

BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY
MUMBAI

Complaint No. CC006000000429328

Upasna Bajaj

... Complainant

Versus

Lokhandwala Kataria Construction Pvt Ltd

Mohamed Abdul Husain Lokhandwala and

Aliasgar Mohammed Lokhandwala

... Respondents

MahaRERA Project Registration No. P51900008204

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

Ld. Adv. Minil Shah i/b Ld. Adv. Nilesh Gala appeared for the complainant.

Ld. Adv. Vibhav Krishna appeared for the respondents.

ORDER

(Tuesday, 30th April 2024)

(Through Video Conferencing)

1. The complainant above named has filed this online complaint before the MahaRERA on 19-02-2024 seeking directions from MahaRERA to the respondent to handover the possession and also to pay interest and compensation for the delayed possession 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. 3501, on 35th floor in A1 Wing of the respondent's registered project known as "Minerva" bearing MahaRERA project registration No. P51900008204 located at Lower Parel, Mumbai.
2. This complaint was heard by the MahaRERA on 08-04-2024 and final on 24-04-2024 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, both the parties appeared for the said hearings and made their respective submissions. The MahaRERA heard the arguments of both the parties and also perused the available records.

3. After hearing the arguments of both the parties, the following Roznamas were recorded in this complaint on 08-04-2024 and 24-04-2024 -
- i) *On 08-04-2024:- "First Hearing Matter" Both the parties are present. The respondent has already filed a reply to the complaint but seeks time to file a further reply and is granted one week's time i.e. till 15-4-2024 to file additional reply along with written arguments. Further one week's time i.e. till 22-4-2024 is granted to the complainant to file a rejoinder along with written arguments. The matter is adjourned to a suitable date after 22-4-2024 for final arguments by both sides in this complaint. List the matter for next hearing on 24-04-2024.*
 - ii) *On 24-04-2024:- "Both the parties are present. Pursuant to the order of the Hon'ble High Court, this matter was kept for first hearing on 08-4-2024 and according to the directions issued in the roznama of the said hearing, the parties have filed their reply and written arguments and rejoinder and written arguments. The matter was kept today for final arguments of both sides. Accordingly, the complainant is relying on the consent terms of May 2019 which was the subject matter of the order of the MahaRERA dated 26-12-2022. However, the said order is not supposed to be taken into consideration while deciding this complaint afresh. The complainant*

contends that as per the consent terms, the amount payable by the complainant was only Rs. 24 lakhs and subsequent to that, the respondent in January, 2023 has issued a letter for possession demanding a further amount of Rs. 40 lakhs for completing the incomplete amenities. However, the agreement could not be signed and possession could not be taken by the complainant as according to the complainant, the respondent was not honouring the consent terms in totality. The respondent has refuted this contention of the complainant and has mentioned that due to the consent terms of May 2019, the allotment letter has been superseded and the understanding between the complainant and the respondent has been novated. Accordingly, the respondent has asked for an amount of Rs. 24 lakhs as per the said consent terms however, the complainant all along was not interested in possession but for resale of the flat and the said fact can be verified from the letter dated 10-5-2019 which the respondent has issued granting exclusive rights to the complainant for resale of the flat on the request of the complainant according to the respondent. Therefore, the complainant avers that the respondent is not honouring the consent terms and in fact, there is no money payable by the complainant due to delayed interest. However, the respondent avers that it has demanded the amount due as per consent terms and interest is due from January 2023 till present as the OC was received on 6-1-2023 and the complainant was informed to obtain possession by paying the due amount. However, on 15-2-2023, the complainant raised this dispute as the agreement for sale could not be signed nor the possession could be handed over to the complainant. Both sides may file additional submissions by tomorrow i.e. 25-4-2024. Accordingly, this matter is reserved for orders suitably after tomorrow based on the arguments of both sides

as well as the reply, rejoinder, additional submissions and the documents uploaded in the complaint."

4. Pursuant to the aforesaid directions issued by the MahaRERA, both the parties have uploaded their written submissions on record of MahaRERA on 24-04-2024. The respondent has also uploaded its sur-rejoinder on record of MahaRERA on 26-04-2024. The same is accepted and taken on record in compliance of principles of natural justice since it is filed beyond the stipulated time period granted by the MahaRERA. The MahaRERA has perused the available record.
5. It is the case of the complainant that she is an allottee as per the provisions of the RERA having purchased from the respondents a residential Flat No.3501 (as per MOFA) and 2 car parking spaces along with exclusive amenities. The respondents are the promoters of the project Minerva registered with the MahaRERA. The respondent nos. 2 and 3 are the directors of the respondent no.1. Hence, they are promoters as per the RERA. Further, the complainant filed a Writ Petition No.(L) 2717 of 2024 before the Hon'ble Bombay High Court challenging order dated 26th December, 2022 passed by the MahaRERA dismissing the Execution Application of the complainant in Complaint No.CC006000000055828. The said Writ Petition No.(L) 2717 of 2024 was disposed of by an order dated 29-01-2024. The relevant paragraphs of the said Order are reproduced hereunder for ready reference: "1 .After this petition was heard for sometime, learned counsel for the petitioner seeks leave to withdraw this petition with liberty to take recourse to appropriate proceedings. 2. In the event, any fresh proceedings are filed, the same be decided on its own merits without being influenced by the order dated 26 December, 2022 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai. 3. The petitioner is also at liberty to make an application for early disposal of any proceedings. If the same is filed considering the

fact that the issues as raised by the petitioner are pending for quite sometime, as also there were consent terms between the parties, the MahaRERA shall make an endeavour to decide the proceedings as expeditiously as possible and within a period of eight weeks from the day such application is placed before it."

6. The complainant has further explained the facts of the case stating that in or around 2010, she came across the project of the respondents and being convinced by their representation she agreed to purchase the said flat. The respondents accordingly issued an allotment letter dated 20th December, 2010 against payment of Rs.81,20,000/-. The complainant purchased the said flat for a total consideration of Rs.4,25,55,000/- and paid an amount of Rs.3,31,80,000/- to the respondents towards payment of the flat cost. On 6th December, 2017, the complainant received a Demand Letter from the respondents after a lapse of almost 3 years. The respondents addressed an email dated 1st February, 2018 whereby the respondents itself changed the possession date to December, 2018 which was never accepted by the complainant whereas it was promised that the possession shall be given by December, 2015 as they issued a payment schedule based on the tentative construction dates. The complainant followed up with the respondents questioning about the delay in possession since 2014 however, the respondents unilaterally changed the payment schedule on 27th March, 2017 without taking consent from the complainant. The respondents issued two notices for cancellation of allotment letter dated 14th February, 2018 and 1st March, 2018 to which the complainant addressed a reply dated 7th March, 2018 to the respondents. On 22nd March, 2018 the respondent revoked the notices for cancellation of allotment letter dated 14th February, 2018 and 1st March, 2018. On 24th April, 2018, the respondents again issued a cancellation letter to the complainant which was promptly replied by her. On 16th August, 2018, the

complainant filed a Complaint No. CC00600000055828 before the MahaRERA against the respondents seeking reliefs under the RERA in respect of the said flat praying for possession, interest for delayed possession and other reliefs more particularly mentioned therein. The said complaint was heard on multiple occasions subsequently, the respondents offered to execute consent terms on the conditions that the complaint be withdrawn by the complainant with liberty to approach MahaRERA in case of breach of consent terms. On 8th May, 2019 the consent terms were executed between the complainant and the respondents wherein the respondents agreed to handover the possession of the said flat on or before 31st March, 2020 and further interest for delayed payment was agreed upon. The consent terms also provided for withdrawal of complainant's RERA complaint, with liberty to approach MahaRERA in case of breach of consent terms. The relevant terms under the consent terms which were agreed upon are as under: *i. The Respondents issued a Credit Note of Rs.68,88,000/- on account of delayed interest to be adjusted on the date of possession i.e. 31st March, 2020; ii. If the delay continues beyond 31st March, 2020 interest @10.55% for every month of delay shall be payable on Rs.3,31,80,000/- from 1st April, 2020 till actual possession. iii. The interest for delayed possession was to be set-off towards balance consideration after adjusting the same, the excess amount was to be paid to the complainant. iv. The balance amount to be paid by the Complainant on possession on the 31st March, 2020 was Rs.24,87,000/- v. The Complainant shall be at liberty to approach MahaRERA on violation of consent terms.* Accordingly, the complainant filed a withdrawal application before the MahaRERA subsequently, the complaint came to be disposed of as withdrawn by order dated 5th July, 2019. The respondents also issued a No Objection letter in favour of the complainant to sell the said flat to third parties in case the complainant decided to exit from the project. The complainant states that as agreed under the consent terms dated 8th May, 2019, the interest @10.55% p.a. continues to run on the amounts paid by the complainant from 31st March,

2020 upto handover of possession of the said flat. Thereafter, she filed an Execution Application before the MahaRERA in Complaint No. CC006000000055828 seeking execution of the consent terms dated 8th May, 2019. The said Application was disposed of as non-maintainable on completely false and erroneous grounds vide Order dated 26th December, 2022. By letter dated 23rd January, 2023, the respondents intimated the complainants about the receipt of Part-Occupation Certificate and demanded monies which were not even payable by the complainant. In fact, as per the consent terms dated 8th May, 2019, the respondents were liable for payment of further interest @10.55% p.a. and as per the terms, no amount was payable to the respondents on 23rd January, 2023, on the contrary, the respondents were liable to pay the complainant. The complainant by its letter dated 15th February, 2023 informed the respondents about the payment of interest for delayed possession and other liabilities of the respondents under the consent terms dated 8th May, 2019 which was amount to be adjusted /setoff against the principal amount and handover the possession of the said flat. Further, the complainant informed the respondent to revise the demand letter and handover the possession of the said fiat. The respondents stopped responding to the complainant's request for possession of the said flat and started defaulting on loans, and presently there are multiple NCLT proceedings filed against the respondents. The complainant believes that the respondents shall be admitted for insolvency under the IBC Code, 2016 and the complainant shall not be able to execute the consent terms. Further, the director Mr. Ali Asgar Lokhandwala of the respondents has defaulted on a loan from UCO Bank, and a flat in the said project has been put up for auction. Further, more than 100% of the said consideration has been paid/ considered to be paid under the consent terms dated 8th May, 2019 read with Allotment Letter executed between the complainant and the respondents. Therefore, there exists no reason for the

respondents to withhold the possession of the said flat from the complainant. In view of the facts mentioned hereinabove, the complainant prays to direct the respondents to handover quiet, vacant and peaceful possession of the said flat along with interest for delayed possession; and to execute the agreement for sale and for permanent injunction on sale of unsold flats in the said project till the satisfaction of the consent terms dated 8th May, 2019; and for cost and to impose a penalty under sections 63 and 64 on the respondents for contravention of the provisions of the RERA. The complainant has prayed for interim relief mainly to direct the respondent not to create third party rights in respect of the unsold flats in the project and to order a debit freeze on the RERA escrow account of the said project.

7. The respondent has filed its reply on 3-4-2024 stating that they have been ready and willing to execute and register the agreement for the said flat and it is the complainant who has avoided execution of the registered agreement and making payment of balance consideration despite intimation sent to her vide letter dated 23.1.2023. Further, part occupation certificate upto 51st floor has been issued by MCGM which includes the said flat and it is the complainant who has refused to make the balance payments and take possession of the flat. Moreover, since the complainant herself admitted that vide letter dated 23.1.2023 the respondents had intimated about the issuance of part OC upto 51st floor and had demanded payment for handing over possession of the said flat and hence the respondents oppose the claim for interest for delayed possession at prayer (b). The complainant's claim for execution of agreement for sale as per the allotment letter and consent terms dated 8.5.2019 and also the claim for payment of cost for filing the complaint is without any basis. Further, the respondents have admitted in the complaint that they have issued No Objection Letter for sale in favour of a third party and thereby conveyed

their willingness to exit the project. Further, the complainant has attempted to misrepresent and misinterpret the High court Order dated 29.1.2024 which does not deal with the merits of the claim of the complainant and therefore there is no basis or justification of the complainant's pleading that he is entitled to the reliefs as prayed. Further, the complainant is seeking to raise a fresh case cause of action on the basis of consent terms inter alia claiming an entitlement to set off the claim for interest under the consent terms with the obligation to make payment of balance consideration for the flat. There is no basis for unilateral set off of the purported claim for interest @10.55% under the consent terms. Further, the said flat is included under the part occupation certificate dated 6.1.2023 issued by MCGM and therefore the respondents as the builder is in a position to handover possession of the flat after executing a registered agreement for sale and after the complainant has made payment of the balance consideration and therefore the complainant is not entitled to maintain the present complaint.

8. The respondent has also filed additional reply on 23-4-2024 stating that the MahaRERA has noticed that the aforesaid complaint was disposed of in view of the withdrawal application filed by the complainant on record of MahaRERA. However, the said consent terms are not filed on record of MahaRERA. It shows that there is neither any order passed by MahaRERA on merits nor the said consent terms has been taken on record while deciding the said complaint. Hence, during the course of hearing held on 17-10-2022 the direction was given to the complainant to upload the said consent terms on record of MahaRERA. Accordingly, the complainant has submitted the same on record of MahaRERA through an email dated 21-10-2022. However, the said consent terms appear to be a credit note issued by respondent promoter in the form of No objection to sell the flat and create third party rights etc. in favour

of the complainant however, nowhere it is mentioned in the said consent terms that the respondent has made any commitment to the complainant that it will refund the money paid to it within the stipulated period. The MahaRERA has made specific observation by order dated 26-12-2022 – *“hence, the MahaRERA cannot consider the said documents as Consent Terms / Settlement terms duly arrived at between both the parties”*. However, the complainant has at prayers b), c) and d) sought orders in terms of consent terms and therefore, it is an attempt by the complainant to overreach the orders of MahaRERA and therefore the reliefs prayed for by the complainant cannot be granted. Further, the complainant has attempted to maintain the present complaint by deliberately misinterpreting the order dated 29.1.2024. The present complaint has been filed for the same reliefs as the earlier Complaint no. CC006000000055828 Upasana Bajaj vs Lokhandwala Kataria Constructions Pvt. Ltd. which was disposed of by order dated 5-7-2019 and therefore the present complaint is estopped by the principle of res judicata. In the circumstances, the respondent has stated that the complaint is devoid of merits and is liable to be rejected.

9. The respondent has also filed written submissions on 23-4-2024 which is mere repetition of what has been stated hereinabove.
10. The complainant has filed written submissions on record on 24-4-2024 reiterating what has been stated in her complaint.
11. The complainant has also filed additional written submissions on record on 24-4-2024 stating that the Hon'ble Bombay High Court has expressly directed the MahaRERA to disregard the Order dated 26th December, 2022 as the MahaRERA has incorrectly read the letter dated 10th May 2019 which has been issued by the respondents which states that :

"Sir/Madam,

I, Mr. Mohammed A Lakdawala, Director and Authorised Representative of Lokhandwala Kataria Construction Pvt. Ltd., state that we have allotted an apartment bearing Flat No.3501 admeasuring carpet area of approx. 1219 sq.ft. i.e. 113.25 sq.mts.in Wing A1, in the building known as "MINERVA along with two car parking in our Project namely MINERVA bearing Maharera Registration No. P51900008204 to you. We hereby waives off the term mentioned in Clause 7 of an Allotment letter dated 20/12/2010 and we are hereby issuing no objection to you to sell/alienate/to create third party right and waive absolute right of ROFR (Right of First Refusal) with respect to the said apartment."

12. The said letter has no bearing on the consent terms since it is a letter issued by respondent no.1 unilaterally. Moreover, the Hon'ble Bombay High Court has directed the MahaRERA to decide the dispute without the influence of the order dated 26-12-2022. Further, due to incorrect reading of the letter dated 10th May 2019 the order dated 26-12-2022 came to be passed by the MahaRERA which came to be challenged before the Hon'ble Bombay High Court. Hence, the Hon'ble High Court has expressly directed the MahaRERA to hear the matter uninfluenced by its findings/orders of the order dated 26-12-2022. Despite the aforesaid, the respondents are repeatedly reiterating the issue of letter dated 10th May 2019 which is not the issue to be adjudicated upon. The issue is the handover of possession of the said flat and execution of agreement for sale as per the consent terms. Further, there is no document on record to show that the complainant has sought an exit from the project at all and they are just bald allegations of the respondents. Hence the complainant prays that the complaint be allowed.
13. The respondents have filed their sur-rejoinder on record on 26-4-2024 reiterating

what has been stated by them hereinabove.

14. The MahaRERA has examined the rival submissions made by both the parties and also perused the available record. In the present case, the complainant claiming to be an allottee of this project has approached the MahaRERA by filing this complaint mainly seeking reliefs under section 18 of the RERA towards possession of her booked flat along with interest on account of the delay in handing over possession of the said flat to her on the agreed date of possession mentioned in the allotment letter dated 20-12-2010.
15. In the present case, after going through the available record and the submissions made by both the parties, the MahaRERA has noticed that the complainant has booked the said flat for a total consideration amount of Rs. 4,25,55,000/- out of which the complainant has paid an amount of Rs. 3,31,80,000/- till the year 2017. However, the registered agreement for sale was not executed between the parties. The respondent has agreed to handover possession of the said flat to her on or before 31-12-2015. However, the respondent (as per the complainant) has extended the date of possession till 31-12-2018 and after issuing several demand letters, has terminated the said booking on 24-04-2018.
16. Being aggrieved, the complainant had earlier filed a Complaint No. CC006000000055828 before the MahaRERA seeking reliefs under section 18 of the RERA. However, during the course of the said hearing, both the parties settled the matter amicably by signing the consent terms on 8-05-2019 on mutually aggregable terms recorded in the same. By virtue of the said consent terms, the complainant has sought withdrawal of the said complaint filed before the MahaRERA.

17. Accordingly, the MahaRERA vide an order dated 5-07-2019 disposed of the said complaint with following directions:-

"1. At the time of hearing today, the advocate for the complainant submitted an application for withdrawal of the complaint signed by the complainant stating that , the dispute with the respondent has been amicably settled. The application was accepted and taken on record.

2. Accordingly, the complaint stands disposed of as withdrawn. The complainant is given a liberty to approach the authority in case of any default by the respondent."

18. However, it seems that alleging the non-compliance of the said consent terms by the respondent promoter, the complainant had filed a non-execution application before the MahaRERA seeking compliance of the said consent terms. In the said non-execution application, the MahaRERA has passed an order on 26-12-2022. The said order reads as under:-

"6) However, during the course of hearing, the MahaRERA has noticed that the aforesaid complaint was disposed of in view of the withdrawal application filed by the complainant on record of the MahaRERA. However, the said consent terms are not filed on record of the MahaRERA. It shows that there is neither any order passed by the MahaRERA on merits nor the said consent terms has been taken on record while deciding the said complaint. Hence, during the course of hearing held on 17-10-2022, the direction was given to the complainant to upload the said consent terms on record of the MahaRERA.

7. Accordingly, the complainant has submitted the same on record of MahaRERA through an email dated 21-10-2022.

8. However, on bare perusal of the said consent terms sent by the complainant it appears that it is a credit note dated 31-03-2019 issued by the respondent promoter and the no-objection letter issued by the respondent in the form of no-objection to sell the said flat, alienate, to create third party rights etc in favour of the complainant. However, no where it is stated that the respondent has

made any commitment to the complainant that it will refund the money paid by the complainant within the stipulated time period. Moreover, the credit note issued by the respondent does not specify the time period. Hence, the MahaRERA cannot consider the said documents as consent terms/ settlement terms duly arrived at between both the parties.

9. In view of the above, although the liberty was granted to the complainant to approach the MahaRERA, the MahaRERA is not inclined to pass any order in this non-execution application filed by the complainant for want of any order on merits by the MahaRERA.

10. Consequently, the present non-execution application stands disposed of being not maintainable. However, the liberty is granted to the complainant to take appropriate steps for execution of the said credit note issued by the respondent."

19. Being aggrieved by the aforesaid order dated 26-12-2022 passed by the MahaRERA in the said non-execution application, the complainant herein had filed the aforesaid Writ Petition (L) No. 2717 of 2024 before the Hon'ble Bombay High Court. In the said Writ Petition, the Hon'ble High Court was pleased to pass an order on 29-01-2024. The said order reads as under:-

"1 .After this petition was heard for sometime, learned counsel for the petitioner seeks leave to withdraw this petition with liberty to take recourse to appropriate proceedings.

2. In the event, any fresh proceedings are filed, the same be decided on its own merits without being influenced by the order dated 26 December, 2022 passed by the Maharashtra Real Estate Regulatory Authority, Mumbai.

3. The petitioner is also at liberty to make an application for early disposal of any proceedings. If the same is filed considering the fact that the issues as raised by the petitioner are pending for quite sometime, as also there were consent terms between the parties, the MahaRERA shall make an endeavour to decide the

proceedings as expeditiously as possible and within a period of eight weeks from the day such application is placed before it."

20. Pursuant to the aforesaid order passed by the Hon'ble Bombay High Court, the complainant has filed this complaint as a fresh complaint seeking reliefs under section 18 of the RERA.
21. Accordingly, this complaint was heard by the MahaRERA on 8-04-2024, when the complainant has pointed out to the aforesaid order passed by the Hon'ble Court and pressed for urgent hearing in this complaint. Accordingly, this complaint was heard finally by the MahaRERA in presence of both the parties on 24-04-2024.
22. In the present case, the complainant has mainly relied upon the consent terms dated 08-05-2019 duly signed by both the parties during the earlier proceeding filed by the complainant herein. Based on the said consent terms, the earlier order dated 26-12-2022 was passed by the MahaRERA. The complainant therefore contended that the said order dated 26-12-2022 cannot be taken into consideration by the MahaRERA while deciding this complaint.
23. The complainant also contended that as per the consent terms, she was liable to pay an amount of Rs. 24 lakhs to the respondent towards the balance consideration amount. However, the respondent by issuing the possession demand letter dated 23-01-2023 raised demand of Rs. 40,00,000/- towards the outstanding dues for obtaining possession. Further, as the respondent was not honouring the said consent terms completely, the registered agreement for sale has not been executed between the parties and the possession could not be obtained by her.

24. However, the respondent has assailed the aforesaid claim of the complainant and contended that the said consent terms dated 08-05-2029 supersede the earlier allotment letter dated 20-12-2010 and it has been novated. Accordingly, it has asked for an amount of Rs. 24 lakhs as per the said consent terms. However, it is the complainant who was not willing to take possession by signing registered agreement for sale ostensibly because she wants to resell the said flat, as can be seen from the letter dated 10-05-2019 (NOC issued by the respondent for resale of the said flat), whereby it has granted exclusive rights to the complainant to resell the said flat on the request of the complainant.
25. However, the complainant in reply to the aforesaid contention raised by the respondent has stated that it is not honouring the said consent terms dated 08-05-2019. Further, as per the said consent terms, there is no money payable by the complainant due to delayed interest. However, the respondent avers that it has demanded the amount due as per consent terms and interest is due from January 2023 till present as the OC was received on 6-1-2023 and the complainant was informed to obtain possession by paying the amount due. The respondent in its sur-rejoinder / additional written submissions filed on record of MahaRERA has also raised an issue of maintainability of this complaint as per the law of Res-judicata. The respondent therefore prayed for dismissal of this complaint.
26. From the aforesaid submission made by both the parties and after perusing the available record, the following observations are noteworthy:-
- a) Before dealing with this complaint on merits , it is pertinent to note that the earlier complaint no. CC00600000055828 which was filed by the complainant herein, was simply disposed of by the MahaRERA vide an order dated 5-07-2019 in view of the withdrawal application filed by the complainant

herein as the matter was settled between both the parties. It clearly shows that there was no order passed by the MahaRERA on merits in the said earlier complaint.

- b) Further, the said fact was noticed by the MahaRERA during the hearing held on the non-execution application. During the course of hearing held on the said non-execution application, the complainant had mentioned that the respondent has not complied with the consent terms dated 8-05-2019 duly signed by both the parties and by virtue of which she had withdrawn the said complaint.
- c) In this regard it is pertinent to note that the parties cannot be permitted to seek review of the final order by filing non-execution application. Hence, the MahaRERA had not taken cognizance of the said consent terms while deciding the non-execution application vide the order dated 26-12-2022.
- d) As far as the present complaint filed by the complainant, the MahaRERA has noticed that, the complainant has booked the said flat by virtue of an allotment letter dated 20-12-2010 and the said flat was booked for a total consideration amount of Rs. 4,25, 55,000/-. However, there is no registered agreement for sale signed between the parties.
- e) However, due to the termination letter issued by the respondent on 24-04-2018, the complainant had filed a Complaint No. CC006000000055828 seeking reliefs under section 18 of the RERA. The said matter was disposed of by virtue of the consent terms dated 8-05-2019 duly signed by both the parties. Accordingly, the earlier complaint was disposed of by the MahaRERA as per the withdrawal application filed by the complainant herein vide an order dated 05-07-2019. However, liberty was granted to the complainant to approach the MahaRERA in case of any default on the part of the respondent.
- f) However, admittedly, the said consent terms dated 8-05-2019 has not been

submitted on record of MahaRERA. Hence, during the course of hearing held in the non-execution application filed in the said earlier complaint, the complainant was directed to upload the same on record of MahaRERA.

- g) In the present case, admittedly by signing the said consent terms, as far as the issue of possession and the delay, the parties have revised the terms stipulated in the allotment letter dated 20-12-2010. Hence, for deciding the claim of the complainant under section 18 of the RERA, the said allotment letter is novated (as far as the payments of the outstanding dues is concerned) and hence, the same cannot be relied upon by the MahaRERA.
- h) The record also shows that the Hon'ble Bombay High Court in its order dated 29-01-2024 has granted liberty to the complainant herein to file a fresh complaint. Hence, the issue of Res Judicata raised by the respondent, as far as the present complaint filed by the complainant, has no legal substance.
- i) The record also shows that although the said allotment was done in the year 2010, neither the complainant nor the respondent has failed to cite any valid reason as to why till date a registered agreement for sale could not be signed by and between the parties.
- j) From the submissions of the complainant, it appears that an amount of Rs. 24,00,000/- was due and payable towards the outstanding dues for the said flat, however the respondent in the final possession demand letter has raised demand for Rs. 40,00,000/-extra. The complainant further contended that as per the said consent terms, she is not liable to pay any amount to the respondent.
- k) However, the respondent during the course of hearing has clarified that it has raised the demand for an amount of Rs. 24,87,000/- only and not Rs.40,00,000/- as alleged by the complainant.
- l) The respondent although has alleged that the said consent terms dated 8-05-2019 also got novated by virtue of the subsequent letter dated 10-05-2019

issued by it in favour of the complainant, this has no legal substance, since the complainant herein had never opted for resale of the said flat.

- m) Hence, the consent terms dated 8-05-2019 duly signed by both the parties needs to be taken into consideration by the MahaRERA, as the parties have modified the payment terms mentioned in the earlier allotment letter dated 20-12-2010. Meaning thereby, both the parties are governed under the said consent terms. These crucial facts were not pleaded during the hearing held before the MahaRERA on the non-execution application filed by the complainant herein in the earlier proceeding. Moreover, both the partes now relying on the said consent terms.
- n) In addition to this, during the course of hearing neither the complainant nor the respondent promoter have denied the execution of the said consent terms. On the contrary, they agreed to adhere to the said consent terms.
- o) Further, on bare perusal of the consent terms dated 8-05-2019 duly signed by both the parties (subsequent to the issuance of the allotment letter dated 20-12-2010), it appears that both the parties have arrived at mutually agreeable terms whereby the respondent has offered credit note of Rs.68,88,000/-towards the compensation for the delay which occurred in the project and the said amount was to be adjusted against the outstanding dues payable by the complainant. The said consent terms also mention that “ **Total Consideration :- Rs. 4,25,55,000/-; Total Principal Amount Paid :- Rs. 3,31,80,000/-; Credit Note :- Rs. 68,88,000/- as on 31-03-2019; Balance amount to be paid towards consideration on 31-03-2020:- Rs. 24,87,000/-; Compensation amount per month from 1-04-2020 for every month of delay Rs. 2,91,707.50/-.**
- p) It shows that the respondent by signing the said consent terms has not only agreed to compensate the complainant till 31-03-2020, but it has also agreed to pay further compensation from 01-04-2020 at the rate of Rs. 2,91,707/-


pm.

- q) Admittedly, the possession was not handed over to the complainant on 31-03-2020 and therefore obviously, the respondent is liable to fulfil its commitments given in the said consent terms and therefore is liable to pay further interest (in the form of compensation) to the complainant till the date of OC being obtained for this project on 6-01-2023 (excluding the Covid-19 pandemic which occurred in March, 2020 for which one year relief is granted to all the promoters for completion of their projects).
- r) Hence, even if the further delayed period of possession from 31-03-2020 till the date of OC dated 6-01-2023 (excluding the period of Covid-19 pandemic) is calculated, in that event, the amount of such interest payable by the respondent promoter would amount to much more than the amount of Rs. 24,87,000/- payable by the complainant on 31-03-2020 (as per the said consent terms dated 08-05-2019) towards the said consideration amount. Hence, the MahaRERA finds substance in the claim agitated by the complainant that no outstanding dues are payable by her for obtaining possession.
- s) In the present case, from the submissions made by the parties, it appears that admittedly, the draft agreement for sale is duly shared with the complainant and admittedly, there is no dispute raised by both the parties with regard to the execution of the said agreement for sale.
- t) Further, from the record, it also appears that the respondent has obtained OC for the project on 6-01-2023 and final possession letter was also issued to the complainant on 23-01-2023 raising further outstanding dues, which in fact the complainant is not liable to pay as per the observations made in aforesaid para nos. (n) and (o). Hence, the complainant is entitled to seek possession of the said flat by executing the registered agreement for sale.

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

- a) The present complaint is hereby allowed.
- b) Both the parties are directed to execute the registered agreement for sale as per the draft shared by the respondent in the year 2019 within a period of 30 days from the date of this order.
- c) The complainant is directed to pay the applicable stamp duty and registration charges for execution of the said agreement for sale.
- d) The respondent is further directed to forthwith handover possession of the said flat to the complainant after execution of the registered agreement for sale, without raising any further demand towards the consideration of the said flat. Needless to state here that the complainant is liable to pay the other applicable statutory dues (if any) at the time of possession.
- e) Any non-compliance of the aforesaid directions would be viewed seriously and appropriate penal action would be taken against the concerned, if the same is brought to the notice of MahaRERA by either party.

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


(Mahesh Pathak)

Member - 1/MahaRERA