

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,  
MUMBAI

Complaint No. CC006000000193145

Saziya Irfan Kudalkar & Anr. ..Complainants  
Vs  
S.M.Infrastructure ..Respondent

MahaRERA Project Registration No. P51700008077

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

Adv. I.A. Shaikh appeared for complainant

Adv. Sonam Singh appeared for respondent

**ORDER**

(18<sup>th</sup> January, 2021)

(Through Video Conferencing)

1. The complainants have filed this complaint seeking directions from MahaRERA to direct the respondent to hand over vacant and peaceful possession under section 18 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") with respect to booking of flat no. A/1504 on the 15<sup>th</sup> floor adm. 956 sq.ft. in the respondent's project known as "Hatkesh Heights" bearing MahaRERA Registration No. P51700008077 at Mira Bhayender. The complainant further sought compensation for not handing over possession of the said flat.
2. The complaint was heard on 25.11.2020 as per the Standard Operating Procedure dated 12<sup>th</sup> June 2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both the parties have been issued prior intimation of the hearing and they were also informed to file their written submissions, if any. Accordingly, the respondent appeared through its advocate and made its submissions, however, the complainants though joined the said hearing, could not be heard due to technical problem. Hence in compliance of principles of natural justice, the complaint was again scheduled for hearing today and both the parties have been issued notice for the said hearing. Accordingly,

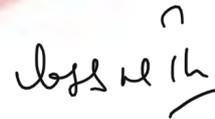


both the parties appeared and made their submissions. The MahaRERA heard the arguments of both the parties and also perused the record.

3. It is the case of the complainants that they have booked the said flat on 10-3-2018 and has made payment of Rs.5,00,000/- for booking and thereafter they have paid further amounts totalling in all to Rs.10,00,000/- and same has been duly acknowledged. They have paid substantial amounts towards the cost of the said flat, stamp duty, registration and other charges i.e GST etc as and when asked by the respondent. However still the respondent issued wrong and erroneous notice dated 11-5-2018 demanding and showing an arrears of Rs. 2,99,000/-. Due certain illegal acts on the part of the respondent they have also filed complaint with the Kashmira Police Station on 18-09-2019 and also to the higher authorities. Since the respondent failed to handover possession of their flat, they issued legal notice to the respondent, however the same has not been complied with by the respondent. Even earlier they have filed complaint No. C006000000171868 before the MahaRERA, which was dismissed being premature on 14-2-2020, with liberty to file fresh complaint. Hence the present complaint is filed seeking reliefs as sought for in this complaint.
4. The respondent on the other hand has resisted the claim of the complainants and stated that the complainants have filed the Special Civil Suit bearing no. Spl.C.S./423/2020 before the Ld. Civil Judge Senior Division, Thane seeking cancellation, termination and revocation of agreement for sale executed and registered between the complainants and the respondent. The respondent states that the matter is filed under sections 31 and 34 of the Specific Relief Act before the Ld. Civil Judge Senior Division, Thane and that matter is pending and hence, the present complaint may be dismissed.



5. The MahaRERA has examined the submissions made by both the parties and also perused the record. In the present case the complainants have approached MahaRERA seeking possession of the flat allegedly booked in the project registered by the respondent. During the course of hearing, the respondent has pointed out that the complainants have already filed Special Civil Suit No. 423/2020 before the Ld. Civil Judge Senior Division, Thane seeking cancellation, termination and revocation of agreement for sale executed between the parties and same is pending. However, the complainants have not pleaded these facts in this complaint. Further during the course of hearing, the complainants have not denied the filing of the said suit by them and stated that since there is no status quo order passed by the civil court, the MahaRERA can go ahead with the complaint.
6. The said contention raised by the complainants cannot be accepted by MahaRERA since the agreement for sale through which the complainants are seeking reliefs towards the possession of their flat itself is under challenge before the Civil Court and the complainants simultaneously cannot seek any relief under the said agreement for sale. Hence, the MahaRERA cannot entertain this complaint being a parallel proceeding.
7. With these observations, the complaint stands dismissed.



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