

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

Complaint No. CC006000000195966

1. Harishankar Kankani

2. Pramila Harishankar Kankani

..Complainant/s

Versus

1. M/s. Reddy Builders & Developers

2. Jagdish Gupta

3. Pinniti Sreeram Sathya Reddy

4. Oregon Hills LLP

5. Vishal Rajgarhia

6. Navin Pansari

..Respondent/s

MahaRERA Project Registration No. **P51800006729**

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

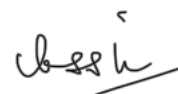
Ld. Adv. Vinayak Kumbhar appeared for the complainants.

C.A. Mr. Kamal Bageria appeared for the respondents.

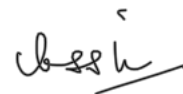
ORDER

(19th April, 2021)

(Through Video Conferencing)



1. The complainants have filed this complaint seeking directions to the respondents to execute agreement for sale with them under the provisions of section 13 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect to the booking of flat bearing no. 804, on 8th floor, admeasuring 1381 sq.ft in the respondent's registered project known as **"34 Park Estate"** bearing MahaRERA registration No. **P51800006729** situated at Goregaon West, Mumbai.
2. This complaint was heard on 6-04-2021 along with other connected matters 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 through the learned advocates / representatives for the hearing and made their respective submissions. After hearing the arguments of both the parties, the respondents were directed to file their reply /written submissions on record of MahaRERA within a period of one week. Pursuant to the said directions, the respondent No. 5 has filed written arguments on behalf of all 6 respondents on record of MahaRERA on 10-04-2021. The complainants have also filed their written submissions on record of MahaRERA on 13-04-2021. The MahaRERA heard the arguments advanced by both the parties and also perused the available record.
3. It is the case of the complainants that they have booked the flat no. 804 on 8th floor admeasuring 1384 sq. mtrs. carpet area in the



respondent's project in the year 2005. The said flat was booked for total consideration amount Rs.38,99,740/- out of which they have paid and amount of Rs. 6,90,000/- as booking amount which is more than 10% of the total consideration. The respondent no. 1 has issued the receipt acknowledging the said payment; hence the complainants are entitled to seek relief under section 13 of the RERA. The issuance of the receipts stating the acceptance of the booking amount and allotment of the said flat is therefore a valid contract between the complainant and the respondent no. 1. The respondent no. 1 has stated that he started the said project in the year 2005 and by accepting the booking amount and he agreed to hand over the possession of the said flat to them by 2012. The complainants invested their hard earned money and booked the said flat. Even after year 2012, the respondents assured to complete the said project within a few years hence they did not initiate any proceeding against the respondent since it has good reputation in the market. The complainants further stated that after commencement of the RERA, the MOFA stands repealed. The respondent no. 1 registered the project as an on-going project with MahaRERA under the provisions of RERA, hence the complaint before MahaRERA is maintainable and MahaRERA has the jurisdiction to try and entertain the present complaint and to support their contention, the complainants relied upon the decision given by MahaRERA in complaint filed by another allottee Mr Apurva Patni which was filed in this project seeking identical reliefs.

4. With regard to the limitation issue, the complainants stated that the RERA came into force on 1st May 2017 and the same has been

applicable to all the ongoing projects. The respondent no. 1 while registering this project has given the completion date of this project as 31-1-2028 hence there is a continuous cause of action and hence the complaint is filed within the limitation period. Though this transaction is made prior to the commencement of the RERA, section 3(1) of the RERA empowers MahaRERA to decide and entertain this complaint, since as per the provisions of section 70 of the RERA there is a bar on civil courts to entertain such a matter in respect of which the MahaRERA is appointed to decide the same. The complainant has stated that the MahaRERA has the jurisdiction to entertain this complaint. Further the main objective of the MahaRERA is to secure the interest of the allottees / consumers. Hon'ble High Court of Judicature at Bombay in case of Neelkamal Realtors Suburban Private Limited has observed that huge sums of money are locked in and the allottees has invested their hard earned money, life savings, borrowed money obtained through loan from various financial institutions etc. with the hope that they would get the possession of their flats and by keeping the same thing in mind the RERA Act was enacted. The complainant further stated that the Hon'ble High Court of judicature at Bombay held that those projects which are already completed will not be affected in any way by the Act but those projects which are on-going were mandatorily directed to be registered under the RERA. Hence this complaint is maintainable in this ongoing project registered by the respondent no. 1. The complainant further stated that they are running from pillar to post to get the possession of their flat from the respondents. With regard to the contentions raised by the respondents that they

have not issued any letter of acceptance stating the cost of the flat, the particulars of the flat and has not delineated on the floor plan, the complainants stated that they have clearly mentioned the payment and allotment of the said flat, hence there is no denial of the allotment of the flat by the respondents. The respondent no. 1 has accepted the booking amount from them and issued receipt confirming the allotment of the said flat and hence there is a valid contract between the respondent no. 1 and the complainants. The complainants further denied that the complaint is time barred by law of limitation. The complainants further denied the contention of the respondents that it is a provisional booking and no allotment has been made to them. The complainants further stated that the respondents offered the refund or purchase of new flat as per current market rate; however, they have booked the said flat in the year 2005 at the rate prevailing at that time and hence the said offer of the respondent is not acceptable to them. The complainants stated that there is no default on their part and therefore they prayed for direction to the respondents to execute a registered agreement for sale with them.

5. The respondent no. 1 is the promoter who has registered this project with MahaRERA and the respondent nos. 2 to 6 are the partners of the respondent no. 1 firm. The respondents on the other hand refuted the claim of the complainants by filing written arguments on record of MahaRERA. They have stated that the complaint is liable to be dismissed since there is no cause of action and the alleged transactions have taken place prior to RERA coming into force and hence, the complaint is guilty of delay and

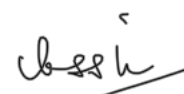
laches and is thus barred by law of limitation. The respondent stated that there is no valid contract between the respondents and the complainants under the Indian Contract Act, 1872 as there is no registered agreement for sale. The respondent stated that they fail to understand on what basis the complainants have arrived at 10% of the cost of the apartment being Rs.38,99,740/- since the respondents have not issued any letter of acceptance stating cost of the apartment nor the floor plan is signed by the respondents and flat no. 804 is also not delineated on the floor plan. Hence, they denied the claim of the complainants under section 13 of the RERA. The respondents denied that they have agreed to execute the agreement for sale and there is no correspondence exchanged between the parties. The respondent stated that it is true that they did not reply to the letters dated 6.12.2019, 18.02.2019 and 11.03.2020 sent by the complainants as there was no valid contract or a contract was not completed. The respondents further stated that the complaint is time barred as the transactions have taken place on 11-12-2005 and the complaint is filed in the year 2021. Hence the complaint is hopelessly time barred under the Law of Limitation Act. In view of the above, the respondents stated that the complainants are not entitled to any reliefs as claimed under sections 13 and 18 of the RERA in absence of registered written agreement for sale. Hence they prayed for dismissal of this complaint.

6. The MahaRERA has examined the arguments advanced by both the parties and also perused the available record. In the present case, by filing this complaint, the complainants are mainly seeking relief under section 13 of the RERA for execution of the registered

agreement for sale. The complainants have contended that on 11-12-2005, they have booked the said flat with the respondent no. 1 for total consideration amount of Rs. 38,99,740/- and out of the same they have paid an amount of Rs. 6,90,000/-. The complainants are seeking the said reliefs by virtue of payment receipts issued by the respondent no.1 dated 27-12-2005 and 7-01-2006, whereby the respondent no. 1 has acknowledged the payment of Rs. 6,90,000/- made by the complainants. The said receipts are reproduced as under:

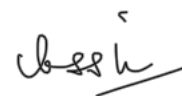
"Received with thanks from Mr. Harishankar Kankani and Mrs. Pramila Kankani a sum of Rs. 6,25,000/- (Rupees Six Lacs Twenty Five Thousands only) vide cheques as per details below being the booking amount of total value of Rs. 38,99,740/- in respect of allotment of flat no. 804 , on the 8th floor of the Building No. 1 at land bearing CTS No. 49(P) and 50 of Village Pahadi Goregaon, Teen Dongari, Opp Yashwant Nagar, Goregaon (West) Mumbai- 400 062."

7. Admittedly, there is no allotment letter issued by the respondent No. 1 for the said booking. The respondents though have not denied the payment made by the complainants, they have denied the allotment of the said flat to the complainants mainly on the ground that it was a provisional allotment of flat and same is not a final allotment. The respondents therefore agreed to refund the same along with applicable interest under RERA.
8. In addition to this, the MahaRERA has also noticed that the said booking was done under the MOFA regime, when it was mandatory on the part of the respondent no. 1 promoter to take a

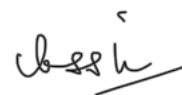


booking on requisite approvals such as IOD (approval of building plan) from the concerned competent authority. However, in the the present case the said booking was taken in proposed building without any approvals having been obtained for the said project thereby violating the provisions of MOFA. Moreover, the respondent no. 1 has taken money from the complainants and utilised the same for such long period for this project. Hence the respondent no.1 is estopped from denying the rights of the complainants as an allottees in this project.

9. However, the MahaRERA has also noticed that the complainants have allegedly booked the said flat in the year 2005 when the provisions of MOFA were in force. However, from 2005 till 2020 the complainants have not taken any steps to get any allotment letter or execution of agreement for sale after the alleged payment receipts were duly issued by the respondent no.1. Further the complainants have not submitted any cogent documentary proof on record to show that being genuine allottees of the project, what steps they have taken in such a long period of 15 years, except making bare statement that the respondent no. 1 kept on promising them that it would handover possession of the said flat to them. It shows that the claim of the complainants seems to be time barred. Therefore the MahaRERA cannot permit to agitate the claim of the complainants on the basis of such provisional allotment issued by the respondent No. 1 in the year 2005 after a lapse of 15 years.



10. The aforesaid facts as stated in aforesaid paras clearly shows that both the complainants allottees as well as the respondent no. 1 promoter are at fault and therefore they cannot be permitted to take undue advantage of RERA which is a welfare legislation enacted with the sole intention to protect the interest of the genuine home buyers who put their hard earned money for booking of their flats and to ensure the development of real estate sector. The complainants being allottees should have taken appropriate steps to establish their rights on the basis of the payment receipts issued by the respondent no. 1 at the relevant time and should have taken appropriate steps for issuance of final allotment letter or execution of the agreement for sale. However, the complainants have failed to explain the said delay with cogent documentary proofs. Hence the MahaRERA prima facie feels that the claim of the complainants is hopelessly time barred.
11. Likewise, the respondent after accepting the money from the complainants by violating the provisions of MOFA should have refunded the money paid by the complainants if the project was not progressing. It has also kept silent for such longer period waiting for the complainants to approach MahaRERA by filing this complaint. Hence, the MahaRERA feels that the respondent no. 1 is liable to compensate the said delay by way of interest.
12. Considering the aforesaid facts and circumstances of this case, the MahaRERA directs that :
 - a) If the complainants are willing to seek refund of their money, the respondent no. 1 is directed to refund the entire money

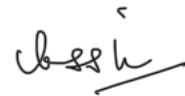


paid by the complainants along with interest as prescribed under RERA and the relevant Rules made thereunder.

b) If the complainants are willing to be in the project, the respondent is directed to allot a flat having equivalent area as booked by the complainants. An agreement for sale may be executed in accordance with the provisions of RERA and the relevant rules.

13. With these 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 parties a copy of this order by e-mail.



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