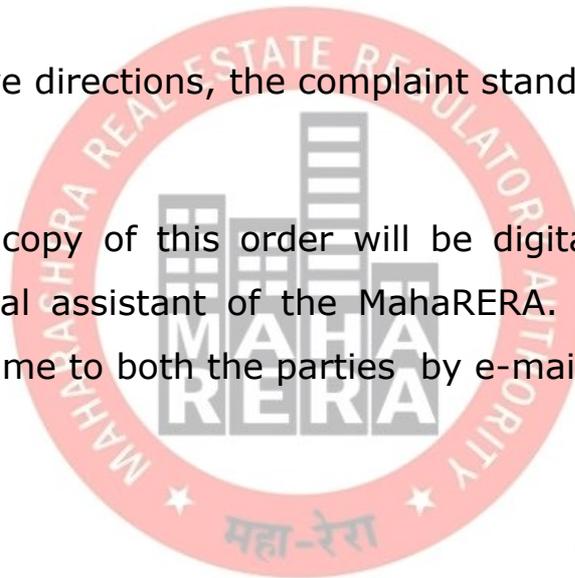
11. In the present case, it is noticed by the MahaRERA that there is no final allotment letter issued in favour of the complainants duly signed by both the parties and hence both the parties are governed under the terms and conditions of the booking application form signed by both the parties. Hence, the

MahaRERA directs that the agreement for sale has to be executed in accordance with the terms and conditions of the booking form signed by both the parties in the year 2015.

12. In view of these facts, the MahaRERA directs both the parties to execute the registered agreement for sale in accordance with the provisions of section 13 of the RERA read along with relevant Rules within a period of one month in accordance with the terms and conditions of the booking application form signed in the year 2015.

13. With the above directions, the complaint stands disposed of.

14. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the same to both the parties by e-mail.



(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA