

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY
AUTHORITY, MUMBAI

Complaint No. CC00500000022087

Sandeep Vithoba Jadhav

... Complainant

Versus

M/s. Solitaire Palms

Dr. Rajkumari Gulab Choithramani

... Respondents

MahaRERA Project Registration No. P52100001927

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

Ld. Adv. Pranit Hagwane appeared for the complainant.

Ld. Adv. Amit Patil appeared for the respondents.

ORDER

(Friday, 30th August 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 02-10-2018 seeking directions from MahaRERA to the respondent - promoter to refund the entire amount paid by him along with interest for delay as prescribed under the provisions of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as 'RERA') in respect of the booking of a flat bearing no. 203, on the 2nd floor in the respondent - promoter's registered project known as "Solitaire Palms E" bearing MahaRERA registration no. **P52100001927** located at Borhadewadi, Moshi, Dist. Pune.
2. The aforesaid complaint was transferred by the MahaRERA to the Ld. Adjudicating Officer/ MahaRERA for further appropriate decision under the provisions of sections 71 and 72 of the RERA, since the complainant had

prayed for refund along with interest and compensation under section 18 of the RERA.

3. Accordingly, the Ld. Adjudicating Officer/ MahaRERA, Pune heard the arguments of both the parties and passed an order on 28-06-2019. The said order reads as under: -

“ORDER

- (1) Complainant is entitled to withdraw from the said project.
- (2) The Respondents/Promoters shall refund the amount of Rs. 17,27,325/- to the Complainant along with interest at the State Bank of India's Highest Marginal Cost Lending Rate i.e. 8.75% + 2% = 10.75% p.a. from the date of actual payments received by him from the Complainant time to time towards Flat No. 203 in D-8 building of the project "Solitaire Palms" situate at Borhadewadi, Tahsil Haveli, District Pune.
- (3) Respondent/Developer shall pay Rs.30,000/- to the Complainant/Allottee as cost of this complaint.
- (4) The Respondent/Developer shall pay the aforesaid amounts within 30 days from the date of this order.
- (5) The Complainant is entitled to refund of Rs.1,19,100/- towards stamp duty in accordance with the provisions of Maharashtra Stamp (Amendment) Act, 2015 and in case if the complainant is unable to claim refund of such amount in accordance with law within the stipulated period, then the respondents shall pay amount of Rs. 1,19,100/- to the complainant-allottee within 30 days from the expiry of stipulated period under law.
- (6) The Complainant shall execute cancellation deed of the agreement dated 24.04.2015 after receipt of all the amounts mentioned in the order, at the cost of the Respondent/Developer.
- (7) Charge of the amount due and payable be kept on the booked flat till realization of the entire amount."

4. Being aggrieved by the aforesaid order dated 28-06-2019 passed by the Ld. Adjudicating Officer/MahaRERA, Pune the respondent had preferred an Appeal No. AT00500000031745 before the Maharashtra Real Estate Appellate Tribunal on 25-08-2019.
5. In the said appeal after hearing the arguments advanced by both the parties, the Hon'ble Appellate Tribunal was pleased to pass an order, on 28-11-2023 to set aside the said order dated 28-06-2019 passed by the Ld. Adjudicating Officer/MahaRERA, Pune and it remanded the matter back to MahaRERA on the issue of jurisdiction and directed the MahaRERA to decide this complaint afresh.
6. Accordingly this complaint was heard by the MahaRERA on 17-01-2024 and finally on 16-04-2024 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 parties appeared for the hearing as per their appearances recorded in the Roznama and made their respective submissions.
7. After hearing the arguments of the parties, as per their appearance, the following Roznamas were recorded in this complaint -

On 17-01-2024

"Both the parties are present. The respondent is directed to file its reply to the complaint along with written arguments within a period of 3 weeks i.e. by 07-02-2024. Further 3 weeks' time i.e. till 28-02-2024 is granted to the complainant to file a rejoinder along with written arguments. The complainant has prayed for refund along with interest and compensation for delay, as according to the agreement for sale of April 2015, the

possession should have been handed over by August 2016. Since, this complaint was originally filed on 02-10-2018 and there are 2 orders issued by Ld. Adjudicating Officer, MahaRERA as well as by the Hon'ble Appellate Tribunal, this matter is adjourned to a suitable date after 28-02-2024 for final arguments by both the sides. List the matter for next hearing on 13-03-2024."

On 16-04-2024

"Both the parties are present. The respondent has filed its reply to the complaint. Therefore the complainant may file his rejoinder to the reply of the respondent within a period of 2 weeks i.e. by 30-04-2024 along with written arguments. Further 2 weeks' time i.e. by 14-05-2024 is granted to the respondent to file a sur-rejoinder, if any and written arguments. The respondent has refuted the contentions of the complainant that the project was completed after a delay as well as the respondent has pointed out that even after the date of possession had lapsed, the complainant has made further payments to the respondent towards the consideration of the said flat. The reasons for delay cited by the respondent is that there was a theft in the project and the police complaint had been filed which led to delays in completion of the project. Moreover, the respondent at the time of registration when RERA came into existence has given the date of March 2020 for completion of the project and accordingly, the project was completed by the said date. However, the occupancy certificate was received in October 2020. Therefore, the respondent claims that there is no delay in the project, the complainant has accepted the said delay by making further payments and the respondent was always ready and willing to handover the possession of the said flat to the complainant. The complainant has refuted these contentions of the respondent and has pointed out that as early as 2018, he wishes to withdraw from the project as the date of completion mentioned in the agreement for sale was lapsed, however, the project was still incomplete. Therefore, the complainant has prayed for refund along with interest and compensation for delay. The complainant has also pointed out that the project suffers from bad quality which the respondent has refuted on the ground that without obtaining the possession, the complainant cannot plead such a ground. In view

of the above, this matter is reserved for orders suitably after 14-05-2024 based on the arguments of both the sides as well as reply, rejoinder, sur-rejoinder, if any and written arguments filed in the complaint."

8. Pursuant to the aforesaid directions issued by the MahaRERA, the complainant has uploaded his rejoinder on record of MahaRERA on 15-05-2024. The respondent has also uploaded the copy of police complaint as well as its written submissions on record of MahaRERA on 30-04-2024 and 5-08-2024 respectively. The said submissions have been taken on record. The MahaRERA has perused the available record.
9. It is the case of the complainant that he has purchased the said flat in the respondent's registered project vide a registered agreement dated 24/04/2015. The said flat was booked for a total consideration of Rs.17,46,000/- out of which he has paid an amount of Rs. 18,00,000/- (Rs.17,06,715/- through cheques and Rs. 1,40,000/- in cash). As per the said agreement for sale, the respondent has promised the date of possession on or before 14 months from date of agreement i.e. on 24-08-2016. However, the respondent has failed to deliver the possession of the flat so far. Also, the respondent has used worst quality material for construction than what has agreed. Further, the bathroom and all the other things are illogically constructed and fixed, which are not according to the demands and his instructions and the promoter is not cooperating to repair the same. Hence, being aggrieved by such action on the part of the respondent promoter, he has filed this complaint for withdrawal from the project claiming refund along with interest and compensation as per the provisions of section 18 of the RERA and refund of the total paid amount. He has further prayed for cancellation of the said agreement for sale and also for refund of the stamp duty as well as costs of the present proceeding.

10. The respondent no. 2 (who is the proprietor of the respondent no. 1 firm) is a promoter, who has registered this project with the MahaRERA has filed her reply on record of MahaRERA on 5-3-2024 stating that the complainant has filed this complaint against the respondent, namely "Mrs. Rajkumari Gulab Choithramani" in her individual capacity. However, the agreement for sale dated 24-04-2015 has been executed by "Mrs. Rajkumari Gulab Choithramani Proprietor of M/s. Solitaire Palms" with the complainant and not by "Mrs. Rajkumari Gulab Choithramani" in her individual capacity. Moreover, all payment receipts have been issued by "Solitaire Palms" in favour of the complainant. Therefore, prima facie, the present complaint is not tenable on the ground of maintainability. Further, the complainant has not made any single payment to the personal account of the respondent. Hence, the prayer of refund cannot be entertained against this respondent and the same is liable to be dismissed with costs. The respondent has relied upon the observation made by Hon'ble MahaRERA in Complaint No. CC00500000096067 (Mr. Vivek Vidyasagar v/s Pranay Shingi), CC00500000096070 (Shweta Saran v/s Pranay Shingi), & CC00500000096236 (Mr. Nikhil Naidu v/s Pranay Shingi) whereby, the said complaints were dismissed by the MahaRERA being not-maintainable on 19/04/2022, as the same were not filed as per the Format-A prescribed by the MahaRERA Rule No. 6. Hence, on the said ground also the respondent has contended that this complaint is liable to be dismissed with costs. The complainant has filed the present complaint mainly on two grounds i.e. (i) delay in possession and (ii) inferior construction quality. Therefore, he is seeking refund of entire amount paid by him along with interest. However, no cogent evidence is given by the complainant to prove his claim that the construction quality is inferior. Secondly, it is admitted by the respondent that there is a delay in handing over possession, however, there are just and

sufficient reasons for the same which was informed from time to time to the complainant. The complainant had booked said flat vide a registered agreement for sale dated 24/04/2015 for a total consideration of Rs. 17,46,000/- out of which he had paid an amount of Rs. 17,27,325/- including taxes. It is pertinent to note that taxes are paid to the respective government department hence, the complainant cannot claim the said amount from her with interest. The complainant had also paid an amount of Rs.1,19,100/- towards stamp duty and Rs. 30,000/- towards registration fee. The respondent further stated that as per the said agreement, possession was promised to be handed over on or before 14 months from the date agreed possession i.e. 23rd June 2016 but the same was delayed due to the various reasons such as delay in getting the lift license, Fire NOC, delay in the process of getting the completion certificate etc. The respondent has applied for project registration with RERA and got the project registered and obtained revised completion date of this project as 09/03/2020 and the temporary possession for furniture work or interior work was offered to the complainant, but it was refused. There was theft at the project site by an ex-employee of the respondent (amounting to Rs. 80,00,000/-) and a police complaint was filed to that effect, due to which the respondent had to go police station several times. There was no response from the contractor appointed, for completing the work. Further, as everyone was aware that there has been a slump in the construction industry since the last five years or more and there were no bookings for the new flats. Thereafter in October, 2016 there was demonetization (which hampered the cash flow of the respondent) followed by a lot of changes taking place in the tax structure. In fact, the respondent never insisted on payments and interest on delayed payments from her flat owners. In fact, she is trying to give more facilities to the flat owners of the new building to compensate for the delays. Further, despite all the above hurdles, the respondent had obtained a completion

certificate for the project on 13/10/2020 and the possession has been handed over to other allottees of the said project who are happily residing over there without having any complaints against the respondent. Since the project has been completed and if the complainant is ready to take possession of the subject flat, the respondent is ready to handover the same to the complainant. Therefore, for all the above reasons, the respondent has prayed that complaint may kindly be dismissed with costs being non-maintainable.

11. The complainant has filed a rejoinder on 15-5-2024 to the reply of the respondent reiterating what has been stated in the complaint and denying the contentions of the respondent parawise. Further, the total consideration of the flat was Rs.17,46,000/- out of which he has made cheque payment of Rs. 17,06,715/- and cash payment of Rs. 1,40,000/- including stamp duty, registration and VAT charges i.e. a total amount of Rs. 18,00,000/-. Further, the date of possession as per the agreement dated 24-4-2015 was promised on or before 14 months from the date of agreement i.e. on 24-08-2016.
12. The respondent has filed its written submissions on 5-8-2024 reiterating the submissions made in its reply hereinabove. The respondent stated that the total consideration for the flat was Rs. 17,46,000/- out of which the complainant has paid Rs. 17,27,325/- and Rs.1,19,100/- towards stamp duty and Rs.30,000/- towards registration fee. Further the agreed date of possession was 23-06-2016 but the same was delayed due to reasons stated in its reply hereinabove.
13. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainant who is an allottee of the said project registered by the respondent promoter, by filing this complaint under section 31 of the RERA is mainly seeking reliefs under section 18 of the

RERA towards refund of the entire money paid by him along with interest and compensation.

14. The complainant has mainly contended that the respondent has failed to handover the possession of the said flat as per the agreement for sale dated 24-04-2015. The complainant has mainly contended that as per the said agreement for sale, the respondent has agreed to handover possession of the said flat to him within a period of 14 months from the date of execution of the said agreement for sale i.e. 24-06-2016. However, despite substantial amount being paid by him towards the said booking the respondent promoter has failed to handover possession of the said flat to him. The complainant has also raised an issue with regard to the quality of construction carried out by the respondent stating that the same is of poor quality. On the said ground also the complainant seeks withdrawal from the project. Hence, he has prayed for refund of the entire money paid by him along with interest and compensation.
15. The respondent no. 1 is the proprietary firm of the respondent no. 2, which has registered this project with the MahaRERA. Hence, for the sake of brevity both these respondents are hereinafter referred to as the 'respondent'.
16. The respondent has assailed the aforesaid claim of the complainant mainly on the ground that even after the date of possession mentioned in the said agreement for sale dated 24-04-2015 had lapsed, the complainant has made further payments to the respondent towards the consideration of the said flat. The respondent has also contended that the project got delayed mainly due to a theft in the project, for which a police complaint was filed and the same led to delays in completion of the said project. The respondent also contended that while registering this project with the MahaRERA, it has mentioned the date

of completion of this project as 31-03-2020. Accordingly, the project was completed by the said date, however, the occupancy certificate was received on 13-10-2020. Hence, the respondent has contended that there is no delay in handing over possession of the said flat. Moreover, the complainant has accepted the said delay by making further payments towards the said flat. Hence, the respondent was always ready and willing to handover the possession of the said flat to the complainant. The respondent promoter has also raised technical issues with respect to the present complaint filed by the complainant stating that the said complaint is filed against the respondent viz. Dr. Rajkumari Gulab Choithramani in her individual capacity, although the said agreement for sale has been signed by M/s. Solitaire Palms. Hence, the respondent has also prayed for dismissal of this complaint on this ground too.

17. The complainant on the other hand has refuted the aforesaid claim of respondent contending that he has sought withdrawal from the project in the year 2018 i.e. before completion of this project on 13-10-2020 (as per the completion certificate), as the date of possession mentioned in the said agreement for sale has already lapsed and the project was also incomplete on the date of filing of this complaint. Hence, he prayed to allow this complaint.
18. From the aforesaid submissions made by both the parties and after perusing the available record, the following observations are noteworthy:-
 - a) The complainant is an allottee of this project as defined under section 2(d) of the RERA and has purchased the said flat vide a registered agreement for sale dated 24-04-2015. As per clause 14 of the said agreement for sale, the respondent promoter was liable to handover possession of the said flat to him within a period of 14 months from the date of execution of the said agreement for sale. However, the possession was not handed over to

him on the said agreed date of possession mentioned in the said agreement for sale.

- b) Basically, the complainant is also seeking refund of the entire money, also on the ground that the poor quality construction is being carried out by the respondent. As far as the said issue raised by the complainant for seeking refund ; it has no legal substance under RERA, as the complainant did not obtain possession of his flat when this complaint was filed and hence, the said reasons seem to be hypothetical.
- c) As far as the technical issue raised by the respondent about filing of this complainant by joining wrong entity, admittedly, the said agreement for sale dated 24-04-2015 has been signed between the complainant and M/s. Solitaire Palms through its proprietor viz Rajkumari Gulab Choithramani (who has registered this project with MahaRERA in her own individual capacity).The complainant, while filing this online complaint has joined both M/s. Solitaire Palms and Rajkumari Gulab Choithramani as respondents. Hence, the MahaRERA does not find any technical error committed by the complainant while filing this complaint. Hence, the MahaRERA does not find any substance in the said technical issue raised by the respondent.
- d) As far as the substantive issue of refund sought by the complainant under section 18 of the RERA, it is necessary to peruse the provision of section 18 of the RERA, which reads as under:
- “18 (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, – (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or(b) due to discontinuance of his business as a developer on account*

of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottee, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

- e) Likewise, in the present case, the respondent has failed to handover possession of the said flat to the complainant on the agreed date of possession as mentioned in the registered agreement for sale i.e. on 24-06-2016. Hence, the complainant has filed this complaint before the MahaRERA on 2-10-2018. However, the respondent has completed this project and obtained completion certificate for the said flat on 13-10-2020.
- f) It seems that the said completion certificate was obtained for this project by the respondent only after filing of this complaint before the MahaRERA and also when the cause of action under section 18 of the RERA was surviving for the complainant to seek relief for refund along with interest and compensation. Hence, the MahaRERA prima facie feels that the present complaint is maintainable and the same needs to be decided by the MahaRERA on its own merits.
- g) The respondent has also raised an issue that the date of completion of this project is 09-03-2020 and hence this complaint is premature to seek reliefs under section 18 of the RERA. In this regard, the MahaRERA

is of the view that the date of completion of this project mentioned on the MahaRERA website is distinct from the date of possession mentioned in the agreement for sale signed with the complainant. Also, the agreement for sale with the complainant-allottee has been executed under the MOFA regime prior to the commencement of the RERA. Moreso, by obtaining extension for the project registration (with or without the consent of the allottees of this project), the respondent promoter cannot try to modify the date of possession mentioned in the said registered agreement for sale, which in fact is a public document and the same needs to be changed only by way of a registered deed. Moreso, the Hon'ble Bombay High Court in its order dated 6-12-2017 passed in the matter of Neelkamal Realtors Suburban Pvt Ltd has clearly held that the RERA cannot rewrite the agreement for sale signed under MOFA. Hence, the MahaRERA does not find any substance in the said contention raised by the respondent promoter about the date of completion of the project to be considered as date of possession.

- h) Admittedly, in the present case, the respondent has failed to handover possession of the said flat to the complainant on the agreed date of possession mentioned in the said agreement for sale dated 24-04-2015. However, to justify the said delay, the respondent has contended that due to theft in the project, the police complaint was filed and due to which the project got delayed.
- i) As far as the said reason of delay cited by the respondent, the MahaRERA is of the view that the said reason cannot be treated as a plausible explanation as the same does not fall within the ambit of force

majeure events mentioned in the said agreement for sale.

j) However, even if it is presumed that the project got delayed due to the force majeure factors beyond the control of the respondent, the MahaRERA is of the view that under the provisions of MOFA, the promoter was entitled to seek 6 months extension due to force majeure reasons. In the present case, the agreement for sale was executed under the provisions of MOFA. As stated hereinabove, the respondent promoter is also entitled to seek extension of 6 months in the date of possession mentioned in the said agreement for sale meaning thereby, the date of possession in this case gets extended for 6 months from the agreed date of possession mentioned in the said agreement for sale i.e. till 24-12-2016 from 24-06-2016 (as per agreement for sale the possession was to be handed over to the complainant within 14 months from the date of execution of the said agreement for sale dated 24-04-2015). However, even on that date the project was incomplete. It shows that the respondent has violated the provisions of section 18 of the RERA and hence, the complainant is entitled to seek refund along with interest under section 18 of the RERA.

k) As far as the claim of refund of stamp duty and registration charges sought by the complainant, the MahaRERA is of the view that the same is ostensibly paid to the government and not to the respondent promoter. Hence, as provided under section 18 of the RERA, the complainant is entitled to seek the refund of the money which has been paid towards the said flat to the respondent promoter. Meaning thereby, section 18 of the RERA does not mention the statutory dues. Hence, the MahaRERA is not inclined to accept the plea of the

complainant for refund of the stamp duty and registration charges.

- 1) As far as the claim of compensation sought by the complainant, the MahaRERA is of the view that as per explicit provisions under sections 71 and 72 of the RERA, the MahaRERA has no jurisdiction to grant any compensation to these complainants. Further, the complainant herein during the course of hearing has not pressed for compensation and also to transfer this complaint to the Ld. Adjudicating Officer/MahaRERA for deciding the quantum of compensation under sections 71 and 72 of the RERA. However, the complainant is always at liberty to agitate his grievances about the compensation by filing a separate complaint before the Ld. Adjudicating Officer/ MahaRERA in Form-B as prescribed under relevant Rules framed under the RERA if he so desires.

19. In view of these observations, the following order is passed:-

- a. The present complaint is partly allowed.
- b. The claim of compensation and refund of stamp duty and registration charges sought by the complainant stands rejected in view of the observations made in the aforesaid paras (k) and (l).
- c. The respondent is directed to refund the entire money paid by this complainant towards the consideration of the said flat along with interest at the rate of SBI's Highest Marginal Cost Lending Rate (MCLR) plus 2% as prescribed under the provisions of section-18 of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder, from the date of payment till the actual realization of the said money to the complainant. Till then the complainant shall have claim on the said flat.

- d. Needless to state here that the actual amount as provided under section 18 of the RERA means the amount paid by the complainant towards the consideration of the said flat only excluding the cash portion and excluding the stamp duty, registration charges and taxes etc. paid to the government.
- e. The complainant is also directed to execute the cancellation deed on receipt of payment of refund along with interest from the respondent- promoter.
- f. With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent promoter is entitled to claim the benefit of "moratorium period" as mentioned in the Notifications / Orders nos. 13 and 14 dated 2nd April, 2020, 18th May, 2020 and 6th August, 2021 issued by the MahaRERA and the Notification/Order which may be issued in this regard from time to time.

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


(Mahesh Pathak)

Member - 1/MahaRERA