

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC006000000210259

Kapstone Constructions Private Limited

... Complainant/s

Versus

Praveen Kumar Sing

Mrs Archna Praveen Singh

...Respondent/s

MahaRERA Project Registration No. P51700001021

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

Ld. Adv. Abir Patel appeared for the complainant-promoter.

Ld. Adv. Akib S. Shaikh appeared for the respondent-allottees.

ORDER

(Thursday, 20th June 2024)

(Through Video Conferencing)

1. The complainant-promoter above named has filed this online complaint before the MahaRERA on 16-03-2022 mainly seeking directions from MahaRERA to the respondent-allottees to make the payment of the outstanding dues along with interest, and also to hold respondent-allottees liable for violation of sections 19(6), 19(7) and 19(10). Alternatively, in case respondent-allottees fail to make the balance payment, then allow to terminate the said agreement for sale and execute cancellation deed and to pay cost 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. 3206 on 32rd floor in wing F admeasuring 727 sq ft. carpet area (hereinafter referred to as "the said flat") in respect of the complainant's registered project known as "Rustomjee Azziano Wing F" bearing

MahaRERA registration no. **P51700001021** located at **Thane (M Corp.), Dist. Thane.**

2. This complaint was heard by the MahaRERA on merits on 9-11-2023 and the same was finally heard on 15-02-2024 as per the Standard Operating Procedure dated 24-01-2024 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 said hearings as per their appearances and made their arguments. The MahaRERA has heard the argument of both the parties as per their appearances recorded in the roznamas and also perused the available record.

3. After hearing the argument of the parties concerned (as per their appearances), the following Roznamas were recorded in the said hearings in this complaint:- (i)09-11-2023: *"The complainant-promoter is present. The respondent-allottee is absent. In fact, the respondent-allottee was absent in the first hearing as well as in the conciliation proceedings and has never appeared before the MahaRERA. The complainant-promoter is directed to upload proof of service on the respondent-allottee within a period of one week i.e. by 16-11-2023. The allottee may file reply to the complaint within a further period of two weeks i.e. by 30-11-2023. The complainant may file a rejoinder to the reply of the respondent within a further period of two weeks i.e. till 14-12-2023. The matter is adjourned to a suitable date after 14-12-2023 for final arguments by both sides. List the matter for next hearing on 15-02-2024."*

(ii)15-02-2024: *"Both the parties are present. The complainant-promoter has filed this complaint praying that the respondent-allottee may be directed to pay the outstanding payment with interest or in the alternative the promoter*

may be allowed to terminate the allotment. Admittedly, the OC was received six years ago and the payments have been pending since then. Therefore, the respondent is allowed to file a reply along with written arguments i.e. by 29-2-2024. The complainant-promoter may file a rejoinder along with written arguments within a further period of two weeks i.e. by 14-3-2024. The respondent-allottee has mentioned that the payments are not being made due to certain issues with the financial institution. In view of the above, this matter is reserved for orders suitably after 14-3-2024 based on the arguments of both sides as well as the reply, rejoinder and written arguments filed in the complaint. The complainant-promoter may file rejoinder/written arguments even if the respondent does not file any reply or written arguments in the complaint. In case, the respondent does not file any reply or written arguments, the MahaRERA will be constrained to decide this matter ex-parte against the respondent."

4. Despite specific directions being given by the MahaRERA, both the parties have failed to upload reply/rejoinder/written arguments on record of MahaRERA. The MahaRERA has perused the available record.
5. It is a case of the complainant -promoter that, it is a promoter who is constructing this captioned project. The respondents are the allottees of the said project who have booked the said flat by executing agreement for sale dated 24-10-2016. The said flat was booked for a total consideration amount of Rs. 1,11,15,000/- for which the respondents have paid a token amount of Rs. 51,000/-. On 01-05-2017, the said project has been registered with the MahaRERA (as Wing 'F' of the project) being an ongoing project with the revised completion date as March, 2019. The complainant-promoter raised demands as per construction linked payment schedule as agreed between both the parties. Further, it has also obtained occupation certificate for the said project on 06-02-2018. However, the respondent-allottees have paid only an

amount of Rs. 94,47,750/- (i.e., 85% of the total consideration) towards the said flat. The complainant-promoter has raised final demand on 28-03-2018 for total payment of Rs. 29,96,673/- which the respondent-allottees have failed to make. There were several reminders which have been sent by it to the respondent-allottees however, the respondent-allottees have informed that the delay in outstanding payment is mainly due to failure of DHFL bank to disburse the balance payment. After several reminders made by it, the respondent-allottees have neither made the balance payment nor have taken the possession. Hence, being aggrieved with the actions of the respondent-allottees, it has filed this complaint seeking directions to the respondent-allottees to make the balance payment of the outstanding dues along with interest. Alternatively, in case the respondent-allottees failed to make the balance payment, then it should be allowed to terminate the said agreement for sale and execute cancellation deed and for costs.

6. The respondent-allottees although have appeared for the final hearing held in this complaint on 15-02-2024, they have failed to file any reply to this complaint. During the course of hearing, although they have admitted the said outstanding dues payable by them towards the said flat however, they have contended that the same is mainly due to certain issues with the financial institution viz DHFL which has failed to disburse the loan amount.
7. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. The complainant herein who is the promoter of this project, by filing this complaint, has approached the MahaRERA mainly seeking reliefs under section 19(6), 19(7) of the RERA for direction to the respondent allottees to make the balance payments towards the outstanding dues, failing which, to cancel the said agreement for sale as per section 11(5) of the RERA.

8. The complainant has contended that the respondent allottees have purchased the said flat by signing the registered agreement for sale dated 24-10-2016, whereby they have agreed to the terms and conditions mentioned therein including the payment schedule. The said flat was booked for a total consideration amount of Rs. 1,11,15,000/- out of which they have paid an amount of Rs. 94,47,750/- towards the said flat which amounts to 85% of the total consideration of the said flat. As per the said agreement for sale the possession was to be handed over to the respondent-allottees on or before 30-06-2017 with grace period of 12 months i.e. 30-06-2018. Accordingly, it has completed the captioned project and obtained OC from the competent authority viz. Thane Municipal Corporation on 06-02-2018 and has also called upon the respondent-allottees to obtain possession by making the outstanding dues vide letters/reminders dated 28-03-2018, 14-09-2018, 19-02-2019, 4-03-2019 and 5-07-2021. However, even after receipt of the said demand letters, the respondent allottees have failed to make the outstanding payment to the complainant. Thereby, the respondent allottees have not only violated the provisions of section 19(6) of the RERA but also section 19(10) of the RERA, which casts obligation upon the allottee to obtain possession within a period of 2 months from the date of OC. Hence, the complainant prayed to allot this complaint.
9. The respondent-allottees although have appeared for the hearing held on 15-02-2024, have neither denied the said outstanding dues payable by them nor have denied the demand letters issued by the complainant and the crucial fact that the OC has been obtained for this project. However, they have merely stated that the said payment got delayed mainly due to certain issues with the financial institution viz DHFL, which has failed to disburse the loan amount. It shows that all the contentions raised by the complainant promoter in this

complaint remain unchallenged / undisputed.

10. In this regard, the MahaRERA is of the view that since there are registered agreement 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.”

11. 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 agreements for sale as per the provision of section 11 (5) of the RERA.
12. In view of these facts, in this case, as stated hereinabove the record shows that the complainant being the promoter of this project as defined under section 2(zk) of the RERA has complied with its statutory duty cast upon it under section 11 of the RERA and completed the project by obtaining the OC on 6-02-2018. Hence, the respondents being 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.
13. In this case since the respondent-allottees have not denied the outstanding payments due and payable by them, the MahaRERA prima facie feels that one

opportunity in compliance of principles of natural justice needs to be granted to them.

14. 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 the required payment to the complainant towards the booking of the said flat 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. The respondent allottees are also directed to pay the other charges /statutory dues as per the said agreement for sale to the complainant within the said period.
- d. With regard to the payment of interest to the complainant, the MahaRERA further directs that the respondent -allottees are 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.
- e. Failing to comply with the aforesaid directions at (b) and (c) above by the respondent-allottees, the complainant would be entitled to terminate the agreement for sale dated 24-10-2016 in accordance with the terms and conditions of the 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.
- f. The respondent allottees shall also be liable to execute and sign the registered cancellation deed for cancellation of the said agreement for sale dated 24-10-2016 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 respondent allottees under section 67 of the RERA, if such non-compliance is brought to the notice of the MahaRERA by the complainant.

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

Mahesh Pathak
(Mahesh Pathak)

Member - 1/MahaRERA

