

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

Complaint No. CC006000000192756

Mrs. Geeta Parekh

..Complainant

Versus

1. M/s Ask Corporation.

2. M/s. Rajsanket Realty Limited

..Respondents

MahaRERA Project Registration No. **P51800012243**

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

**Ld. Adv. Pooja Gaikwad i/b Ld. Adv. Sanjay Chaturvedi
appeared for the complainant.**

None appeared for the respondent.

ORDER

(12th May, 2021)

(Through Video Conferencing)

- 1.** The complainant has filed this complaint seeking directions from MahaRERA to the respondents to execute the registered agreement for sale and also to pay interest for the delayed possession under the provisions of sections 13 and 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of flat admeasuring 1120 sq.ft in the respondent's registered project known as "**Rajinfinia Phase II wing A,B,C**" bearing MahaRERA registration No. **P51800012243 at Malad (West) Mumbai.**
- 2.** The complaint was heard finally today 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. Accordingly, the complainant appeared through her advocates and made her submissions. However none appeared for the respondents though they have been issued notices for the hearing. They have neither appeared nor filed any reply on record of MahaRERA. Hence the MahaRERA heard the arguments of the complainant and also perused the available record.

3. It is the case of the complainant that she has booked the said 2BKH flat in the respondent's project in the year 2014 for total consideration amount of Rs. 78,40,000/-. The respondent number 1 have issued allotment letter for the said booking on 27-02-2014, however no flat number is mentioned in it. At the time of booking itself, she has paid the entire consideration amount to the respondent which was duly acknowledged by it. However, inspite of payment of entire consideration amount, it has failed and neglected to execute the registered agreement for sale. Hence she issued letter dated 16-01-2017 to the respondent no.1 calling upon it to execute the agreement for sale. The said letter was replied by the respondent no.1 on 26-03-2017, whereby informing her that it would enter and execute the agreement of sale by 31-12-2017. It has further agreed that there was delay in execution of the agreement of sale which was due to pending permissions from the MCGM and SRA authorities. The respondent with malafide intentions have deliberately failed and neglected to execute the agreement of sale, thereby contravening section 13 of RERA. The complainant thereafter made several telephonic communications as well as visited the respondent for execution of the agreement of

sale; however the it failed to take action. Further she waited for the respondents in good faith and always trusted all the promises and clarifications given by the respondents. However, the respondent with malafide intentions cheated her in spite of taking the entire amount of consideration. She further stated that the respondents have failed and neglected to handover the possession to the complainant as per the possession date verbally promised by the respondent no. 1 i.e. in and around 2014. Hence she has relied upon the Judgement of Hon'ble Supreme Court of India in M/s. Fortune Infrastructure (Now Known as M/s. Hicon Infrastructure) and Anr. Versus Trevor D'Lima & Ors wherein it was held that a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. It was clearly mentioned that a reasonable time has to be taken into consideration and a time period of 3 years generally is reasonable for completion of the contract. Since the respondents has clearly failed in handing over the possession within the reasonable period of time, she is entitled to seek reliefs under section 18 of the RERA towards interest for the delayed possession. Hence she prayed for the reliefs as sought in this complaint.

4. In the present case, the MahaRERA has observed that the complainant has filed this online complaint before MahaRERA on 27-02-2021. However, till date the respondents have not bothered to file its reply to this complaint, though the complaint is visible to the respondent in its project. Even, as per SOP dated 12-06-2020, the respondents were liable to upload it reply in digital form in

this complaint, within a period of 15 days, but they have not complied with the said direction. Furthermore, though the notice for this virtual hearing has been duly served upon them, yet the respondents failed to appear for the hearings, it shows that the respondents are not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to proceed with the matter ex-parte against the respondents on merits.

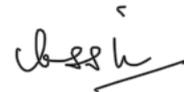
5. The MahaRERA has examined the arguments advanced by the complainant. In the present case, the complainant claiming to be an allottee of this project has filed this complaint seeking directions to the respondents to execute the registered agreement for sale with her under section 13 of the RERA and also to pay interest for the delayed possession under section 18 of the RERA.
6. The record shows that the complainant has booked the said flat with the respondent no.1 promoter. The respondent no.2 is also promoter who has registered this project with MahaRERA, wherein the respondent no.1 has been shown as co-promoter having area sharing in this project. The documents relied and submitted by the complainant mainly the allotment letter as well as the reply dated 25-03-2017 issued by the respondent no. 1 show that the entire money has been paid to the respondent no.1. Hence, the MahaRERA prima facie feels that the complainant's claim could be agitated against the respondent no. 1 only.
7. As far as relief sought by the complainant under section 13 of RERA is concerned, the MahaRERA has perused the copy of allotment

letter dated 27-02-2014 issued by the respondent no.1, which is annexed at exhibit A to this complaint. It appears from the said letter that the complainant has been allotted flat admeasuring 1120 sq.ft area for total consideration amount of Rs. 78,40,000/-. The said amount has been paid by the complainant at the time of booking itself and the same has been duly acknowledged by the respondent no.1. Further on perusal of exhibit B i.e. the reply given by the respondent no.1 to the letter dated 16-01-2017 issued by the complainant, it appears that the respondent no.1 also accepted the said booking done by the complainant and agreed to execute the registered agreement for sale by end of 31-12-2017. The MahaRERA therefore feels that these two documents are sufficient to grant relief under section 13 of the RERA.

8. With regard to the relief sought by the complainant under section 18 of the RERA towards interest for the delayed possession, the record shows that there is no agreed date of possession mentioned in the allotment letter issued by the respondent no.1 and even there is no agreement for sale entered into between the parties showing any agreed date of possession, which has lapsed. Moreover, the complainant has not produced any cogent documentary proofs on record of MahaRERA to show that the respondent no. 1 has ever committed any agreed date of possession. In absence of any agreed date of possession the relief sought by the complainant under section 18 has no substance. Since the complainant is willing to continue in the project the judgement cited by the complainant of Hon'ble Supreme Court of India cannot be made applicable to this case. Hence the relief

sought by the complainant towards interest for the delayed possession stands rejected.

9. Considering these facts, the MahaRERA directs the respondent no. 1 to adhere to the commitment made under letter dated 25-03-2017 and execute a registered agreement for sale with the complainant under section 13 of the RERA and the relevant Rules made thereunder within a period of one month.
10. With these directions, the complaint stands disposed of.
11. The certified copy of the order will be digitally signed by concerned Legal Assistant of MahaRERA and it is permitted to send the same to both the parties by e-mail.



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