

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

Complaint No. CC006000000196160

Vasant Fiona F Wing CHS

.... Complainant

Versus

Sheth Developers Pvt Ltd

.... Respondent

MahaRERA Project Registration No. P51700000734

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

Ld. Adv. Rajeshwar Deshmukh appeared for the complainant.

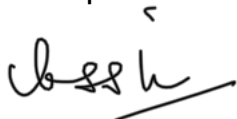
Ld. Adv. Kedar Khembete a/w Ld. Adv. Pragati Malle appeared for the respondent.

ORDER

(Wednesday, 23rd March 2022)

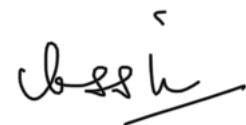
(Through Video Conferencing)

1. The complainant has filed this complaint seeking direction from MahaRERA to the respondent to rectify the structural defects in the complainant's building and other reliefs under the provisions of section 14(3) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the respondent's registered project known as "**Vasant Fiona**" bearing MahaRERA registration No. **P51700000734** located at Thane.
2. This complaint was initially heard on 29-04-2021, when the directions was given to both the parties to file their claims and counter claims on record of MahaRERA and on receipt thereof the final order would be passed based on the submissions of the parties. With the said directions, the hearing was concluded. However, the parties did not file the same on record of MahaRERA. In the meantime, on 5-07-2021, the respondent promoter filed



an application on record of MahaRERA challenging the maintainability of this complaint. Hence, this matter was again scheduled for hearing before MahaRERA, when both the parties appeared and made their respective submissions.

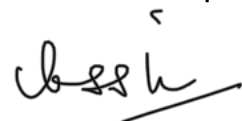
3. Thereafter, this complaint was heard finally on 21-12-2021 as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions if any. Accordingly, both the parties appeared for the hearing and made their submissions. During the course of hearing, the respondent was directed to file its written submissions within a period of two days. With this direction the matter was reserved for the order.
4. However, despite specific directions given to the respondent to file its written submissions on record of MahaRERA, it has failed to file the same. Hence, the earlier reply and application challenging the maintainability of this complaint is taken on record. The MahaRERA heard the submissions of both the parties and also perused the available records, however, it was not possible to decide the matter expeditiously since the office was severely impacted by Covid-19 pandemic heavy work and shortage of staff.
5. It is the case of the complainant that their members have booked their respective flats in the respondent's project and possession was given to them in the year 2019 and within 2 years from the date of possession the building "Vasant Fiona F Wing" is facing structural defects like external and internal leakages, several complaints of water seepage/ leakage have been reported over last two rainy seasons, that is due to poor quality of work/ material used by the respondent during construction. Also as per the Civil



Audit Report dated 02/07/2021 the external plastered surface has been found to have severely cracked, and damaged at multiple locations leading to major leakage/ seepage inside of the flats. Also the external plastered surface is seen visibly damaged and deep / hairline cracks everywhere due to improper workmanship and use of low quality of river sand and other materials. Due to this low quality of work and materials used it has resulted in heavy leakage in the building, thus damaging the inside of the flats on the finishes, furniture's, and has created unhealthy living condition. The complainant seeks relief under Section 14(3) of RERA which states that ***“In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.”***

Therefore the complainant stated that the respondent is liable for the same. Further, once the respondent rectifies all the structural defects, the said building should not face any structural defects at least for a period of 5 years from the date of rectification of defects. Moreover, the construction of compound wall and security cabin and the gate is yet not completed by the respondent which was agreed between the complainant and the respondent vide their agreement.

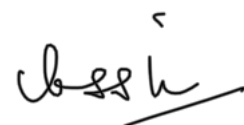
6. The respondent on the other hand has refuted the claim of the complainant and filed its reply stating that on obtaining occupation certificate for buildings A to E on 12.5.2016 and for building F on 24.7.2018, the respondent



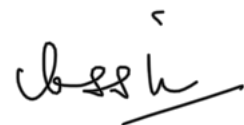
proceeded to hand over management of the common properties and amenities of the said Vasant Fiona project in favour of the Vasant Fiona Co-operative Housing Society on 4.2.2019. Further, it carried out all the formalities of registration and registered the said building as an ongoing project. It is stated that that in due course the sale agreements came to be executed with concerned flat purchasers for all the 6 buildings including the complainant's alleged society having agreed to the provision as stated in the Recital Clause P of the said agreement as follows:

“The Developer has already formed a co-operative housing society for the purchasers of the project including Vasant Fiona F Wing known as ‘Vasant Fiona Co-operative Housing Society Limited’ bearing registration no.... The Purchaser is aware of the formation of the Society and undertakes to become a member of the same”

Further, the said society has been managing the common properties and amenities pursuant to handing over of the management and affairs of common properties and amenities by the respondent in their favour on 4.2.2019. It is stated that despite knowledge of existence of Vasant Fiona CHS the complainant has proceeded to unilaterally incorporate the complainant's alleged society viz Vasant Fiona F Wing CHS and have malafidely approached the office of the Dy Registrar for Co-operative Societies and tendered an application for registration on the ground of non-cooperation by the developer and have by an act of such material suppression acquired registration of their society vide Certificate of Registration dated 31.7.2020. The respondent stated that members of the complainant's alleged society are well aware that the developer/promoter has formed the bonafide society for all the 6 buildings A to F of Vasant Fiona project and by letter dated 10.2.2019 requested the respondent to induct



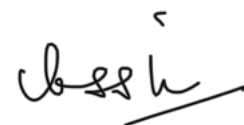
them into the existing Vasant Fiona CHS and even the respondent vide various correspondence requested the flat purchasers of the complainant's alleged society to become members of the said society by filling up the membership form and making application to the bonafide society as their share capital has been deposited with them but inspite that, complainant's alleged society with malafide intention avoided to sign the membership form of the said society. Further the respondent has challenged the legality and validity of the grant of registration dated 31.7.2020 vide their application dated 25.2.2021 filed before the Hon'ble Divisional Joint Registrar Co-operative Societies, Konkan Division at Navi Mumbai and during the pendency of the said application, the complainant does not have any locus standi to proceed against the present respondent and hence the complaint deserves to be dismissed. The respondent has denied the contents of the complaint parawise. It is stated that refund of 3 months advance maintenance to the extent of Rs.10,56,800/- and for balance of property tax to the extent of Rs.4,35,801/- should not be granted to the complainant's alleged society as the respondent continued to render its services to the complainant's alleged society till handing over of the affairs and management of the said common properties and amenities of the Vasant Fiona project till 4.2.2019 and balance if any is to be handed over to the common society consisting of all members of the buildings of Wing A to F. Further in absence of complainant's alleged society as member in Vasant Fiona CHS the same cannot be realized since its constitution is under challenge. Further, the construction of compound wall, security cabin and gate could not be carried out due to road alignment issues with the Thane Municipal Corporation and due to the above issues the same could not be erected for complainant's alleged society which will be erected on resolution of issues with the Thane Municipal Corporation. Moreover, the repair works to the existing STP was preliminary done in January 2019 and was in a serviceable condition till handing over of the



same which cannot be attributable to the respondent and the complainant/ society are not entitled for damages and the complaint is liable to be dismissed with compensatory costs.

7. The respondent has filed application challenging maintainability of the complaint on record on 5-7-2021 stating that on the previous date of hearing i.e. 29.4.2021 the complainant was directed to file their list of alleged defects within 7 days therefrom and respondent was directed to tender its reply within further 7 days however, the complainant has failed to do so. The respondent has relied upon the judgement of Hon'ble Appellate Tribunal in Appeal no. AT00600000021454 in Neumec Developers v/s Antop Hill Warehousing Co. Ltd., wherein it was held that the MahaRERA ignored to consider the subject of locus standi as defined in section 31 of the RERA and that the same ought to have been decided prior to taking cognizance of the said complaint. Further, the RERA mandates composition of Adjudicating Authority while deciding complaint pertaining to sections 12,14,18 and 19 which ought to be referred to Adjudicating Authority for rightful appreciation of the evidence of the respective parties and since the present complaint is rectification of defects/interest/compensation the same ought to have been entertained by the Adjudicating Officer in view of sections 71 and 72 of the RERA and not by MahaRERA alone.

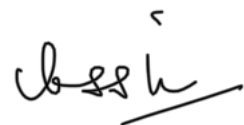
8. MahaRERA has examined the rival submission made by both the parties and also perused the available record. In the present case by filing this complaint, the complainant society has approached MahaRERA mainly seeking relief under section 14 (3) of the RERA and seeking rectification of the structural defects in its building. Admittedly, the project is complete and the OC has already been obtained for this project and the members of the complainant's society has already taken possession of their flat and



thereafter raising the issues of pertaining to construction of the said building known as Vasant Fiona Wing F CHS Ltd.

9. The respondent promoter on the other hand has refuted the said claim by filing an application on record of MahaRERA whereby challenging the maintainability of this complaint filed by the complainant society, mainly on the ground that the complainant society has no locus standi to file this complaint as the registration granted in its favour on 31-07-2020 by the concerned Deputy Registrar is under challenge and hence it cannot represent its case through the said entity. Moreover, power to decide the complaint under section 12,14,18 and 19 of the RERA vest with the Ld. Adjudicating Officer/MahaRERA.

10. Considering these legal submission made by the respondent in the present case, prima facie it appears from the webpage information's uploaded by the respondent on MahaRERA portal, it appears that the project is complete and the OC has been obtained for this building F on 24-07-2018. The respondent has also formed the society in the name of Vasant Fiona CHS Ltd by obtaining registration certificate from Deputy Registrar, Co-operative Society , Thane City, Thane on 30-05-2017. It shows that the society had already formed in the year 2017. Further, in Recital clause No. P of the draft Model Agreement for Sale uploaded by the respondent on MahaRERA webpage, it also declared the said fact about the formation of registered society in the name of Vasant Fiona CHS Ltd. It shows that one registered society was already existed on site, when the complainant has obtained the registration for it on 31-07-2020. However, whether the said registration is legal or otherwise cannot be looked into it by MahaRERA for want of jurisdiction and as the matter is already sub-judice before the appropriate court of law and the said proceeding will take its own recourse.

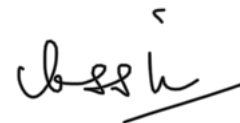


11. Keeping all these technicalities whether the complainant has locus standi to file this complaint or otherwise aside the MahaRERA is of the view that in this complaint by filing this complaint a group of some allottees have approached MahaRERA seeking relief under section 14(3) of the RERA claiming certain general types of reliefs about the structural defects in the building and in support of its claim it has submitted the Civil Audit Report dated 2-07-2021 issued by Ajay Mahale and Associates citing some structural defects in the form of leakages, cracked in the building, external plastered surface is visibly damaged, hairline cracks are everywhere due to improper workmanship etc. These structural defects pointed out by the complainant can not be ignored by MahaRERA being Regulatory Authority.

12. In view of these facts and in compliance of principles of natural justice, the MahaRERA directs the respondent to look into all these defects pointed by the complainant and take appropriate action to rectify the same and submit structural audit report of the said building of the complainant on record of MahaRERA within a period of 6 months from the date of receipt of this order.

13. With these directions, the present complaint stands disposed of.

14. The certified copy of the order will be digitally signed by the concerned Legal Assistant of MahaRERA and it is permitted to send the same to both parties by e-mail.



(Dr. Vijay Satbir Singh)

Member – 1/MahaRERA

