

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

Complaint No. CC006000000141194

Mrs. Neelam Sahebrao Satre

..Complainant

Vs

M/s Accord Estates (P) Limited

M/s Runwal Realty Pvt Ltd

M/s. Runwal Developers Pvt Ltd.

..Respondents

MahaRERA Project Registration No. P51900010100

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

Adv. Avinash Bamane appeared for the complainant.

Adv. Abir Patel for respondent no. 1

None appeared for the respondent No. 2.


Adv. Nitin Jadhav appeared for the respondent no. 3.

ORDER

(10th November, 2020)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondents to execute the registered agreement for sale and to pay interest for the delayed possession from 2011 till the actual date of possession as per the provisions of sections 13 and 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect of booking of flat in the respondent's registered project known as "Nirvana Part I" bearing MahaRERA registration No. P51900010100 at Mumbai City.
2. This complaint was heard on several occasions in presence of both the parties and the same was heard finally today 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. Accordingly, both the parties appeared for the hearing and made their oral as well as written submissions. The MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainant that initially, the respondent No. 1 has undertaken this project and in the year 2009 she had booked flat No. 602 on the 6th floor admeasuring 1425sq.ft carpet area for total consideration amount of Rs. 1,35,00,000/-. The registered agreement for sale was entered into between her and the respondent No. 1 in the year 2009. According to the said agreement the respondent No. 1 was liable to handover possession of the said flat to her on or before 2011. However, the possession has not been delivered to her. Thereafter, the respondent No. 1 without taking any permission and without her knowledge has executed joint development agreement with the respondent No. 3 promoter, who has registered this project with MahaRERA. Till date, she has paid about 40% of the total consideration amount to the respondent No.1. When she applied for loan, the concerned Bank informed her that since the project has been registered by the respondent No. 3, the agreement is to be registered with the respondent No. 3 and hence her loan could not be granted. The respondents without obtaining any consent from her has changed the building plan as such the original flat of the complainant is not in existence and hence the respondents have offered another in the said building and the draft agreement for sale has also been shared to her. The complainant has further stated that she has already paid the stamp duty and registration charges for registration of agreement for sale executed on 2-09-2008, the respondents are liable to pay the stamp duty and registration charges for the new agreement hence she did not sign

and execute the said agreement. The complainant has stated that she is ready and willing to execute the agreement for sale with the respondents. However she prayed MahaRERA that the stamp duty and registration charges should be borne by the respondents as due to change in plan by the respondents without her consent, she has to pay double stamp duty and registration charges which she is not liable to pay. The complainant further prayed for interest for the delayed possession under section 18 of the RERA, since the respondent No. 1 has failed and neglected to handover possession of her original flat on the agreed date of possession mentioned in the said old agreement for sale. Hence the complainant prayed to allow this complaint.

4. The respondent No. 1 on the other hand have resisted the claim of the complainant and stated that the complainant is claiming rights under agreement for sale dated 30-07-2009 after belated period of about 10 years and hence the said claim is not maintainable. Further the complainant had purchased the said flat from the original allottee Mr. Hanumant Jagdale who has purchased the said flat by executing the registered agreement for sale dated 2-09-2008 with respondent No. 1. In the said agreement the erstwhile purchaser had agreed for any modification in the plans. Since the complainant by executing the agreement for sale dated 30-07-2009 has confirmed the terms and conditions of the registered agreement for sale entered into between the erstwhile allottee and the respondent No. 1, now the complainant cannot raise any issue with regard to change of plan by it.

5. The respondent No. 1 further stated that before execution of the development agreement with the respondent No. 3 promoter, a public notice dated 5-07-2015 was issued calling upon the suggestion and

objections from the parties. However, the complainant did not make any grievance at that time. Hence now she cannot claim that the no information was given to her before transferring the project to the respondent No.3. The respondent No. 1 further stated that after having negotiation talks with it, she has agreed to purchase the flat No. 1504 on 15th floor of the said building and the draft agreement for sale was also shared with her through email dated 18-03-2020. The complainant through her email sent on 14th September, 2020 has informed that she is considering the draft and agreed for the said draft agreement for sale. The complainant has submitted the said email sent by the complainant in their reply filed on record. The respondent therefore stated that since the complainant is taking time for execution of the said agreement for sale, there is no delay on their part for execution of agreement for sale under section 13 of the RERA.

6. With regard to the issue raised by the complainant towards interest for the delayed possession, the respondent No. 1 stated that the earlier agreement for sale is not in existence and it becomes infructuous now since the complainant has accepted the new flat No. 1504. If the complainant wants to agitate her grievances as per the old agreement for sale, it is ready and willing to refund the entire amount paid by her along with interest at the rate of 9% since it cannot perform the old agreement now. Hence, the complainant cannot seek any reliefs towards the interest for the delayed possession under section 18 of the RERA as per the old agreement for sale.
7. With regard to the issue raised by the complainant for change of plan without her consent, the respondent no. 1 stated that there is no violation of section 14 of the RERA by it as the plan got amended prior to

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commencement of RERA. The respondent No. 1 therefore prayed for dismissal of this complaint.

8. The respondent No. 3 by filing reply on record of MahaRERA has stated that there is no privity of contract between it and the complainant, as the money has been paid by the complainant to the respondent No. 1. Hence it is not a necessary party to this complaint. Hence the complaint be dismissed against the respondent No. 3.
9. The MahaRERA has examined the arguments advanced by both the parties and also perused the record. By filing this complaint the complainant is seeking two reliefs for execution of agreement for sale and interest for the delayed possession. Admittedly, the complainant has initially purchased flat No. 602 on 6th floor and the registered agreement for sale was executed on 30-07-2009. The said flat was purchased under resale from the original allottee Mr. Hanumant Jagdale. The said facts brought to the notice of MahaRERA by the respondent No. 1 has not been denied by the complainant by filing any rejoinder on record. The project was undertaken by the respondent No.1 promoter and subsequently, it has executed development agreement with the respondent No. 3 promoter, who has registered this project with MahaRERA, wherein the respondent No. 1 is shown as co-promoter.
10. With regard to the relief sought by the complainant under section 13 of the RERA, the MahaRERA is of the view that due to change in plan the complainant's old flat is not in existence and hence the respondent No. 1 has offered another flat No. 1504 to the complainant and she has accepted the said flat. Accordingly, a draft agreement for sale has also been shared with the complainant and she has shown her willingness to

execute the same. Even, the respondent is ready and willing to execute the agreement or sale with the complainant. In view of the said fact, the MahaRERA feels that nothing survives in the complaint with respect to the relief sought by the complainant under section 13 of RERA is concerned. The parties may take appropriate action and get the agreement registered.

11. With regard to the relief sought by the complainant under section 18 of the RERA, the MahaRERA is of the view that once the complainant has agreed for allotment of new flat by the respondent No. 1, the complainant simultaneously cannot seek performance of the old agreement executed for flat No. 602 which is not in existence. By such subsequent incidental actions on the part of both the parties, the agreement for sale entered into between the complainant and the respondent No. 1 becomes infructuous and therefore the complainant cannot seek relief under section 18 of the RERA in lieu of the said old agreements. If the complainant wanted to go ahead with the earlier agreement for sale, she should have modified this complaint or should have filed fresh complaint seeking reliefs under the said agreement. However, no such steps have been taken by the complainant as seen from the record. Hence the relief sought by the complainant under section 18 of the RERA in lieu of the old agreement for sale cannot be considered by the MahaRERA.

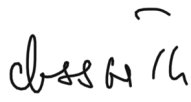
12. With regard to the direction sought by the complainant to the respondent No.1 to bear the stamp duty and registration charges, the MahaRERA is of the view that there is no explicit provision under RERA and the Rules made there under to grant such relief. Moreover, the complainant has not produced any cogent documents on record of MahaRERA to show that after commencement of RERA, the respondents

have changed the plan by violating the provision of section 14 of the RERA due to which the flat of the complainant got changed.

13. In view of the aforesaid facts, the MahaRERA directs both the parties to execute the agreement for sale within a period of 30 days.

14. With the above direction, the complaint stands disposed of.




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