

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

Physical Hearing held through video conference as per
MahaRERA Circular No.: 27/2020

COMPLAINT NO: CC006000000171638

Parin Shantilal Furia ...Complainant
Vs
1. Indiabulls Properties Pvt. Ltd.
2. Indiabulls Housing Finance ...Respondent

MahaRERA Project Registration No. P51900000467

Order

January 27, 2022

(Date of Hearing: 9th September, 2021: Matter Reserved for Order)

Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA
Advocate Varun Mamania present for Complainant
Advocate Vatsal Shah present for Respondent No.1
Advocate Indrajeet for Respondent No.2

1. The Complainant is home buyers and Allottees within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016 ("**Said Act**") and the Respondent No.1 is the Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016. The Respondents have registered their project "INDIABULLS SKY FOREST" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") bearing MAHARERA Registration No. P51900000467 (hereinafter referred to as the "**said Project**").
2. The Complainant is seeking the following relief:
"a. For an Order and direction that the Respondent 1 to sell to the Complainants the Suit Premises described in clause 2(a) of this Complaint the residential flat bearing no A3 - 1705 admeasuring 1,554 sq ft (usable carpet area) alongwith three(3) covered car parking spaces (hereinafter referred to as the 'Flat') and exclusive attached terrace admeasuring 1,180 sq ft (usable carpet area) (hereinafter referred to as the 'Terrace') aggregating to 3,668 sq ft (saleable area) in the building known as 'Indiabulls Sky Forest' situate at Jupiter Mills Compound Senapati Bapat Marg Elphinstone Road (West), Parel, Mumbai 400 013 for the consideration of Rs 7,33,60,000/- (hereinafter referred to as the

'Consideration'). The Flat and the Terrace shall hereinafter collectively be referred to as the ('Suit premises');

b. For an Order and direction to the Respondent 1 to execute and cause to be registered the Sale Agreement as per the Model Form as per Annexure A of the Act in respect of the Suit Premises in favour of the Complainants for the consideration of Rs 7,33,60,000/- subject to the plans thereof being duly sanctioned whereby the Suit Premises consisted of the residential flat admeasuring 1,554 sq ft (usable carpet area) (hereinafter referred to as the 'Flat') and exclusive attached terrace admeasuring 1,180 sq ft (usable carpet area) (hereinafter referred to as the 'Terrace') aggregating to 3,668 sq ft (saleable area) alongwith three (3) car parking spaces;

c. In the absence of the Terrace being sold and allotted by the Respondent 1 to the Complainants the Respondents be ordered and directed to (i) sell and allot to the Complainants the Flat now admeasuring 1,196 sq ft (carpet area) for the consideration of Rs 3,36,66,481/- (Rupees three crores thirty six lacs sixty six thousand four hundred and eighty one only) as per Exhibit 'S' hereto and (ii) to execute and cause to be registered the Sale Agreement as per the Act;

d. In the alternate to the above, the Respondent 1 be ordered and directed to (i) sell and allot the Alternate Premises described in clause 12 of the Complaint for the Consideration of Rs 7,33,60,000/- and (ii) to execute and cause to be registered the Sale Agreement as per the Act;

e. For an Order and direction against the Respondents to repay the sum of Rs 1,52,16,331/- (Rupees one crore fifty two lacs sixteen thousand three hundred and thirty one only) (hereinafter referred to as the 'Earnest Money Deposit') paid by the Complainants to the Respondent 1 alongwith interest thereon calculated at the rate of 12% (twelve percent) per annum from 24th May 2013 till the date of Order and with further interest calculated at the 18% Order payment/realization thereof.

f. For costs.

g. For such other and further reliefs as the nature and circumstances of the case may require."

3. On 9th September, 2021, the following roznama was passed by this Authority:
"The Complainant contends that the booking was made in 2013 and he paid an amount of over Rs. 1.52 Cr against consideration of approximately Rs. 7.33 Cr. The rest of the money was to be paid through a Subvention Scheme. The Respondent No. 2 Indiabulls Housing Finance has disbursed Rs. 5.7 Cr plus under the Subvention Scheme.
1. The Complainant pleads that Agreement for Sale which is not yet signed should be executed.
 2. The Complainant pleads that the Agreement of Sale should correctly reflect whatever was promised in the booking form especially with the regards to the issue of the terrace which was to be given to them as the part of the area promised.
- The Respondent in the reply states that they are willing to sign the agreement for sale and the same has been forwarded to the Complainant. The Respondent agrees that they are ready to execute the Agreement for Sale strictly as per the terms offered in the booking form. The Respondent however contends that the booking form clearly states that the terrace is not for the exclusive use. The Complainant denies and contends this. Both Parties have filed the Booking form and the draft Agreement for Sale which is given. The Advocate for India bull finance states that the amount paid by them to the developer is

subsequent to and on authorisation by the complainant and no amount was transferred suo moto. Matter Reserved for Order."

4. The submissions of the Complainant are as follows:
 - a. An apartment No. A3- 1705, admeasuring 1,554 sq. ft. (usable carpet area) ("**said Apartment**") along with three (3) covered parking spaces and exclusive attached terrace admeasuring 1,180 sq. ft. (Terrace area) ("**said Terrace**") aggregating to 2,734 sq. ft. (carpet area) that is 3,668 sq. ft. (saleable area) along with three (3) parking spaces in the building known as "Indiabulls Sky Forest" in the said Project.
 - b. The total consideration amount of the said Apartment was Rs. 7,33,60,000/- (Rupees Seven crore Thirty-three Lakhs Sixty thousand only) out of which the Complainants paid to the Respondent No. 1 the aggregate part of Rs. 1,52,16,331/- (Rupees One crore Fifty-Two Lakhs Sixteen Thousand Three hundred and thirty-one Only). The Complainant further states that the booking summary sheet dated 24th May, 2013, the Respondent No. 1 had agreed to sell the suit premises including the apartment and terrace for the total consideration amount.
 - c. The Complainant purchased the said Apartment under the Subvention scheme of 20:80 ratio from the Respondent No.2 wherein it was decided that the 20% of the consideration amount was to be payable at the time of the booking of the said Apartment and the balance 80% to be payable at the time of the possession.
 - d. A Tripartite Agreement was executed on 28th September, 2013, between the Complainant, Respondent No.1 and Respondent No. 2. Further the Complainant submits that the Tripartite Agreement was executed only for the purpose of the Subvention Scheme and the Tripartite Agreement was not shared in totality nor was the Complainant given the time to read or consider the same.
 - e. The period from 2013 until 2015 the draft of the Agreement for Sale ("**said Agreement**") was not provided by the Respondent No. 1 in respect of the said Apartment. The draft of agreement was later shared on 20th April, 2016.

- f. The draft of the agreement the area of the Apartment was mentioned as 1225.7 Sq. ft. instead of 1554 sq. ft.(usable carpet area) and regarding the Terrace it was mentioned that the Terrace will always be with the Respondent No.1. Further the Agreement did not have the MCGM sanctioned plans of the said Apartment and Terrace. The Complainant further states that the draft of the agreement was not as per the Model Form, Annexure A of the Act and Rule 10(i) of the Act/Rules, the details of "Promoters Retained Area".
- g. The multiple emails were forwarded to the Respondent No. 1 requesting to provide the amended draft of the Agreement for sale to enable the Complainant to pay the amount of the Value Added Tax (VAT). The Respondent No. 1 directly on 6th January, 2017, emailed and raised the consideration amount from Rs. 7,33,60,000/- to Rs. 7,60,00,000/-.
- h. On 22nd September, 2018, the site visit and the measurements of the Apartment were recorded along with the Architect and Surveyors with the permission of the Respondent No. 1. The discrepancies were noticed in the carpet area of the Apartment and that of the Terrace as mentioned in the draft agreement.
- i. On 5th July, 2019, an email was received from the Respondent No. 2 to register the agreement in respect of the apartment.
- j. The letter from the MCGM dated 3rd September, 2019, stated that the sanctioned plan of the suit premises including the said Apartment and terrace was uploaded on the website and after perusing the sanctioned plan of the building it was noticed that the Terrace has an access from the common areas/passages of the building, there is no direct access to the terrace from the said Apartment. The Complainant further states that the carpet area of the said Apartment was reduced from 1554 sq.ft to 1,196 sq.ft. and the carpet area has reduced by 358 sq.ft.
- k. Further the Complainant was willing to execute and register the agreement for sale in respect of the said apartment now admeasuring 1,196 sq.ft carpet area excluding the terrace as it is not the part of the apartment at the total consideration of Rs.3,36,66,481/- (Rupees three crores thirty six lacs sixty six thousand four hundred and eighty one only).

5. The submissions of the Respondent are as follows:
- a. The Complainant had agreed to purchase the apartment of 3668 sq.ft. and the usable carpet area sold to the Complainant was 1,554 sq.ft which comes along with the common terrace area of about 1,180 sq.ft. The total area of the apartment in terms of MOFA is 144.88 sq.mt (1559.48 sq.ft) and as per RERA is 148.08 sq.mt (1593.93 sq.ft), it is clear that there is no reduction in the usable area which was sold to the Complainant. The apartment in the project with a terrace outside the apartment was also nowhere mentioned to the Complainant.
 - b. The Complainant opted for the subvention scheme of 20:75:5 and not 20:80, wherein the Complainant was to pay 20% of the amount as the Basic Sale Price and the Respondent No. 2 to fund 75% of the sale consideration of the apartment as the agreement between the Complainant and the Respondent No.1 and the balance 5% to be paid by the Complainant on offer of possession by the Respondent No.1.
 - c. The Complainant by subvention scheme had mortgaged the apartment to Indiabulls Housing Finance Limited financing the 75% of the total consideration amount as by way of a housing loan. The per EMI is borne by the Respondent No.1 till date on behalf of the Complainant. Further the Respondent No. 1 has paid Rs. 4,65,20,558/- (Rupees Four Crore Sixty-five Lakhs Twenty thousand Five hundred and Fifty eight only) towards pre EMI and the Complainant has contributed Rs.1,38,85,608/- (Rupees One Crore Thirty-eight Lakh Eighty-five thousand Six hundred and eight only) (exclusive of the taxes) i.e. 18.93% of the total consideration amount.
 - d. The Respondent No. 1 denies that they agreed to the Complainant to sell any exclusive terrace area admeasuring 1,180 sq.ft. along with three car parking spaces in the said project and deny that the terrace area of 1180 sq.ft. was charged at Rs.20,000/- per sq.ft.

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- e. The Respondent No. 1 further denies the reduction of 358 sq.ft. in the carpet area of the apartment and is further clarified that the usable carpet area 1554 sq.ft as mentioned in the Application form is increased to 1,559 sq.ft.
- f. The Application form and Booking Summary Sheet dated 24th May, 2013, does not support the case of the Complainant. The disbursement of the loan amount made by the Respondent No.2 to Respondent No.1 was with the approval and consent of the Complainants as per the Tripartite Agreement.
6. The Complainant vide its Written Submission dated 14th September, 2021, submits that Rs.1,52,16,331/- (Rupees One Crore Fifty-two Lakhs Sixteen thousand and three hundred and thirty-one only) was paid as the Earnest money and as deposit of 20% of the consideration amount under the subvention scheme.
7. It is observed that the documents relevant to the submission of the Complainant and the Respondent are not uploaded on the portal of RERA or submitted the hard copy of the same to rely upon.
8. From the above facts as submitted during the hearing dated 09.09.2021, the only issue that requires consideration is *Whether the Respondent is mandated to enter into an Agreement for Sale as per section 13 of the said Act?*
9. It is observed that the Complainant has paid 20% of the total consideration amount and that the Agreement for sale was not executed within the Parties even after the Complainant paid 20% of the total consideration of the amount through his own resources.
10. Before dealing with the facts in this Complaint, it is pertinent to examine Section 13 of the said Act:

“Section 13 - No Deposit or advance to be taken by promoter without first entering into Agreement for sale:

(1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a

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person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

11. From the plain reading of Section 13(1) it is clear that the Respondent herein is mandated to enter and execute an Agreement for Sale with the Allottee (Complainant herein) once he receives more than 10% amount of the total consideration of the said Apartment.

12. It is clear from the submission of the Parties on the last date of hearing, namely 9th September, 2021, that both the Parties are willing to execute the Agreement for Sale as per the booking form dated 24th May, 2013. It is pertinent to note here that the Respondent has orally submitted during the aforesaid hearing that they are ready to execute the Agreement for Sale as per the terms and conditions offered in the booking form. In view thereof, the issue is resolved on the affirmations made by the Respondent and thus, the Parties are hereby directed to execute the Agreement for Sale as per the terms and condition mentioned in the booking form dated 24th May, 2013. Further, this Authority is not inclined to interfere with the terms of the booking form issued to the Complainant by the Respondent No.1 as the same is pre-RERA period.

FINAL ORDER

In view of the observation hereinabove, the Complaint is disposed off and the Parties are bound by the terms and conditions of the Booking Form dated 24th May, 2013. Needless to say, the Parties shall abide by the terms and condition of the Booking form executed between them. However, if the Complainants wish to withdraw from the project, it would be as per the terms and conditions of the Booking form and the tripartite agreement dated 28th September, 2013 and not in accordance with the provisions of the Act. No order as to Cost.


(Ajoy Mehta)

Chairperson, MahaRERA