

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

Complaint No. CC006000000100328

Mr. Santosh Sandhu ..Complainant
Versus
M/s.J.P Builders & Developers ..Respondent

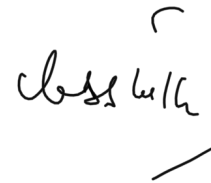
MahaRERA Project Registration No. P51700006609
Coram: Dr. Vijay Satbir Singh, Hon'ble Member - 1/MahaRERA

The complainant present in person.
C.A. Mr. Sunil Kewalramani for the respondent.

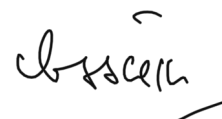
ORDER

(8thOctober, 2020)
(Through Video Conferencing)

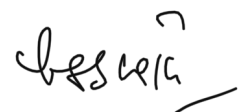
1. The complainant has filed this complaint seeking direction from MahaRERA to the respondent to execute the agreement for sale with him under the provisions of section 13 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") with respect of booking of flat in the respondent's registered project known as "Airoli Co-op Housing Soc Ltd." bearing MahaRERA registration No. P51700006609 at Airoli, Thane.
2. This complaint was heard on several occasions in presence of both the parties and same was heard finally on 29/09/2020 as per SOP dated 12-06-2020. Both the parties have been issued prior intimation of this hearing and they were also informed to submit their written submissions, if any. Accordingly both the parties have filed their respective written submissions on record and they appeared for hearing. MahaRERA heard the arguments of both the parties as well as perused the record.



3. It is the case of the complainant that he has booked the said flat in resale and paid an amount of Rs. 34,55,000/- to original allottee in the year 2013 who sold the flat to him due to financial constraint by signing MOU. He has also paid an amount of Rs. 12,30,000/- to the respondent which was reflected in the allotment letter issued in the year 2013. He further stated that the original allottee has made statement before the Rabale Police Station and confirmed the said payment. It shows that till date, he has paid 96.10% of the total cost of the flat but still the agreement for sale has not yet been registered with him. Therefore, in this case the MahaRERA has passed an interim order on 6th March 2020 and directed the respondent to execute an agreement for sale for another flat having equal area as per his choice within a period of 30 days. But till date, the respondent has not provided another flat nor has the respondent shown his wiliness to execute the agreement for sale though he has sent 300 reminders to the respondent. However, the respondent through email dated 24-04-2019 informed him that due to pandemic situation and due to lockdown declared by the Government, it is unable to access the legal opinion and therefore, his request would be entertained only after lockdown is opened. Thereafter, though the government has relaxed the lockdown the respondent has not shown any willingness to comply with the directions issued by MahaRERA on 6th March 2020. The complainant stated that by paying huge amounts in the year 2013 he is facing financial burden and hence to avail the benefit of zero stamp duty declared by NAREDCO, the complainant prayed MahaRERA to direct the respondent to comply with the directions issued on 6th March 2020 before 31st October 2020.
4. The respondent on the other hand resisted the claim of the complainant by filing written reply on record of MahaRERA as per SOP dated 12/06/2020. It has stated that the complaint is not maintainable as an amount of Rs. 12,30,000/- has been returned to the complainant which was paid for booking of said flat no. A -502 for which the allotment letter



was issued on 11th July 2013. It has further stated that the complainant has failed to make the payment and thereby breached the terms and conditions of the said allotment letter and hence, booking was terminated and cancelled vide letter dated 30th July 2019. The respondent further stated that the complainant was allotted the said 2 BHK flat bearing no. 502 in the said project vide allotment letter dated 11/07/2013 for total consideration amount of Rs. 48,70,000/-. At the time of booking he had paid an amount of Rs. 12,30,000/- and thereafter the complainant failed and neglected to pay the balance amount and hence notice dated 9/07/2019 issued to him, calling upon him to make the balance payment / consideration amount and to execute an agreement for sale and due to his default in making the payment, the allotment was cancelled on 30/07/2019 and cheque dated 12/10/2019 for Rs. 11,07,000/- was returned to the complainant vide letter dated 15/10/2019. The complainant did not encash the same and refused to accept the cancellation. Hence, by filing this complaint the complainant is challenging the termination and cancellation done due to his own default and therefore it is a civil dispute and is not maintainable before MahaRERA. The respondent further stated that due to pending litigation before the Hon'ble High Court of Judicature at Bombay filed by the society it was prevented to undertake further development on the basis of additional FSI. In the year 2012, one Mr. Kharatmol had jointly booked the said flat for total cost of Rs. 48,75,000/- and he paid an amount of Rs. 12,30,000/- towards the consideration of said flat on 3rd March 2012. Thereafter, Mr. Kharatmol approached the respondent along with the complainant and made request to transfer the said flat in the name of complainant. At that time, the complainant was aware of the pending writ petition and the construction work will not progress beyond third floor. Thereafter the original allottee surrendered the flat on 11th July 2013 and also made a request to refund the amount of Rs. 12,30,000/- and accordingly it has refunded the amount to original



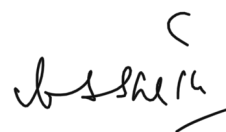
allottee and same is duly acknowledged by him. Thereafter, the respondent issued fresh allotment letter to the complainant on 11th July 2013. In the meantime, due to change in plans by competent authority the flat no. A 501 was not in existence and therefore, the complainant selected another flat no. **A-1208** on 12th floor and showed his willingness to execute the agreement for sale on payment of stamp duty and registration charges. Hence, the respondent vide letter dated 24-06-2019 called upon the complainant to make further payment and to execute the agreement for sale. The complainant through email dated 30-06-2019 confirmed the said allotment and sought 3 months' time to pay stamp duty and registration charges. However, the complainant failed to make the said balance payment though the respondent has given concession of Rs. 1,75,000/- against the increased price of Rs. 3,75,000/-. However, the complainant just to avoid registration charges and stamp duty did not make the further payment. Thereafter through email he informed the respondent that he does not want flat no. 1208 and now he only wants flat no. A-502 which was not in existence. This is nothing but non-cooperative attitude of the complainant by not fulfilling his obligation to complete the legal formalities. In view of the said facts, the respondent prayed for dismissal of this complaint.

5. MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, prima facie it appears that there is an interim order passed on 06-03-2020 passed by MahaRERA wherein specific direction was given to the respondent to execute the agreement for sale with the complainant within a period of 30 days with respect of another flat having equal area as per the choice of the complainant. However, the said direction has not yet been complied with by the respondent. The MahaRERA is also observed that the said direction was issued after considering the submissions made by both the parties as well as after perusing the records. Therefore, these averments made by both the parties need not to be reconsidered. Moreover, nothing



has been brought on record of MahaRERA by either party to get review of the said interim order. Further after passing of the said order by MahaRERA there was lockdown declared by the Government due to Covid-19 pandemic. Therefore, within 30 days period the direction could not have been complied with by the respondent. Moreover, the respondent has not challenged the said interim order passed on 6-03-2020. Therefore, considering all these facts brought on record of MahaRERA, MahaRERA directs the respondent to comply with the directions issued by MahaRERA vide interim order dated 06th March 2020 within 30 days from this order.

6. With regard to the issue of payment made by the complainant, MahaRERA is of the view that the said issue cannot be dealt with by MahaRERA as it has no jurisdiction to decide the payment made by the parties.
7. In the present case, it is also noticed by the MahaRERA that the complainant had earlier booked flat No. 502 A , which is not in existence due to change in plan by the competent authority, hence the complainant now cannot seek the same flat. This issue has also been considered by the MahaRERA in the interim order passed by the MahaRERA on 6-03-2020.
8. With the above direction the complaint stands disposed of.



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