

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI

1. Complaint No. CC00600000079098

Mr. Raj Girish Karia

..... Complainant

Versus

M/s. RRD Heights and Builders Private Limited
Project Registration No. P51800005901

..... Respondent

Along with

2. Complaint No. CC006000000100604

Mr. Raj Girish Karia

..... Complainant

Versus

M/s. RRD Heights and Builders Private Limited
Project Registration No. P51800005901

..... Respondent

Along with

3. Complaint No. CC006000000100606

Mr. Raj Girish Karia

..... Complainant

Versus

M/s. RRD Heights and Builders Private Limited
Project Registration No. P51800005901

..... Respondent

Along with

4. Complaint No. CC006000000100607

Mr. Raj Girish Karia

..... Complainant

Versus

M/s. RRD Heights and Builders Private Limited
Project Registration No. P51800005901

..... Respondent

Along with

5. Complaint No. CC006000000100608

Mr. Raj Girish Karia

..... Complainant

Versus

M/s. RRD Heights and Builders Private Limited
Project Registration No. P51800005901

..... Respondent

Along with

6. Complaint No. CC006000000100609

Mr. Raj Girish Karia

..... Complainant

Versus

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M/s. RRD Heights and Builders Private Limited Respondent
Project Registration No. P51800005901

Along with

7. Complaint No. CC006000000100610

Mr. Raj Girish Karia Complainant

Versus

M/s. RRD Heights and Builders Private Limited Respondent
Project Registration No. P51800005901

Along with

8. Complaint No. CC006000000100612

Mr. Raj Girish Karia Complainant

Versus

M/s. RRD Heights and Builders Private Limited Respondent
Project Registration No. P51800005901

Along with

9. Complaint No. CC006000000100613

Mr. Raj Girish Karia Complainant

Versus

M/s. RRD Heights and Builders Private Limited Respondent
Project Registration No. P51800005901

Along with

10. Complaint No. CC006000000100614

Mr. Raj Girish Karia Complainant

Versus

M/s. RRD Heights and Builders Private Limited Respondent
Project Registration No. P51800005901

Along with

11. Complaint No. CC006000000100615

Mr. Raj Girish Karia Complainant

Versus

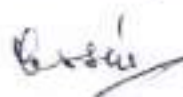
M/s. RRD Heights and Builders Private Limited Respondent
Project Registration No. P51800005901

Along with

12. Complaint No. CC006000000100616

Mr. Raj Girish Karia Complainant

Versus



Coram: Hon'ble Dr. Vijay Satbir Singh, Member – 1/MahaRERA

CA Mr. Nicky Milani appeared for the complainant in all the complaints.

Adv. Bhowmick Vaidya a/w Adv. Pranjali Joshi appeared for the respondent in all the complaints.

ORDER

[6th November, 2019]

1. The complainant above named claiming to be allottee has filed these 12 separate complaints seeking directions to the respondent promoter to execute registered agreement for sale with the complainant under section-13 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in accordance with the allotment letter issued by the respondent for 12 flats in the respondent's project known as "The Elite" bearing MahaRERA registration No. P51800005901 at Mulund (West), Mumbai. The complainant further prayed before the MahaRERA to direct the respondent to pay the amount of consideration in respect of these flats, which have been sold to a third party without the consent of the complainant.
2. These complainants were heard on several occasions and the same were heard finally today. During the hearings, both the parties appeared and made their respective written as well as the oral submissions.
3. It is the case of the complainant that the complainant along with other partners have formed a partnership firm under the name and style of M/s. R.R. Developers under a partnership deed dated 5th September, 2005 to carry on the business of inter-alia construction, acquisition, purchase, lease etc. of land and building and development, construction or erection of immovable

properties. According to the said partnership deed, the complainant was entitled to 35% share in the profits and losses of the said partnership firm. The said firm had undertaken the present project for re-development of plot bearing CTS No. 555 (part), situated at P.K. Road, intersection of Nahur Road and Jawahar Road, Mulund (West), Mumbai. Thereafter, the said partnership deed was re-constituted and the same was converted into a limited company. In the meantime, certain disputes arose between the complainant and the respondent and after negotiations the complainant relinquished his shareholding and exit from the said company. Accordingly, a Memorandum of Understanding (MoU) dated 15-03-2016 was executed between the complainant and the respondent, whereby it was agreed by the respondent to allot 12 flats in the project to the complainant and also to issue allotment letter to the complainant in respect of those 12 flats and also to execute the agreements for sale in favour of the complainant and/or the prospective buyers of the said flats allotted to the complainant. The said MoU further stated that in the event the sale of the said flats did not materialise within a period of 1 (one) year from the date of execution of the MoU, the complainant will be entitled to a lumpsum consideration of Rs. 22,50,00,000/- (Rupees Twenty Two Crores Fifty Lakhs) by way of full and final consideration for release and relinquishment of his shareholding in respondent.

4. The project is registered with the MahaRERA. However, till date the respondent has failed to issue the allotment letters/execute agreements for sale in respect of the said 12 flats in favour of the complainant. The respondent has only issued an allotment letter dated 9th May 2016 in favour of the complainant in respect of Flat No. 503 in Wing-A in the project and deceive and cheated the complainant. The complainant has stated that he is an allottee in this project as defined under section 2(d) of the RERA and therefore, he is entitled to seek reliefs under the provisions of RERA. Further, the allotment letter dated 9-05-2016 supersedes the MoU. The complainant has paid more

than 10% amount to the respondent and hence the complainant is entitled to seek relief under section-13 of the RERA. Hence, the present complaints have been filed.

5. The respondent on the other hand filed reply on record of MahaRERA and disputed the claim of the complainant and stated that he was promoter in the respondent's firm and not the allottee as defined under section 2(d) of the RERA and therefore, the MahaRERA has no jurisdiction to entertain these complaints. Further, prior to registration of this project with MahaRERA, he relinquished his rights in the respondent's project. The MoU was executed due to internal dispute between the promoters. The respondent further stated that the entire transaction with respect to 12 flats are governed by MoU dated 16-03-2016, wherein the parties had recorded their intention to sell the flats to any third party/parties and to distribute the sale proceeds. The complainant has not paid any consideration amount to the respondent towards the said flats and therefore, these complaints are beyond the purview of the MahaRERA. The respondent further clarified that the allotment letter has to be read along with the MoU dated 16-03-2016. Since there is no consideration amount paid by the complainant, no refund of amount is possible as sought by the complainant. The respondent therefore prayed for dismissal of these complaints.

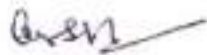
6. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In these complaints, the complainant is seeking preliminary relief under section-13 of the RERA. In this regard, the MahaRERA has perused the provision of section-13 of the RERA which read as under:

"13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a

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written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

7. The said provision specifically talks about the advance money to be paid. However, in the present case, no money /advance has been paid to the respondent and no payment receipts have been issued by the respondent. The complainant has stated that by relinquishing his rights in the partnership firm, the said flats have been allotted. The said contention of the complainant can not be accepted, as there is no basic criteria of section- 13 of the RERA has been fulfilled. Hence, the MahaRERA can not invoke the provision of section-13 of the RERA and grant any relief in favour of the complainant.
8. The MahaRERA further observed that it is the dispute between the partners interse arising out of the MoU executed between the complainant and the respondent. Such disputes cannot be entertained by the MahaRERA for want of any specific provision under RERA to try and entertain such civil disputes. The parties are at liberty to adopt the appropriate proceedings for such disputes. Moreover, the RERA has been enacted to protect the interest of the homebuyers, who have put their hard earned money in purchasing of their flats. However, in the present case, the complainant has not paid any money to the respondent, cannot treated as genuine home buyer. He was a partner in partnership firm who wants to have flats in view of relinquishment of his rights.
9. In the light of the above observations, the MahaRERA do not find any merits in these complaints. Hence all 12 complaints stand dismissed for want of merits.


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