

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
MUMBAI

Complaint No. CC00600000192862

Mr. Hitendra V Shah

..Complainant

Versus

M / s .  
Ltd.

Shivam

Megastructures  
..Respondent

Pvt.

MahaRERA Project Registration No. P51800000812

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

C.A. Sumit Kapure appeared for the complainant.

Adv. Vijay Vaghela appeared for the respondent.

**ORDER**

(4<sup>th</sup> January 2021)

(Through Video Conferencing)

1. The complainant has filed this complaint seeking directions from MahaRERA to the respondent to execute a registered agreement for sale under the provisions of section 13 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA') in respect of booking of 3 flats, bearing nos. 902B, 1102 B & 1602 B, in the respondent's project known as "Godrej Tranquil" bearing MahaRERA registration No.P51800000812 at Kandivali East. The complainant further sought direction to the respondent to pay the interest to the complainant under section 18 of RERA on the amount already paid by him, till the actual possession of the said flats.
2. The complaint is heard finally today as per the Standard Operating Procedure dated 12<sup>th</sup> June 2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of the hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared and made their submissions. The parties have accordingly

made their respective submissions and uploaded the same on the MahaRERA website.

3. It is the case of the complainant that he had purchased the said 3 flats in the respondent's project and pursuant to the booking, he was issued allotment letter for all the flats by the respondent on 09/01/2014. The said 3 flats were purchased by him for a total consideration of Rs. 79,48,000/-, Rs. 81,98,300/- & Rs. 83,41,925/- respectively including the amounts of Rs. 5,00,000/- each for the parking. Out of the said consideration amounts, the complainant has till date paid an amount of Rs.37,24,000/-, Rs.37,52,000/- & Rs. 38,22,000/- respectively, towards the consideration of the said flats. As per the allotment letter the areas of the flats were supposed to be 700 sq. ft. However, due to change in area which was increased by 18 sq. ft. additional amounts were paid by the complainant. Further, the complainant has also paid the additional charges sought by the respondent for the said flats which was immediately paid by him. As per the allotment letter clause No. 5, the respondent was liable to handover the possession of the flats within 42 months from receiving the commencement certificate i.e. on or before 27/02/2018, since the commencement certificate was received on 28/04/2014. As per clause 17 of the allotment letter, the respondent would be liable to pay the interest for delay if he failed to hand over possession as mentioned above. The respondent in the month of July 2019, cancelled the allotment letter for the flats stating non payment of dues which was replied to by the complainant and same was eventually withdrawn. The complainant thereafter paid Rs.2,00,000/- towards each flat. The respondent again cancelled the allotment of the flats in the month of October 2019 by presenting improper facts. Therefore on 24/11/2019, the complainant filed the police complaint

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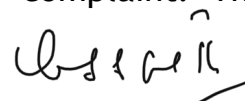
for criminal breach of trust against the respondent. The complainant also referred to various judgements to support his claim. Further, even after receiving around 50% towards the consideration of each flat, the respondent has not executed the agreement for sale. Hence, the complainant has filed the present complaint seeking directions as sought in the complaint.

4. The respondent on the other hand has resisted the claim of the complainant by filing written reply on record of MahaRERA. It has mainly stated that the complainant has suppressed the material facts from the MahaRERA and has filed the complaint just to take revenge from the respondent who has filed two criminal complaints against the complainant under section 500 of IPC. It has raised preliminary objection that M/s. Shivam Developers are co-promoter but have not been made a party to the complaint and hence the complaint must be rejected outright. The respondent has further denied the contentions raised by the complainant in this complaint in toto. The respondent further stated that the complainant is in the business of infrastructure redevelopment etc. and is the group head of M/s. Naminath Infraprojects Pvt. Ltd. and has developed various commercial projects all over Mumbai. Hence, it is impossible that the complainant bought the said flats of 700 sq. ft. The complainant is also under investigation by the EOW and various orders being passed against him for cheating in a different project and was also imprisoned for the same. The respondent further stated that the police has also frozen the bank accounts of the complainant and the sessions court has rejected his plea to defreeze it.



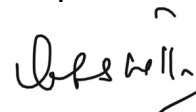
5. The respondent further stated that there is no written agreement between the complainant and the respondent and further, the complainant has not prayed anything with regards to the termination of his allotments. Hence, the MahaRERA does not have authority to grant the reliefs sought by the complainant. It has also stated that it had requested the complainant to enter into agreement for sale by letter dated. 03/12/2014 however, the complainant replied by stating that he did not wish to execute the agreements at that time and would inform the appropriate time. The respondent again sent a letter to the complainant in the year 2017 for the execution of the agreement for sale but it was not replied and the complainant has not come forward to execute the agreement for sale. The complainant again asked to pay stamp duty and registration charges by a letter in January 2018 but the complainant has not paid the same. The respondent has till date sent various letters emails to the complainant calling upon him to execute the agreement for sale by paying the stamp duty and registration charges as well as various demands raised. The respondent further stated that the three flats of the complainant are ready and 90% complete. The occupancy certificate would be received before 30/06/2022 from the SRA. The respondent stated that the complainant is a businessman and is in the business of buying and selling flats. Hence, he is not a bonafide purchaser.

6. With regard to the claim of interest raised by the complainant the respondent has stated that though commencement certificate was approved by SRA on 28/08/2014, it was issued on 27/10/2016 by the SRA. Hence the date of possession should be taken as 04/2020 if all the dues are paid by the complainant including the stamp duty and registration charges. The respondent further went on to deny all the contentions made by the complainant in the said complaint. The



complainant has never challenged the termination till date and has neither prayed for the same in the complaint. Hence, it is binding upon the complainant. Further, the complainant has not paid anything with regard to the TDS etc. as contended by him. The complainant has still to pay the outstanding amount which has been demanded by the respondent time and again. The respondent has therefore prayed for the dismissal of the complaint.

7. The complainant has filed a rejoinder to the reply filed by the respondent on 01/12/2020 uploaded on the MahaRERA website and has stated that the personal allegations made by the respondent are baseless and have no relevance in this context. He further stated that he is an allottee as per section 2(d) of RERA and the respondent cannot deny his claim on the flats. The complainant further relied upon judgements by the Hon'ble Appellate Tribunal wherein relief was granted under section 18 even though the agreement for sale was not present in those cases. The complainant further stated that he is entitled to interest as per the terms and conditions of the allotment letter. The respondent has been unable to provide the flat to the complainant as per the terms and conditions agreed upon by them. The complainant further stated that the respondent is unwilling to forgo even the interest of 22 days in delay of payment by the complainant but asked the complainant to forgo the whole interest which he is entitled to. Further the reasons for delay given by the respondent are invalid and does not come under the clause of force majeure. The issue raised by the respondent about freezing of the complainant's account is baseless and false. The complainant therefore prayed to expedite the matter since the respondent was causing harassment to the complainant.




8. The respondent has further filed a sur-rejoinder to the rejoinder filed by the complainant on 03/01/2021 and uploaded on the MahaRERA website. The respondent stated that the M/s. Shivam Developers are a co promoter and are a necessary party to the transaction. Since the complainant has not denied any articles of the model form of agreement of RERA, the complainant is bound by the same. The respondent has denied the claim of the complainant being harassed by the respondent. The respondent further stated that the complainant paid 50% amount to avail low rate and did not pay as per demands and also failed to pay the stamp duty and registration charges. Further, the termination has not been challenged in this complaint. The respondent has completed the work till 21<sup>st</sup> slab, however, the complainant remained silent till the completion of 90% of the work. Further, only a civil court has jurisdiction to the issue raised by the complainant regarding the private contract. The respondent stated that the reason for termination was the inability of the complainant to make payments from August 2019 till March 2020. The respondent further stated that the complainant is an investor in the project. The complainant being in the business of buying and selling properties bought 3 flats on 3 different floors and trying to get sympathy from the MahaRERA. Further, the date of preparation of CC is not taken as the granting of commencement certificate which means it was prepared and signed by the officers of the SRA and finally issued on 21/10/2016. The respondent further stated that the EOW being approached and the various cases being filed is not harassment by the respondent but it is due to the wrong doings of the complainant himself. The respondent hence sought rejection of the complaint.
9. The MahaRERA has examined the arguments advanced by both the parties as well as the available record. In the present case by filing

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this complaint, the complainant is seeking relief under sec. 13 of the RERA for execution of registered agreement for sale under the provisions of section 13 of the RERA in accordance with the allotment letters dated 9/1/2014 issued by the respondent promoter for booking of three separate flats. The complainant further sought reliefs under section 18 of the RERA seeking interest for the delayed possession. In the present case, though the respondent showed its willingness to execute the registered agreement for sale with the complainant in respect of the three flats, the respondent denied the claim of the complainant towards the interest. Admittedly, there are allotment letters issued by the respondent in favour of the complainant and the said booking was done under the provisions of MOFA. The said fact has not been denied by the respondent. The allotment letters provides the date of possession of the said flat to the complainant within a period of 42 months from the date of receipt of the commencement certificate.

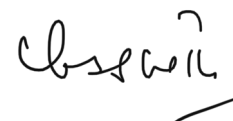
10. With regard to the claim of the complainant under section 13 of the RERA, it appears from the record that the respondent was ready and willing to execute the registered agreement for sale with the complainant and accordingly it has sent several request letters to the complainant to come and execute the registered agreement for sale. It is to the best of knowledge of both the parties why till date though the said booking was done in the year 2014, why the registered agreement for sale has not been entered into between both the parties. Moreover as per the provisions of the MOFA, the promoter was not entitled to seek more than 20% amount towards the cost of the construction from the allottee without first registering the agreement for sale. The complainant though has alleged that he has paid more than 20% amount to the respondent, why he waited till



filing of this complaint for not sought any relief under the relevant provisions of MOFA prevailing at that time. However, since the respondent is ready and willing to execute the registered agreements for with the complainant, the MahaRERA feels that these issues need not be considered at this stage.

11. With regard to the claim of section 18 of the RERA the complainant in this complaint are seeking interest for the delayed possession. Though there is no agreement for sale entered into between the parties, however clause no. 5 of the said allotment letters provides the date of possession which is 42 months from the date of receipt of the commencement certificate. In the present case, from the copy of commencement certificate attached to the reply, it appears that though the commencement certificate was though approved by the competent authority in the year 2014, however, the same was finally issued after a period of two years i.e on 27.10.2016 and if the said period of 42 months is calculated from the said date, then the respondent was liable to hand over possession of the said flats to the complainant on or before April, 2020. However, the possession of the flats have not been handed over to the complainant. Hence the MahaRERA feels that the respondent has violated the provision of section 18 of the RERA and hence is liable to pay interest for the delayed possession under section 18 of the RERA from 1<sup>st</sup> May, 2020 till the actual date of possession.

12. In view of these facts, the MahaRERA directs both the parties to execute the registered agreement for sale with the complainant in accordance with the allotment letters issued in favour of the complainant in favour of the complainant on 9/1/2014 within a period of one month.

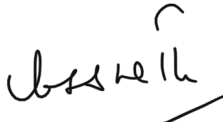




13.The respondent is directed to pay interest to the complainant from 1<sup>st</sup> May, , 2020 for every month till the date of actual possession on the actual amount paid by the complainant at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of section 18 of The Real Estate (Regulation and Development) Act, 2016 and the Rules made there under

14.With regard to the issue raised by the respondent for non payment of the timely dues by the complainant, the MahaRERA is of the view that in case of any default on the part of allottee or the promoter, either party would be entitled to seek interest for such default as prescribed under RERA. Accordingly if the complainant has made any default in timely payment as per the payment schedule mentioned in the allotment letter, in that case the complainant is liable to pay interest for such delayed payment the rate as prescribed under the provisions of section 18 of the RERA and the rules made thereunder i.e. MCLR plus 2%.

15.With these directions, the complaint stands disposed of.

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