

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

Complaint No. CC006000000110847

Ms. Feroza Shaikh and Fakhre Alam Shaikh

.... Complainants

Versus

M/s. S. M. Infrastructures

Niyaz Amir Shaikh

Uday Pandurang More

Tufail Riyaz Rahi

.... Respondents

Project Registration No. **P51700008077**

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

Adv. Anwar Landge appeared for the complainants.

Adv. Siddharth Pimple appeared for the respondent.

ORDER

(10th December, 2019)

1. The complainants have filed this complaint seeking directions from MahaRERA to the respondents to execute agreement for sale u/s 13 of the Real Estate Regulations and Development Act (RERA) in respect of booking of a flat in the respondent's project known as "Hatkesh Heights" at Mira Road, Dist Thane bearing MahaRERA registration No P51700008077.
2. This complaint is heard finally today, when both the parties appeared through their respective advocates and made their oral submissions. During the hearing, the respondent filed written submission and the same is taken on record.
3. It is the case of the complainants that they have booked the said flat in the respondent's project in 2014 at a total consideration amount of Rs. 35,60,000/-. The respondents have issued allotment letter dated 26-08-2014 and assured that the project will be completed within 3 years from date of allotment letter. Accordingly, they have paid a total amount of Rs. 22,91,000/-

Chauhan

plus service taxes of Rs. 75,701/- since 2014 till 2017-2018 as and when demanded by the respondent.

4. The complainants stated that the respondents had forwarded the draft agreement to them which was duly signed and sent back to them through their Agent Mr Umar. However, till date the agreement for sale has not been registered between the complainants and the respondents yet. They had also applied for loan and the aforesaid loan is sanctioned by ICICI Bank. However, on 26-08-2019, they have received a termination letter for breach of non-payment of dues within stipulated time, which is illegal and bad in law. Hence the present complaint has been filed.
5. The respondents, on the other hand, disputed the claim of the complainants by filing written submission on record. It is the case of the respondents that the complainants have defaulted in making payment towards the consideration amount to them. Hence, they have terminated the said booking and allotted the said flat to third party in the month of September, 2019. Hence, no flat of the complainants is available now with them. The respondents, therefore, prayed for dismissal of this complaint.
6. The MahaRERA has examined the arguments advanced by both the parties as well as record. In this particular case, the complainants are seeking directions u/s 13 of RERA to respondent to execute the agreement for sale with them. Admittedly, the complainant has paid more than 10% amount to the respondents towards the purchase of the said flat. In this regard, the MahaRERA has perused the provisions of Section 13 of the RERA which states as under :

“13(1) - A promoter shall not accept a sum more than 10% 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 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 aforesaid explicit provisions under the RERA, provides that the promoters cannot accept a sum more than 10% of the cost of the flat without first entering into an agreement for sale with the allottees. In the present case, prima facie, it appears that the respondents have violated the aforesaid provisions of section 13 (1) of the RERA. The MahaRERA has also observed that since substantial amount has been paid, the respondents are liable to execute the agreement for sale with the complainants. However, it has brought to the notice of the MahaRERA by the respondents that the complainants are defaulter and they failed to make payment and hence they have terminated the said booking and allotted the said flat to one Mrs. Sara Khan in the month of September, 2019, i.e. after filing of this complaint. The MahaRERA has observed that the said termination is illegal and bad in law as the respondent could not have accepted more than 10% amount from the complainants without registering the agreement for sale with them.
8. In view aforesaid facts, the MahaRERA feels that the rights of the complainants as allottee of this project are required to be protected. Hence, the MahaRERA set aside the unilateral termination done by the respondent after filling of this complaint before MahaRERA. The MahaRERA further directs that within a period of one month, the respondent shall execute the agreement for sale with the complainants in accordance with the allotment letter issued by them as per the provision of section 13 of the RERA.
9. In the present case, the MahaRERA is also of the view that it is well settled principle of interpretation of statute that wherever a statute contains stringent provisions, they must be literally and strictly construed so as to achieve the aim and object of the statute/Act. The RERA is a law for regulation

and development of real estate sector. Likewise, in the instant case MahaRERA has observed that the respondents have violated the provisions of section-13(1) of RERA and therefore, the MahaRERA directs the respondents to pay a penalty of Rs.5 lakhs (Rupees five lakhs only) under section- 61 of RERA.

10. With the above directions, the complaint stands disposed of.


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

