

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC00600000251358

Transcon Developers Private Limited

... Complainant/s

Versus

1. Shabana Zakir Hussain Sayyed

2. Zakir Hussain Safdar Ali Sayyed

... Respondent/s

MahaRERA Project Registration No. P51800000970

Coram: Shri. Mahesh Pathak, Hon'ble Member - I/ MahaRERA

Ld. Adv. Ruchi Gandhi i/b Lexicon Law Partners appeared for the complainant-promoter.

None appeared for the respondent-allottees.

ORDER

(Monday, 26th August, 2024)

(Through Video Conferencing)

1. The complainant-promoter above named has filed this online complaint before the MahaRERA on 04-06-2022 mainly seeking directions from MahaRERA to the respondent-allottees to pass an order and declare the agreement for sale as cancelled and terminated, to execute the deed of cancellation, if the respondent-allottees failed to execute a deed of cancellation then be pleased to appoint the Secretary, MahaRERA or any other fit and proper officer to execute a deed of cancellation, to declare that the complainant-promoter is entitled to

market, advertise for sale and sell the said flat and to create a third party in respect of the said flat, cost as prescribed under the provisions of sections 19(6), 19(7) and 11(5) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat no. 3601, 36th Floor, Auris Bliss, admeasuring 659.50 sq. ft., carpet area along with one (1) car parking space (herein after will be referred to as "said flat") by the respondent -allottees in the complainant-promoter's registered project known as "AURIS BLISS" bearing MahaRERA registration No. P51800000970 located at **Andheri, District Mumbai Suburban.**

2. This complaint was heard by the MahaRERA along with other complaints filed with respect to this project on several occasions and the same was heard finally on 02-05-2024 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, the complainant-promoter appeared and made their respective submissions. However, the respondent-allottee remained absent despite the notice issued. The MahaRERA heard the arguments of both parties and also perused the available records.
3. After hearing the arguments of the complainant-promoter, the following Roznama was recorded in this complaint -

On 24-01-2024-" The complainant-promoter is present. The respondent-allottees are absent. However, the complainant-promoter has mentioned during the hearing that the respondent-allottees were also absent during the conciliation proceedings despite service of notice. The complainant-promoter

may again serve copies of the complaints on the respondent-allottee who the complainant-promoter claims to be defaulters as per the agreement for sale signed between the complainant and respondents, by all possible means (email, whatsapp, courier etc.). This may be done by the complainant-promoter within a period of one week i.e. by 31-1-2024. The complainant-promoter is also directed to upload the copy of the agreement for sale in s.no.12 by the said date. The respondent-allottees may file their reply to the complaints within a further period of four weeks i.e. by 28-2-2024 along with their written arguments. The complainant-promoter may file its rejoinder and written arguments within a further period of three weeks i.e. by 20-3-2024 even if the respondent-allottees do not file reply or written arguments. These matters are adjourned to a suitable date after 20-3-2024 for final arguments by both sides. List these matters for next hearing on 02-05-2024."

On 02-05-2024- "The complainant is present. The respondent is absent. The complainant has already uploaded the proof of service on the respondent. However, the respondent-allottee has neither filed any reply nor written arguments. Therefore, the respondent-allottee may file a reply along with written arguments within a period of one week i.e. by 9-5-2024. Further one week's time i.e. till 16-5-2024 is granted to the complainant to file a rejoinder along with written arguments even if the respondent does not file any reply or written arguments. The matter is accordingly reserved for order suitably after 16-5-2024 based on the arguments in the hearing as well as the reply, rejoinder and written arguments filed in the complaint. In case the respondent does not file any reply or written arguments, the MahaRERA will be constrained to decide the matter ex parte against the respondent-allottee on merits."

4. Pursuant to the aforesaid directions given by the MahaRERA, the

complainant-promoter has uploaded its written arguments on the record of the MahaRERA on 16-08-2024. However, till date, the respondent-allottees failed to upload any documents on the records of the MahaRERA. The MahaRERA has also perused the available records.

5. It is the case of the complainant-promoter that the respondent-allottees purchased the said flats in the complainant-promoter's registered project vide the booking application form/sheet dated 10-10-2020. Nevertheless, the respondent-allottees agreed to all the terms and conditions mentioned in the booking application form/sheet. However, the respondent-allottees paid an amount of Rs. 8,00,000/- as an initial payment towards the flat. The respondent-allottees were required to make further payments of 30% before an agreement for sale along with the payments towards stamp duty and registration within 30 - 45 days from booking of the said flat. Furthermore, it submitted that till date an amount of Rs.15,18,525/- was received from the respondent-allottees toward the consideration of the said flat. The respondent-allottees were required to make outstanding payments as per the schedule provided to them at the time of booking the said flat. Thereafter, it stated that the agreement for sale was executed and registered on 31-12-2020 for a total consideration of Rs.1,53,00,000/-, wherein the date of possession was 30-06-2024. However, at the time of the execution of the agreement for the sale the respondent -allottees agreed to make the requisite payments towards the consideration of the said flat. However, despite much follow-up initiated by the complainant-promoter, the respondent-allottees failed to make the outstanding payments towards the said flat. Further, it alleged that till May 2022 an amount of Rs.1,18,15,845/- was due and payable by the respondent-allottees. Hence, being aggrieved by the said action of the respondent-allottee the complainant-promoter has endured a huge interest on the total amount

that has been accrued till date. Thereafter, it stated that given non-payment of dues on behalf of the respondent-allottees, the complainant-promoter had addressed an email by attaching a first interest letter on 27-01-2021 inter alia calling upon the respondent-allottees to make a payment to the tune of Rs.49,77,266/-. Thereafter there was another interest letter dated 15-02-2021 inter alia calling upon them to make the payment towards delay in outstanding payments to the tune of Rs.49,97,985/-. Further, it has also stated that the complainant-promoter was constrained to issue the final interest letter on 22-02-2021 whereby the respondent-allottees were called upon to make the payment of Rs.50,05,619/-.

6. Despite various letters, the respondent allottees failed to revert. However, all the emails were ignored by them. Further, it stated that vide all the interest letters the complainant-promoter had specifically informed the respondent-allottees that they would accrue a further interest at the rate of 9% per annum on the overdue payments if they failed to make the payments. The complainant-promoter would also be constrained to proceed with the cancellation of the booking and/or termination of the said agreement for sale towards the said flat. However, the respondent-allottees have again failed to revert to the said letter. Hence, being aggrieved by the said action of the respondent-allottees, the complainant promoter issued a notice for cancellation dated 02-03-2021 along with all previous correspondence letters. The complainant-promoter stated that the respondent-allottees had made the payment of Rs.15,18,525/-. However, they are liable to make a payment of Rs.50,14,343/-.
7. Nevertheless, to maintain cordial relations with the respondent-allottees the complainant-promoter again gave a last/final chance to the respondent-

allottees to make the necessary payments within 30 days, failing which the sale of the said flat under the said agreement for sale would stand terminated/cancelled without any further notice to the respondent-allottees and the respondent-allottees shall have no recourse of any nature whatsoever against the complainant-promoter. Further, it relied on the matter of M/s. Skystar Buildcon Private Limited being Complaint No. CC006000000171899, and an order dated 04-02-2021 passed by the MahaRERA, with similar facts. MahaRERA had directed the allottees to either make payments as due under the agreement for sale failing which complainant-promoter was entitled to terminate/cancel the booking of the premises in question. However, the complainant-promoter at all times received false assurances from the respondent allottees. Hence, being aggrieved by the said action of the respondent-allottees, the complainant-promoter issued a legal notice via R.P.A.D on 14-02-2022 inter alia calling upon the respondent-allottees to make a payment of Rs.1,12,96,549/- along with other charges and delayed interest. However, the respondent-allottees failed and neglected the same. Therefore, the complainant-promoter being aggrieved by the actions of the respondent-allottees has filed this complaint before the MahaRERA seeking to jointly or severally make a payment of Rs.1,18,15,845/- along with the interest of Rs.12,85,620/-, to pass an order and declare the agreement for sale cancelled and terminated, to execute the deed of cancellation, if the respondent-allottees fail to execute a deed of cancellation then be pleased to appoint the Secretary MahaRERA or any other fit and proper officer to execute a deed of cancellation, to free the complainant-promoter to sell the said flat and to create a third party in respect of the said flat and also for cost of the present complaint.

8. The complainant promoter uploaded the affidavit in service on the record of

the MahaRERA on 16-02-2024 to show that it has served the copy of this complaint to the respondent-allottees through an email as well as by courier.

9. The complainant-promoter uploaded the written arguments on the record of the MahaRERA on 16-08-2024 in which the complainant-promoter has repeated all the facts which are already mentioned in the complaint copy. Further, it alleged that the respondents have failed to give justifiable reason for not paying the outstanding amount despite several opportunities being granted to the respondent-allottees. Further, it relied on clause 3.6 of the agreement for sale which categorically records that the time for payment of each instalment is the essence of the contract. However, due to non-payment from the respondent-allottees, the respondent is suffering from a liquidity crunch which is causing delay in the completion of the said project. However, 90% of the work is completed as well as the OC is in process. Further, it repeated the prayers which are already mentioned in the complaint copy.
10. In the present case, the MahaRERA has noticed that the complainant has filed this online complaint before MahaRERA 04-06-2022. However, till date the respondent- allottees have not bothered to file their reply to the complaint before the MahaRERA despite the fact that the copy of this complaint has been duly served upon them through an email on 29-01-2024 and also through courier on 29-01-2024 (as per the service affidavit dated 16-02-2024 uploaded by the complainant promoter along with acknowledgment).
11. Further, as per the service affidavit dated 16-02-2024 submitted by the complainant on record of MahaRERA, it appears that the hearing notice as well as the copy of complaint was duly served upon the respondent allottees. However, the respondent allottees failed to appear for the said hearings held

before the MahaRERA. The complainant has also uploaded the proof of service to the respondent-allottees on record of MahaRERA as stated to show that it has served the copy of this complaint on the respondent allottees through an email. However, despite service of the copy of this complaint as well as the hearing notice on the respondent-allottee, they have failed to appear for the said hearings held before the MahaRERA. It shows that the respondent-allottees are not willing to contest this complaint. Hence, the MahaRERA has no other alternative but to decide this complaint ex-parte on merits.

12. The MahaRERA has examined the submissions made by the complainant and also perused the available record. In the present case, the documents produced by the complainant-promoter on record of MahaRERA clearly show that the respondent-allottees have purchased the said flat by signing registered agreement for sale dated 30-12-2020, whereby they have agreed to the terms and conditions mentioned therein including the payment schedule.
13. In the present complaint the complainant has cited the default on the part of the respondent-allottees in making timely payments as per the agreement for sale signed between the parties therein. The complainant has given all relevant submissions along with the supportive documents uploaded in the present complaint.
14. However, as far as the substantive issue involved in this complaint about alleged violation of section 19(7) of the RERA, the MahaRERA has noticed that all these submissions made by the complainant in this complaint remain unchallenged / undisputed as the respondent-allottees despite notice have neither appeared nor have filed any reply to this complaint refuting the claim of the complainant-promoter in this complaint. Thereby, the respondent -

allottee have also not disputed the outstanding dues claimed by the complainant by issuing the demand letters. Hence, all these facts clearly show that there is default on the part of the respondent-allottees in making timely payments to the complainant as per their respective agreement for sale signed by them with the complainant-promoter.

15. In this regard, the MahaRERA is of the view that since there are registered agreements for sale entered into between the complainant and the respondent-allottees, it is necessary to peruse the relevant provision of section 19(6) of the RERA, which reads as under :

“19(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.”

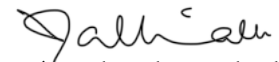
16. In view of the aforesaid explicit provision of the RERA, the MahaRERA is of the view that the respondents being the allottees of this project are liable to make payment in accordance with the terms and condition of the agreement for sale failing which the promoter is entitled to terminate the agreement for sale as per the provision of section 11 (5) of the RERA.
17. In view of these facts, the respondents being the allottees are under statutory obligation to make the balance payment to the complainant as per the terms and conditions of the agreement for sale, which binds both the parties. However, in this case, the respondent allottees despite being called upon to

make the balance payment as per the demand letters issued by the complainant, have failed to make the said payments towards the said flat and thereby have violated the provision of section 19(6) of the RERA.

18. In view of these facts, since the respondent-allottees have violated the relevant provisions of section 19(6) of the RERA, they are liable to pay interest for the said delayed period of payment as provided under section 19(7) of the RERA.
19. In view of these facts, the following order is passed:-
 - a. The present complaint is hereby allowed.
 - b. In compliance of principles of natural justice, last opportunity is granted to the respondent-allottees to make necessary payment to the complainant towards the booking of the said flat as per the terms and conditions of the agreement for sale dated 31-12-2020 along with the applicable interest for the delayed period of payment at the rate prescribed under RERA and the relevant rules made thereunder i.e. Marginal Cost Lending Rate (MCLR) of SBI plus 2% within a period of one month from the date of this order.
 - c. Failing to comply with the aforesaid directions at (b) above by the respondent-allottees, the complainant would be entitled to terminate the respective agreement for sale dated 31-12-2020 in accordance with the terms and conditions of the said agreement for sale as per the provisions of section 11(5) of the RERA by exercising the forfeiture clause as mentioned in the said agreement for sale.
 - d. The said respondent allottees shall also be liable to execute and sign the registered cancellation deed for cancellation of the said agreement for sale dated 31-12-2020 within a period of 30 days once they are called upon by the complainant-promoter. Failing which

appropriate penal action would be taken against the said respondent allottees under section 67 of the RERA, if such non-compliance is brought to the notice of the MahaRERA by the complainant.

20. With these directions, the present complaint stands disposed of.



(Mahesh Pathak)

Member - 1/MahaRERA