

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**
Complaint No.CC006000000055575

- 1) Peter Almeida
2) Tangerine Almeida

.... Complainants

Versus

- 1.M/s. Shubh Enterprises
2. Uday Surve
3. Govind Somani
4. Rajendra Shah
5.SamudraDarshan CHS
6.SamudraDarshanGruhpravesh LLP
7. Catalyst Trusteeship Limited
8. ECL Finance Limited
Project Registration No. P51800014518

.... Respondents

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

Adv. Sushant Chavan a/w Adv. Sumeet Singh and
Mrs. Vidhya Shetty appeared for the complainants.

None appeared for the respondent Nos. 1 to 4.

Adv. Arun Panickar appeared for the respondent No. 5 Society.
Adv. Nilesh Gala appeared for the respondent No. 6 Promoter.
None appeared for the respondent No. 7 and 8.

ORDER

(5th November, 2019)

1. The complainants have filed this complaint seeking directions from the MahaRERA, to the respondent No 6 to allot the complainants a flat in the present project registered with MahaRERA. Further, the respondent No. 1 or the respondent No. 6 be directed to execute an agreement for sale with the

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complainants under section- 13 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in accordance with the allotment letter dated 11-06-2011, or alternatively refund them the amount paid to the respondents, with respect to the booking of the flat bearing No. 1103 admeasuring 1075 sq. ft. in wing "C" on the 11th floor in the respondents' project known as "Platinum Life" situated at Andheri (West), bearing MahaRERA registration No. P51800014518.

2. This matter was heard on several occasions and the same was heard finally on 23rd July 2019. During the hearings, the complainants, and the respondent No. 5 and 6 appeared through their respective advocates and made their submissions on record. However, none appeared for the respondent No. 1 to 4 and 7 and 8. During the hearings, the respondent No. 5 and 6 have filed application for deciding preliminary issue of the maintainability of this complaint on the ground mentioned therein.
3. It is the case of the complainants that, the respondent No. 5-Society is the owner of the land and assigned development rights of re-development of its land to respondent No.1 by executing Development Agreement dated 8/7/2005 and power of attorney dated 16/8/2005 for rehabilitation of its 132 members. On the basis of the said documents, the respondents had submitted proposal and obtained IOD from the competent authority namely, MCGM on 16/2/2006.
4. Thereafter, MHADA had issued an offer letter to the respondent No.5-Society for allotment of additional buildable area on payment of 14,11,77,030/- vide letter dated 11/3/2011. The respondent No.1 has started the construction work on site as well as the sale In the year 2011. Accordingly, the complainants booked the flat with the respondent for a total consideration amount of Rs. 64,50,000/-. The respondent No. 1 issued the allotment letter dated 11/6/2011 for the said booking. The complainants paid earnest amount of Rs. 6,17,550/-

The same amount paid by the complainants was utilised for obtaining various permissions / payment of land premium to MCGM & MHADA. The respondent No. 1 collected about Rs.10,00,00,000/- (Rupees ten crores only) from total 73 allottees at that time.

5. Since there was no progress on construction at site, the complainants approached respondent No.1 and vide letter dated 25/4/2012, the respondent No.1 has assured for completion of the project. However, the respondent No.1 did not start the construction work at site. Thereafter, it was learnt to the complainant that, the respondent No.1 and his partner were arrested by police on the basis of the complaints filed by the flat purchasers. On 14/3/2014, the respondent No.1 issued letter to the respondent No.5- Society showing their inability to complete the said project and requested the respondent No.5-Society to accept the offer of the respondent No.6. Thereafter, respondent No.5-Society terminated the development agreement and appointed respondent No.6 as a new developer for further implementation of the said redevelopment scheme. It shows that, these appointments of respondent No.6 were done on request of the respondent No.1 who had written letter to respondent No.5-Society asking it to appoint respondent No.6 as the new developer. It clearly shows that, this was all the co-ordinated efforts and fraud played by all the respondents herein to cancel the rights of the respondent No.1 and transfer it to respondent No.6.

6. The complainant further stated that, respondent No.6 was fully aware about the third party rights created by the respondent No.1 at the time of taking over of the said project. The respondent No.6 or the respondent No.5-Society issued a public notice before executing the subsequent development agreement dated 21/10/2014. There is a clause written in the said development agreement that, the respondent No. 6 can take the advantage of the money paid by respondent No.1 to obtain various permissions from the building authorities. It is submitted by the complainants that, the money

which was paid to the respondent No.1 by the complainants was utilised by the respondent No.1 to obtain various permissions, which is being utilised by the respondent No.6 now to complete the said project.

7. The complainants therefore stated that, due to this fact, there is a privity of contract between the complainants and respondent No.6 and hence it was liable to execute the registered agreement with the complainants. The complainants further stated that, the allotment letter issued by respondent No.1 in favour of the complainants is binding upon the respondent No.6. Section-4 of the MOFA protects the complainants from lack of registration of an agreement for sale and provides that an agreement can be used as evidence. The complainants further stated that the respondent No.5 could not terminate the registered development agreement without protecting the rights of the existing flat purchasers under MOFA. The complainants have relied upon the various judgements passed by the consumer court and prayed to allow the complaint filed against the respondent No.6.
8. The respondent No.5 has raised preliminary objection on maintainability of the present case on the grounds that, there is no privity of contract between the complainant and the respondent No. 6 and the allotment letter was issued by earlier developer whose rights had been terminated before the commencement of the RERA. The respondents have also disputed the transactions between the complainant and the respondent No. 1. The respondent further stated that, the present complaint is barred by limitation since the respondent No. 5 has terminated the development agreement entered with the respondent No.1 by issuing public notice and all rights & interests of the respondent No.1 were also terminated by the same in the year 2015 itself. The complainants have approached to MahaRERA after lapse of about 4 years and hence claim of the complainants is barred by law. Moreover, the respondents have also argued that, order passed by the Hon'ble High Court in '**Vaidehi Aakash**' case is applicable to the present case

since the termination of the development agreement entered into between the respondent No. 1 and Respondent No. 5-Society was done prior to the commencement of the RERA. Further, there is no privity of contract between the complainant and the respondent No.6-Promoter and hence the respondent requested for dismissal of this complaint.

9. The respondent No. 5 further argued that, as per the development agreement entered into between respondent No. 5 and respondent No. 1 provided that, respondent No. 1 was entitled for the sale if he has rehabilitated the members of the respondent No. 5-Society and admittedly, the respondent No. 1 has not rehabilitated any member of the society and therefore, he has not entitled to seek any sale component and due to this reason, the respondent No. 5-Society terminated the development agreement entered into respondent No. 5-society and Respondent No. 1.
10. The respondent No. 6 stated that the complaint filed by the complainants is liable to be dismissed on the preliminary ground that there is privity of contract between the complainant and the respondent No. 6. Further, the complainant No. 1 has not produced any authorisation letter on behalf of the complainant No. 2. Hence, he cannot represent the complainant No. 2 before MahaRERA. The respondent further stated that the respondent No. 1 had been assigned the development rights vide development agreement dated 8-07-2005 by the respondent No. 5 society. As per clause No. 2 of the said agreement the respondent No. 1 was liable to rehabilitate the members of the respondent No. 5 society within time period mentioned in the said development agreement. However, though the development rights were given to the respondent No. 1, till the year 2011 when the complainants have booked the said flat there was no progress on site. Therefore, the respondent No. 5 society has terminated the said development agreement with the respondent No. 5 society and invited tenders from new developer. Thereafter, the appointment of the respondent was done in the special

general body meeting convened on 3-08-2014. Pursuant thereto, a cancellation deed was also executed between the respondent No. 1 and the respondent No. 5 society. Accordingly, by process of tender the respondent No. 6 has been appointed as new developer by inviting applications for dismissal of complaint stating that, they do not have any privity of contract with the complainants.

11. The respondents argued that, the money paid by the complainants to the respondent No. 1 was some sort of financial arrangement and there is no agreement for sale executed between them. They further submitted that, if the complainants have any remedy, then it is only against the respondent Nos. 1 to 4. The respondent No.5 terminated the development agreement of the respondent No.1 in the year 2014 and then vide a transparent tender process, appointed the respondent No. 6 to develop the project. The respondent No. 6 had sent out a public notice on 30th April 2015, stating that, they were roped in as the new developers in the said project. The respondent Nos. 5 & 6 further argued that, the complainants did not take any action on the public notice for around 3 years until filing of this complaint in the month of July 2018. Hence, the claim of the complainants is barred by the law of limitation. Hence, they prayed for dismissal of the complaint on the preliminary ground of maintainability with exemplary cost.
12. The MahaRERA has examined the arguments advanced by all the parties as well as the record. The respondent No. 5 and 6 have disputed this complaint on the ground of maintainability under Rule 6(2)(d) of the Maharashtra Real Estate (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeals) Rules, 2017. In this regard, the MahaRERA is of the view that the respondent No. 6 has registered this project under the provisions of the RERA. The complainants are claiming to the allottees in the ongoing project which is registered with MahaRERA under Section-3 of the RERA. The jurisdiction of this Authority on such project continues till the

project gets completed fully and obligation of the promoter regarding the project get fully discharged. The MahaRERA, therefore, has jurisdiction to hear the complainants' grievances concerning the project irrespective of other issues concerning the other merits of the present complaint.

13. The respondent No. 5 and 6 have also raised an issue that the present complaint is barred by the law of limitation. In the present case, the respondent No. 1, the erstwhile developer had undertaken the re-development project of respondent No. 5 society viz., Samudra Darshan CHS Ltd. The respondent No. 2 to 4 are the partners of the respondent No. 1 firm. The respondent No. 5 is the society undertaken the re-development project for rehabilitation of its 132 existing members. The respondent No. 6 is the new developer, appointed by the respondent No. 5 society after terminating the development agreement with the respondent No. 1 and now they are implementing the said project on site. The respondent No. 7 and 8 are the financial institutions. The complainants are claiming to be the allottees in the present project registered with MahaRERA by the respondent No. 6 promoter.
14. With regard to the limitation point raised by the respondents, the complainants stated that, though there is no privity of contract between the respondent No.6 and the complainants, the money paid by the complainants to the respondent No.1 was used for huge payment of premium to various government and semi-government authorities. The complainants' money has been utilised impliedly for construction purpose. The complainants stated that after commencement of the RERA, they have immediately filed complaint with RERA, and therefore, their complaint is not barred by law of limitation.
15. In the present case, the complainants are seeking execution of the registered agreement for sale as provided under Section-13 of the RERA by

the respondent No. 6. The complainants further sought allotment of the flat of similar size and value in the said project from the respondent No. 6, as agreed by the respondent No.1-erstwhile developer as per the allotment letter dated 11/6/2011 by the respondent No.1. The complainants have stated that they have booked the said flat for a total consideration amount of Rs 64,50,000/- out of which they have paid 6,17,550/-. The respondent No. 5 and 6 have contested the matter on the ground of limitation and contractual liability of the respondent No. 5 and 6.

16. The respondent No. 5 and 6 have contended that the termination of the respondent No.1 has been done in the year 2015 by the respondent No. 5 by giving a public notice in the local newspaper and the complainants have raised their claim after lapse of 4 years. In this regard the MahaRERA is of the view that, the complainants are claiming relief under Section-13 and 18 of the RERA and they have shown cause of action for filing of this complaint has been arose after the commencement of the RERA i.e. 1st May, 2017, when the respondent No. 6 has registered the said project with MahaRERA. Considering the cause of action mentioned by the complainants in the complaint, the MahaRERA is of the view that, there is no substance in the contention raised by the respondent No. 5 and 6 regarding the limitation point that cause of action was arose for the complainants in the year 2015. Hence, the said contentions of the respondent No. 5 and 6 stands rejected.
17. With regard to other issues raised by the complainants for possession of the similar area flat in the respondents' project and the execution of the registered agreement for sale, the MahaRERA is of the view that, there is an allotment letter issued by the erstwhile developer for allotment of a flat bearing No. 1103 admeasuring 1075 sq. ft. built-up area in the respondents' project. However, there is no registered agreement for sale executed between the complainants and the respondent No. 1. The respondent No. 1 by obtaining registered development rights from the respondent No. 5-

Society had undertaken the said project and invited the home buyers to book their flats in the project. However, the respondent No.1 could not carry out further re-development work in the said project and therefore, requested the respondent No. 5 – Society to assign the said project to the respondent No. 6 and accordingly by terminating the registered development agreement with the respondent No. 1, the respondent No. 5-Society has appointed the respondent No.6 as new developer to complete the said project.

18. The complainants have contended that, since the project is transferred from the respondent No.1 to respondent No. 6, all liabilities of the respondent no.1 got transferred to the respondent No.6 as the respondent No. 1, 5 and 6 acted in collusion with each other to transfer the development rights. Further, all the money invested by the complainants used by the respondent No.1 in getting the permissions. In this regard, the MahaRERA is of the view that, the present complaint is maintainable and the complainants are the allottees in the MahaRERA registered project. The judgment passed in case of Vaidehi Akash is not applicable since it is given prior to RERA coming into force and the facts of this case are different. Further the respondent No. 1 has taken money from the complainants and same is utilized for the project. Further the project of the respondent No. 1 is taken over by the respondent No. 6 promoter and hence all liabilities of the allottees vis-à-vis to the erstwhile developer also gets transferred to the subsequent promoter. The society cannot unilaterally take a decision to change the promoter without obtaining the consent of the allottees and also execute development agreement with another promoter behind their back. Further the sale component is registered with MahaRERA, it is mandatory to protect the interest of the allottees who have put their hard earned money for booking of their flats in the respondent's project.

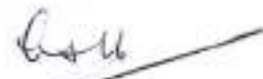
19. The MahaRERA has further observed that the present project is the re-development project undertaken by the respondent No. 5-Society, which is

lessee of the land under the said project and principle owner, namely MHADA has leased out the said property to the respondent No.5-Society vide lease agreement dated 15/1/1997 for the period of 99 years and the respondent No.5-Society is holding the lease hold rights at par with the owners and assigned development rights to the respondent No.1 and as per the said development rights respondent No.1 and was liable to rehabilitate 132 members of the respondent No.5-Society and remaining FSI was to be used by the respondent No. 1 as a sale component. By taking development rights from respondent No. 5-Society the respondent No. 1 had undertaken this project and invited the home buyers to book their flats. After transfer of development rights in favour of respondent No. 6, by the society, the commitment of the erstwhile promoter (respondent No.1) will have to be honoured by the developer & society.

20. In the light of these facts, the MahaRERA directs the respondents to execute registered agreement for sale with the complainants in accordance with the allotment letter issued by the respondent No. 1.
21. With these directions the complaint as well as the applications filed by respondent No.5 and 6 raising preliminary ground of jurisdiction and maintainability of the present complaint stands disposed of.

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महा-रेरा



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