

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

Complaint No. CC006000000194144

Mr. Saiyed Sharafat Ali

.... Complainant

Versus

M/s. Jangid Group of Companies

and 3 ors.

.... Respondents

Project Registration No. P51700007248

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

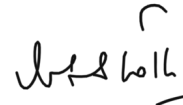
Adv. Suraj Naik appeared for the complainant.

CA Mr. Sumit Kapure appeared for the respondent No. 1 to 3.

ORDER

(23rd February, 2021)

1. The complainant has filed this complaint seeking directions to the respondent promoter to execute the registered agreement for sale with him under the provisions of section 13 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') with respect to the booking of flat no. 1601, on 16th floor, admeasuring 3350sq.ft in the respondent's registered project known as "Ambrosia and Aster" bearing MahaRERA registration No. P51700007248 at Thane. The complainant further prayed for interest for the delayed possession under section 18 of the RERA.
2. This complaint was heard finally today as per the Standard Operating Procedure dated 12-06-2020 issued by MahaRERA for hearing of complaints through Video Conferencing. Both



the parties have been issued prior intimation of this hearing and they were also informed to file their written submissions, if any. Accordingly, both the parties appeared for the hearing through their advocate/ authorised representative 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 complainant that in the year 2011 he booked the said flat in the respondent no. 1 and 2's registered project along with 3 upper stilt car parking for total consideration amount of Rs. 1,42,00,000/-. The said booking was done through respondent no. 4 who is a broker. At the time of booking, the respondent no. 4 informed that he has to pay an amount of Rs. 32 lakhs by way of cash after which the allotment letter will be issued. Accordingly, on 13th March 2011 he paid a sum of Rs. 90,50,000/- i.e. Rs. 32 Lakhs in cash and Rs. 58,50,000/- by way of cheque. The respondent no. 2 acknowledged the said payment and issued the payment receipt for the cheque payment. However, in spite of repeated requests the respondent no. 2 did not issue the receipts for the cash payment. Thereafter, the respondent no. 2 issued allotment letter on 13th October 2012, and at that time he paid an amount of Rs. 13,60,000/- through cheque for which the respondent no. 2 has issued payment receipts. Thereafter by demand letter dated 4th June 2013 the respondent no. 2 had called upon him to pay a sum of Rs. 25,40,000/- together with interest of Rs. 2,24,948/- towards the balance consideration.



Accordingly, on 13th June 2013 he paid a sum of Rs. 10,00,000 for which the respondent no. 2 issued receipt acknowledging the said payment. Thereafter, in the month of June 2013, the construction work got stopped and the respondent nos. 1 and 2 without consent of the allottees including the complainant assigned the development rights of the said project to respondent no. 3 M/s. Jangid Properties Pvt Ltd which is private limited company of the respondent no. 1. The said company without obtaining the consent of the allottees including the complainant amended the plan of the said building on 27th April, 2016 and till that time he had paid an amount of Rs. 1,13,66,000/- i.e. 80% of the total consideration of the said flat. However, no registered agreement for sale was executed with him by the respondent-promoter nor the possession has been handed over to him. Hence, he issued the legal notice to the respondent promoter on 4th August 2020 calling upon it to execute the registered agreement for sale with him and to handover the possession of the flat. However, the said notice has not been replied by the respondent. Hence, he approached the MahaRERA seeking reliefs as sought in this complaint. During the course of hearing, the complainant further stated that the respondent promoter has committed fraud and amended the plan of his flat and thereby broke his flat in two flats and sold it to two different allottees, who have also filed complaints before MahaRERA against the respondent-promoter. Hence, due to such fraudulent act of the respondent-promoter the complainant prayed either for allotment of the another flat in the said project or refund of entire amount paid by him.

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4. The respondent on the other hand refuted the claim of the complainant by stating that the complainant was defaulter and failed to make the timely payment. The respondent-promoter further admitted the payment made by the complainant, however, it has stated that since the complainant failed to make timely payment as per the slab wise payment structure, the registered agreement for sale was not executed with him. Further, after 2013 no money has been paid by the complainant and therefore by giving several reminders and finally by giving 15 days' notice it has cancelled the said booking on 16th June 2015 and the said fact was duly conveyed to the respondent no. 4 who is a broker through whom the complainant approached the respondent. Accordingly, the said broker informed the complainant to collect the refund amount payable to the complainant. In addition to this, as on today the flat cannot be given to the complainant due to change in the building plan. However, it is ready and willing to refund the amount paid by the complainant. Therefore, it has prayed for dismissal of this complaint.

5. The MahaRERA has examined the arguments advanced by both the parties as well as the records. In the present case, by filing this complaint, the complainant has approach MahaRERA seeking relief under sections 13 and 18 of the RERA for execution of the registered agreement for sale and also interest for the delayed possession. Admittedly, the said flat was booked in the year 2011 under the provisions of

MOFA and the said flat was booked for total amount of Rs. 1,42,00,000/-. Out of which the complainant has allegedly paid an amount of Rs. 1,13,66,000/- which comes to around 80% of the total consideration amount. The said payment has not been denied by the respondent during the course of hearing. The said fact shows that though the complainant has paid more than 20% of the total consideration as per MOFA and 10% as per provisions of section 13 of the RERA, no registered agreement for sale has been executed with the complainant. Hence, in the present complaint prima facie it appears that the respondent promoter has violated the said provisions of section 13 of the RERA.

6. However, during the course of hearing it is brought to the notice of MahaRERA that the allotment / booking of the flat has been cancelled on 16th June 2015 by the respondent due to non-payment of outstanding dues by the complainant and even the flat of the complainant has already been sold to other flat purchaser/ allottee. Hence, now the said flat booked by the complainant is not in existence. In the regard, the MahaRERA is of the view that the demand raised by the respondent towards the outstanding due more than 20% of the total consideration, before commencement of RERA and even after commencement of RERA was not permissible as it was mandatory on the part of the respondent to execute the agreement for sale with the complainant before demanding more than 20% under MOFA and 10% under RERA from the complainant. However, the said statutory obligation has not been adhered to by the

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respondent. Hence, the termination of said booking by the respondent on the ground of non-payment of outstanding dues is not in accordance with the provisions of law. Moreover, even , after cancellation of the said booking in the year 2015 itself , the money paid by the complainant has not been refunded to the complainant. Hence, the MahaRERA is of the view that there is substance in the claim raised by the complainant. However, during the course of hearing the respondent promoter shown its willingness to refund the entire amount paid by the complainant.

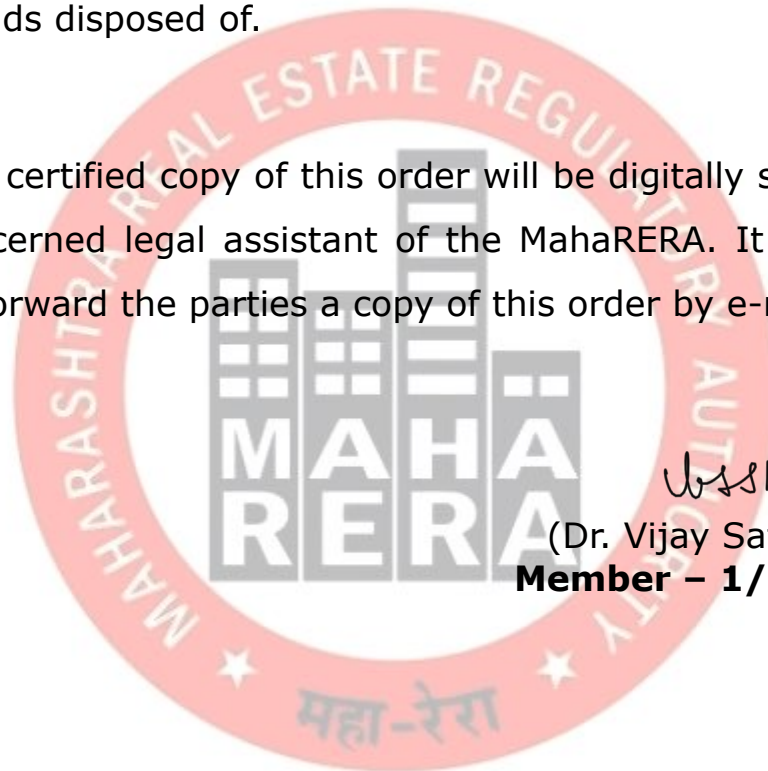
7. In view of the above facts, the MahaRERA directs the respondent-promoter to execute the registered agreement for sale for any other flat having similar area as of the complainant if available within period of one month, failing which the money paid by the complainant be refunded within next one month.
8. With regard to the allegations made by the complainant for amendment in building plan by the respondent without the consent of the allottees, the MahaRERA feels that no action could be taken on it by the MahaRERA, since the said amendments were done in the year 2010 and 2016 i. e prior to commencement of RERA and therefore the provision of section 14 of the RERA could not be made applicable retrospectively in this case. Hence, the said contentions raised by the complainant has no substance in RERA.

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9. With regard to the allegations made by the complainant with regard, to the alleged fraud done by the respondent promoter, the MahaRERA feels that the complainant has to agitate such case of fraud etc before the appropriate court of law. MahaRERA has no jurisdiction try and entertain such cases of fraud as alleged by the complainant.

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

11. The certified copy of this order will be digitally signed by the concerned legal assistant of the MahaRERA. It is permitted to forward the parties a copy of this order by e-mail.



Vijay Singh

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