

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

Complaint No. CC006000000141209

Mr. Rais Ibrahim Patel & Anr

..Complainants

Vs

M/s. Skystar Buildcon Pvt Ltd.

..Respondent

MahaRERA Project Registration No. P51800002637

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

Adv. Tanuj Lodha appeared for the complainants.

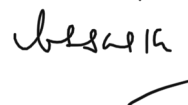
Adv. Bhaumik Vaidya appeared for respondent.

ORDER

(17th November, 2020)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions to the respondent to refund the entire amount paid by them along with interest and compensation under sections 12 and 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of booking of a flat No. 104, on 1st floor, having carpet area adm 545 sq.ft carpet, in the respondent's registered project known as " Sunteck City Avenue-2 " bearing MahaRERA registration No. **P51800002637** at Goregaon (West) Mumbai.
2. This complaint was heard on several occasions in presence of both the parties and same was heard finally on 27-10-2020 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 the said hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared through their respective advocates and



made their respective submissions. The MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainants that they have booked the said flat having an area admeasuring 545 sq.ft carpet along with one car parking on 13 December 2013, for total consideration amount of Rs 1,21,40,674/-. Subsequently in the year 2015, the respondent unilaterally revised the area of their flat from 545 sq. ft. to 550 sq. ft. and thereby also revised the consideration of the said flat from Rs. 1,21,40,674/- to Rs. 1,22,45,634 /-. At the time of booking of the said flat, the respondent represented to them that the possession of the said flat will be handed over to them by end of the year 2017. Believing the said representation, they have till date paid an amount of Rs. 38,04,666/- which comes to approximately 31% towards the cost of the said flat and service tax. The complainants stated that the project is already delayed by 3 years from the agreed date of possession and delay continues even today. Further the respondent has collected Rs. 23,41,319/- i.e 20% of the sale consideration from them in the year 2013 itself, without registering an agreement for sale with them thereby violating the provision of section 4 of the MOFA prevailing at that time. After commencement of RERA, by registering the said project with MahaRERA, the respondent has disclosed the proposed date of completion as 13th April 2021 and revised completion date of the said project as 30th April 2021. The said delay is not acceptable to them and hence they sought cancellation of the said booking. The complainants further stated that despite several emails and follow ups by the complainants, no effective effort was made by the respondent to cancel the booking of the flat and refund the amount paid in respect of the said unit. In fact, in order to retain and prevent the cancellation of the flat invoked by the complainants, the respondent in 2017 approached the

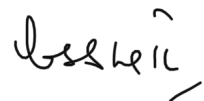
complainants and offered possession of the flat in the year 2019 with a new revised payment terms. It is submitted that the complainants while visiting the site in January 2019 were shocked to find that the possession of the flat will be as declared in RERA and Disney amenities as promised at the time of booking also will be not provided. These issues were raised and admitted by the complainants in its email dated 28 January 2019. The respondent in 2019, again called upon to sign agreement for sale with revised date of possession as per MahaRERA disclosure i.e. 30 April 2021, failing which respondent threatened termination and forfeiture of Rs.18,54,895/-. Therefore they immediately through their advocates sent a reply dated 31st August 2019 through denying all the contentions of the above stated letter in toto dealing with such termination as threatened by the Respondent. It is submitted that in clause 6 of the Application Form the respondent admitted that it was selling the flat without having the requisite approvals to construct the building, thereby violating section 3 of MOFA - committing offence under section 13 of RERA. Further the respondent commenced construction only in December 2015 and till that time it enjoyed the monies collected from flat purchasers since 2013. The respondent ought to have handed over the possession within the reasonable time from the booking date / allotment. The complainants further stated that as per section 46 of the Indian Contract Act, 1872, even if no time for possession is stated, the possession must be given within a reasonable time and 8 years for constructing 20 floors is not a reasonable time period by any stretch of Imagination. Hence they have filed this complaint seeking withdrawal from the project.

4. The respondent on the other hand has resisted the claims of the complainants by raising various defences as stated in its reply filed on record. The respondent has mainly stated that the complainants have

deliberately suppressed to deceive MahaRERA of the fact that they themselves have sent a letter dated 14th January, 2016 to it stating that they are aware of the mandatory provisions in respect of execution and registration of the agreement for sale and have further stated that owing to the personal difficulties, more particularly, their business problems they are unable to comply with its request to execute and register the agreement for sale in respect of their flat. Even time and again they failed to come forward to execute the agreement for sale in respect of the said flat despite repeated reminders sent by it which are duly acknowledged by them. However, now the complainants wish to take advantage of their own wrong which is strictly prohibited in law. The respondent further stated that it was always been willing at all times to execute and register the agreement for sale. The complainants have requested in the said letter to continue to block the booking of the said flat and trying to take up unrelated and unnecessary issues to create disputes and hence the complainants must be penalized for taking advantage of their own wrong and purposely trying to defame the reputation of the respondent without any ground. The respondent further denies the claim of the complainants that they were forced to make milestone payments without receiving a draft of the agreement for sale which is totally false and baseless as the complainants themselves had accepted that it was due to their own fault that the agreement for sale in respect of the said flat could not be executed and registered as more particularly set out in detailed in the said letter dated 14-01-2016. This shows the fraudulent and deceitful intention of the complainants to approach the MahaRERA by stating that they did not receive a draft of the agreement. The complainants are making contradictory statements by stating that the agreement for sale is “disputed” when the complainants themselves were at fault for non-execution and registration of the same which has been willingly

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accepted by them in the said Letter. The respondent further stated that the complainants have willingly signed the booking application form dated 13th December, 2013 in respect of the said flat with full knowledge and awareness of the contents therein and never raised any issues or concerns with regard to the contents of the said application form at the time of booking or anytime thereafter and are raising the said issues at this stage only to avoid complying with their obligations in respect of the said flat being an allottee. The claim of the complainants that it had promised to hand over possession of the said flat in 2017 is completely baseless and false as it had never represented to the complainants about date of possession as alleged by the complainants. Further the complainants have not set out any material evidence to show that there was a misleading representation or false advertisement on its part. It has further stated that the L&T was appointed as the construction contractor in relation to the said project for a certain period and thereupon L&T exited from the said project. The development and construction of the said project is presently carried out by it through an in-house contractor. Even its collaboration and tie-up with Disney was in continuation at the time of booking of the said flat. It was only later in the year 2016 that Disney discontinued their entire operations in India. Therefore, the claim of the complainants that it never intended to provide such amenities and was only to attract customers towards the said project is completely vague and false. The respondent further stated that the complainants never raised any dispute with regard to change in area at the time the letter dated 30th December, 2015 was issued to the complainants nor did the complainants provide any response to the said letter. Therefore, the issues raised by the complainants at this stage are unsubstantiated. Further it was always ready and willing to execute the agreement for



sale but the complainants themselves delayed the process of execution. Hence prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments advanced by both the parties and also perused the record. In this case, the complainants who are the allottees of this project have approached MahaRERA seeking refund of the principal amount paid by them to the respondent towards the booking of a flat in the respondent's project along with interest and compensation mainly for violation of sections 12 and 18 of the RERA. The complainants' entire case is based on the alleged misrepresentation made by the respondent about the date of possession at the time of booking of the said flat due to which they are seeking relief under section 12 of the RERA. The complainants further sought relief under section 18 of the RERA.
6. With regard to the claim of the complainant under section 18 of the RERA for refund along with interest, the MahaRERA has perused the provision of section 18 of the RERA which reads as under:

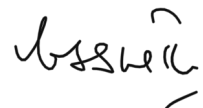
1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received

by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

7. The aforesaid provision of section 18 stipulates that if the promoter fails to complete the project or is unable to handover possession of the flat to the allottee on the agreed date of possession mentioned in the agreement for sale, the promoter, on demand in case the allottee wishes to withdraw from the project to refund the entire amount along with interest as prescribed under RERA along with compensation. However, in the instant case, admittedly there is no agreement for sale entered into between the parties nor any date of possession mentioned in the allotment letter issued by the respondent on 6-03-2017. Furthermore the complainants have not produced any document on record of MahaRERA duly signed by the respondent to show that it has ever agreed to handover possession of the said flat to them on or before December,2017. Hence the MahaRERA is of the view that there is no violation of section 18 of the RERA by the respondent. Hence the claim of the complainants under section 18 of the RERA stands rejected.
8. With regard to the claim of the complainants under section 12 of the RERA, the MahaRERA has observed that the entire case of the complainants is based on misleading information given by the respondent at the time of booking such as date of possession, Disney amenities and construction by the L & T. In this regard, the MahaRERA

is of the view that the booking of the flat was done by the complainants in the year 2013 when the provisions of MOFA were in force. Thereafter on commencement of RERA on 1-05-2017, the respondent registered this project with MahaRERA as per the provision of section 3 of the RERA and has obtained the registration certificate under section 5 of the RERA. The MahaRERA therefore is of the view that since the booking is done under the provision of MOFA, the provisions of section 12 of the RERA would not be made applicable to this case retrospectively. Moreover, the respondent agreed to provide the Disney amenities for this project at the time of booking. However subsequently, the Disney discontinued their entire operations in India and even the L & T who was appointed as contractor exited from the project. The MahaRERA therefore feels that for subsequent developments the respondent cannot be held responsible, since it was a decision taken by the Disney and L& T.

9. In addition to this, the MahaRERA has also observed that the complainants in the year 2016 itself have sought withdrawal from the project by issuing letter dated 14-01-2016 to the respondent. The said letter has been produced on record of MahaRERA by the respondent. The said letter shows that the complainants due to their own personal problem sought cancellation of the said bookings. It shows that the complainants were not willing to continue their booking in this project before the RERA came into force. If it was so, then the complainants should have taken action at the relevant time before the RERA into force and should not have waited till filing of this complaint on 29-05-2020. Even the alleged cause of action raised by the complainants seem to have arisen before the RERA. Hence the MahaRERA feels that there is no violation of section 12 of the RERA by the respondent. Hence the claim of the complainants toward refund




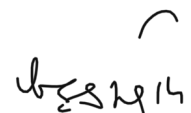
along with interest for violation of section 12 of the RERA has no substance. Hence same stands rejected.

10. In the present, the MahaRERA has observed that admittedly, the draft agreement for sale was sent to the complainants in the year 2016, however, the complainants refused to sign the same alleging that the respondent has extended the date of possession. Till date the complainants have already paid more than 10% amount towards the cost of the said flat, therefore the complainants are entitled to seek reliefs from MahaRERA under section 13 of the RERA.

11. In view of these facts, the MahaRERA directs the both the parties to execute the register agreement for sale within a period of 30 days in accordance with the application form/allotment letter failing which the respondent shall refund the money paid by the complainants.

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




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