

**THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI.**

COMPLAINT NO: CC006000000193053.

Tina Dharamsey. ... Complainants.
Purav Dharamsey.

Versus

M/s. Kiyana Ventures LLP. ... Respondents.

MahaRERA Regn: P51800000591.
(Kalpataru Radiance)

Coram: Shri B.D. Kapadnis,
Member-II.

Appearance:

Complainant: Adv. Mr. Jipnesh Jain.
Respondents: Adv. Mr. Abir Patel.

FINAL ORDER

28th September, 2020

Complainants' claims.

The complainants have contended that they have booked flat no. 213 in the D wing of the respondents' registered project 'Kalpataru Radiance' situated at Village Pahadi, Goregon West. The complainants have paid the respondents Rs. 2,86,28,710/-. Despite the payment of such huge amount, the respondents have failed to handover the possession of the flat on agreed date 30.06.2018. Therefore, the complainants who want to continue in the project claim interest on their investment for delayed possession under section 18 of RERA.

Decision on application to put the complaint on Sine Die list.

2. The respondents have filed the application to put the complaint on Sine Die list by contending therein that -



- a. The plot bearing no. R-8/ bearing CTS No. 260/5A of village Pahadi, Goregaon is the larger land comprising of various CTS nos.
- b. MHADA entered into joint development agreement dated 10.04.2008 with M/s. Guru Ashish Construction Pvt. Ltd. (hereinafter referred to as "GACPL"). It is a sister concern of Housing and Area Development Limited (HDIL). MHADA gave development right of the land to GACPL on the consideration that GACPL shall handover 672 tenements for the tenants of MAHDA free of cost in rehab component and also handover certain tenements for MHADA to sell or allot in the open market
- c. MHADA, by its letter dated 26.07.2011 and Deed of Confirmation and Modification dated 09.11.2011 permitted GACPL to create third party rights in respect of free sale component.
- d. The respondents received the development rights from GACPL by virtue of development agreement dated 20.10.2011.
- e. The respondents have been constructing four buildings namely A, B, C and D Wings on the said land under the said agreement.
- f. Union Bank of India, one of the creditors of GACPL, initiated Corporate Insolvency Resolution Process under section 7 of Insolvency and Bankruptcy Code and by the order dated 24.07.2017 the application was admitted by National Company Law Tribunal.
- g. Thereafter, MHADA terminated the joint development agreement with GACPL by issuing notice dated 21.01.2018 contending that GACPL failed to comply with its obligation under the contract namely to construct the rehab component.
- h. The respondents approached the Hon'ble High Court and filed a suit bearing no. 611 of 2019 (being suit no. (L) no. 176 of 2018) against MHADA for seeking directions of the Hon'ble High Court against the termination



and issuance of the necessary directions to the MHADA for issue of completion/occupancy certificate. The Hon'ble High Court has passed an order dated 28.02.2018 and restrained MHADA from taking coercive steps pursuant to the termination notice.

i. In the aforesaid suit, the flat purchasers of the project 'Kalpataru Radiance-C' of the same lay-out filed interim application bearing nos. 1 and 2 of 2020 in February 2020 to seek the reliefs of issuance of occupation certificate by MHADA and various buildings in the lay-out by contending that more than 1,000 purchasers have purchased the flats from different developers and they should not be penalised for default of GACPL and HDIL towards MHADA. The matter has been seized with by the Hon'ble High Court but due to the spread of Covid-19 Pandemic and it is waiting for hearing before it.

j. Flat purchasers of the larger land filed complaints against GACPL before this Authority particularly Satish Shetty V/s. Guru Ashish Constructions Private Limited (Complaint no. CC006/1114). This Authority disposed of those complaints by permitting/ giving the liberty to the complainants to file fresh complaints after finalisation of the insolvency resolution process.

k. In view of fate of 672 tenants of MHADA and more than 1000 purchasers of the units in free sale component in the larger property is involved, the State Government has also constituted a single member committee comprising of Mr. Johnny Joseph in January 2020 to examine the resolution plan. The committee could not submit the report due to the present Covid-19 Pandemic and the extension is granted to it till September 2020 to submit the report.

L. The resolution plan submitted by the resolution professional is reserved for the orders.



3. Heard Mr. Abir Patel for the respondents and Mr. Jain for complainants. Mr. Patel highlights the points raised by the respondents in the application.
4. Mr. Abir submits that the Hon'ble Chairperson of this Authority has disposed of the complaints relating to the larger layout since NCLT has taken the cognizance of the matter. I find that, the Hon'ble Chairperson has specifically referred to section 14(1)(1) of the IBC which relates to the staying suits/ proceeding pending in any court or tribunal during moratorium period. Therefore, these orders will not come to the help of the respondents because the moratorium period of six months imposed by NCLT has already lapsed.
5. Mr. Abir submits that the matter is before Hon'ble High Court in the various suits relating to termination notice issued by MHADA and hence this complaint be put on hold till the decision of those suits. He brings to my notice the case of Chhavi Mehrotra Vs. Director General of Health Services, 1995 Supp (3) SCC 434, in this case, same petitioner filed the writ petitions before the Hon'ble Supreme Court and Hon'ble High Court for similar reliefs and therefore, the Hon'ble Supreme Court has held that the High Court ought not entertain the writ petition filed by such petitioner when Supreme Court is seized with the same matter. Mr. Abir relies on Kannuru Basava Punnarao v/s. Puttagunta Nageswara Rao, 1993 (3) A.P.L.J. 295, in this case, Andhra Pradesh High Court was dealing with the application for transfer of proceeding under section 24 of code of civil procedure and held that when the suits for similar reliefs were filed against the same defendant in more than one court, , in order to avoid conflicting decisions the matters were brought in one court. Mr. Abir then relies on the Indian Overseas Bank Madras vs Chemical Construction Company (1979) 4 SCC 358, in this case the Hon'ble Supreme Court has held that the



scope of section 25 of code of civil procedure is wider than section 24, these provisions relates to the transfer of the case. Mr. Abir then relies upon the Chitivalasa Jute Mills v/s. Jaypee Rewa Cement (transfer petition no. 16 of 2002) , it again relates to transfer of a case, Reliance is also placed on Sukanya Holdings (P) Ltd. V/s. Jayesh H. Pandya (2003) 5 S.C.C. 531, in this case the Hon'ble Supreme Court has held in the context of section 8 that the Arbitration and Conciliation Act 1996 that the entire agreement should be covered and not only a part of it for the purpose of section 8 of Arbitration and Conciliation Act 1996. In Indian overseas bank Madras Vs. Chemical construction co. (1979) 4 SCC 358 regarding transfer of a case the Supreme Court observes that the scope of section 25 relating to power of High Court is wider than the power of a district judge u/s. 24 of Code Civil Procedure. After giving thought to the ratios laid down in the above-mentioned cases, I find that they are not applicable to the facts of the case on hand and they do not help Mr. Abir to convince me that once the matter is moved before the Hon'ble High Court, this Authority should not exercise it jurisdiction for following reasons—

- A. The cases on which Mr. Abir has placed reliance are not applicable to the facts of the case.
- B. Plaintiffs of the civil suits filed before the Hon'ble High Court have mainly prayed for the reliefs against MHADA challenging the termination of the development agreement and issuance of various permissions particularly occupation/completion certificate of the sale component.
- C. The reliefs claimed by the complainants in this complaint are totally different than the reliefs claimed by the plaintiffs of those suits.
- D. Complainants or the allottees of other wings are not the parties in those suits.



E. Complainants allege that the respondents have violated or contravened various provisions of RERA and the Authority can entertain the complaints under section 31 of the RERA against the promoter when there are allegations regarding the contravention or violation of the provisions of RERA or the rules or regulations framed thereunder.

F. Authority is empowered to grant the reliefs claimed by complainant's u/s 34 to 38 of RERA.

G. The Authority has exclusive jurisdiction to deal with these matters and jurisdiction of civil court is expressly barred by section 79 of RERA.

H. Section 14(1)(1) of the IBC relates to the staying the suits/ proceedings pending in any court or tribunal during moratorium period. The orders asking complainants to file fresh complaints after close of NCLT proceeding will not come to the help of the respondents because the moratorium period imposed by NCLT has already lapsed.

Therefore, I find that the complaint is maintainable before this Authority and it is not necessary to keep the matter on sine die list. Hence the application is rejected.

Reply of respondents.

6. The respondents have pleaded not guilty. The respondents contend that they constructed four buildings namely wing nos. A, B, C & D. They have specified June 2023 as the proposed date of completion while registering the project. The permissions have been issued in the name of GACPL and GACPL has not been made party to the proceedings. GACPL has disputes with MHADA and that is why the occupation certificate is withheld by MHADA. The subject matter is already seized with Hon'ble Bombay High Court for deciding it in comprehensive manner. Therefore, there is no propriety in proceeding with this matter before this Authority. The respondents contend that though the date of possession is mentioned



as June 2018 in the agreement for sale, it is subject to the grace period of 6 to 9 months on account of various mitigating circumstances specified therein. They contend that they have already completed the building but because of the dispute of MHADA and GACPL the completion / occupation certificate has not been granted by MHADA. Hence, the respondents request to dismiss the complaint.

Maintainability of complaint.

7. Now I shall turn to the case on hand. I have already assigned reasons while rejecting respondents' application to hold that the complaint is maintainable before the Authority.

Claim u/s.18 of RERA.

8. The complainants contend that the respondents agreed to handover the possession of their flat on or before 30.06.2018. They have paid Rs. 2,86,28,710/- I do not find any substance in submission of the respondents' advocate that the date specified by the respondents for completion of the project at the time of its registration has not been crossed and therefore section 18 of RERA is not attracted because in the case of M/s. Neel Kamal Realtors Suburban Pvt, Ltd. V/s. Union of India it is mentioned by Hon'ble High Court that the court cannot re-write the agreements. Therefore, the date of possession specified by the parties in the agreement is a material date for computing the delay and not the date of completion unilaterally changed by the promoter while registering the project.

9. The respondents themselves have admitted that the agreed date of possession was 30.06.2018. It is also necessary to take the judicial note of the fact that the plans have been changed by the promoter in the year 2017. Therefore, there is reason to believe that the project is delayed only because the respondents have changed the plan which approved has been approved on 29.07.2017. The architect' report of 15.02.2020 clearly shows



that the application for occupation certificate was not made till that date. This shows that the building was incomplete. Even if it is taken for granted that the respondents could not obtain the occupation certificate / completion certificate from MHADA because of the dispute between MHADA and GACPL, a period of 6 months can be granted as per section 8 (b) of the MOFA for such reason. The agreement has been executed during MOFA regime and its section 8 (b) provides that, if the promoter is prevented by the causes beyond his control from completing the project in time then the period of possession can be extended by three months first, if the reasons still persist, then it can again be extended by next three months. Therefore, extension beyond 6 months cannot be given and hence, I find that, in any circumstance the respondents were liable to handover the possession of the flat on or before 31.12.2018. Admittedly, the respondents have failed to handover the possession of the flat till date. The allottee cannot enter into the flat without occupation certificate because it is not permissible under section 3(2) (i) of MOFA and it is an offence under Maharashtra Municipal Corporation Act also. Therefore, it is the statutory duty of the promoter under section 11(4)(b) of RERA to obtain the occupation certificate and he shall handover the possession of the flat to the allottee as per section 19(3) of RERA. The respondents have failed to discharge their statutory duty. As per the section 34 (f) of RERA, it is the duty of this Authority to get the provisions of the RERA and Rules and Regulations framed thereunder complied with. Therefore, I find that since the respondents have failed to handover the possession of the flat to the complainants even after six months from the agreed date, I find that, the respondents have made themselves liable to pay interest on the complainants' investment for the delayed possession under section 18 of RERA. The respondents have relied upon the case of M/s. Neel Kamal




Realtors Suburban Pvt, Ltd. V/s. Union of India wherein in para 126 of the Judgement Hon'ble High Court has observed that, in case, in-spite of making genuine efforts, a promoter fails to complete the project, then the concerned authority, adjudicators, forum and tribunals would certainly look into the genuine cases and mould the reliefs accordingly. The complainants' entitlement is to the simple interest at the prescribed rate from 01.01.2019 till getting the possession of the flat. The prescribed rate of interest is 2% above SBI's highest MCLR which is currently 7% p.a. The relief can be moulded to this extent only. Therefore, I proceed to pass the following order.

ORDER

- A. The respondents shall pay simple interest at the rate of 9% p.a. on the amount of consideration paid by the complainants prior to 01.01.2019, from 01.01.2019 and on the subsequent payments from their dates of payment till handing over the possession of the flat, car parking space with all the agreed amenities and with occupation / completion certificate as the case may be.
- B. The respondents shall also pay the complainants Rs. 20,000/- towards the cost of the complaint.
- C. The parties are at liberty to adjust their respective current claims and pay the balance, if any, to whom it is due.

Date: 28.09.2020.


(B. D. Kapadnis)
Member-II,
MahaRERA, Mumbai.