

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

**Complaint No. CC006000000171868**

Saziya Irfan Kudalkar & Anr.

.... Complainant

**Versus**

S.M. Infrastructure & Ors

.... Respondent

Project Registration No. **P51700008077**

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

Adv. I. A. Shaikh appeared for the complainant.

Adv. Sonam Singh for the respondent.

**ORDER**

(13<sup>th</sup> March, 2020)

1. The complainants have filed this complaint seeking possession of their flat under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") in respect of booking of a flat in the respondents' project known as "**Hatkesh Heights**" bearing MahaRERA registration No. **P51700008077** at Ghodbunder Road, Dist Thane. The complainants also prayed for injunction against the respondent from creating any third party rights with respect to their flat.
2. This complaint was heard on several occasions and the same was heard finally today, when both the parties appeared and made their respective submissions. During the hearing both the parties sought time to file their written submissions and in compliance of principles of natural justice the same was granted by MahaRERA. After hearing the respondents were allowed to file their written submission within a period of one week.
3. It is the case of the complainants that they have booked the said flat for a total consideration amount of Rs. 28 Lakhs on 12.03.2018. Thereafter a

*clay*

registered agreement for sale was executed on 9<sup>th</sup> April 2018 wherein the respondent/promoter has agreed to hand over the possession of the said flats to them on or before 31<sup>st</sup> March, 2020. Till date they have paid 96.42% amount to the respondents. However, the respondents were not allowing them to enter the gate and hence they have lodged police complaint before the Kashmir Police Station against the respondents. However, no action is taken by the concerned police station. Hence the present complaint has been filed.

4. The respondent no.1 is a partnership firm and the respondent nos. 2 and 3 are partners of respondent no.1's firm. The respondent filed reply on record of MahaRERA on 18.02.2020 and refuted the claim of the complainants by raising preliminary objection with regard to the maintainability of this complaint mainly on the ground that the present complaint is not filed in a proper format as per the certificate issued by the MahaRERA dated 23.10.2019. The respondents further stated that the name of the complainants in their complaint is Ishaque Abdul Aziz Shaikh and Another however, in the online complaint the names of the complainants is mentioned as Shaziya Irfan Kudalkar and Another. The respondents further stated that as per the circular dated 23.10.2019 the complaint under section-31 is to be filed in a proper format alongwith details. However the present complaint is not filed as per prescribed in the said circular hence, the respondents prayed for dismissal of this complaint. In addition to this, the respondents further stated that there is no cause of action which has arisen to file this complaint and as per agreement for sale dated 9<sup>th</sup> April, 2020 entered into between the complainants and the respondents, they are liable to hand over the possession of the said flat on or before 31.3.2020 which is yet to come and hence as on today there is no cause of action to file this

*asn*

complaint and therefore the complaint is premature as on date. Moreover, the complaint filed consists of misleading and false statements by suppression of material facts and hence the respondents prayed for dismissal of the complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the record. In the present case, the complainants are seeking possession of the flats booked by them in the respondents' project in the year 2018. There is a registered agreement for sale entered into between the complainants and the respondent / promoter dated 9<sup>th</sup> April, 2018 wherein the date of possession is mentioned as 31.3.2020 which is yet to come and therefore the MahaRERA feels that even for seeking possession of the flat before the agreed date of possession there is no cause of action arisen and the complaint is premature at this stage. The respondents by filing their reply on record also mentioned the preliminary objection with regard to the maintainability of this complaint on the ground that the payment made by the complainants are wrongly written in the complaint and the complaint is not filed in proper form as prescribed in the circular dated 23.10.2019.
6. In this regard, the MahaRERA feels that these are final issues which ought to be raised and agitated when the complaint is to be decided on merits. However, in the present case since the complaint is premature as on date, the MahaRERA feels that these issues cannot be dealt with by MahaRERA at this stage.
7. In view of the aforesaid facts, the complaint stands dismissed as premature however, the complainants would be at liberty to file a fresh complaint as and when any cause of action would arise for violation of any of the provisions of RERA.



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