

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

Complaint No. CC006000000171828

Anita Pahudkar

.... Complainant

Versus

Macrotech Developers Ltd

.... Respondent

MahaRERA Project Registration No. P51700014760

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

Ld. Adv. Avinash Pawar appeared for the complainant.

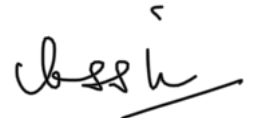
Ld. Adv. Prashant Gawali appeared for the respondent.

ORDER

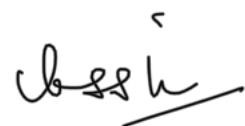
(Wednesday, 8th December 2021)

(Hearings Through Video Conferencing)

1. The complainant above named has filed this complaint seeking directions from MahaRERA to the respondent to refund the amount paid by her along with interest and compensation under the provisions section 12 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 2605, in the respondent's registered project known as "**Lodha Amara - Tower 6, 22**" bearing MahaRERA registration No. **P51700014760** at Kolshet, Thane. The complainant has further sought relief under section 7 of RERA for revocation of the project registration of the respondent.



2. This complaint was scheduled for hearing on 28/10/2020 when both the parties agreed to transfer the matter to the conciliation forum for amicable settlement. However, the parties could not reach any mutually agreeable terms. Hence, this complaint was transferred back to MahaRERA.
3. The matter was there after scheduled for hearing on 07/10/2021, 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 this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing and made their submissions. MahaRERA heard the arguments of the parties and also perused the available record.
4. It is the case of the complainant that, she has purchased 2 flats in the respondent's project by executing the registered agreements for sale with respect to the said flats dated 12/06/2018 and 18/09/2018. The said flats have been purchased by the complainant for total considerations of Rs. 1,11,81,974/- each. The complainant has till date paid amount towards the flats of Rs. 24,39,480/- for flat no. 2605 and Rs. 7,54,573/- for flat no. 2606. Thereafter, it came to the knowledge of the complainant that, the respondent did not have the commencement certificate for the 26th floor wherein the flats have been allotted to the complainant. The respondent had only received the commencement certificate up to the 1st floor of the said building in which the flats of the complainant are situated. The complainant further submitted that, the respondent has collected from the complainant around 22% towards the consideration of the flat no. 2605. The complainant further submitted that, the respondent has further failed to show the bank encumbrances amounting to approximately Rs. 70,00,00,000/-. The

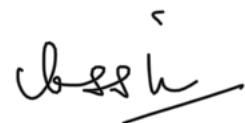


complainant further stated that the respondent has played fraud upon her as it has sold the said flats to her without commencement certificate and she came to know about the same when she applied for loan, which was rejected by the bank. Hence, she has filed this complaint seeking reliefs as sought for in this complaint.

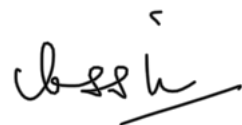
5. The respondent has refuted the claim of the complainant by filing its reply on record of MahaRERA on 06/10/2021 and has stated that, the present complaint is false, frivolous and is contrary to the provisions of RERA. It has further submitted that, the present complaint is just an attempt by the complainant to seek vendetta against the respondent since the respondent issued pre-termination notice to the complainant for default in the payment as per the schedule. The respondent submitted that, the allegations made by the complainant are sham and the complaint ought to be dismissed on this ground itself.
6. The respondent has further submitted that, the complainant has purchased the said flat bearing no. 2605 vide registered agreement for sale. Out of the total consideration of the said flat, the complainant has paid an amount of Rs. 24,39,480/-. However, the complainant made various defaults in payment of the consideration, and as on 25/01/2019, an amount of Rs. 32,49,058/- was due and payable by the complainant, towards the consideration of the said flat. The respondent therefore issued a pre-termination notice to the complainant on 25/01/2019. The complainant has therefore filed the present complaint against the respondent.
7. The respondent further submitted that, the complainant has purchased the said flat vide a registered agreement for sale after necessary due diligence

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and upon inspection of the necessary documents. The respondent further submitted that, the complainant is only alleging that, the respondent did not have commencement certificate to avoid imposition of penalty for default in payment to the respondent. The respondent further submitted that, the commencement certificate is issued by the competent authority of the plinth level initially and then in phased manner in pursuance of the sanctioned plans and IOD after ensuring that, the building is being developed as per the plans. It would be impossible to give blanket permission for all floors in case of high-rise buildings without verifying that, the building is being developed as per the plans. The respondent has received the MahaRERA registration under section 4 of RERA by complying with all the requisites and it shows that, it had all the necessary permissions before executing the said agreement for sale. The respondent further stated the section 2(m) of RERA defining the commencement certificate and has submitted that, it is the permission to begin the development work and the construction of the 26th floor would not have been possible without the construction of the floors below including the plinth and the developer is allowed to sell the flats as long as they are approved by the sanctioned plans. The said fact is also substantiated as per the FAQs uploaded on the MahaRERA website. The complainant has done her due diligence and hence the burden of proof is on the complainant to prove that, the respondent did not have all the necessary approvals. The respondent further submitted that, the complainant has never raised the said issue before filing the present complaint. The respondent further submitted that, the complainant has filed the present complaint mischievously and no case is made out by the complainant in terms of the provisions of the RERA. The complainant therefore prayed for dismissal of the present complaint with the exemplary costs.



8. The MahaRERA has examined the rival submissions of both the parties and also perused the available record. In these complaints the complainant has approached MahaRERA mainly seeking relief of refund along with interest and compensation mainly alleging the violation of section 12 of the RERA. The complainant also seeks revocation of MahaRERA registration issued in favour of the respondent. The complainant has mainly contended that the respondent has executed the registered agreements for sale dated 12/06/2018 and 18/09/2018 without any valid mandatory permissions such as commencement certificate for the said flats and thereby it has given misleading information to them. Mainly due to the said reason, she is seeking refund along with interest and compensation. However, the said contention of the complainants has been denied by the respondent promoter by relying upon the FAQ issued by the MahaRERA whereby it was clarified by the MahaRERA that in any MahaRERA registered project, for registration of the apartment to be purchased, Building Plan Approval (IOD) of the building where the apartment is located, is necessary.
9. With regard to the relief sought by the complainant under section 7 of the RERA for cancellation of this project registered by the respondent, the MahaRERA is of the view that as per the provision of section 7 of the RERA, the MahaRERA registration may be cancelled if the promoter makes default in doing anything required by or under this Act or if the promoter violates any of the terms or conditions of the approval given by the competent authority or if the promoter is involved in any kind of unfair practice or irregularities as specified under section 7 (1) (a) to (c) and (A) and (B) of the RERA. However, in the instant case, the complainant has not produced any cogent documentary evidence to show that the respondent has violated any of the terms or conditions stipulated in the provisions of section 7 of the RERA.

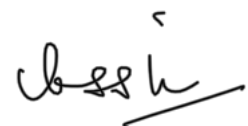


Therefore, the prayer for revocation of projects registered by the respondent with the MahaRERA sought by the complainant is devoid of any merits. Hence same stands rejected.

10.As far as the main reliefs sought by the complainant with respect to violation of provision of section 12 of the RERA is concerned, it is necessary to deal with the said provisions of RERA before going into the merits of this case. The relevant provisions of section 12 reads as under:

“12. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

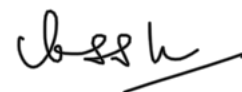
11.The aforesaid explicit provisions under RERA make it clear that the allottee is entitled to seek refund of the amount along with interest if he makes any booking on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein.



12.However, in the present case, admittedly, it is not the case of the complainant that the respondent has provided them any false advertisement, notice or prospectus and induced them to book the said flat. Further the provision of section 12 of the RERA does not talk about the execution of agreement for sale. Hence the MahaRERA prima facie feels that there is no substance in the claim agitated by the complainants for violation of section 12 of the RERA.

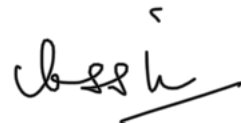
13.The MahaRERA has noticed that admittedly, the said agreements for sale are executed and registered between the complainant and the respondent after commencement of RERA in the year 2018 in the MahaRERA registered project. Being promoter of the project, it was mandatory on the part of the respondent promoter to disclose all relevant information pertaining to this project on the MahaRERA webpage as per the provisions of section 4 of the RERA. Further as per provision of section 4(2) (C) of the RERA, it was mandatory for the respondent promoter to upload / submit an authenticated copies of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the said project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases. Section 4 of the RERA mainly talks about the information to be submitted for registration of project with MahaRERA, however it does not talk about registration of agreement for sale between the allottee and the promoter.

14.In addition to this, the MahaRERA has further noticed that the RERA legislation is enacted to regulate and promote the real estate sector in the

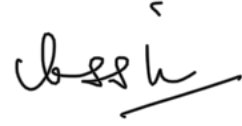


whole country. Further, the MahaRERA is constituted to strive to facilitate the growth and promotion of a healthy, transparent, efficient, and competitive real estate sector while protecting the interest of allottees, promoters and real estate agents. After commencement of RERA in the year 2017, no sale is permitted by the promoter without registering the project with MahaRERA under the provisions of section 3 of the RERA. Accordingly, this project was registered with MahaRERA whereby the respondent has disclosed all relevant information pertaining to this project was uploaded on MahaRERA website. The complainant being prudent allottee should have verified all the relevant information pertaining to the said project including the relevant permissions uploaded on the MahaRERA website such as IOD, commencement certificate etc. If no commencement certificate for the said flats was not uploaded on MahaRERA webpage, in that event, the complainant should have raised the query/ objection at the relevant time of signing and executing the said agreements. After signing the said agreements, now the complainants cannot raise such issue of commencement certificate, which has subsequently been obtained by the respondent promoter including the complainant flats in the year 2020. Hence the said claim of the complainant seems to be an afterthought and hence cannot be entertained at this stage as it has been raised after two years from the date of execution of the said agreements for sale. Therefore, the MahaRERA does not find any merit in the claim agitated by the complainant. Hence, the subsequent reliefs sought by the complainant need not be entertained.

15. In view of the aforesaid facts of this case, the complaint stands dismissed being devoid of merit.



16.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

