

BEFORE THE
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

COMPLAINT NO. CC006000000089995

Samit Raut and Seema Raut ... Complainants

Versus

Incline Realty Private Limited ... Respondent
MahaRERA Regn. No. P51800003582

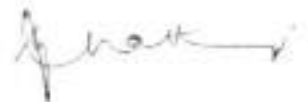
Coram: Shri. Gautam Chatterjee, Chairperson, MahaRERA

Complainants were themselves present a/w Ms. Shweta Merchant, Adv. (i/b. Solicis Lex).
Respondent was represented by Ms. Richa Singh, Adv.

Order

January 30, 2020

1. The Complainants have stated that they had booked an apartment bearing No. 4005-C in the Respondent's project 'Sky City Towers A to D' situated at Borivali, Mumbai through an allotment letter in the year 2010. The Complainants alleged that at the time of booking the said apartment, the Respondent had promised that possession of the said apartment will be handed over by December, 2021 but the Respondent has now put the revised completion date for the said project as December, 2022 in the MahaRERA registration webpage. Thereafter, the Complainants filed Complaint bearing no. CC0060000000023534 with this Authority, praying that the Respondent be directed to execute and register the agreement for sale for the said apartment with the timeline of December, 2021 for handing over possession of the said apartment.
2. It was observed that the Respondent has put December, 2022 as the revised proposed date of completion in their MahaRERA registration, which is an unreasonable time period for completion of the project. As per the provisions of the Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate



Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 the revised date of possession for an ongoing project has to be commensurate with the extent of balance development and accordingly, vide Order dated June 24, 2019 passed in Complaint bearing no.: CC00600000000023534, directed the parties to execute and register agreement for sale as per the provisions of section 13 of the Real Estate (Regulation and Development) Act 2016 and the rules and regulations made thereunder within 30 days from the date of this Order with a possession date on or before the period of June 30, 2022.

3. The Complainants have filed the present Complaint stating that as per the original allotment letter dated February 10, 2016, the Respondent had promised to handover possession by December 2020 and latest by December 2021, and since the Respondent is not willing to execute and register the agreement for sale with the said dates of handing over possession, they have prayed that the Respondent be directed to refund the amounts paid with interest and compensation.
4. The learned counsel for the Respondent stated that they are willing to execute and register the agreement for sale with the Complainants by advancing the timeline to June, 2022 for handing over possession of the said apartment as directed vide Order dated CC00600000000023534. Further, it was submitted that the present Complaint is not maintainable as it has been filed on the same grounds despite of there being an Order passed directing the parties to execute and register the agreement for sale with the Complainants by advancing the timeline to June, 2022. Further, she submitted that instead of complying with the directions passed in the previous complaint, the Complainant and filed the present complaint and therefore the complaint ought to be dismissed. She also submitted that as per the said allotment letter, the completion date for the premises of the Complainant was December, 2021 and the time period of obtaining the occupancy certificate and period of handing over possession were not mentioned in the said allotment letter. She submitted that in the agreements executed with the other allottees of the said project, the Respondent has added a further period of nine months in the date of possession, which is inclusive of six months for obtaining the occupancy certificate and three months for handing over possession.



5. The Respondent has made the following submissions via Reply dated September 11, 2019; which is taken on record and annexed as '**Annexure A**' to this Order.
6. The Complainants have made the following submissions via affidavit in rejoinder dated September 25, 2019; which is taken on record and annexed as '**Annexure B**' to this Order.
7. In the previous Complaint, the date of handing over possession was ascertained by applying the provisions of Rule 4 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 and such does not warrant any change.
8. In view of the above facts, the present Complaint is not maintainable as the grievances of the Complainants have already been taken care of in the directions passed in the previous Complaint.
9. Consequently, the matter is hereby disposed of.


(Gautam Chatterjee)
Chairperson, MahaRERA

Annexure A

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...

1. *The Respondent denies all the allegations/ claims/ averments made by the Complainant in the captioned Complaint including those which are contrary to or inconsistent with whatever is stated hereinunder.*
2. *The Respondent submits that none of the claims/ allegations/ averments made by the Complainant in the captioned Complaint should be deemed to be admitted by the Respondent unless specifically admitted hereinunder. Nothing should be deemed to be admitted for want of specific traverse.*
10. *At the outset it is submitted that the Complaint ought to be dismissed as the Complainant has mischievously filed the second complaint on the same grounds despite of there being an order passed by this Hon'ble Authority directing the Complainant to execute and register the Agreement for Sale with the possession date as June, 2022.*
11. *The Complainant has failed to show any violation of the provision of the Real Estate (Regulation and Development) Act, 2016 and Rules framed thereunder and therefore the Complaint is not maintainable under section 31 of the Real Estate (Regulation and Development) Act, 2016 and thus is required to be dismissed with cost.*
12. *The Complainant had filed Complaint No. CC006000000023534 of 2018 ("previous Complaint") with similar allegations as made in the captioned Complaint. By Order dated 9th May, 2018, after appreciation of all the facts, this Hon'ble Authority directed the parties to execute and register the Agreement for Sale ("AFS") with the possession date as June, 2022. Hereto annexed and marked as Exhibit "A" is copy of Order dated 9th May, 2018.*
13. *Thereafter, instead of complying with the Order dated 9th May, 2018 to execute and register the AFS as directed by this Hon'ble Authority the Complainant filed an Appeal challenging the validity and legality of the Order dated 9th May, 2018 on the ground that they had not accorded their consent for the revised possession date as mentioned in the said Order dated 9th May, 2018, passed by this Hon'ble Authority.*

14. Subsequently, after hearing the Appeal on 22nd January, 2019 and 24th January, 2019, the Hon'ble Bench by Order dated 24th January, 2019 recorded that the Complainant seek permission to withdraw the Appeal as the Complainant desires to file an application under section 39 of RERA before the MahaRERA Authority, for rectification of order dated 24th January, 2019. Hereto annexed and marked as **Exhibit "B"** is copy of order dated 24th January, 2019.
15. Consequently, the Complainant on 27th February 2019 filed an Application under section 39 of the RERA Act for rectification of order dated 9th May, 2018 stating that the Complainant had not consented to the revised timeline for handing over possession and therefore sought rectification in the Order dated 9th May, 2018. In view of the same, the Hon'ble Bench by Order dated 24th June, 2019 modified the Order dated 9th May, 2018 and directed the parties to execute and register the AFS as per the provisions of section 13 of the RERA, Act 2016 and Rules and Regulations made thereunder within 30 days of the date of this order with possession date on or before the period of June 30, 2022 (said "Order"). Hereto annexed and marked as **Exhibit "C"** is copy of Rectification Order dated 24th June, 2019.
16. The Respondent states that the Complainant failed to comply with the said Order inspite of several reminders from the Respondent to the Complainant to come forward to execute and register the said AFS as per the Order dated 24th June 2019 and in making all outstanding payments till date, and instead filed the present Complaint with the same allegations to avoid making further payments.
17. In view thereof it is submitted that the present Complaint is not maintainable and ought to be dismissed at the outset. The Complaint is liable to be dismissed as no fresh cause of action as on date is accrued to the Complainant to file the aforesaid Complaint.
18. The Respondent states the true and correct facts of the matter are hereinunder:
- (i) The Respondent is the owner of the piece and parcel of land admeasuring 1,01,153.10 square meters. Respondent is developing four towers being Tower A to D called as Sky City on portion of land admeasuring 3,619 square meters (hereinafter referred as "**the Real Estate Project**"). The Respondent has registered the said Real Estate Project as per Real Estate (Regulation and Development) Act, 2016 ("RERA Act") read with the provisions of the Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interest

and disclosures on website) Rules, 2017 ("RERA Rules") before the Maharashtra Real Estate Regulatory Authority ("Authority"), and has been granted certificate bearing no. P51800003582. The Complainant had booked Flat No. 4005, in Tower C on 30.05.2015 (hereinafter referred to as "**the said Premises**") in the said Real Estate Project. The Allotment Letter was executed in favour of the Complainant on 10.02.2016 which was duly signed by the Complainant.

- (ii) As per the Allotment Letter, the completion date for the Premises of the Complainant was December, 2021. The time period for obtaining Occupation Certificate and period for handing over possession were not mentioned in the Allotment letter. However, in all MOFA Agreement signed with all allottees as on date, further period of 9 months have been added as possession date which is inclusive of six months for obtaining Occupation Certificate and further three months for handing over possession. While registering the said Real Estate Project the Respondent revised and included the time period for obtaining Occupation Certificate for the said Real Estate Project as December, 2022 only because the FAQ published by the RERA Authority mandatorily prescribed completion date as the Occupation date. The Respondent therefore says that the Respondent had not extended the date as promised to the Complainant. The Complainant has not executed MOFA Agreement despite of reminder in this regard on several occasions. If the Complainant would have executed MOFA Agreement the possession date would have been almost same as the date now mentioned on the RERA Website. Copy of the MOFA Agreement executed with one of the allottee of the said Real Estate Project is annexed hereto and marked as **Exhibit "D"**.
- (iii) The Respondent has been always willing and ready to execute and register the said AFS with the Complainant, but to avoid payment as per the schedule of payment agreed by the Complainant and for reasons unknown, the Complainant did not execute the said AFS even as directed by this Hon'ble Authority.
- (iv) Respondent submits that the construction of the said buildings is going on in full swing. Casting of 58 Slab out of total 62 slabs for Tower C is already completed, and the Respondent is aiming to complete the construction of the said Premises before the completion date mentioned on the RERA Website. The Respondent, therefore submits that there is no violation and/or contravention of the provisions of the RERA Act on the part of the Respondent and therefore the Complainant is not entitled to any relief.

Copy of the photograph evidencing the status of the construction of the Tower C is enclosed hereto and marked as Exhibit "E".

19. The Respondent now deal with the complaint paragraph wise:

1. *Contents of the Paragraph No. 1 is a matter of record and does not require comments.*
2. *Contents of Paragraph Nos. 2 to 8 are denied. The Respondent denies that the time limit for completion of the project was 5 years i.e. December, 2020. The completion date as per the Allotment Letter executed with the Complainant provides for completion date as December 2021. The Complainant has not executed the AFS under the provisions of MOFA despite of calling upon him to do so. The MOFA Agreement executed with all the other allottees further provides for 6 months period for obtaining Occupation Certificate and another three months period for handing over possession. As the RERA Act mandated date of completion to coincide with the Occupation date, to match the requirement under RERA, the Completion date was revised to December, 2022. The Respondent submits that as per the Order passed by this Hon'ble Authority, the Respondent is ready and willing to execute the AFS as per the provisions of the RERA Act with possession date June, 2022. The Respondent submits that the construction work at site is progressing at very good speed. Respondent has already casted 58th slab out of total 62 slabs. Further the payment schedule is in accordance with the RERA Act and Rules framed thereunder and as per the Model Agreement for Sale. The Respondent states that Respondent has not misguided and/or given false assurance and/or misrepresented the Complainant. The Complainant are not entitled to invoke section 12 of the RERA Act, 2016 as no false statement has been made by the Respondent in the advertisement or prospectus.*
3. *The contents of the Paragraph Nos. 9 to 16 are denied. The Respondent denies that the Complainant is entitled to cancel the Allotment of the said Premises and refund of all amount paid along with interest. It is submitted that as per Order dated 24th June, 2019, passed by this Hon'ble Authority the Complainant has been directed to execute and register the AFS with the possession date June, 2022. The Complainant cannot therefore once again agitate the same issues which already has been adjudicated by this Authority. The Respondents are ready and willing to execute the AFS with revised date as directed by this Hon'ble Authority. The Complainant have instead of complying with the said Order filed the captioned Complaint which is not maintainable in law or*

otherwise. The Respondent therefore have not been able to make out a case of violation of 12 of the RERA Act. Further as per section 18 of the RERA Act, Allottee is only entitled to seek refund of the amounts paid by him to the Promoter if the Promoter has failed to complete the premises and/or handover the premises. However in the present case there is no violation on the part of the Respondent. Respondent is ready and willing to execute and register the AFS in terms of the order dated 24th June, 2019 passed by this Hon'ble Authority.

4. The contents of Paragraph Nos. 17 to 23 are denied. The Complainant denies the form in which the Complaint is filed, and the nature of reliefs sought herein. The Respondent denies that the Complainant is entitled to any ad-interim Reliefs. The Respondent has not committed any act which are in violation and/or in contravention of the provision of section 4 of the RERA Act. The Respondent have complied with section 4(1), 4(2) (1)(d) of the RERA Act. The Respondent has maintained separate account as required under the RERA Act. The Respondent denies that the date of possession has been changed by the Respondent. On the contrary it is submitted that the Complainant has not complied with the Order dated 24th June, 2019 instead filed another Complaint for the same cause of action which requires to be dismissed with cost. Further the Respondents have not committed any violation of section 12 and 18 of the RERA Act and in view thereof the relief sought in the present complaint for withdrawal of Complainant from the said project is not maintainable and further he is not entitled for refund of his entire consideration or any compensation.

20. The Respondent states and submit that in view of the above the captioned Complaint be dismissed with a direction against the Complainant to execute and register the Agreement for Sale as uploaded by the Respondent on the RERA Website, as per the provisions of the RERA Act and Rules framed thereunder with the possession date as directed by this Hon'ble Authority and to make payment of all outstanding instalment with interest being sum of Rs. 85,73,596 (Rupees Eighty Five Lakhs Seventy Three Thousand Five Hundred and Ninety Six Only) as on 10th September, 2019.

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Annexure B

2. *At the outset I deny each and every allegation made by the Respondent in the Affidavit in Reply so filed. I repeat and reiterate the contents of the Complaint so filed by me as if the same form a part and parcel of the present affidavit.*

CONTENTION OF RESPONDENT THAT COMPLAINT IS NOT MAINTAINABLE.

3. *I say and submit that the first and foremost objection raised by the Respondent is that the present complaint is not maintainable as an earlier complaint bearing no. 23534 of 2018 was filed by the Complainant and therefore, the cause of action is the same. I say that I strongly oppose the aforesaid contention of the Respondent.*
4. *I say and submit that the Complainants were issued an Allotment Letter dated 10th February, 2016 in respect of flat no. 4005 in Tower 'C' at Sky City Project at Borivali East. As per Clause (1) of the said Allotment Letter, it was expressly assured by the Respondent that the completion date would be December, 2020 at latest December, 2021. Based on this assurance, the Complainants booked the said flat and paid a sum of Rs.1,35,73,767/- out of the total consideration of Rs.3,11,50,500/- being approximately 44% of the total consideration.*
5. *I say and submit that despite of making the aforesaid payment being more than 20% of the total consideration, the Respondents failed to enter into a Registered Agreement for Sale.*
6. *After the advent of RERA, the Complainants received an email on 30th June, 2017 demanding a further sum of Rs.11,84,902/- whereas as per Allotment Letter, the Complainants were required to pay a sum of Rs.2,10,885/-.*
7. *It was further informed by the Respondent that as the project was now registered with RERA, the agreement for sale would have to be executed as per the Rules of RERA and a draft agreement was circulated to the Complainants. On perusal of the said agreement it was found that the date of possession was extended by the Respondent to December, 2022. I say and submit that the said date was unacceptable to me and my wife and hence vide email dated 24th January, 2018 we informed the Respondents that we did not accept the revised date of possession and*

hence we sought refund of the amounts paid by us with 9% interest as agreed under the Allotment Letter. As the Respondent refused to comply with the terms of the Allotment Letter which in itself contained all the essential terms of the agreement for sale, the complainants were forced to approach this Hon'ble Authority.

- 8. I say and submit that the Complainants filed a Complaint bearing No.CC006000000023534 before the Hon'ble MahaRERA for reliefs under Section 12 of the Act for execution of an Agreement for Sale in favour of the Complainants bearing the date of possession as agreed under the Allotment Letter i.e. December, 2020 or December, 2021.*
- 9. I say and submit that the Respondent appeared before the Hon'ble MahaRERA and submitted/proposed that the Respondents are willing to execute and registered the agreement for sale with the Complainants by advancing their timeline to complete the project till September, 2022. However, upon deliberation by the Ld. Chairperson the Respondent agreed to further advance the date of possession to June 2022.*
- 10. I say and submit that the Hon'ble MahaRERA vide its Order dated 9th May, 2018 had wrongly recorded that the Complainants has given the consent for such proposed timeline by the Respondent.*
- 11. Being aggrieved by the Order dated 9th May, 2018, the Complainants filed an Appeal bearing No.AT006000000010418 of 2018 before the RERA Appellate Tribunal challenging the legality and validity of the Order dated 9th May, 2018 mainly being the consent part of the said order. On hearing both the Complainants and the Respondents the Hon'ble Tribunal suggested the Complainants to withdraw the Appeal and file Application under Section 39 of the Real Estate (Regulation and Development) Act, 2016 before the previous authority for the rectification of the Order dated 9th May, 2018.*
- 12. Pursuant to the suggestion of the Appellate Tribunal the Complainants filed an Application under section 39 of the Act before the Hon'ble Chairperson for the Rectification of the Order dated 9th May, 2018. The Hon'ble Chairperson vide its Order dated 24th June, 2019 rectified that Complainants had not consented the revised the revised timeline submitted by the Respondent for the handing over the possession of the said Flat.*
- 13. I say and submit that as considerable time was lost from January, 2018 (date of cancellation notice) and the Respondent not agreeing to execute the agreement for*

sale with date of possession as December, 2020 and December, 2021, the Complainants were left with no option but to withdraw from the project.

14. Hence, the Complainants have filed the present complaint for withdrawing from the project and refund u/s 18 of the Act.

15. I say and submit that the cause of action for both complaints as filed is different as the same have been filed under different sections of the RERA Act and for different reliefs and hence the present complaint as filed is maintainable.

PARAWISE REPLY

16. With reference to Para Nos. 1 and 2 of the Reply, I deny the contents thereof in toto. I repeat and reiterate the contents of the complaint so filed by me.

17. With reference to para nos.3 of the Reply, I deny the contents thereof in toto. I say and submit that for reasons as explained hereinabove, the present complaint is maintainable as the cause of action is different than the earlier complaint. I say and submit that the Complainants had never agreed to the date of June, 2022 as the date of possession which is evident from the fact that the Complainant had filed an Appeal challenging the said Order dated 9th May, 2018.

18. With reference to Para nos. 4 of the reply, I deny the contents thereof in toto. I say and submit that the Respondent has violated Section 12 of the Act by misrepresenting the Complainants in the Allotment Letter that possession would be handed over by December, 2020 and latest by December, 2021. I say and submit that the Respondent has unilaterally changed the date of possession to December, 2022 and hence, violated Section 12 of the Act. It is not correct to say that the Respondent has not violated any provisions of RERA Act.

19. With reference to Para nos. 5 to 8 of the reply, I deny the contents thereof in toto. I say and submit that the Order dated 9th May, 2018 where due to inadvertence it was recorded that the Complainants had consented to the revised date of possession being June, 2022. I say and submit that being aggrieved by the said Order, an Appeal was preferred before the Appellate Authority which directed the complainants to seek rectification of the Order u/s 39 of the Act. Accordingly, the Complainants filed a Rectification Application u/s 39 and the rectified Order was uploaded on 24th June, 2019. However, the Complainants are not ready and willing to execute an Agreement for Sale with date of possession as June, 2022 and hence now seek to withdraw from the project of the Respondents. I say and submit that

the Respondent is liable to refund the amounts paid by the Complainants for misappropriation u/s 12 of the Act.

20. *With reference to para 9 and 10 of the Reply, I deny the contents thereof in toto. I say and submit that the Respondent cannot coerce the Complainants to continue in its project and forcefully agree to the revised date of possession. I say and submit that the Respondent is liable to refund the amounts paid by the Complainant till date for breaching Section 12 of the Act. I say and submit that fresh cause of action has arisen and hence the present complaint is maintainable as filed.*
21. *With reference to para nos. 11(i) of the Reply, the same are statements of facts and records and hence I do not wish to comment on the same.*
22. *With reference to para nos. 11(ii to iv) of the Reply, I deny the contents thereof in toto. I say and submit that despite of receiving more than 44% of the total consideration, the Respondent failed and neglected to execute an Agreement for Sale under the provisions of MOFA. I say and submit that the Respondent has not only breached the provisions of RERA but has also breached the provisions of MOFA. I say and submit that after the advent of RERA and under the guise of revised date of possession, the Respondent tried to coerce the Complainants to execute an Agreement for Sale under the provisions of RERA with an extension of an entire year i.e. upto December, 2022. I say and submit that the Complainants had agreed to purchase the said flat on the assurance that the same would be handed over maximum by December, 2021. I say and submit that I wanted to gift the said flat to my parents as they are senior citizens and I wanted them to reside in a new flat for the rest of their lives. I say that my parents are 85 years old and above and hence, due to this default of the Respondent, I could not proceed with providing the said flat to my parents. I say and submit that there was never any clarification and/or correspondence on behalf of the Respondent in respect of the completion date and date of possession. Hence, at this belated stage, the Respondent cannot state that the date of completion and date of possession are two different dates. I say and submit that at the time of selling the flats to layman like me it was represented that the flat would be handed over to me by December, 2020 and latest by December, 2021 and hence now under the guise of RERA the Respondent cannot fall back on its representations and commitments. I deny that I had failed and neglected to execute the Agreement for Sale. I state and submit that purposely the respondent failed to execute an Agreement for Sale under MOFA.*

23. With reference to Para nos. 12(1 + 4) of the Reply, I deny the contents thereof in toto. I say and submit that the Respondent has simply denied the contents of the Complaint so filed by me. I repeat and reiterate the contents of the complaint.

24. With reference to para nos. 13 of the Reply, I deny the contents thereof in toto. I say and submit that the present complaint be allowed and the Complainants be allowed to withdraw from the project with refund of the amounts paid till date for breach of section 12 of the Act. I say and submit that the Complainants cannot be coerced to continue in the said project. Hence, the complaint be allowed accordingly.

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