

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

Virtual Hearing held through video conference as per  
MahaRERA Circular No.: 27/2020

**COMPLAINT NO: CC006000000057788**

Charan Trimbak Patil

...Complainant

Vs

Sheth Developers Pvt. Ltd., Jeetendra Sheth,  
Vallabh Sheth, Ashwin Sheth, Lothika Properties LLP,  
Ashwin Sheth, Chintan Ashwin Sheth &  
Maulik Ashwin Sheth

...Respondent Nos. 1 to 8

**MahaRERA Project Registration No. P51800017754**

**Coram: Shri. Ajoy Mehta, Chairperson, MahaRERA**  
Advocate Ambareen Khatri for the Complainant  
Advocate Pragathi Malle for the Respondent No.5

**Order**

September 27, 2021

1. The Respondent No.1 is a Developer / Builder and Respondent No. 4 is the Director of the Respondent No.1 Company. Respondent No. 2 & 3 are no more the Directors of the Respondent No.1 Company as they had resigned from the Directorship of the Respondent No.1 Company on 11.01.2019 and that this event is before the filing date of the present complaint date i.e. 24.01.2019 [*ref. reply pf Respondent No.1 & 4 dated 22.08.2019*].
2. Further, Respondent No. 5 is the Promoter/Developer within the meaning of Section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 and has registered project "MONTANA PHASE - 3" under section 5 of the Real Estate (Regulation and Development) Act, 2016 ("**said Act / RERA**") bearing **MAHARERA Registration No. P51800017754** (hereinafter referred to as the

*Ajoy Mehta*

“said Project”). The Respondent Nos. 6, 7 & 8 are the Partners of the Respondent No. 5 LLP.

3. The Complainant seeks the following reliefs:

*“a) Respondents be ordered and directed to comply with requisitions of Letter of Allotment dated 7<sup>th</sup> September, 2010 and enter into regular flat sale agreement.*

*b) To construct and provide to the complainant a residential flat adm. 1,466 square feet (carpet area and a car parking area) in the building constructed on the said property complete in all respect.*

*c) In alternative to prayer clause (a) and (b) above and in the event if this Hon’ble Court comes to the conclusion that the respondents are unable to provide residential flat as agreed then in that event the respondents be ordered jointly and severally to pay to the complainant a sum equivalent to market value of the subject flat to enable complainant to purchase another similar flat in the vicinity of the suit flat.*

*d) costs to be provided.”*

4. On 07.07.2021, the following roznama was passed by this Authority:

*“Both parties present.*

*The contention of the Complainant is that out of total consideration of INR -1,45,70,000, he has paid around 72 lakhs and a booking was made on September 7, 2010.*

*He was to receive intimation to make further payments, which he never received.*

*The Complainant now says that he is ready to pay the remaining amount but there is no response and he desires directions to the Respondent to execute the agreement for sale and ensure that he is handed over his apartment together with parking.*

*He further states that the letter of allotment was given to him by Respondent (1) however, subsequently, the project was transferred to Respondent (5).*

*The Complainant also confirms that the project “Splendour” in which he had a letter of allotment is not registered with MahaRERA.*

*He states that the new project “Montana” started by Respondents (5) to Respondents (8) are the same people as Respondent (1) and that liability to execute the agreement for sale should be passed on the new entity that has stepped in.*

*Learned counsel for the Respondent states that allotment letter was given by Respondent (1) and the project for which the allotment was given was not registered with MahaRERA.*

*She further states that even the allotment letter made it clear that no damages would be sought in the event of delays arising due to force majeure, regulatory issues or other events beyond the control of the promoter.*

*She contends that there were forest issues that came up which forced the promoter to cancel the allotment and the Complainant was offered the refund together with interest.*

*The offer was made on December 1, 2011, however in spite of repeated reminders the Complainant never came forward to execute the cancellation and collect his cheque.*

*She contends that the Complainant’s contention is not maintainable as the promoter for the new project registered with MahaRERA does not have a contract with the present Complainant.*

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*She desires cost in view of the Complaint being filed after a long delay. Both parties are at liberty to submit written say by July 14, 2021, subsequent to which the matter will be reserved for Orders."*

5. Before going into the merits of the complaint, it is pertinent to note that the Respondents have filed an application dated 06.07.2021 [*Respondent No. not specified, hence presume to have been filed on behalf of all Respondent Nos. 1 to 8*] objecting the maintainability of the complaint to be heard by this Authority having proper forum as per section 21 of the said Act. In this regard it is important to note that the Respondents have raised this issue of maintainability on 06.07.2021 which is at the very last moment when the last hearing in the matter was scheduled i.e. 07.07.2021. Further on the date of hearing too the Respondents did not raise the objection of maintainability and thus, this issue is not dealt with by this Authority. This Authority has heard the captioned complaint at length and have perused all the pleadings and in the interest of justice shall choose not to pass orders on this issue of maintainability which have been raised by the Respondents at the very last moment. This Authority expresses displeasure on this behaviour of the Respondents as it appears that they have chosen to raise the issue of maintainability on 06.07.2021 when the case is almost on its last leg. Further the Respondents choose to keep silent on the issue of maintainability when the case was heard. It will thus, not be out of place to infer that the Respondents have deliberately chosen to insidiously slip in a door which they can then conveniently open tomorrow to create further litigation. This behaviour of first consuming time of this Authority on hearings on merits and then to leave an application silently of which they can take advantage of at a later date needs to be discouraged. This Authority frowns upon this behaviour and in future would be constrained to pass orders imposing exemplary costs.
6. Moving further, this Authority has heard the complaint fully, with regard to the merits. The present complaint basically has two main issues. Firstly, that the Complainant herein is relying on the letter of allotment dated 07.09.2010

whereby he had booked an apartment of approx. 1466 sq. ft. carpet area excluding terrace, balcony, flower bed and dry area on the 12<sup>th</sup> floor, together with 1 car parking space in the building known as 'SPLENDOUR' to be constructed by Respondent No.1. The event of this booking is dated September 2010 much before RERA came into force. Thus, the Respondent No.1 and the Complainant are completely bound by the terms of the letter of allotment dated 07.09.2010 and this Authority cannot interfere with the same as the Project mentioned in this letter of allotment is not registered with MahaRERA as on date. It is pertinent to note in this context that Respondent No. 1 had to abandon the construction of the building known as 'SPLENDOUR' on account of the plot of land upon which the aforesaid building was to be developed was reserved as forest land in or around the year 2005 which was challenged by Western Rolling Mills Pvt. Ltd. (*owner of the plot*) before the Hon'ble Supreme Court and the matter came to be decided on 30.01.2014 after which the development of the plot started afresh on a totally new layout plan put forth by the Respondent No.5 herein. The Complainant has not denied this fact of reserve forest land issue in his rejoinder and has acknowledged the same by stating that the said issue does not alter the relationship of him and the Respondent No.1 qua the development of the aforesaid building whereby he was an Allottee and the Respondent No.1, the Promoter.

7. Secondly that the Respondent No. 5 have registered the captioned Project namely 'MONTANA PHASE - 3' vide an application dated 01.09.2018. The said Project consists of a building name GIONA and the proposed date of completion of the said building is 31.12.2023 and that of the said Project is 30.12.2024. It is also pertinent to note that the said Project is registered as a 'NEW PROJECT' with MahaRERA and not as an ON-GOING PROJECT which means that the captioned Project had not commenced before RERA.
8. This Authority is anxious to a few facts submitted by the Complainant:

*Raj Mehta*

- a. That he has paid Rs.72,09,400/- towards the booking of an apartment in the building known as 'SPLENDOUR' which till date is lying with the Respondent No.1; and
  - b. That he has waited for so many years (*from September 2010 to September 2018*) without taking any legal recourse for the amounts paid by him to Respondent No.1. without any assurance from Respondent No.1 to adjust the amounts paid by him against any other Projects.
9. In view of the above, it is clear that the Complainant has raised a complaint for a Project which is not registered with MahaRERA as on the date of filing of the complaint. Thus, the grievance of the Complainant cannot be raised before RERA as the Complainant has no locus standii in the said Project as he is not an Allottee or home buyer in the said Project within the meaning of the said Act. In this regard section 2 (d) read with section 31 of the said Act, section 3 and section 4 are noteworthy. The relevant portion is reproduced hereinbelow for ready reference:

***" .... section 2 (d) - allottee:***

*in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;*

....

***Section 3 - Prior registration of real estate project with Real Estate Regulatory Authority:***

*(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

***Provided*** *that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

... ..

***Section 4 - Application for registration of real estate projects:***

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*(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.*

.....

***Section 31 - Filing of complaints with the Authority or the adjudicating officer"***

*(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.*

...."


10. From the above sections it is clear that there are two kinds of Project which can be registered with MahaRERA, one is On-going Project and the second one is New Project. On-going Project would mean that the Project where an advertisement, marketing, booking, sale or offer for sale, or invitation to purchase has been made in respect of any plot, apartment or building in the Project and the Project was not completed before 01.05.2017, the date of commencement of the said Act. However, New Project on the other hand would mean the Project where first advertisement, marketing, booking, sale or offer for sale, or invitation to purchase has been made in respect of any plot, apartment or building in the Project is made or proposed to be made on or after 01.05.2017 and this would also include Projects which had commenced and were not completed before 01.05.2017 but no advertisement, marketing, booking, sale or offer for sale, or invitation to purchase had been made in respect of any plot, apartment or building in the Project before 01.05.2017. Thus, it is pertinent to note that the requirement of registration under section 3 of the said Act gets triggered not with the start of construction or development of the Project but when the Promoter proposes to advertise, market, book, sell or offer for sale or invite persons to purchase any unit in the Project, which may be at any time before or during construction / development of the Project.
  
11. In the present case the letter of allotment is way back in September 2010 but the same does not evidently pertain to the said captioned Project of Respondent No.5

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herein. Thus, the Complainant is not a home buyer or Allotee for the said Project and thus has no locus to file any complaint before RERA for the said Project.

**FINAL ORDER**

Thus, the complaint is dismissed as the Complainant has no locus standii in the said Project registered with MahaRERA bearing MAHARERA **Registration No. P51800017754**. No order as to cost.

  
(Ajay Mehta)  
**Chairperson, MahaRERA**