

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

Complaint No. CC006000000171899

M/s. Skystar Buildcon Private Limited

..Complainant

Versus

Mr. Abdul Rasool Ahmed Saheb Jendi

Mr. Mehmood Abdul Rasool Jendi

Mr. Moisin Abdul Rasool Jendi

..Respondents

MahaRERA Project Registration No. **P51800002637**

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

Adv. Bhaumick Vaidya appeared for the complainant.

None appeared for the respondents.

ORDER

(4th February, 2021)

(Through Video Conferencing)

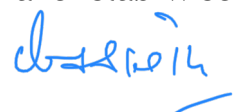
1. The complainant promoter has filed this complaint seeking directions from MahaRERA to the respondents allottee to pay the outstanding dues as per the terms and conditions of the agreement for sale dated 19-01-2018 executed between the complainant and the respondents as per the provisions of Section 19(6) of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA') in respect of booking of a flat bearing No.1505 on 15th floor, in Wing-B of the complainant's project known as "Sunteck City Avenue-2" bearing MahaRERA Registration No. **P51800002637** at Goregaon (West), Mumbai. The complainant further prayed for direction to the respondents allottees to execute the cancellation deed.

2. This complaint was heard on 14-01-2020 and 17-02-2020, when both the parties have been issued notice for the said hearings. During the said hearings the complainant appeared through its advocate, however none



appeared for the respondents allottees and hence in compliance of principles of natural justice, the case was adjourned. Thereafter, this complaint was heard on 11-11-2020 as per the Standard Operating Procedure dated 12th 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, the complainant appeared through its advocate. However none appeared for the respondent. Hence, on the said date of hearing, after hearing the arguments of the complainant, the case was closed for order. The respondents/allottees did not file any reply on record of MahaRERA though they were informed to file the same through mobile phone. Hence, this complaint was again scheduled for hearing today, by issuing the notice for the hearing. Accordingly, for today's hearing, though the complainant appeared and made its submission, none appeared for the respondents. Hence, the MahaRERA heard the arguments of the complainant and also perused the record.

3. It is the case of the complainant that on 14-11-2014, the respondents have booked the said flat in the project of the complainant for total consideration amount of Rs. 1,60,96,099/-. At the time of booking of the said flat, the respondents have paid an amount of Rs. 10,00,000/- to the complainant. Thereafter several letters have been issued to the respondents to execute the registered agreement for sale with it. Finally on 19-01-2018, the respondents have executed the registered agreement for sale and made further payment upto 15% amount totalling to 24,78,360/- out of total consideration amount. However, thereafter the respondents failed and neglected to make further payment as per the payment schedule mentioned in the agreement for sale. Hence, it has sent several reminder letters to the respondents to make slab-wise



payments on 22-01-2018, 25-04-2018, 06-06-2018 and on 26-07-2018. However inspite of several reminders the respondents have failed and neglected to make the timely payment towards the consideration amount. Hence, on 5-1-2019, it has sent final notice to the respondents to pay the outstanding dues since they had paid only 15% amount, though on site 75% work was completed in the project. However, the respondents didn't respond to the same. Hence, the complainant filed this complaint seeking directions to the respondents to make the balance payment as per the terms and conditions of the agreement for sale as per the provision of section 19(6) of the RERA.

4. The respondents failed to appear for the hearings before the MahaRERA though they were contacted on mobile phone on the contact provided even by the complainant and the respondents have not filed any reply on record of MahaRERA. It is pertinent to note that the complainant has submitted the acknowledgement of the receipt of the complaint by the respondent on 24/1/2020 and the same has been duly signed by the respondent on record of MahaRERA on 11/11/2020. The respondents have failed to appear which shows that they are not willing to contest this complaint. Hence the MahaRERA has no other alternative but to proceed with this complaint ex-parte against the respondents on merits.
5. The MahaRERA has perused the copy of complaint as well as the record. In the present case, the complainant promoter has approached MahaRERA seeking direction to the respondents allottee to pay the outstanding dues as per the terms and conditions of the agreement for sale dated 19-01-2018 executed between the complainant and the respondents as per the provision of Section 19(6), as the respondents have failed to make the timely payment as per the agreement for sale. The complainant has alleged that despite repeated requests the

respondents allottees have failed and neglected to pay the outstanding dues, due to which it is facing difficulties in honouring its financial commitments. It has further alleged that clause nos. 7, 9 and 18(b) of the agreement for sale executed with the respondent provide that in case of default in making payment by the respondents allottees, it is entitled to terminate the said agreement for sale and to forfeit the amount as per the terms and conditions of the said agreement.

6. In the present case, admittedly, the respondents are allottees of the project registered by the complainant promoter and there is registered agreement for sale dated 19-01-2018 entered into between the complainant and the respondent. Since this project is registered with MahaRERA being ongoing project, both the complainant promoter as well as the respondents allottees are bound by all the provisions of RERA and the Rules and Regulations made there under and also liable to perform the duties and liabilities as per sections 11 and 19 of the RERA. The complainant being promoter of the project is bound to comply with its part and to handover possession of the flat in accordance with the agreement for sale executed between it and the respondent allottee by making the flat habitable by obtaining requisite permission from the competent authority viz the occupancy certificate. In a similar way, the respondents allottees are also liable to perform their statutory liability cast upon them under RERA.
7. In this regard, the provision of section 19(6) of the RERA is required to be perused, which reads as under :

“11(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case

may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.”

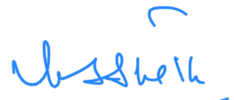
8. In view of the aforesaid explicit provision of the RERA, the MahaRERA is of the view that the respondents being allottees are liable to make payment in accordance with the terms and condition of the agreement for sale failing which the promoter is entitled to terminate the agreement for sale as per the provision of section 11 (5) of the RERA.
9. In this case, the complainant promoter has performed its part of liability and completed the construction in the project substantially. The respondents have signed the agreement for sale with the complainant but have failed and neglected to make timely payment in accordance with the terms and conditions of the said agreement for sale. Hence the MahaRERA feels that the respondents have violated the provision of section 19(6) of the RERA. However, in compliance of principles of natural justice, an opportunity should be granted to the respondents to pay the outstanding dues to the complainant.
10. In view of the aforesaid facts and circumstances of this case, the MahaRERA directs the respondents to make necessary payment to the complainant towards the consideration of his flat within a period of one month, failing which the complainant would be entitled to terminate the

agreement for sale in accordance with the terms and conditions of the agreement for sale.

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

12. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the same to both the parties by e-mail.




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