

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

Complaint No. CC006000000193705

1. Sangeeta R Adukia
2. Dr. Rajkumar S
Adukia

..Complainants

Versus

1. Conoor Builders Pvt. Ltd.
2. Ozone Lifestyle Projects Pvt. Ltd.
3 .
A
Constructions

H

..Respondents

MahaRERA Project Registration No. **P51800002922**

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

CA Ashwin Shah a/w. Adv. Sandeep Manubarwala appeared for the complainants.

Adv. Bishwajeet Mukherjee a/w Adv. Anil D'souza appeared for the respondent no. 1.

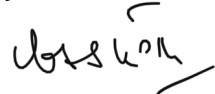
Adv. Abir Patel appeared for the respondent no. 2.

None appeared for the respondent no. 3.

ORDER

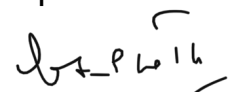
(11th February, 2021)
(Through Video Conferencing)

1. The complainants above named have filed this complaint seeking directions from MahaRERA to the respondents to hand over immediate possession of their flat along with interest for the period of delay under the provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA') in respect of booking of their flat bearing no. 145 in the respondent's project known as "The Gateway" bearing MahaRERA Registration No. **P51800002922** at Andheri. The complainants further prayed to set aside the termination letter dated 20-08-2020 issued by the respondent No. 1 being illegal and bad in law.
2. This complaint was heard finally on 29/12/2020 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 parties appeared and made the submissions. During the hearing, the parties were allowed to file their respective replies/ written submissions within a period of two weeks. The complainants and the respondent no. 2 have filed their replies/ written submissions on record of MahaRERA. The respondent 1 & 3 have, failed to file their replies on record of MahaRERA till date. Hence the MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainants that they booked the said flat by signing a booking application form on 28th March 2017 for total consideration amount of Rs. 2,23,20,200/-. At the time of the booking, the respondent no. 1 promised the date of possession of the said flat as 31st December, 2017 and thereafter, it has sent e-mails on 19th March 2017 and 10th April 2017 stating that 60% work of the said building had completed and the possession of the said flat would be handed over to them by June 2018. Accordingly, they paid an amount of Rs. 2,00,79,630/- as and when demanded by the respondent no. 1 and the balance principal amount of Rs. 22,40,370/-. In spite of payment of such huge amount, the respondent-promoter failed to execute the agreement for sale with them. Thereafter, the respondent-promoter revised the completion date of project as 31st March 2019 with grace period of one year i.e. 31st March 2020. Hence, at that time they objected the draft agreement for sale sent by the respondent-promoter mentioning the incorrect date of possession initially 31st March 2019 and later on 31st March 2020 and they requested respondent-promoter to mention the date of possession as 31st December 2017 or 30th June 2018 for which the respondent no. 1



agreed to vide an email dated 19th March 2017. However, they had no choice but to unwillingly sign the registered agreement for sale on 7th May 2019 with date of possession as 31st March 2020. However, while signing the said registered agreement for sale on the last page they put the remarks "*Subject to allotment letter*" and thereby they declined to accept the date of possession as 31st March 2020. To support their contention the complainants relied upon the Judgement of Apex Court given in the case of Pioneer Urban Land and Infra Structure and Anr. V/s. Union of India wherein it is held that the dominant power of the promoter cannot be imposed to one sided clauses in the agreement for sale and although, they signed on dotted lines they cannot be compelled to adhere to such one sided clauses which are not in consonance with the law. The respondent-promoter failed to handover the possession of the said flat to them hence they filed this complaint on 13th August 2020 and the copy was duly served upon the respondent no. 1. However, the respondent no. 1 vide an email dated 22nd August 2020 terminated the registered agreement for sale executed with them in pursuance to the notice dated 5th August 2020 which has also been challenged in this complaint. The complainant further stated that the respondent no. 1 in spite of exercising legal remedy for recovery of balance principal amount by filing complaint under section 31 read with 19(6) and 19(7) of the RERA has terminated the said registered agreement for sale which is illegal after collecting 90% of the principal consideration amount from them with the delayed possession and thereby exercised the dominant power without the consent of respondent no. 2 as the respondent no. 1 wanted that the allottees who have filed the complaint before MahaRERA should first withdraw the complaint and then only the possession would be offered as per part occupancy certificate. Hence, the complainant has filed this complaint seeking relief as sought for in this complaint namely to handover the immediate possession of the

said flat to them with copy of occupancy certificate by adjusting the outstanding dues payable by them against the interest claim of the complainant for delayed possession and issue no dues certificate. The complainants further prayed to set aside the termination letter dated 22nd August 2020 issued by the respondent no.1.

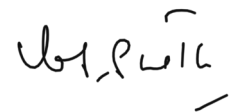
4. The respondent no. 1 though appeared for the said hearing through its advocate has failed and neglected to file any reply on record of MahaRERA. However, during the course of hearing, the respondent no. 1 has uploaded the copy of part occupancy certificate and the termination letter dated 22nd August 2020 issued to these complainants. Hence, the MahaRERA has perused the available records.
5. The respondent no. 2 who is also joined as co-promoter having revenue share in the project has also filed reply on record of MahaRERA and refuted the claim of the complainants and requested for dismissal of the complaint being not maintainable against it as no reliefs could be granted against it. It has further stated that as per clause no. 27 of the said registered agreement for sale dated 7th May 2019, the date of possession is 31st March 2020 and it is not under obligation to give possession of the said flat to the complainants. Even the complainants themselves agreed to the date of possession as March 2020 and the same is signed with full knowledge and proper legal advice. It has further stated that in the month of March 2020 the entire country went into lockdown declared by the Central Government due to Covid-19 pandemic. Therefore, it was not possible for any developer to operate its sites or to give the possession. Even the MahaRERA by issuing the circular no. 14 of 2020 dated 18.05.2020 extended the timeline of completion of the real estate project for 6

months and the said circular also covers the said project. Even clause no. 27 of the said registered agreement for sale enabled the respondent no. 1-promoter for extension in the possession date on account of such factors of delay as stated therein. Further the occupancy certificate for the said project was obtained on 5th June 2020 and the possession was offered to them by the respondent no. 1 subject to payment of outstanding dues agreed to be paid at the time of possession. However, the complainants failed to make the said payment and thereby violated the provisions of section 19(6) and 19(10) of the RERA. with regard to the delay in possession. It has stated that the complainants' whole case is that the alleged promised date of possession is June 2018 although they have signed the registered agreement for sale with the promised date of possession as 31st March 2020 with remarks that it is subject to the allotment letter. However, no allotment letter has been produced by the complainant till date. Further, clause no. 4 of the said allotment letter states that the possession will be given after the present real estate project has been completed with occupancy certificate and therefore, even assuming that the said registered agreement for sale was subject to the terms and conditions of the allotment letter, even then there is no delay in handing over the possession of the said flat to the complainants. In addition to these, the respondent no. 2 has also stated that it has been only appointed as development manager of the project under the development management agreement dated 1st March 2017 by the respondent no. 1 and it has signed the said registered agreement for sale as a confirming party and therefore, no relief would be granted as prayed in this complaint against it.

6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the respondent no.

1 is the promoter who has registered this project with MahaRERA and the respondent no. 2 is also shown as co-promoter of this project having revenue sharing in this project and it is also the confirming party to the registered agreement for sale executed between the complainants and the respondent no. 1 promoter. The respondent no. 3 is the landowner, who is promoter on record of the competent authority. During the course of hearing, the respondent no. 3 owner neither appeared nor filed any reply on record of MahaRERA. Moreover no such relief has been sought against the respondent no.3.

7. The present complainants have approached MahaRERA seeking immediate possession of their flat along with interest for the delayed possession under section 18 of the RERA. The complainants have also challenged the termination letter dated 22-08-2020 issued by the respondent no. 1 in this complaint. Admittedly, there are registered agreements for sale entered into between the complainants and the respondent no. 1 promoter, wherein the respondent no. 2 is also joined as confirming party. According to the said agreements, the respondent promoter was liable to handover possession of the said flats to the complainants on or before 31/03/2020 and admittedly possession of the flat was not given to the complainants on the agreed date of possession mentioned in the said agreement. The complainants have disputed the said date of possession mentioned in the agreement for sale and contended that they have signed the same unwillingly under pressure of the respondent no.1 and therefore while signing the said agreement for sale they have put their remarks as "subject to allotment letter". However, the copy of the allotment letter has not been submitted on record of MahaRERA by the complainants.



8. In this regard, the MahaRERA is of the view that the complainants have booked the said flat in the month of March, 2017 and the registered agreement for sale was executed between the parties on 7-05-2019 after commencement of RERA. Till that period, the complainants have paid substantial amount to the respondent no. 1 promoter which amounts to more than 10% of the total consideration amount. Although, after commencement of the RERA, the promoter was not entitled to accept more than 10% amount, without first executing the registered agreement for sale with the allottees however, both the parties have failed and neglected to clarify the said fact as to why the registered agreement for sale was not executed between the parties. If the date of possession mentioned in the draft agreement for sale was not acceptable to the complainants, then they should not have signed the same and should have approached MahaRERA seeking relief in that regard. If such a complaint had been filed before the MahaRERA, the claim of the complainants would have been considered by MahaRERA in accordance with the terms and conditions of the allotment letter if any issued in favour of the complainants. After signing the said agreement for sale, the complainants kept silent for such a long period till filing of this complaint and the said delay has not been explained sufficiently by the complainants. Mere allegation of the complainants that they signed the said agreement under protest and under pressure of the respondent no. 1, cannot be accepted in absence of any cogent documentary evidence. In addition to this, it is a settled position of law that any allotment letter issued or any email sent committing the date of possession can be only considered as a preliminary contract while the registered agreement for sale subsequently signed by the parties is actually the renovation of an earlier agreement which has a binding effect under the law on both the parties. Therefore the MahaRERA cannot accept the contention of the complainants that the

agreed date of possession in this case was 31-12-2017 and thereafter as 30-06-2018 and hence holds that the date of possession as per the registered agreement for sale is 31-03-2020.

9. On the said date of possession as stipulated in the agreement for sale, the respondent has failed and neglected to handover possession of the said flat to the complainants and therefore the MahaRERA feels that the respondent no. 1 promoter has violated the provisions of section 18 of the RERA.

10. With regard to the other issue raised by the complainants about termination of the agreement for sale by respondent no. 1 dated 22-08-2020, the MahaRERA feels that the complainants in this case have filed this complaint seeking reliefs under section 18 of the RERA including for the possession on 13-08-2020. The respondent no. 1 promoter was aware of the said fact and therefore, if it had any grievances about non-payment of any dues by the complainants, then it should have raised the same before the MahaRERA at the time of hearing. Therefore the action initiated by the respondent no. 1 promoter towards the cancellation of the said agreement for sale vide its letter dated 22-08-2020 seems to be a rather high handed action on its part and hence same cannot be accepted by the MahaRERA. Therefore, the MahaRERA holds the said termination letter as illegal and hence the same stands set aside.

11. The respondent no.1 has not stated any valid reasons for the alleged delay in handing over possession of the said flat to the complainants on the agreed date of possession i.e. on 31-03-2020. Further, the MahaRERA is of the view that the Covid-19 pandemic arose in the mid of March, 2020 i.e. nearing the date of possession of the said flat to the complainants. Therefore, the said reason of delay would not help

the respondent no. 1 in getting extension in the date of possession mentioned in the agreement for sale. The respondent no. 1 therefore should have completed the said flat of the complainants and should have obtained the occupancy certificate before the said date of possession to the complainants. However, no such steps seem to have been taken by the respondent no. 1 and admittedly the part occupancy certificate has been obtained for this project covering the complainants flat on 5-06-2020 i.e. after the agreed date of possession mentioned in the said agreement was over. Hence, the MahaRERA feels that the complainants are entitled to seek relief under section 18 of the RERA to have interest for the delayed possession from 31-03-2020 till the date of occupancy certificate i.e. 5-06-2020. Moreover, the respondent no. 1 in its letter dated 22-08-2020 has also admitted the delay of 45 days and a copy of the said letter is submitted before MahaRERA by the respondent no. 1.

12. With regard to the reliefs sought by the complainants against the respondent no. 2, the MahaRERA has noticed that by virtue of the Development Management Agreement entered into between the respondent no.1 promoter and the respondent no. 2, dated 1-03-2017, the name of the respondent no. 2 has been mentioned as co-promoter in the project registered by the respondent promoter having revenue sharing. The complainants are seeking interest for the delayed possession jointly from both the respondents. In this regard, the MahaRERA has perused the definition of promoter as defined under section 2(zk) of the RERA, which reads as under:

2(zk). Promoter means:

- (i) *a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments,*

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- for the purpose of selling all or some of the apartments to other persons and includes his assignees; or;*
- (ii) a person who develops land into a project, whether or not the person so constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) any development authority or any other public body in respect of allottees of—*
- (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;*
- (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*
- (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*
- (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public. Explanation. -----made thereunder.”*

13. The aforesaid definition of promoter provides that the promoter is a person who develops the land on behalf of the owner for selling purpose. However, in the present case, the respondent no. 2 has been appointed as project manager by the respondent no. 1 for

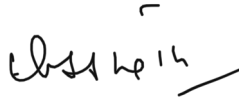
construction purpose on its behalf. Further, the respondent no. 2 has signed the said agreements with the complainants as confirming party and not as vendor/seller/owner of the land. Further on bare perusal of clause 27 (a) of the said agreement for sale clearly states that the respondent no. 1, who is a vendor is liable to handover possession of the said flat to the complainant. Hence, if the definition of the promoter as defined under provision of RERA is read with the terms and conditions of the agreement for sale executed between the parties, the respondent no. 2 seems not liable for handing over possession of the said flat to the complainant. Hence, the MahaRERA holds that the respondent no. 2 cannot be held liable for any violation of section 18 of the RERA.

14. In view of above facts and discussion, the termination letter dated 22-08-2020 issued by the respondent no. 1 promoter is hereby set aside.
15. Further, the respondent no.1 promoter is directed to forthwith handover possession of the said flat to the complainants along with interest for the delayed possession from 01/04/2020 for every month till the date of occupancy certificate i.e. 5-06-2020 on the actual amount paid by the complainants 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 thereunder.
16. The MahaRERA further directs that the interest amount payable by the respondent no. 1 be adjusted with the outstanding dues payable by the complainants at the time of possession and the remaining balance if any shall be paid by the either parties if outstanding.

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17. With the above directions, the complaint stand disposed of.

18. 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