

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

Complaint No. CC006000000110744

Ms. Meena Dhawan

..Complainant

Versus

Mrs. Anita Rajesh Mutha

Mr. Rajesh Mutha

M/s. Ekdant Constructions and Developers Pvt. Ltd.

..Respondents

MahaRERA Project Registration No. P51700012381

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

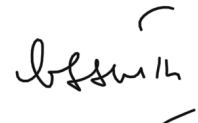
Adv. Tushar Kadam appeared for the complainant.

Adv. Girish Rao a/w Adv. Sameeta Halankar appeared for the respondent.

ORDER

(21st September, 2020)
(Through Video Conferencing)

1. The complainant has filed this complaint seeking direction from MahaRERA to the respondent to handover the possession of the flat under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'the RERA') in respect of booking of a flat no. 1603 admeasuring 60.75 sq. mtrs. in the respondents' registered project known as "Shree Siddhivinayak Tower" bearing MahaRERA registration no. P51700012381 at Vartaknagar, Thane.
2. This complaint was heard on several occasions in the presence of concerned parties and same were heard finally today as per the Standard Operative 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 submit their respective written submissions, if any. Accordingly both the parties have filed their respective written submissions on record of MahaRERA and they appeared for hearing today through their respective advocates.

3. It is the case of the complainant that flat no. 1603 in the respondents' project was purchased by her uncle, Late Capt. Anand S. Kapoor who expired on 16th May, 2018. During his lifetime, he executed a registered will dated 02nd December 2015 by which the complainant inherited all his assets in including the said flat in the name of the complainant. After the death of her uncle, she has been requesting the respondents with relevant documents for possession of the said flat. However, till date the respondents have only made false assurances. The respondents have received entire consideration amount of Rs. 68,50,000/- before the year 2016. Though the occupancy certificate has been received by the respondents the possession of the said flat has not been given to her. Now, recently she came to know that her flat has been allotted to a third party viz. Ms. Supriya Chavan.

4. The respondents on the other hand, had disputed the claim of the complainant by filing the written reply on record of MahaRERA on 21.09.2020. The respondents have denied the claims of the complainant on the ground of maintainability of this complaint. They have stated that the complainant is not an allottee of this project and therefore she has no locus standi to file this complaint. They further stated that as per the registered agreement for sale dated 26.02.2015, one Late Capt. Anand S. Kapoor purchased the said flat. Prior to the execution of the

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agreement for sale, an allotment letter was issued by them in favour of Mr. Anand S. Kapoor and Mrs. Supriya Chavan claiming to be wife of Late Mr. Anand Kapoor. Mrs. Supriya Chavan has taken forcible possession of the said flat from them. Hence, they have filed Suit bearing no. 677 of 2019 before Thane District Court. Mrs. Supriya has represented that she was the wife of Late Mr. Anand S. Kapoor and they earlier jointly purchased another flat from the respondents in their project at Tilak Nagar, Chembur. The respondents always believed that Mrs. Supriya Chavan is wife of Late Mr. Anand S. Kapoor. The complainant is now claiming that Late Mr. Anand S. Kapoor by registered Will dated 02nd December, 2015 has bequeathed the said flat to her. However, the said Will is not yet probated and hence, the complainant is not entitled to seek any reliefs through the said Will. Further, this is a Civil Dispute between the complainant and Mrs. Supriya Chavan and MahaRERA has no jurisdiction to try and entertain such a civil dispute and it has to be adjudicated by a Civil Court. Further, the complainant has already filed probate petition bearing Civil Misc. Application no. 1112 of 2018 before the Civil Judge Senior Division-Thane, but till date she has not obtained any relief in the said matter and it is still pending. The respondents further stated that the present complaint is not maintainable for non-joinder of Mrs. Supriya Chavan who has taken the forcible possession of the flat. The respondents therefore, sought dismissal of this complaint.

5. The MahaRERA has examined the submissions made by both the parties as well as the records. In the present case, the complainant by filing this complaint is seeking possession of the flat purchased by one Late Mr. Anand Swaroop Kapoor by virtue of registered will dated 02.12.2015 executed by late Mr. Anand Kapoor. The complainant has alleged that the said flat has bequeathed to her by her uncle, Late Mr. Anand Swaroop

Kapoor being legal heir and the complainant is claiming to be niece of Late Mr. Anand S. Kapoor. During the course of hearing, the respondents have brought to notice of MahaRERA that one Mrs. Supriya Chavan, claiming to be the wife of Late Mr. Anand S. Kapoor has already taken forcible possession of the said flat and therefore, the suit bearing no. 677 of 2019 has already been filed before Thane Civil Court and same is pending. The MahaRERA therefore feels that since the civil dispute is already pending before the appropriate civil court of law pertaining to the flat of late Mr. Anand Kapoor, the MahaRERA cannot decide the civil rights of the complainant at this stage.

6. In view of the aforesaid facts, the MahaRERA does not find any merits in this complaint. Hence, the complaint stands dismissed for want of merits.



(Handwritten signature)

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